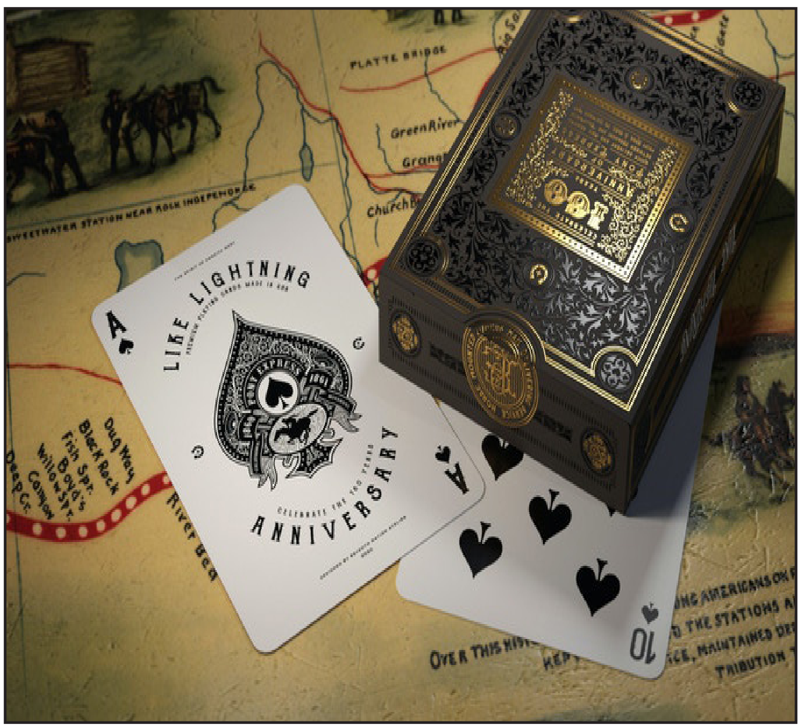
Retirement Plan Providers That 401(k) Plan Sponsors Should Avoid

By Ary Rosenbaum, Esq.

There are three important rules of life in the Nelson Algren novel, A Walk on The Wild Side: "Never play cards with a man called Doc. Never eat at a place called Mom's. Never sleep with a woman whose troubles are worse than your own." When it comes to important rules of life for 401(k) plan sponsors, there isn't much eloquence out there. There are quite a few retirement plan professionals out there that plan sponsors should avoid just like playing cards with a man called Doc. So this article is about which retirement plan professionals that you should avoid.

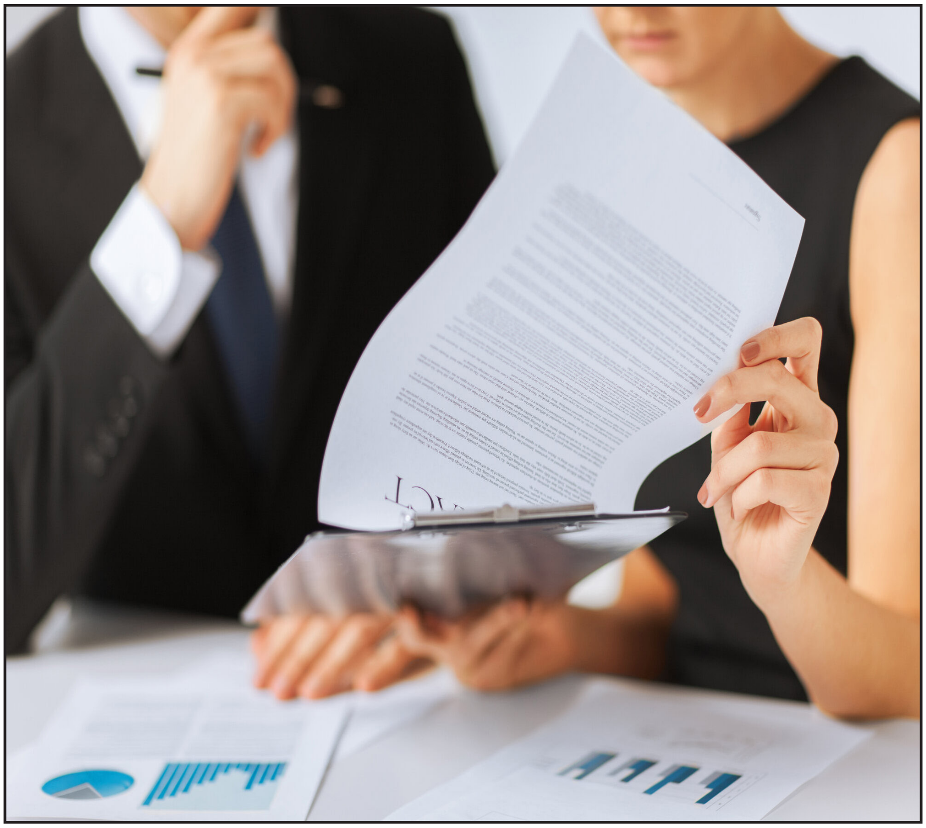


A TPA salesperson from one of the top two payroll companies

The two top payroll companies in the country are in the third-party administration (TPA) business and they are two of the largest TPAs out there and that's an absolute shame. The reason it's a shame is that they don't do a very good job as a TPA even though they are good at payroll. The reason you should avoid the TPA salesperson from one of the two payroll companies is that they get paid when you hire them as a TPA and there is no financial incentive for them for you to be a continuous payroll TPA client. In addition, you're not likely to see them ever again because they have no involvement in the business side of the TPA business, because they're just selling. There is also a lot of turnover in sales positions, so the salesperson you met may work for the competing payroll company in a year's time. They may promise you a level of service that your current TPA provides whether it's plan design or day-to-day administration. If those promises fall empty, they won't be there to explain their previous lies. When I worked for a couple of TPAs, the salespeople always remained part of the process, often serving as an ombudsman when our level of service didn't meet the client's expectations. When the salesperson is the only contact that a plan sponsor remembers, it's often unsettling when they are no longer on the scene. One last thing that a TPA salesperson from one of the top two payroll companies will forget to tell you is that if you're unhappy with their services as a TPA and fire them as the TPA, they will usually fire you as a payroll client because apparently, they take this very personally. For 99% of the Plans out there, one of the top 2 payroll companies as a TPA is a bad idea.

An insurance agent who only really wants to sell insurance or annuities

Insurance agents are in the retirement plan business as they help sell retirement plans to many closely-held businesses. There is nothing wrong with insurance agents selling retirement plans as long as the intent is to sell retirement plans and not something else, such as life insurance. Life insurance policies can be a good thing sometimes and a bad idea many other times. Life insurance policies within a retirement plan can be a great investment, but it's like drinking alcohol, it's only good in moderation. Too often, I have met clients where the only investment in their defined benefit plan is an insurance policy on the life or lives of the company's owners. While defined benefit plans will allow most employees to save more than they could with any other retirement plan, these plans require annual, minimum funding. When times are good, minimum funding isn't an issue. When times are bad (and they have been bad quite a few times in my 18 years as an ERISA attorney), minimum funding is a big issue especially when the employer could no longer afford to make contributions to the plan. Insurance policies require annual premiums and an employer that can no longer meet minimum funding in these plans can no longer afford these life insurance premiums. Without these premiums, a plan sponsor may have to surrender their life insurance policies for cash. Often, the life insurance policy and defined benefit plan are so new, there is little cash to surrender for. Again, most life insurance agents are in the business of selling retirement plans, but there are quite a few who only use retirement plans to sell insurance. How to spot the difference? It depends on how much they push life insurance policies for any of the plans they are trying to sell, as well as policies that fall outside the norm which may offer some type of return of principal or some type of variable or stated return as well as selling exotic annuities. You can spot these agents when you see what they are selling.



An ERISA attorney who does something more than just being an ERISA attorney

I will never be the President of my local bar association because I don't like most attorneys. I've seen enough abuses to last me a lifetime and I only worked for law firms for about three years. When you have an issue with your retirement plan, you should seek the counsel of an ERISA attorney, whether it's me or someone else. Just make sure that all the ERISA attorney is going to be doing is serving as an ERISA attorney. There are many ERISA attorneys who wear the hat of an ERISA attorney and also wear the hat of a financial advisor or a TPA. There are TPAs where they have affiliated law firms where the ERISA attorneys are principals of the TPA and there are law firms that also serve as a TPA. Legal advice should be unbiased and based on the client's needs and I think the advice is biased if an ERISA attorney is serving as a financial advisor and/or the TPA. ERISA attorneys are there to make sure that the retirement plans of their clients remain qualified and what happens when it's the ERISA attorney as the financial advisor and/or TPA that is threatening that plan's qualification? Holy conflict of interest, Batman. If you need the help of an ERISA attorney, hire an independent ERISA attorney.

A retirement plan professional who is a relative

I never went into business with a relative or hired a relative in any type of business relationship. Maybe it had to do with the fact that most of my relatives were underachievers, but even if they had achieved, I don't want relatives to know my business and count my money (which they still do, but that's another story). As a retirement plan sponsor and plan fiduciary, retirement plan sponsors have the fiduciary duty to hire retirement plan professionals. There must be a process in hiring and reviewing plan providers, so hiring a financial advisor just because he's your cousin isn't going to slice it. I have been through Department of Labor audits where they ask my plan sponsor client how they hired the financial advisor and what process they went through in making these plan provider selections. Saying you made the choice over that Thanksgiving dinner table isn't the right answer. Plan sponsors have a fiduciary duty in safeguarding the assets of their plan participants; it's the highest duty of care in equity and law. If I wanted to invest in my uncle's indoor amusement park business and lose all my money as he did, that's too bad for me. If I wanted to invest the retirement plan assets of my employees into that venture and lost all their money, it's worse for me. Everyone wants to see family members (at least most family members) do well. But a plan sponsor should never risk their fiduciary duty in hiring a relative. I know TPAs where the principals have relatives in the investment advisory business and the advisor never refers business to their TPA relatives. Do you know why? Those advisors want to keep peace in the family and not do anything that may jeopardize their plan sponsor clients. So if plan providers won't "juice" in relatives, you shouldn't either.

An auditor with another hand in someplace else

Retirement plans with over 100 participants generally are required to have an independent audit performed by an independent auditor. The Department of Labor Regulations fail to really define what is independent and what isn't, but I believe like Justice Potter Stewart would opine that you know it when you see it. An auditor affiliated with your TPA or financial advisor in any fashion isn't independent. I would also suggest that an auditor that uses your financial advisor for their retirement plan needs isn't independent either. The purpose of a plan audit is to determine that the retirement assets of the plans are where everyone says they are as well as identifying any risks to those plan assets. Bernie Madoff had an auditor and we know how that turned out when the auditor was merely a rubber stamp. If you are paying thousands of dollars in audit fees, it's important to make sure that the audit is beyond reproach in its independence and completeness. If you don't, then all you have is meaningless papers.

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