



## Legal Note – Retirement Plans/ERISA

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In response to several inquiries, we discuss certain protections afforded by retirement plans in this and the next few legal notes.

In 1974, Congress enacted the Employment Retirement Income Security Act (“ERISA”) to address several high profile pension collapses of the 1960 and 70’s. ERISA was drafted to encourage employers to fund qualified plans by providing an income tax deduction for plan contributions. ERISA qualification generally requires federal compliance with an array of financial and legal requirements.

Among the plan protections required by ERISA is that plan assets be held in an irrevocable trust. The trust arrangement generally prevents plan participants from transferring any interest in the plan. Such prohibition on transfers generally removes plan assets from the reach of the creditors of participants. Moreover, the Bankruptcy Code generally excludes from the bankruptcy estate (available to creditors) assets subject to a transfer restriction, such as the trust fund restriction required by ERISA. Qualified plan assets are therefore afforded substantial creditor protection.