



**CHAPTER MEETING MINUTES**  
**June 24, 2010**  
**Headliners Club 11:45 am - 1:00 pm**

**PRESIDENT REPORT - James Cornell**

James welcomed everyone and acknowledged Tommy Wald and RIATA Technologies, one of our Gold Sponsors of the year and our meeting sponsor. James recommended the website [www.extraordinarylawfirm.org](http://www.extraordinarylawfirm.org) as an excellent resource on how to make our law firms extraordinary. The site was created by ALA. James, Chrissie Eastin, Chris Sims and Tina Terrian will be attending the Chapter Leadership Institute in Las Vegas this weekend. They will report back to the chapter at the next meeting.

**COMMITTEE ANNOUNCEMENTS**

**Benefits & Compensation Survey Committee** - Elaine Nielson announced that the survey will be sent out in July. She encouraged everyone to participate. Results will be ready in early fall for use in preparing budgets for next year.

**Business Partner Relations Committee** - Tina Terrian announced that the Legal Expo and Educational Seminar will be on August 19 and the Downtown Hilton. It is our 12<sup>th</sup> Annual Legal Expo.

**Membership Committee** - Chrissie Eastin announced that there will be a Buddy Happy Hour next Wednesday, June 30 at 219 West at 5:30 p.m. More Buddies are needed so please complete an application if you are interested.

**Newsletter Committee** - Debbie Roan announced that the 2<sup>nd</sup> quarter newsletter will be out in about two weeks.



## OTHER ANNOUNCEMENTS

There were no other announcements and no guests in attendance.

## LUNCHEON SPONSOR

Founded in 1993, RIATA Technologies has been serving Austin and San Antonio providing information technology consulting and hardware procurement services for 17 years. Expert network consultants and competitive prices have been the hallmark of the company. RIATA was originally founded as a computer backup service company by today's CEO Tommy Wald in the front bedroom of his home. Now, 17 years later, Mr. Wald is still actively involved in the business and leading the company. His commitment to customers and employees is still evident throughout the organization.

## SPEAKER

Tommy Wald introduced our speakers, Tom Carter and Lisa Keckler with Maxwell Locke & Ritter. Tom and Lisa did a presentation on "Retirement Plan Considerations for Law Firms." The handout is attached.





# ML&R Wealth Management LLC

*Registered Investment Advisor*

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## Retirement Plan Considerations for Law Firms

Presented to the Austin Chapter of the  
Association of Legal Administrators

June 24, 2010

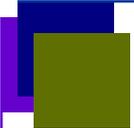


# Agenda

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- Fiduciary Concerns
- Plan Design Considerations
- Operational Issues
- Reviewing Plan Fees

# Fiduciary Concerns



## Who is a Plan Fiduciary?

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- Anyone listed in the plan document or other written agreement
- A functional definition – Fiduciary status is based on functions performed, not title
  - Anyone who exercises any discretionary authority or control of the assets
  - Anyone who has any discretionary authority for plan administration
  - Anyone who provides investment advice for a fee
- Personal liability for breach of fiduciary duty

## Who is a Plan Fiduciary?

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- At least one individual must be designated
- The named Fiduciary in the plan document may be the plan sponsor
  - If so, the sponsor must designate specific individuals who will be responsible for carrying out the fiduciary responsibilities
- A Plan Committee may be the named Fiduciary, provided names or positions of committee members are identified

# Who is a Plan Fiduciary?

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## ■ Fiduciaries

- Plan Sponsor
- Plan Trustee(s)
- Plan Administrator
- Plan Committee members

## ■ Possible Fiduciaries

- Investment Advisor
- Board of Directors
- Shareholders
- Partners
- Officers
  - CEO
  - CFO/Controller
  - Vice President of HR

## ■ Beware the WorldCom case

# Fiduciary Duties

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- ERISA Section 404(a) provides that fiduciaries have a duty to:
  - Act solely in the best interest of the plan participants and beneficiaries with the exclusive purpose of providing benefits to them (exclusive benefit rule)
  - Carry out their duties prudently
  - Follow the plan documents
  - Diversify the plan investments
  - Pay only reasonable plan expenses
  - If delegating duties, must prudently select and monitor the persons performing those duties

# Different Types of Fiduciaries

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- Typical Fiduciary roles
  - Plan Sponsor
    - Retains Fiduciary responsibility to the extent it meets the definition of a Fiduciary under ERISA 3(21)
  - Plan Administrator – ERISA 3(16)
  - Trustee
  - Investment Manager – ERISA 3(38)
- Full scope vs. limited scope

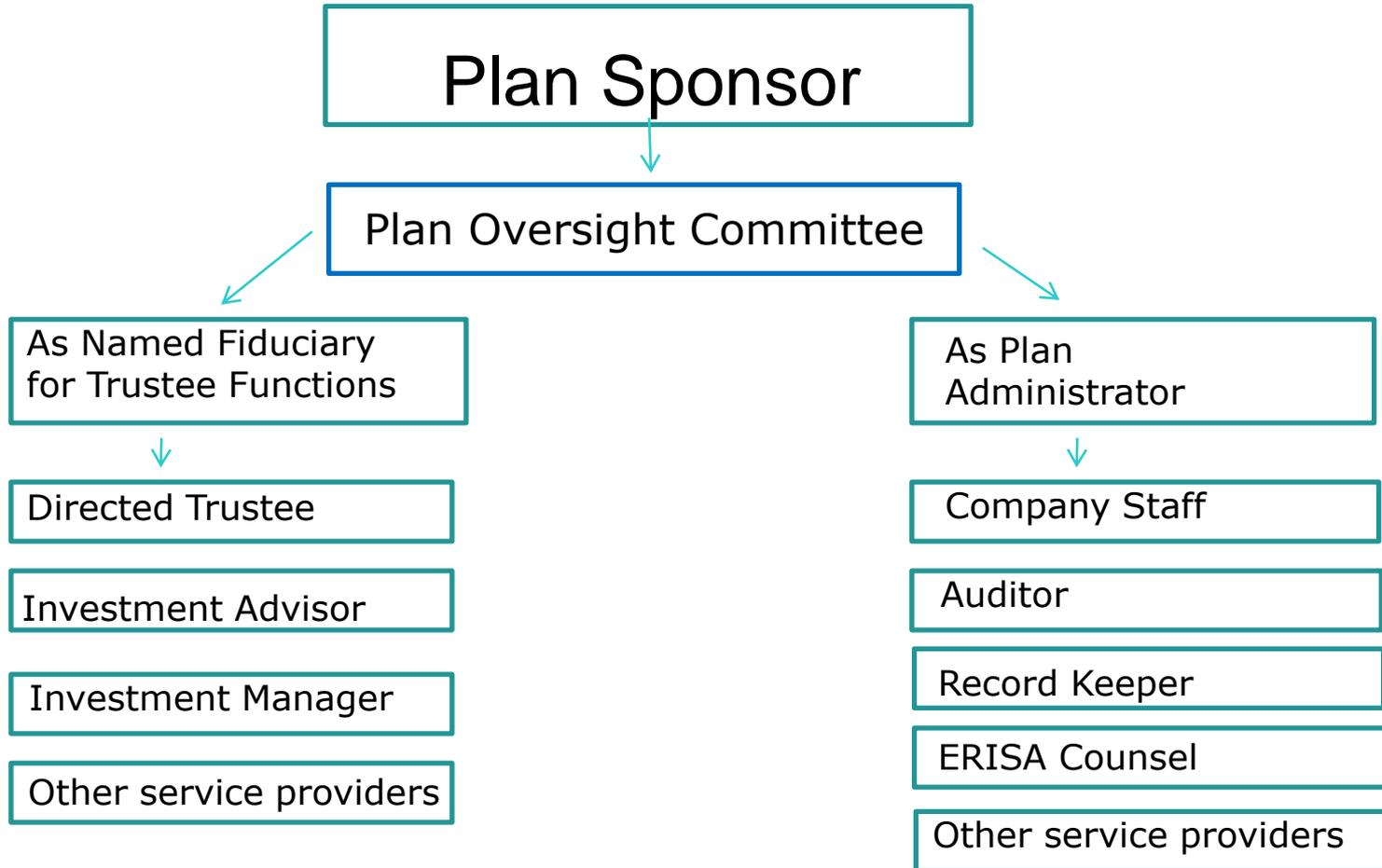
# Service Providers

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- Trustee
- Investment Advisor
- Custodian
- Record Keeper
- Third Party Administrator
- Auditor
- Consultant
- ERISA Attorney

Who is a Fiduciary?

# Typical Allocation of Responsibility

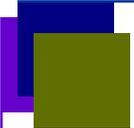


# Fiduciary Issues for Law Firms

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- Documentation of Fiduciary Duties
  - Who is the Named Fiduciary?
  - Is there a formal Plan Committee?
- Consider Fiduciary Liability Insurance
  - Special insurance coverage, separate from the plan's required ERISA Fidelity Bond
- Firm administrator generally wants to avoid Fiduciary status
  - Avoid being listed as "Plan Administrator" in the plan document or other written plan or employee materials
  - Avoid signing the Form 5500

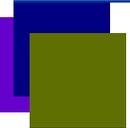
# Plan Design Considerations



# Plan Design Considerations

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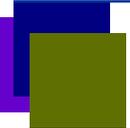
- Employer Contributions & Testing
- Safe Harbor Design
- Cross Testing
- Eligibility Requirements
- Automatic 401(k) Plans
- Defined Benefit & Cash Balance Plans



# Employer Contributions & Testing

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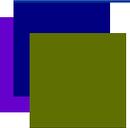
- Matching Contributions
- Profit Sharing Contributions
- Is your plan failing the non-discrimination tests for 401(k) contributions (ADP test)?
  - Are shareholders or partners receiving refunds?
- Is your plan top heavy?
  - More than 60% of total account balances belong to key employees (owners & officers)
  - 3% contribution required for non-key employees if any key employee contributes 3% or more



## Safe Harbor 401(k) Plan

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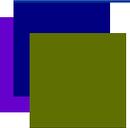
- A plan design option that automatically satisfies certain nondiscrimination tests
  - Allows all participants to make 401(k) deferral contributions up to the annual limit (\$16,500 in 2010 or \$22,000 if age 50 or older)
- Employer contributions are required and must be 100% vested
- Employees must receive annual notice 30 to 90 days before beginning of each plan year



# Safe Harbor 401(k) Plan

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- Required employer contribution can be:
  - Safe harbor matching contribution
    - Basic match is 100% of first 3% plus 50% of next 2%; or
    - Can use another formula, such as 100% of first 4%
  - Safe harbor 3% non-elective contribution
    - commit before plan year begins; or
    - wait and see approach – decide during fourth quarter



## Cross Testing

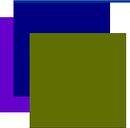
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- A Plan design option that gives great flexibility to fully fund shareholders' retirement accounts
  - Profit sharing component of a defined contribution plan is "cross tested" as if it were a defined benefit plan to pass discrimination testing
    - Testing compares what this year's contributions will be worth at retirement for various employees
    - Time value of money is factored into testing, which tends to "equalize" disparate contribution rates
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# Cross Testing

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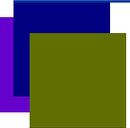
- Profit Sharing contribution is allocated to provider greater contributions to selected employee groups
  - 3 times rule – highest contribution rate is no more than 3 times the lowest contribution rate, i.e. partners receive 9%, staff receives 3%
  - 5% gateway - provided the lowest contribution rate is at least 5% of pay, the highest contribution rate is based on testing outcome and annual contribution limits, i.e. partners receive 20%, staff receives 5%



## 401(k) Safe Harbor with Cross Testing

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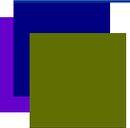
- A beneficial plan design for many law firms
  - Especially worth considering if the plan is top-heavy, so a 3% contribution is already required
- Can be part of a 401(k) safe harbor plan, provided that the 3% contribution is 100% vested



## Cross Testing

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- Results will vary based on demographics of the employee population, especially for small firms
- Law firms often consider cross-tested profit sharing contributions as part of the determination of year-end payments to partners/shareholders
- ML&R Wealth Management will prepare a complimentary cross-tested contribution calculation for ALA members' firms upon request



# Eligible Employees

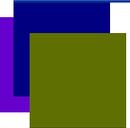
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- Who is eligible to participate in the plan?
    - Age and service requirements
    - Entry dates
  - Shift to more rapid eligibility and plan entry in recent years
  - Category exclusions
    - law clerks, runners, interns
    - associates
  - Part-time employees – must have fail-safe language that brings employees in to the plan if they work more than 1,000 hours
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# Automatic 401(k) Plans

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- Automatic 401(k) plans are increasingly popular
- Several aspects of plan operation can be “automated”
  - Automatic enrollment
  - Automatic escalation of contribution rates
  - Investment options
    - Default funds
    - Target date funds
    - Managed accounts
    - Participant advice

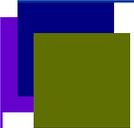


## Defined Benefit and Cash Balance Plans

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- If shareholders/partners want to fund more than \$49,000 per year for retirement, a defined benefit plan may be appropriate
  - Many options available for the plan benefit formula and other provisions
  - Employer bears the investment risk
  - A significant commitment, because employer contributions are required
  - Cash balance plan is a special type of defined benefit plan
    - Participant benefits are expressed as hypothetical account balances, similar to a defined contribution plan
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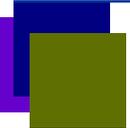
# Operational Issues



## Who is the Employer?

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- Do the owners of the firm own other businesses or operate their own sole proprietorships?
- Does the plan cover the appropriate entities?
- Consider possible controlled group status:
  - Same 5 or fewer people own 80% or more of two entities
  - Same 5 or fewer people own more than 50% of two entities, when considering only “identical” ownership percentages



## Who is the Employer?

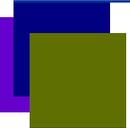
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- Consider possible affiliated service group (ASG) status:
    - Two or more entities with a joint relationship in providing services
      - A-Org group
      - B-Org group
      - Management group
  - ASG rules were developed in part to address avoidance situations in professional firms, where ownership was structured to avoid controlled group status
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## Who is the Employer?

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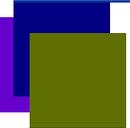
- Failure to cover the appropriate employee population may disqualify the plan
- Not all entities or employees have to be covered, provided coverage requirements can be satisfied separately by each entity
- When firms split up or are newly formed, these relationships should be re-examined
- When new owners come on board, should inquire about outside business interests that may impact the affiliated employer status



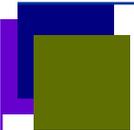
# Compensation Definition

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- How does the plan document define compensation?
- Are there any exclusions or amounts to add back to what is reported from the payroll system?
- Partnership calculations
- Year-end calculations for corporations operating similar to a partnership



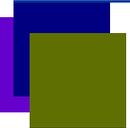
# Reviewing Plan Fees



# Reviewing Plan Services and Fees

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- Increased regulatory focus on fees and fee disclosure
  - Revised Schedule C to Form 5500 for 2009 plan year requires detailed reporting of fees paid from plan assets to service providers
  - Proposed regulations for participant fee disclosure have been withdrawn and are being revised by the DOL



# Retirement Plan Marketplace

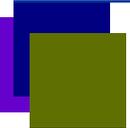
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- Traditionally, “services” were sold by brokers, mutual fund companies, TPAs
- Many providers are not Fiduciaries (or try to avoid Fiduciary status)
- Inherent conflicts of interest in broker products
- Payments by fund companies to service providers for “shelf space”
- Mutual fund expenses used to pay other providers, i.e. revenue sharing
- Different share classes
- Total fees may be difficult to determine

## Reviewing Plan Services and Fees

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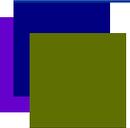
- The retirement plan industry is evolving rapidly
- Significant cost savings may be available for plans that have not “shopped” their services recently
  - Recent example – 60 participant plan with \$2.5 million in plan assets
    - Realized 38% savings
    - Reduced overall plan costs from 1.94% of plan assets to 1.22% of plan assets
    - Enhanced service for plan sponsor and participants, including fiduciary services



## Reviewing Plan Services and Fees

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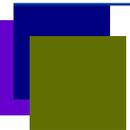
- Larger plans may consider asking for a fixed fee or a hybrid fee (part fixed fee, part asset-based fee)
- Ask your provider about additional services that may be available at no additional cost
- Keep an eye on contract provisions calling for a reduction in fee rates as plan assets or participant count grow



# Reviewing Plan Services and Fees

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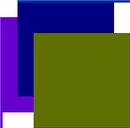
- Decisions about service providers, investments, and fees are Fiduciary decisions
- The plan's services and fees should be compared to the marketplace periodically, as part of the exercise of appropriate Fiduciary oversight
  - No specific guideline
  - We usually recommend:
    - examining investment expenses at least annually
    - a thorough fee and services review every 5 years



# Questions?

If you would like to receive ML&R Wealth Management's 401(k) update newsletters, leave your business card with us

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## Contact Information

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