HOUSE RULES

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Casinos have house rules. These rules dictate what patrons can and cannot do. They are often written down, posted, and there is no debating the validity of said guidelines. House rules govern all those under the purview of management. I have house rules of my own when it comes to card games, darts, boardgames and any other source of competition. House rules can also apply to non-competitive situations. No swearing. Take your shoes off. Don't sit on the good furniture in the living room.

When it comes to workplace plans like a 401(k), house rules apply. We like to say, "the law of the plan is the law of the land." While a 401(k) cannot allow total anarchy and must abide by strict ERISA guidelines for things like eligibility and non-discrimination testing, the plan does have flexibility in other areas.

For example, a plan does not have to offer Roth contributions. A plan does not have to offer in-service withdrawals or loans to its participants. It does not have to offer the "still-working exception" for those employees subject to required minimum distributions (RMDs). In fact, in 2020, a plan did not have to offer Coronavirus-related distributions (CRDs) authorized by the CARES Act or recognize the CARES Act waiver of 2020 RMDs. If the plan wanted to force out a 2020 RMD payments, the plan was well within its rights to do so. House rules.

Of course, a plan participant who received a forced 2020 RMD could have rolled it over to an IRA, thereby avoiding the taxes due. A plan participant who could access 401(k) plan dollars via a hardship distribution could retroactively deem the 2020 hardship distribution as a CRD. A plan cannot control what participants do on their own time once they receive their plan funds. In fact, the plan does not care. That is between the participant and the IRS. When the participant is not under the roof of the plan, (i.e., when he or she has plan dollars in hand), plan house rules are, for the most part, no longer applicable.

One such case that clearly demonstrates the all-powerful authority of plan house rules is Herring v. Campbell, U.S. Court of Appeals, 5th Circuit, August 7, 2012. In this case, a plan participant died with no living beneficiary listed on his qualified retirement plan. (His wife had predeceased him.) The plan looked to its “house rules” and identified its default beneficiary protocol. The plan would pay out the account to next of kin based on the following order: (1) surviving spouse; (2) surviving children; (3) surviving parents; (4) brothers and sisters, (5) estate.

The plan participant did not have any biological or legally adopted children, but he did have two stepsons. What did the plan do? The plan decided that his stepsons were not his children because they were not his biological children and were never adopted by him. Since the participant had no surviving parents, the plan distributed the funds to the next category of default beneficiaries – the participant’s brothers and sisters. The Court of Appeals ruled that 1.) the plan correctly applied its policy that stepchildren are not “children,” and 2.) the funds were properly distributed to the siblings as the default beneficiaries. The stepsons were disinherited.

House rules. Be sure to know the guidelines of the workplace plan you participate in, or else house rules could put a serious crimp in your game.