

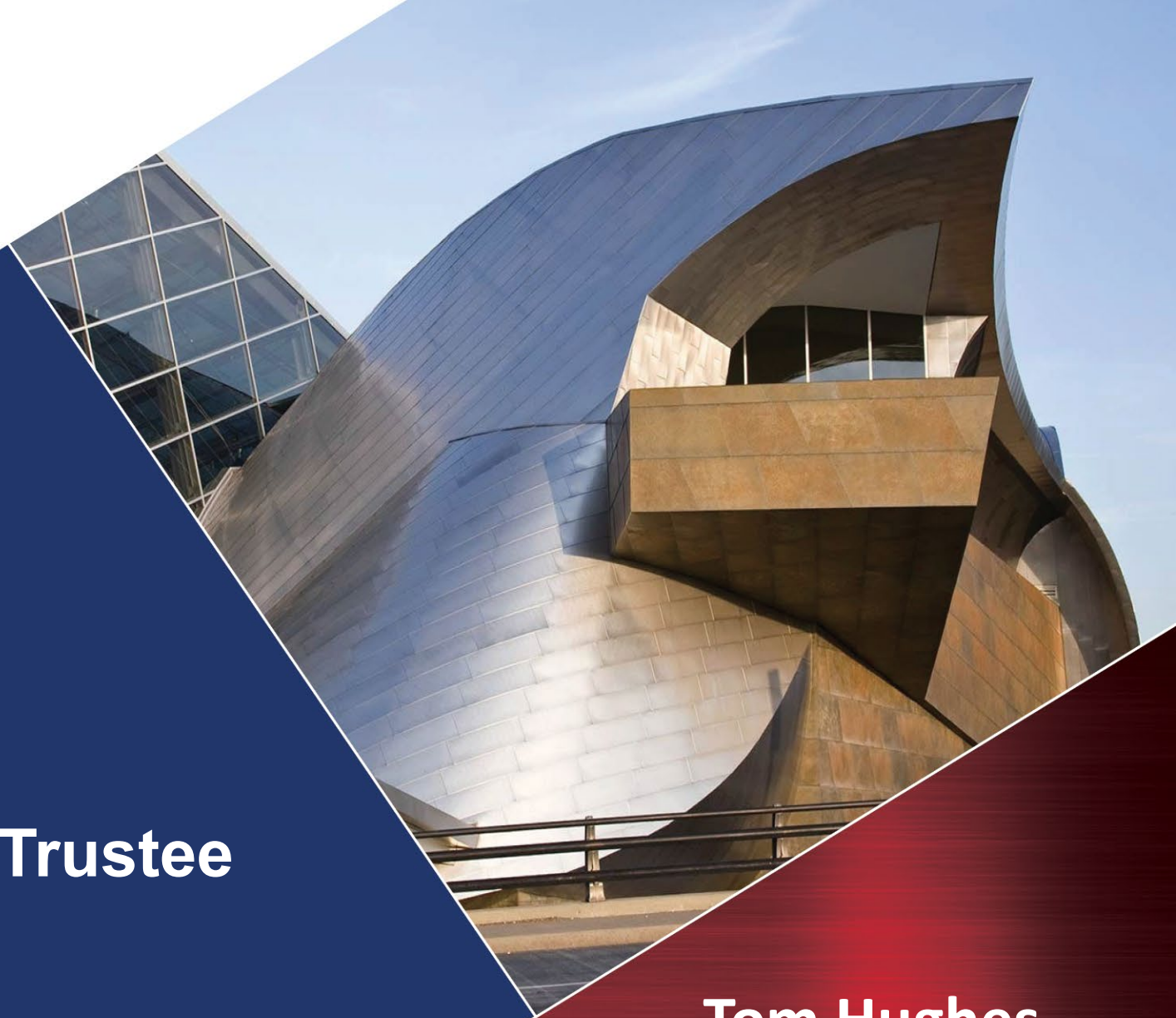


SHEET METAL & AIR CONDITIONING
CONTRACTORS' NATIONAL ASSOCIATION

Fiduciary Duty of a Trustee

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The Basics

Relevant Documents

- Trust Agreement
- Plan Document / Summary Plan Description
- Collective Bargaining Agreement
- Participation Agreement



The Basics

Relevant Documents

- Trust's Policies
 - Collections
 - Conflict of Interest
 - Education
 - Expense Reimbursement
 - Investment Policy
 - Whistleblower



Erisa § 3(21)(A)

ERISA 3(21)(A) provides that a person is a fiduciary with respect to a plan to the extent that he or she:

1. exercises any discretionary authority or discretionary control with respect to management of the plan or exercises control with respect to the management or disposition of plan assets;
2. Renders investment advice for a fee or other compensation, direct or indirect, with respect to any plan assets or has the authority or responsibility to do so; or
3. has any discretionary authority or discretionary responsibility in the administration of the plan.



Fiduciary Issues

Fiduciary Duties

- “[A] fiduciary shall discharge its duties with respect to a plan solely in the interests of the participants and beneficiaries and
- For the exclusive purposes of:
 - providing benefits to participants and their beneficiaries; and
 - defraying reasonable expenses of administering the plan;...



Fiduciary Issues

Fiduciary Duties (cont'd.)

- With the care, skill, prudence and diligence under circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
- In accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with ERISA.”



Fiduciary Issues

Fiduciary Duties / Said differently:

- Act Prudently
 - Hire professionals to know what you don't know
- Sole and Exclusive Benefit
 - Act in the interest of the plan's Ps & Bs
- Minimize Expenses
 - Administration costs should be reasonable and necessary
- Diversification
 - Mitigate risk of large losses



Fiduciary Issues

Conflicts of Interest

- Self-dealing
 - Fiduciary shall not receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving plan assets
- Acting on Behalf of an Adverse Party
- Kickbacks



Personal Liability

If a fiduciary does breach a fiduciary duty, the law provides that the individual breaching the duty shall be ***personally liable***:

- 1) to ***make good any losses*** to the plan resulting from the breach
- 2) to ***restore to the plan any profits*** which have been made through the use of assets of the plan by the fiduciary
- 3) and may be ***removed*** as a trustee
- 4) are subject to such ***other equitable relief*** as the court may determine.



“Party in Interest”

The “**party in interest**” definition is quite elaborate, and includes, any fiduciary (including, but not limited to, administrator, officer, trustee, or custodian of a plan, legal counsel to the plan, employee of the plan, a person providing services to the plan, any employer whose employees are covered by the plan, an employee organization whose members are covered by the plan, and certain other identified individuals such as relatives, trusts, officers, directors, etc.



Transactions between a Plan and a Party in Interest, ERISA §406(a)

A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a ***direct or indirect*** –

- ***sale or exchange***, or leasing, of any property between the plan and a party in interest;
- ***lending of money*** or other extension of credit between the plan and a party in interest;
- ***furnishing of goods, services***, or facilities between the plan and a party in interest;
- ***transfer*** to, or use by or for the benefit of a party in interest, of any assets of the plan; or



Transactions Between a Plan and a Fiduciary, ERISA § 406(b)

With respect to the transactions between the plan and the fiduciary, the fiduciary shall not:

- deal with the assets of the plan for his ***own interest*** or for his own account;
- in his individual or any other capacity, act in any transaction involving the plan on behalf of a party whose interests are ***adverse*** to the interests of the plan or the interests of its participants or beneficiaries; and
- receive ***any consideration for his own personal account*** from any party dealing with such plan in connection with a transaction involving the assets of the plan.



Fiduciary Issues

Prohibited Transaction Exemptions:

- Statutory
 - Allows a plan to contract or make reasonable arrangements with a party in interest for office space, legal, accounting or other services necessary for the establishment or operation of the plan.
 - Allows certain purchases, sales, leases, extensions of credit and transfers of assets between a plan and a service provider, other than a fiduciary that has or exercises fiduciary functions regarding the assets involved in the transaction.
 - The Plan must receive no less, nor pay no more, than adequate consideration, in connection with the transaction.



Fiduciary Issues

Fiduciary Breaches (cont'd.)

- Most Common
 - Not collecting contributions
 - Not following plan documents in administering benefits
 - Incurring unreasonable expenses
 - Engaging in self-dealing and prohibited transactions