

Prohibited Transactions for Pension Plans

The prohibited transaction provisions of ERISA are quite broad and preclude numerous types of transactions between "parties in interest" and the pension plan. §406 of ERISA prohibits fiduciaries, including trustees and investment managers, from entering into certain transactions if they know or should know that any such transactions are with a party in interest, unless a statutory or administrative exemption is available under §408 of ERISA. These prohibited transactions include:

- >The sale, exchange or leasing of any property between a pension plan and a party in interest;
- >The lending of money or other extension of credit between a pension plan and a party in interest;
- >The furnishing of goods, services or facilities between a pension plan and a party in interest;
- >The transfer to, or use by or for the benefit of, a party in interest, of any assets of a pension plan; and
- >The acquisition on behalf of a pension plan of any employer security or employer real property unless the requirements of §407 of ERISA are met.

Unfortunately, prohibited transactions are not always immediately recognizable. ERISA dictates that a pension plan that owns an office, industrial, apartment, or retail property, cannot lease to anyone affiliated directly or indirectly to the pension plan. Thus, entering into a lease for building space with a tenant who happens to be a family member of someone providing services to the pension plan, or who falls within the broad party in interest definition in ERISA, may be a prohibited transaction.