GROOM LAW GROUP

Publications

The ERISA Fiduciary Advice Exemption

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Investment advisers act as fiduciaries to clients based on a recognition that an adviser's relationship with clients is one of trust and confidence. When an adviser deals with retirement clients, such as plan fiduciaries or participants in plans governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the relationship is subject to an overlay of additional duties of care and loyalty.

An adviser that breaches ERISA's duties can be liable for losses suffered by the retirement client.

These rules also prohibit a plan fiduciary from using its fiduciary authority to benefit itself or an affiliate. A prohibited transaction involving a retirement plan cannot be cured through disclosures, and violations can lead to the potential for excise tax liability. Importantly, when an adviser deals with IRA clients, ERISA's fiduciary duties do not apply, but the prohibited transaction and excise tax provisions of the Code do.

In this *IAA Today* article, Groom's Jenny Eller and Jacob Eigner discuss DOL-Prohibited Transaction Class Exemption 2020-02 ("PTE 2020-02"), which is a continuation of the DOL's efforts to further regulate interactions between financial professionals and retirement clients.

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