

## Inside this issue

### CONTENTS:

- Is Your Company's *Affirmative Action Plan* Good, Bad or Ugly?.....1
- In the Estate Plane We TRUST.....2

### QUARTERLY CONTRIBUTORS:

- Michael Cortina, Editor
- Lizzy Garlovsky
- Jeffrey Risch and Rebecca Dobbs

### FINANCIAL SERVICES ATTORNEYS:

- Mark Broderick
- Michael Cortina
- Bruce de'Medici
- Brian Graham
- Lizzy Garlovsky
- Ned Othman
- Thomas Scherschel
- Heather Shea
  
- Stephen Butler
- William Hackney
- Ean Kryska
- Bryan Minier
- Kelly Schwab

## Is Your Company's *Affirmative Action Plan* Good, Bad, or Ugly?

By Jeffrey Risch and Rebecca Dobbs

The Office of Federal Contract Compliance Programs (OFCCP) *generally* views all financial institutions that are members of the federal banking system as being required to maintain an affirmative action plan (AAP). The obligation to maintain an AAP is triggered virtually by one's mere existence. For instance, a bank with as little as \$1.00 of government deposits is obligated to maintain an AAP. Additionally, where a financial institution does not have any government deposits, the obligation to maintain an AAP can be triggered where the institution holds transfer authority for U.S. savings bonds. This obligation exists without relation to the value of bonds that are transferred – and simply by the fact that the institution maintains transfer authority.

In the past, it was not uncommon to find employers who were willing to forego the time and expense involved in properly maintaining a written AAP and all of the required supporting documentation. Many employers chose to risk the chance that it would not be randomly selected for an OFCCP audit. However, this gamble has become more and more risky as the *OFCCP continues to step up its enforcement efforts*. Years ago, the OFCCP relied on employers to voluntarily disclose whether they were a government contractor subject to obligations to maintain a written AAP. This is no longer the case.

In addition, those who handled OFCCP audits in years past viewed the OFCCP as “harmless.” In the majority of audits where insufficient records were maintained, an employer would receive little more than a slap on the wrist. Such an employer would typically be ordered to begin maintaining records properly and report to the OFCCP frequently over a relatively brief period of time to show it was respecting its obligations under the regulations. Very few employers were actually barred from their government contracts. *Currently, the regulations permit the OFCCP to infer discrimination where an employer has failed to maintain adequate records*. And, the OFCCP has found it is able to collect substantial penalties from employers by conducting a much more thorough analysis of workforce compensation information. In fact, the OFCCP has invested substantial time and expense to formulate a detailed regression analysis focusing on employee compensation information. The OFCCP is now eager to determine whether a financial institution's compensation practices are discriminatory.

With the OFCCP charged with stepping up its enforcement efforts to assist in maintaining the transparency of funds issued through recent subsidy legislation such as the American Reinvestment and Recovery Act (ARRA), all employers should anticipate being randomly selected for a compliance audit in the near future. It can no longer be considered prudent to take the gamble and forego maintaining proper AAP documents and record keeping procedures. A boilerplate AAP should



not be relied on as sufficient. In the event the OFCCP selects an employer for a compliance audit, the Agency will want to see a document that illustrates the good faith efforts an employer has made to review its employment activity and determine its areas

of underutilization. The OFCCP will want to see a document and record-keeping system that reflects the employer's efforts to address any underutilization.

*For additional information relating to AAP Compliance and related best-practices, please contact Jeffrey (jrisch@salawus.com) or Rebecca (rdobbs@salawus.com).*

## In the Estate Plan We TRUST

By Lizzy Garlovsky

As we all struggle through what now appears to be an economic recovery, many of us are haunted by the turmoil of the last 12 months and find it difficult to feel secure and in control of our assets. Now more than ever, clients are taking a step back and looking at their financial picture in a whole new light. They are getting more advice and following road maps to not only minimize future vulnerability, but to protect what they still have. One hopefully obvious step in this process is to take care of your estate plan. But does everyone need an estate plan? The short answer is yes and a good rule of thumb to use is this: Preparing an estate plan is a way to carry out your lifetime financial planning goals into the next generation. If you have any such goals like: (i) saving money to provide a secure future; (ii) exercising "fiscal discipline" by delaying economic or material gratification; or (iii) keeping the creditors out of your wallet, an estate plan, if nothing more, can help you sleep better at night. With a carefully drafted estate plan prepared by an experienced attorney, the assets you have worked so hard to accumulate during your lifetime can carry on into the next generation with a purpose.

So how do we define "estate plan?" It usually signifies a thick stack of documents with no shortage of legal jargon. The language in the documents is designed to regurgitate statutory administrative procedures and guidelines and to give you a chance to have some control over the distribution of your assets even after you die. Keep in mind, however, that there is no one size fits all estate plan. Estate plans are (or should be) made up of carefully drafted documents, such as Wills, Revocable or "Living" Trusts, and Durable Powers of Attorney. Additionally, in higher net worth situations, careful planning must also be done to minimize liability for estate and gift taxes. With the "year of no estate tax" looming upon us (on December 31, 2009, the Federal estate tax is scheduled to expire for one year) coupled with the ever-growing budget deficit, many practitioners believe Congress has no choice but to act (and quickly) to ensure the revenue generated from estate tax payments is not disrupted. The bottom line is that the estate tax is likely here to stay and we all need to examine how we may or may not be affected by the current law in addition to potential future changes.

Unfortunately the information available to most people on this topic is at best confusing. Some people think if they have a Will they have an estate plan and they don't need anything more. They

falsely believe that if they are not "rich" they don't also need a Trust. The truth is you don't need to be a millionaire to benefit from an estate plan which includes trust planning. Rule of thumb #2: If you own anything of value, be it real, tangible, or intangible property, establishing a trust may just be the perfect vehicle for you to pass your assets in an efficient way to those you consider your objects of affection.

But exactly what IS a trust? A trust is nothing more than a legal arrangement between the person who establishes the trust (commonly referred to as the "grantor") and the person (or in some cases, the corporation) selected by the grantor, (known as the "trustee") to hold and distribute the property which makes up the "principal" or "corpus" of the trust, for the benefit of those identified as the "beneficiaries" of the trust. The trustee has an obligation to safeguard the principal of the trust in coordination with the language set out in the document known as the "trust agreement."

The language in a trust agreement will typically incorporate the grantor's wishes as to how and when he or she wants the money to be distributed to the beneficiaries. A grantor will often place restrictions and/or limitations on distributions from the trust to the beneficiaries and here's where the confusion begins. Clients often worry that imposing restrictions on otherwise outright inheritances can leave their loved ones high and dry when they really need something. Actually, the possibility of an inheritance ending up in the wrong hands, as opposed to the right ones, generally outweighs any benefits of an outright inheritance. Leaving assets in trust for your loved ones is like giving them a neatly wrapped present. Inside is what they really want, but, until the right time comes for opening the present, the wrapping on the outside keeps it safe and secure.

The good news is that a trust is very easy to establish. It is possibly the most cost-efficient way to ensure a smooth transition of your affairs in the event of your death or even disability. An attorney with experience in this field can prepare a trust based on financial and personal information you provide and will customize the document to meet the needs of your particular situation. Your "Revocable" or "Living" Trust is generally inert during your lifetime, but upon your death, can be the golden ticket to keeping your assets in the family. Your Trust can provide that upon your death, more trusts will spring into action and will house the inheritances of your family members and loved ones. The trustee will hold the main key to the "house" and can open the doors as needed, including for specific things like weddings or a down

payment on a new house. The trustee does not, however, have to turn the key for ex-spouses, business deals gone south, or worse, the child with an addiction.

There's never been a better time to have a financial check-up. An essential piece of that process is taking a look at your estate plan (or finally addressing the lack thereof). It is important to consider the Trust as the cornerstone of your plan. Trusts are not just for

the wealthy; anyone who, upon their death, wishes to have some control over the distribution of assets they have accumulated during their lifetime needs a Trust. The trick is to just get it done and done correctly.

*For additional information on Trusts and protecting your family, please contact Lizzy (egarlovsky@salawus.com).*

## About SmithAmundsen

SmithAmundsen offers experienced, efficient, and proactive counsel on a wide range of legal and business issues. Our goal is to become our clients' primary source for legal services and business advice, the lawyers you turn to when you need to "get it done right." In addition to litigation, we also practice non-traditional means of resolving cases. We understand the importance of "bottom line" analysis in our legal advice to clients.

### Mission Statement

SmithAmundsen provides the quality legal services that our clients require to achieve their goals. Each of us strives to demonstrate the highest degree of professionalism in our relationships with the bench, the bar and in business transactions. Our success is built upon this foundation of integrity, shared values, a commitment to exceeding client expectations, and the use of creative approaches to resolve client matters efficiently. We distinguish ourselves from our competitors by our commitment to the professional development of our lawyers and staff.

## Our office locations:

2460 Lake Shore Drive  
Woodstock, Illinois 60098-6911  
(815) 337-4900

Stewart Square  
308 West State Street  
Suite 320  
Rockford, Illinois 61101-1140  
(815) 987-0441

3815 East Main Street  
Suite A-1  
St. Charles, Illinois 60174-2488  
(630) 587-7910

4811 South 76th Street  
Suite 306  
Milwaukee, Wisconsin 53220  
(414) 282-7103

### CHICAGO OFFICE:

150 North Michigan Ave., Suite 3300  
Chicago, IL 60601  
[www.salawus.com](http://www.salawus.com)  
312.894.3200

