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Plan Sponsor Guide

Fiduciary Role Comparison Guide

Understanding the practical differences between a Discretionary Trustee, 3(16), 3(21), Directed Trustee and 3(38) fiduciary roles

FIRST HILL TRUST · PLAN SPONSOR GUIDE

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Why This Guide Matters

Why this guide matters

- Plan sponsors often hear these fiduciary terms used together, even though they describe different responsibilities under ERISA.
- **The most important distinction is not the label alone. It is who actually has authority to make decisions, where exposure usually sits, and what the plan sponsor still retains.**

Plan sponsors and committee members often hear terms like **3(16)**, **3(21)**, **3(38)**, and **discretionary trustee** used together in provider conversations, comparison materials, and fiduciary discussions. The challenge is that these roles do not mean the same thing. Each describes a different type of responsibility under ERISA, and each can affect how decisions are made, how oversight is structured, and where exposure may remain.

That distinction matters because the key issue is not simply what a provider calls itself. The more important question is **who actually has authority to act, which responsibilities are being accepted, where exposure typically stays, and what duties the plan sponsor or committee still retains**. For committees evaluating a discretionary trustee arrangement, understanding those differences can help create a more informed, consistent, and better-documented review process.

This guide is designed to make that comparison easier by showing how these roles differ in practice, where discretion begins and ends, and what those differences can mean when real fiduciary decisions need to be made.

Advice

A 3(21) adviser may recommend actions, but the committee generally still decides whether to approve them.

Discretion

A 3(38) investment manager can make investment decisions within delegated scope without committee approval. A discretionary trustee may have broader authority depending on the scope defined in the trust agreement and governing documents.

Important note: Fiduciary duties and exposure depend on the actual functions accepted in the governing documents and service agreement, not just the marketing label used by the provider.

Side-by-Side Role Comparison

A practical comparison of what each role typically does, where discretion sits, what exposure usually remains, and what the sponsor still retains.

Role	Primary Function	Discretion	Where Exposure Usually Sits	What Sponsor Still Retains	Best Fit
3(16) Fiduciary	Administrative fiduciary support for delegated plan administration responsibilities, required notices and disclosures, and certain day-to-day plan decisions.	Administrative discretion within delegated areas	Usually with the party that accepted the delegated function, but the sponsor retains a continuing duty to monitor under ERISA Section 405(c)(2)	Prudent selection, monitoring, and replacement of the 3(16); duties not delegated	Sponsors seeking relief from internal administrative fiduciary burden
3(21) Fiduciary Adviser	Investment recommendations, committee support, fund reviews, and guidance.	No final investment discretion	The 3(21) may have exposure for imprudent advice; the committee retains exposure for the final investment decision and for failing to independently evaluate recommendations	Final investment decisions and provider oversight	Sponsors wanting guidance while keeping investment control
3(38) Investment Manager	Discretionary authority to select, monitor, and replace investments within agreed scope.	Full investment discretion within delegated scope	Usually with the 3(38) for delegated investment decisions, plus sponsor exposure for poor selection or monitoring	Prudent selection, monitoring, and replacement of the 3(38); non-investment fiduciary duties; monitoring obligation retained under ERISA Section 404(a)(1) and DOL Interpretive Bulletin 75-8.	Sponsors wanting to delegate investment decision-making
Directed Trustee	Holds and safekeeps plan assets and carries out transactions on the proper directions of a named fiduciary, usually the committee	None over investments. Acts only on proper directions and may not follow a direction contrary to ERISA or the plan documents	Usually with the party giving the directions. The directed trustee remains a fiduciary with a narrow scope and can have exposure for following an improper direction	Prudent selection and monitoring of the trustee, plus every decision the trustee is directed to carry out	Sponsors that want independent custody of plan assets while the committee or its managers keep decision authority
Discretionary Trustee	Trustee-level authority over plan assets and other delegated fiduciary functions, depending on the trust agreement and governing documents.	Trustee-level discretion within delegated scope	Usually with the trustee for functions and asset decisions it actually controls, plus sponsor exposure for inadequate oversight	Prudent selection, monitoring, and replacement of the trustee; responsibilities kept outside delegated scope; monitoring obligation retained under ERISA Section 404(a)(1) and DOL Interpretive Bulletin 75-8.	Sponsors seeking broader fiduciary delegation and clearer centralized accountability

A common misunderstanding

Hiring a fiduciary provider does not automatically remove all sponsor exposure. Under ERISA Section 409, that exposure includes personal restoration of losses to the plan. Delegation can shift decision-making authority, but plan sponsors still retain a duty to prudently select and monitor the provider and to manage any duties not actually delegated.

The Four Roles at a Glance

The grid below covers the four investment and trustee roles compared above, duty by duty. The 3(16) administrator's responsibilities are administrative and sit outside these asset-side functions. A duty marked No does not disappear. It stays with whoever else holds it, which is often the committee itself.

Duty	3(21) Adviser	3(38) Manager	Directed Trustee	Discretionary Trustee
Gives investment advice to the committee	Yes	Yes, as part of managing	No	Yes, as part of managing
Decides which investments the plan offers	No. Recommends only	Yes	No. Follows directions	Yes
Holds (safekeeps) the plan's assets	No	No	Yes	Yes
Collects contributions owed to the plan	No	No	Only if the documents assign it	Yes
Applies contributions and plan revenue, including revenue sharing	No	No	Processes as directed	Yes
Must refuse directions contrary to ERISA or the plan document	No	No	Yes	Yes
Acknowledges fiduciary status in writing	Varies by agreement	Yes, required by ERISA §3(38)(C)	Yes, as trustee	Yes, as trustee
Scope of responsibility	Advice given	Duties listed in its agreement	Following proper directions	Full trustee authority over plan assets
Committee still selects and monitors it	Yes	Yes	Yes	Yes

Plain-Language Definitions

3(16) Plan Administrator (ERISA §3(16)(A), 29 U.S.C. §1002(16)(A))

The administrator is the person the plan document specifically names to run the plan, and if no one is named, it is the plan sponsor itself. Outside providers can be hired to take on administrator duties, but the sponsor remains the administrator unless the documents name someone else.

3(21) Investment Adviser (ERISA §3(21)(A), 29 U.S.C. §1002(21)(A))

A fiduciary because it renders investment advice for a fee. It recommends, and your committee decides. Responsibility for each decision stays with the committee.

3(38) Investment Manager (ERISA §3(38), 29 U.S.C. §1002(38))

A fiduciary with the power to manage, acquire, or dispose of plan assets. It must be a registered investment adviser, a bank, or a qualified insurance company, and it must acknowledge its fiduciary status in writing. Its duties are set by its written agreement. When it is properly appointed, ERISA §405(d) provides that no trustee is liable for its acts or omissions on the assets it manages.

Directed Trustee (ERISA §403(a)(1), 29 U.S.C. §1103(a)(1))

A trustee that holds plan assets but acts on the proper directions of a named fiduciary, usually the committee. It is still a fiduciary, and it may not follow a direction that is contrary to ERISA or the plan documents.

Discretionary Trustee (ERISA §403(a), 29 U.S.C. §1103(a))

A trustee holding the exclusive authority and discretion ERISA gives the trustee role: managing and controlling plan assets, safekeeping them, and collecting and applying the money owed to the plan. The Department of Labor confirmed in Field Assistance Bulletin 2008-01 that collecting contributions is a trustee responsibility that a trust agreement cannot simply disclaim.

What Happens in Real-World Scenarios?

These examples help committees understand where decisions usually sit and what happens when something goes wrong.

Scenario	Role Involved	What Happens	Why It Matters for the Sponsor
Required participant notice is missed or delivered incorrectly	3(16) Fiduciary	If that administrative duty was clearly delegated and accepted, the 3(16) is usually the primary fiduciary at issue for that function.	The sponsor should still be able to show prudent selection, monitoring, and follow-up when service issues appear.
Committee keeps an expensive or underperforming fund after receiving advice	3(21) Fiduciary Adviser	The adviser may have exposure for imprudent advice, but the committee usually still owns the final investment decision because it approved the recommendation.	Advice can improve process, but it does not transfer final investment authority away from the committee.
Investment lineup change is made without committee approval	3(38) Investment Manager	That is typically what a valid 3(38) arrangement is intended to allow. If challenged, the 3(38)'s prudence and process are usually examined first.	The sponsor's continuing exposure is more about prudent selection and monitoring than the underlying delegated decision itself.
Trust assets are moved or managed in a way later challenged as imprudent	Discretionary Trustee	If the trustee had actual authority over that asset decision, the trustee is usually the main fiduciary at issue for that action.	The sponsor still needs a documented oversight process and a clear understanding of the trustee's scope.
A provider underperforms or creates repeated service problems over time	Any delegated fiduciary role	Even where duties were delegated, the sponsor may still have exposure if it ignored red flags or failed to monitor the provider prudently.	ERISA Section 404(a)(1) and DOL Interpretive Bulletin 75-8 require prudent monitoring: documenting the review process and taking corrective action when problems are identified.

Four Plan Sponsor Takeaways

- 1. Advice is not the same as discretion**

A 3(21) can guide the committee, but the committee usually still decides.
- 2. Scope matters more than labels**

The service agreement and governing documents determine what the provider actually accepted, not the marketing label.
- 3. Monitoring never goes away**

Sponsors retain a duty to prudently select, monitor, and if necessary replace any delegated fiduciary, regardless of what was delegated.
- 4. Documentation matters**

Committee minutes, delegation language, and provider review records help demonstrate prudent oversight under ERISA.

Worksheet: Map the Roles in Your Plan

For each duty below, write down who holds it in your plan today and the document that says so: the plan document, the trust agreement, or a service agreement. A blank line is a finding, not a failure. It means the duty currently sits with the committee, and the committee can decide deliberately whether to keep it or assign it. The questions in the next section can guide that conversation with a prospective provider.

Duty	Who holds it in our plan today	Where it is written down
Selecting and monitoring the investment menu		
Holding (safekeeping) plan assets		
Confirming every payroll contribution arrived in full and on time		
Pursuing late or missing contributions		
Confirming revenue sharing is received and applied correctly		
Reviewing the appointed fiduciaries at reasonable intervals		

Questions to Ask a Prospective Discretionary Trustee

Use these questions to clarify actual scope, delegated authority, and what remains with the committee.

- 01 What fiduciary role or roles are you accepting in writing?**
Ask whether the provider is acting as trustee, 3(16), 3(38), or some combination, and request that this be clearly stated in the executed service agreement.
- 02 Which decisions can you make without committee approval?**
Request practical examples instead of relying on general descriptions.
- 03 What responsibilities remain with the plan sponsor or committee?**
This is one of the most important questions in the process.
- 04 How is the delegation documented?**
Look for clear language in the service agreement, trust agreement, and plan documents.
- 05 How do you report decisions and oversight activity back to the committee?**
Good delegation should still support visibility and documentation.
- 06 If investments are included, are you acting as a 3(38) investment manager?**
Do not assume investment discretion is included unless it is explicitly stated in the agreement.
- 07 If administrative fiduciary duties are included, which specific 3(16) functions have you accepted?**
Ask which notices, operational decisions, or participant processes are in scope.
- 08 Have you provided or will you provide a written fee disclosure consistent with ERISA Section 408(b)(2) requirements?**
This is a required disclosure for covered service providers under ERISA, it should be provided before the arrangement is finalized.

Practical takeaway

For plan sponsors evaluating a discretionary trustee, the key question is not simply what the provider calls itself. The real issue is who has authority to act, where exposure usually sits, what remains with the committee, and whether the arrangement creates a clearer and better-documented fiduciary structure.

About First Hill Trust

First Hill Trust is a retirement plan solution provider that delivers a comprehensive employee benefits back office for plan sponsors who want clearer accountability, stronger governance, and fewer operational handoffs. Our work is grounded in fiduciary oversight. We focus on helping sponsors understand where responsibility sits, how decisions are executed, and how oversight functions in practice, not just on paper.

We work behind the scenes to support plans that value clarity, consistency, and confidence in how they are managed. If you'd like more information or a high-level review of how your retirement plan is structured today, click the link to schedule a brief review, or contact us (206) 625-1800.

[Schedule a Brief Review](#)

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