

PUBLISHED WHITE PAPERS

Strauss Troy, the premier business law firm of Greater Cincinnati and Northern Kentucky, is committed to helping companies of all sizes overcome business challenges and gain the resources they need to succeed.

Below is a table of contents of white papers written by our knowledgeable team of attorneys. These articles feature insights on such topics as saving for your retirement, employee retirement plans, how to handle a government investigation, the importance of a well-crafted Buy/Sell Agreement and the downside to automated DIY legal services.

For more information, please contact a Strauss Troy attorney or visit strausstroy.com for additional white papers and resources.

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Strauss Troy is Greater Cincinnati and Northern Kentucky's premier business law firm. For more than 60 years, the attorneys at Strauss Troy have helped companies like yours grow. I want to take this opportunity to share a little bit of information with you about our firm and to provide some valuable resources.

We have a strong track record of providing innovative legal solutions to complex legal challenges for companies both large and small. Our entrepreneurial spirit has proven highly advantageous to our clients. By knowing each client's business inside and out — its people, its culture and its industry challenges — Strauss Troy offers holistic solutions with long-term impact.

As a leader at a fast-growing company, you need expertise, fresh perspective and proven results. You need top-notch attorneys who work as hard as you do and have the right experience for the best results.

We understand your business challenges and will guide you to overcome obstacles. We're easy to work with and responsive, and we get to know both you and your business personally. Our lean model of direct attorney access eliminates layers, improves efficiency and speeds results. This old-fashioned model of personal service never goes out of style at Strauss Troy.

Community engagement is also an imperative at Strauss Troy — we are committed to the region where we live, work and play. Our *Make A Difference* team and the firm support a wide-variety of organizations and events from the annual Fast 55 to the Strauss Troy Market, the Kentucky Symphony Orchestra and many other groups.

Our mission is to understand where you're headed and to help you succeed. That's why we've developed this series of white papers and a video to give you information and insight.

Our clients depend on us to keep their businesses moving forward. You can too. Contact us to find out how we can help your business grow.

Marshall K. Dosker, *President*
Strauss Troy Co., LPA

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It's Time To Re-Think Roth

By Claudia Allen, Strauss Troy Attorney

About The Author:

Strauss Troy Attorney Claudia Allen focuses her practice in the areas of employee benefits, qualified retirement plans and employment law. She is a frequent lecturer and author of many articles in the areas of qualified retirement plans, deferred compensation, employment law and other employee benefits.

If you thought a Roth IRA was out of the picture for you, think again.

Perhaps you associated Roth IRAs with younger investors who had overall lower incomes and longer savings horizons. Things have changed.

When Roth IRAs were first established in 1997, income limits prevented higher income individuals from using this tax-free (rather than tax-deferred) income-producing savings program. Later, the IRS permitted Roths to be offered inside a 401(k) plan and removed the income barrier. Many higher income individuals, however, retained the misperception that it was "too late to get on the Roth road."

If this sounds like you, give Roth another look.

Roth Contributions Are Made After Tax

First, let's set the ground rules of Roth: Whether in an IRA or 401(k) plan, Roth contributions are made "after-tax." Therefore, you count this contribution as income on your taxes and pay the tax on it in the year it's earned. For high earners, the fact that the tax deduction that accompanies a 401(k) contribution is gone is sometimes the end of the story. But it shouldn't be:

- While all the earnings on both types of accounts compound without tax, earnings in the traditional 401(k) account are fully taxable on distribution
- Roth earnings are never taxed (if held in a Roth IRA that is at least 5 years old)
- Roth is also not subject to the minimum distribution rules at age 70 ½

Tax Rates Will Likely Rise


If most of your retirement savings is in qualified plans, it's likely to be fully taxable as you take it out in retirement. Relying on those distributions to maintain your lifestyle may mean taking much more each year than you really want because of the tax bite. Consider these facts:

- With the likelihood of rising tax rates, paying the tax on a \$20,000 contribution now to avoid the tax on a \$50,000 distribution in the future may be very prudent
- Combining withdrawals from both taxable and nontaxable accounts may keep your effective tax rate down significantly
- With a Roth, there are no forced withdrawals, so you can take out whatever is best for you, or take none at all and leave it all to your children

How To Take Advantage Of A Roth

If you haven't taken advantage of the Roth feature in your 401(k) plan, you may be able to convert a portion of your pre-tax account to a Roth through in-plan conversion. If the plan permits, there is still much to consider in making the decision.

High earners will have to pay tax on the converted amount which, added to their wages, might put them into a detrimental tax position, such as having to pay the 3.8 percent Medicare tax on earnings over \$250,000. Also, if you cannot pay the tax with money other than the conversion, much of the value would be lost, not to mention the 10 percent penalty for a premature distribution before age 59 ½.

If your 401(k) plan doesn't offer a Roth, or an in-plan conversion of your 401(k) assets, you still can take advantage of Roth. No matter what your income, you can make a non-deductible contribution to a traditional IRA. Then, the traditional IRA can be converted to a Roth IRA. The five-year clock begins to run on the date a Roth IRA is established, not when the contribution is made. Distributions from a Roth IRA that is at least five years old will be completely tax-free. 

If you have questions about Roth IRAs or any other retirement plan or program, please contact Claudia Allen at cgallen@strausstroy.com or 513-629-9462.

PUBLISHED WHITE PAPERS

Employee Retirement Plans: Avoiding Problems With Beneficiary Designations

By Claudia Allen, Strauss Troy Attorney

About The Author:

Strauss Troy Attorney Claudia Allen advises employers of all sizes on employee benefits and employment law.

Four brothers, all serving in the military, received the sad news that their father had passed away. Unfortunately, in my role as an attorney, I had to give them more bad news regarding the payout of their dad's benefits.

Five days after marrying his second wife, their dad died while on his honeymoon. Wife #2 had agreed that the sons should have their father's 401(k) retirement plan. Right before the wedding, their dad had asked his employer for the paperwork to make sure it happened, but the packet arrived when he was away. Dad never made it home.

All qualified retirement plans — whether they are profit sharing, 401(k), 403(b) or defined benefit pension plans — provide for some type of spousal benefit. In some plans, the spouse has the right to 50 percent of the annuity payments after the death. In 401(k) plans, it's typically the right to the entire account. Unless this right is waived, the trustees of the plan have no choice but to pay the account to the spouse according to the terms of the plan.

Unfortunately for the four brothers, you can probably guess that wife #2 changed her mind and kept the money.

Could dad have done anything else to prevent this situation for his sons?

- A pre-nuptial agreement wouldn't have worked since wife #2 wasn't a spouse before the wedding. Courts confronting this situation have uniformly enforced the terms of the plan.
- If dad had asked for the paperwork in advance, he could have had wife #2 sign the waiver after the ceremony and before leaving on the honeymoon. One additional challenge — her signature would have to have been notarized or the documents signed in front of the plan administrator to be valid. Not a likely scenario.

Employers Can Help. Here's How:

A provision could have been added to the plan defining a "spouse" as one legally married at least one year before the death of the participant. (This definition is in military pensions and is the reason one of the sons thought he might have a chance to recover the money.) It wasn't in dad's plan.

I've often seen another provision in plans where the employer's goal is to protect participants from unintended outcomes. For example: upon divorce, the plan automatically invalidates the named spouse as beneficiary. Then, if the participant intends for a former spouse to receive the benefits, a subsequent beneficiary designation would have to be filed.

If you're an employer, find out what your plan says about paying out benefits and then review your files to make sure you comply. But that also would presume that you have all the information needed to make the most accurate decision for your employees. Many times you don't. For example, what if nobody knew dad remarried?

Another question to consider is what if a purported marriage was not valid or not recognized?

The recent Supreme Court decision in *United States v. Windsor* invalidated the federal law defining marriage as between a man and a woman. Same sex marriages are now recognized for purposes of federal law, and federal law (ERISA) governs qualified retirement plan benefits. While only 18 states currently allow same sex couples to marry, the other states don't have to recognize the marriage, and some do not.

The Internal Revenue Service (IRS) and the U.S. Department of Labor (DOL) recently issued a technical release stating that, for ERISA purposes, employers are required to recognize marriages that are valid in the state where the marriage was celebrated. If the employer offers other benefits, such as health coverage to spouses, the fact that an employee was legally married to a same-sex spouse in another state might be known when the employee applies for family coverage. But if the new spouse was already covered under another employer's health plan, it's unlikely that the participant's employer would be told of the marriage.

What happens if the plan's trust pays the benefit to the wrong beneficiary? It's not good news: the trustee (often a small business owner) would be liable to pay the right one anyway.

The trustee would have to try to recover, but it's often impossible. If the employer knows of the dilemma in advance of paying out the benefits, the best course of action is to deposit the money with the court and file a proceeding to decide the right beneficiary. Of course, there's a cost to this.

Send An Annual Notice To Your Employees

I recommend employers annually send a notice to all employees reminding them that these rules are in place. At the same time, the employer can ask for an update on the employee's marital status, dependents, current address and contact information and maybe even send out a copy of the employee's current beneficiary designations asking for confirmation. Also, if an employer becomes aware of something that might change the outcome of a beneficiary designation, such as a divorce or marriage, the employer can take action to ensure that the form on file reflects what the employee really wants to happen in regard to his or her benefits. ➡

If you have questions about your employee retirement plans, please contact Claudia Allen at cgallen@strausstroy.com or 513-629-9462.

PUBLISHED WHITE PAPERS

What To Do When The Government Comes Calling

By Dave Davidson, Strauss Troy Attorney

About The Author:

Dave Davidson is a trial lawyer at Strauss Troy who practices in Northern Kentucky and Greater Cincinnati in the areas of personal injury, criminal defense, domestic relations and commercial litigation.

It's Monday morning. Suddenly, a government agent is knocking on the front door of your business. Not exactly the type of visitor you want to welcome with open arms before your first cup of coffee.

What should you do if an FBI agent, someone from the US Attorney's Office, a police detective or a police officer arrives at your business, walks in and demands to see you?

After your silent pleas to your deity, ask some questions and call your lawyer. Here's what you need to know.

If the agents come to your door and just want to talk to you, believe it or not, you should first of all be thankful. That means there's an opportunity to respond to the government before anything else happens.

Don't talk to the agents except to be polite, identify them, share the name of your attorney and let them know that you'll be happy to talk to them after you talk to your attorney.

Most agents are trained to be polite and charming. They will often try and convince you that you can clear up everything in a quick, 10-minute conversation. Many times such agents, especially IRS agents, work in teams and have pre-planned the information that they want from you. They've had a chance to plan. Likewise, you should also have a chance to plan your response. If it's true that a 10-minute conversation can change things, then it will also be equally true when you have your attorney by your side when you speak with them.

When the government takes the effort to send agents to your door, there's a reason, and that reason is based on an investigation that's already underway to one extent or another.

You, through your attorney, will want to take the opportunity to be responsive, and if possible try to mold and shape the investigation to limit any potential for harm.

Work with your attorney immediately to determine if there's a way to respond effectively and in a manner that responds to the investigators that will be both helpful and persuasive. Your attorney is well-suited to guide you in formulating that response. Also, if there's something that needs to be protected or defended, then your attorney will be your best resource for that defense. In either circumstance, your attorney will be there to help.

Silence Is Golden — Don't Be Trapped Into Making Statements

Silence is your best tool. If there is a problematic issue trying to cover it up is your worst possible choice. Your attorney will want you to gather, preserve and collect documents so that none are destroyed — either deliberately or inadvertently.

Common mistakes to avoid:

- Don't try to cover-up anything
- Don't plan what to say with any other witnesses
- Don't destroy documents
- Don't make the investigator's job easy

If a government agent shows up with a subpoena, he will officially serve you. Then, you'll have time to respond. If the agent shows up with a search warrant, there likely will be little time to call an attorney or do anything other than comply. If faced with a warrant, ask to see the warrant and ask for a copy of the warrant as well as any affidavit or other supporting information that established the need for the warrant.

The agent likely will not wait for you to get an attorney before conducting a search, so don't try to stop them. The warrant, however, should state exactly where the agent can look and what he can look for — it doesn't entitle the agent to look anywhere else or for anything else.

Read the warrant carefully and either assign an employee, or be present, during the search. Watch what the agent is doing, what he or she is looking for and where the agent is looking. In this age of sophisticated cell phones, you may even want to take video of the search — so long as you don't get in the way of the agents or impede their search in any way.

If you only remember one thing from this article, remember this: don't talk; just observe. The agent may continue to try to engage you in conversation — this is a tactic. Consider any contact with a government agent as an official, or formal, contact. It's all on the record.

An encounter with any government agent is nerve-racking at best. Get in the mindset that this experience won't be quick or easy. Even if the agent seems friendly, know that he's come with a plan and a purpose. Be careful, truthful, direct and deliberate when responding to the agent. 🌀

If you have specific questions about an ongoing investigation or how to handle inquiries from any agent, FBI, US Attorney's Office, detective or a police officer, contact Dave at dedavidson@strausstroy.com or 513-768-9709.

PUBLISHED WHITE PAPERS

As Your Business Evolves, Make Sure Your Buy/Sell Agreements Keep Pace

By C. Richard Colvin, Attorney & Chair Of Strauss Troy's Corporate | Business Practice Group

About The Author:

Richard Colvin serves as chair of Strauss Troy's Corporate | Business Practice Group. He practices in the areas of corporate law, business law and business litigation. He has broad experience in corporate transactions including, but not limited to, corporate organization, tax free reorganizations, contract negotiations, mergers, acquisitions and entity formations.

Change is a certainty in both life and business.

Significant events such as death, divorce, resignation or retirement of a company owner, known as "Dissolution Events", not only affect the life of that individual, but also the lives of the other shareholders or members of the business.

All of these Dissolution Events are common occurrences, and in some cases, certainties. But if not properly planned for, they can effectively destroy a closely-held business. At a minimum, they could expose the organization's owners and employees to avoidable crises, all of which could have been prevented with a well-crafted Buy/Sell Agreement.

Buy/Sell Agreements are documents that help manage the orderly transition of the ownership in an organization when a Dissolution Event occurs. These documents minimize the uncertainty for everyone involved. Buy/Sells can either be stand-alone agreements or can be part of a Shareholder or Operating Agreement. Regardless of form, they are a crucial component of every organization. Buy/Sells are the manifestation of the owners' agreement on how to continue the business under life's turbulent events.

In most cases, startup organizations simply don't have Buy/Sell Agreements. As organizations grow, and the relationship between the owners becomes more complicated and their lives more intertwined, it's increasingly more difficult to agree on how to face these events. This difficulty often paralyzes the owners, and they simply ignore the issue.

Dissolution Events can be easily planned for in a Buy/Sell Agreement; however, failure to do so can spell disaster for the company. When drafting these agreements, owners will sometimes want to deal with each Dissolution Event separately. In doing so, many complex questions arise such as:

- Will the company continue beyond the death of an owner?
- What happens to the ownership of the company with each one of these events?
- Does the ownership get passed to a spouse, child or heir in the case of death?
- Who buys the shares and for how much?

These are just a few of the many issues that the company's ownership must resolve. The answers to these questions are often complex, but experienced legal counsel can help a business plan effectively.

For example, insurance can fund the purchase of an interest in the company in certain Dissolution Events. "Key man" policies are another tool that can help minimize the effect of an owner's death on the organization. Life insurance policies can fund the acquisition of the deceased owner's shares in the company. Disability insurance can also be acquired for the owners of the organization.

However you choose to structure or fund your Buy/Sell Agreement, as a company owner, you owe it to yourself, your organization, your family and your employees to sit down, consider your options and

get a Buy/Sell Agreement in place. As the company grows and matures, the relationship between the individual shareholders will certainly become more complex, and the Buy/Sell may have to be modified, changed or adapted to new circumstances.

Regardless of where a company is in its life cycle, Dissolution Events will eventually occur, and a good Buy/Sell is essential to facilitate not only the orderly transition of the ownership in the company, but its continued success. Careful planning will facilitate, not only result in, a harmonious relationship between owners, but also the continued success of the business that you have worked so hard to create. 🔄

For a review of your organization's Buy/Sell Agreements or help in drafting one, contact Richard Colvin at crcolvin@strausstroy.com or 513-768-9705.

PUBLISHED WHITE PAPERS

Automated DIY Legal Services Leave Many Businesses Holding The Bag

By Brett Renzenbrink, Strauss Troy Attorney

About The Author:

Brett Renzenbrink is a member of the Strauss Troy litigation department. He focuses his practice in the areas of complex commercial and business litigation, real estate law, banking and foreclosure.

President Abraham Lincoln once said, *"A lawyer's time and advice is his stock in trade."*

In the mid-19th century when Lincoln said this, little did he know that his words were about 150 years ahead of their time. Back then, there were no *"Do-It-Yourself"* sections at the local library, no Internet, no smart phones to look up and disseminate the most fleeting and random questions at the touch of a screen, and no archived public legal resources or automated legal services.

What Abe was trying to convey is that the true value of an attorney is his talent and experience multiplied by the length of time.

I, myself, am a *"millennial."* I'm impatient, overly self-invested, two-second goal-oriented, and I'm not afraid to admit it. In fact, I'm proud of it — much like a millennial would be, right?

I also have the perspective, though, to understand when examples of perceived societal advancement have very little, if any, practical value. One of those examples is the advent and rise of automated legal services.

Thousands of new companies launch every year. These companies are started exponentially by individuals that are deeper and deeper in the quicksand — meaning they lack access to credit but have an unwavering confidence in their ability to do anything, all the time. The monster that this creates believes, *"I can build a multi-million dollar company with a couple buddies, a Starbucks and a laptop."*

Attorneys-turned-businessmen saw how easy the basic fundamentals of registering an LLC or trademark had become. They decided to ditch the bar dues and attack a national market. Enter: Automated legal services.

This may lead many entrepreneurs to think — *"Why in the world would I ever pay an attorney to help me start a business when it takes \$100 and five minutes on the Internet?"*

To start, nothing worthwhile in this world has ever been produced by combining zero experience, five minutes and \$100. Next, I've had attorneys very astutely say, *"Good, cheap or fast...you can have any two of the three that you want."* There's truth there. It's called the *"Unattainable Triangle."*

It all goes back to Abe — the real value of the attorney is not the resultant product, which people can attempt to cheaply knockoff on the Internet, but in the process that gets you where you actually need to be. There's an art to proper business formation — filled with strategic and impactful decisions that are well above the pay-grade of any cheap, automated website's java script.

Forming entities is not just about basic taxation and due diligence; it's also about protection. It's about arming your house with a state-of-the-art alarm system that not even the savviest of criminals could penetrate.

Purchasing automated legal services is like only putting a sticker on your front door, rather than buying a state-of-the-art alarm system to protect you.

I have represented both businesses and creditors that collect on businesses alike. When my team and I start the process of collecting on a commercial entity and dig up boilerplate form documents, it usually takes minimal effort to pierce and extinguish any protection that the entity, itself, ostensibly was designed to create. If, however, the construction of the entity was developed with the advice and assistance of someone who knows what they are doing, a true professional — all bets on expectations are off.

Don't Be Penny Wise And Pound Foolish

There's a multitude of different ways to brand yourself, create managerial infrastructure and protect your valuable assets (both commercial and personal). Sometimes, envisioning success involves looking at the titans in your trade and mimicking what they've done. Go look up how many Fortune 500 companies have boilerplate, automated documents to protect the entity's assets and shareholders. I'll give you a hint— it's a little higher than negative one.

Fortune 500s usually have an army of attorneys who've meticulously crafted their entity filings and shareholder/partner agreements down to the last Oxford comma. Sure, access to voluminous capital and credit makes it easier to afford good representation.

If you look, you will find, practical, reasonable attorneys who understand your business model, help you solve problems and who can think ahead about how best to protect your business. That's not just value you will feel, but tangible protection for your business that you'll be thankful for if you ever need to look back through the lens of any type of business litigation.

Do you want the alarm system that truly protects your business or just a sticker on the door? 🚪

If you have questions about entity formation, strengthening your corporate shield or protecting your assets, please contact Brett at bmrenzenbrink@strausstroy.com or 513-629-9493.