

**Bootcamp for  
Business Owners:  
Getting Your House In  
Order**

*Presenter:  
Theodore P. Stein, Esq.  
Offit Kurman, P.A.*

# Introduction



**Theodore P. Stein**

[tstein@offitkurman.com](mailto:tstein@offitkurman.com)

240.507.1725

Theodore P. Stein's practice focuses on the defense of fiduciaries in a variety of contexts: In the employee benefits field, he defends employers who serve as Plan Administrators, individual Trustees of employer-sponsored pension and welfare plans and service providers of group benefit plans. Mr. Stein assists businesses, non-profits and their sponsored pension and health/welfare plans with compliance issues and litigation problems arising under ERISA, the federal regulatory statute for group benefit plans.

In the estates and trusts field, he defends Personal Representatives and Trustees of estates and trusts from claims alleging breach of fiduciary duty and other wrongful conduct. His areas of expertise in this field include:

- Estates and Trusts Planning
- Estates and Trusts Administration
- Estates and Trusts Litigation

# About Offit Kurman

Offit Kurman is one of the fastest-growing, full-service law firms in the mid-Atlantic region.

With over 190 attorneys offering a comprehensive range of services in virtually every legal category, the firm is well positioned to meet the needs of dynamic businesses and the people who own and operate them.

Our twelve offices serve individual and corporate clients along the I95 corridor in the Virginia, Washington, DC, Maryland (Bethesda, Baltimore, Columbia, Frederick), Delaware, Pennsylvania, New Jersey, and New York City regions.

At Offit Kurman, we are our clients' most trusted legal advisors, professionals who help maximize and protect business value and personal wealth. In every interaction, we consistently maintain our clients' confidence by remaining focused on furthering their objectives and achieving their goals in an efficient manner.

# GETTING YOUR BUSINESS HOUSE IN ORDER

# Employment Documents

## What documents bind your employees:

- Employee Handbook
- Employment Agreements
  - At Will v. For Cause
  - Compensation
  - Restrictive Covenants
    - Non-compete
    - Non-solicitation
    - NDA



# Employment Documents (Pt. 2)

## Other Employee Issues:

- Exempt v. Non-Exempt
- Independent contractor v. employee
- Legal proceedings related to employees
- EEO-1 reports on affirmative action

# Employee Documents (Pt. 3)

## Potential Problems:

- Misclassification of employees as independent contractors
  - Alert: Potential liability for payroll taxes
- Misclassification of non-exempt employees as exempt
  - Alert: Potential liability for FLSA and state wage payment law

## Sale Issues:

## WARN Act

# Employee Benefit Plans

## Qualified:

- Health and welfare plans
  - Cafeteria plans
  - Insured v. self-insured
- 401(k) and profit sharing plans
- Pension plans



# Employee Benefit Plans (con't)

## Non-Qualified:

- Equity Incentive Plans
  - Stock Options & Grants
  - Restricted Stock & Stock Units
  - SARs
  - Performance Shares
  - Phantom Stock & Stock Units
  - Top Hat Plans

## — EMPLOYEE BENEFITS —



# Potential Benefit Problems

## Qualified:

- Missing documents
  - Plan document
  - Summary Plan Description (SPD)
  - Form 5500
  - Audits
- Compliance Issues – Pension Plans
  - Computation of Benefits

# Potential Benefit Problems (Pt. 2)

- Sale Issues
  - Plan termination
  - Trustee liability
  - COBRA

# Potential Benefit Problems (Pt. 3)

## Non- Qualified:

- Compliance Issues
  - 409A – deferred compensation plans
  - 208G – parachute payments
- Sale Issues
  - Unfunded liabilities



# GETTING YOUR PERSONAL HOUSE IN ORDER

# Taxes

- Estate & Gift Tax Exemptions:
  - Lifetime:
    - Federal: In 2019, \$11.4 million for individuals and 22.8 million for married couple.
    - State Exemptions:
      - VA: None.
      - MD: \$5 million
      - DC: \$5.6 million
  - Annual gift tax exclusion:
    - Federal: In 2019, \$15,000 for individuals and \$30,000 for married couple.
- Portability
  - Federal: Yes.
  - MD: Yes
  - DC: No
  - VA: Not applicable

# Estate Planning 101

## Basics:

- Will – Pourover
- Revocable/Living Trust
- Advance Medical Directive
  - POA for Health Care Decisions
  - Living Will
- Irrevocable Life Insurance Trust



# Estate Planning Strategies

## Pre-Liquidity Valuation Strategy:

- Who owns the business?
  - Family Limited Partnership
  - LLC
  - Other
- Discounts
  - Marketability
  - Lack of control

# Estate Planning Strategies

## Wealth Transfer - Gifting of Shares:

- Grantor Retained Annuity Trust (GRAT)
- Intentionally Defective Grantor Trust (IDGT)
- Charitable Remainder Trust (CRT)

# Questions?

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