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You Deserve a Loyal and True Fiduciary

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GUEST COMMENTARY: What is a fiduciary and why do you deserve one? Let's start with a definition and then discuss why you should insist that anyone giving you financial advice be a fiduciary.

The word fiduciary is a legal term that includes executors of wills and estates, trustees and those who manage the assets of underage or incompetent beneficiaries. Within the investment industry a fiduciary is a professional held in a capacity of trust who renders investment advice. If a person is a fiduciary, he or she is legally required to always do what is in the client's best interest, even when it is not in the fiduciary's best interest.

Why do you deserve a fiduciary? Because the scandal-ridden financial industry includes many unscrupulous financial people who are more interested in selling you something rather than in doing what is in your best interest. You need to protect yourself and your hard-earned money.

Most stockbrokers, insurance agents, financial advisers, financial planners, and investment representatives in banks are ethical and recommend what they believe is in the client's best interest.

However, let's look at a common example. Consider that someone in the financial industry attempts to sell you an annuity. If the person recom-mending the annuity is serving as a fiduciary, he or she is legally required to recommend only products that are in your best interest.

That sounds reasonable, doesn't it? After all, you should be able to trust the person giving you financial advice. Unfortunately, it is hardly ever that simple. Consumers are often sold annuities that are not in their best interest. The persons who sell them rarely mention the negative traits of annuities.

Does the salesman mention to the customer that the salesman's commissions may be as high as 8 or 10 percent? This equates to a commission of $20,000 or more if a customer invests $250,000 or more in an annuity. The high commissions are a major reason that annuities are sold so aggressively. There is not a full disclosure law in the U.S. so the salesperson is not required to disclose his or her commission. However, you as the customer should always ask because you have a right to know.

Would the salesperson mention that the customer typically pays very high fees each year in an annuity, or that there are often very high surrender penalties that may last for six to ten years? Would he or she mention that annuities often have negative tax consequences? If you die with a fixed or variable annuity (that was never annuitized) your beneficiary will have to pay taxes on the gain, whereas if the money was not in an annuity (and in a taxable account instead) the beneficiary would receive a step-up in basis and not owe any income taxes? How many of the negative features will the salesperson mention? Are annuities always a bad choice? No. In certain limited circumstances annuities are a wise choice, but in most cases they are not.

I have chosen to use an annuity as an example. However, a wide variety of financial products and insurance products could have been used. Some large brokerage firms have been fined multiple times on various allegations made by New York Attorney General Eliott Spitzer and the Securities and Exchange Commission. Many customers lost large amounts of money during the past five years because of poor investment recommendations that did not match the customers' risk tolerance and goals. Some of these instances are classic examples of a broker or financial adviser who did not put the client's interest first. Yet, many customers do not question their broker or financial adviser. It is important that you protect yourself so you are not the next victim.

Let's look at who is, and who is not, a fiduciary within the financial industry.

Who is a fiduciary? Attorneys are fiduciaries. Certified Financial Planner professionals, Chartered Financial Analysts, and Registered Investment Advisers are all required to be fiduciaries.

Who is not a fiduciary? Stockbrokers and insurance salespeople are typically not fiduciaries. The Investment Adviser's Act of 1940 specified that registered investment advisers serve their clients as fiduciaries. However, large brokerage firms were exempt from this Act, so they are not held to a fiduciary standard. Stockbrokers are typically held to suitability standards, which are less stringent than fiduciary standards.

Some experts say the difference between a salesperson (not held to a fiduciary standard) and a person that is required to be a fiduciary is whe not the person gives advice. If a person describes his/her role as an investment adviser or financial adviser, one would assume he or she is held fiduciary standard because he or she is giving advice. Conversely, if a stockbroker primarily just places trades, or an insurance agent primarily sell insurance, he/she is likely not a fiduciary.

Melanie Waddell, in the August 2003 issue of Investment Advisor magazine, states, "Brokerage firms and their reps are perhaps the worst at up to their obligation as a fiduciary. Why? Primarily because many brokers still argue that they're merely executing transactions for clients, and th shouldn't be held responsible if clients make shoddy investment choices. But, as we're all aware, brokerage firms are providing more comprehen financial advice these days, and whether they like it or not, do have a fiduciary duty, even if it's just a moral fiduciary duty."

What can you do to protect yourself? I recommend you ask every professional who gives you financial advice if they are a fiduciary. If they sa ask them to commit to you that they will act as a moral fiduciary, always putting your interest first.

Another step you can take is to contact your congressional representative and ask them to support new laws that would require every profess giving financial advice to serve the client as a fiduciary, as well as a full disclosure law requiring disclosure of all relevant information about any investment or insurance product being recommended. This would include the positive and negative traits, the commissions, and all other fees. is right for such a law, and the American consumer deserves it

From the Executive's Desk

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