KRIEG DEVAULT

Employee Stock Ownership Plans

Our Experience: Your Success

Krieg DeVault's ESOP Practice is a national leader and innovator in the structuring and implementation of ESOPs for organizations throughout the United States. We employ a comprehensive team of ESOP attorneys, bringing over 140 years of combined counsel to clients in manufacturing, distributing, retailing and wholesaling, transportation, construction and technology, and regulated industries, including financial institutions, insurance companies, accounting firms, architectural and engineering firms and health care firms. We currently represent clients in over 45 different industries, including 160 ESOP companies and 75,000 ESOP participants.

Thought Leadership & ESOP Innovation

Our ESOP team has been at the forefront of many industry "firsts" including:

- Integrally involved in writing the S corporation ESOP enabling legislation
- Direct involvement in drafting the S corporation "anti-abuse" legislation
- First ESOP to be recognized as a registered bank holding company
- First accounting firm to be owned by an ESOP
- First optometry firm to be owned by an ESOP

Track Record of Success

Our team has a proven track record of identifying opportunities and creating solutions for our clients. Our ESOP team has:

- Structured over 700 ESOP transactions throughout the United States for private and public companies
- Closed transactions ranging in size from $1.5 Million to $10.5 Billion
- Assisted with 60+ IRS & DOL ESOP Audits
- Represented 20 different trustees in ESOP transactions
- Given over 300 ESOP Association, National Center for Employee Ownership (NCEO), and other conference presentations sharing thought leadership within the industry
- Extensive experience in structuring innovative ESOP transactions which include creative seller financing instruments, warrants, earn-outs, leveraged acquisitions of target companies, ESOP purchases with existing qualified plan assets and equity-based incentive plans for key management employees
- Practical knowledge of ESOP needs for middle-market companies
- Knowledge of ESOP law, including authoring ESOP legislation

- click **here** to download our ESOP Experience Infographic

What is an ESOP and How Does it Work?

An ESOP is a tool of corporate finance which provides significant economic benefits, through income tax incentives, to business owners and employees. These incentives are designed to encourage owners to sell their businesses through an ESOP. An ESOP is a tax-qualified retirement plan designed to borrow money and use the proceeds to buy stock of the business owner or directly from the business itself. Krieg DeVault's ESOP lawyers know an ESOP is not right for every company, but we understand the compelling benefits for many owners – particularly those who are nearing retirement.

An ESOP can:

- Allow a C corporation shareholder who sells stock to an ESOP to defer taxable gain on the sale
- Eliminate federal taxes on all of the income of an S corporation if the ESOP owns 100 percent of the corporation's shares
- Make both tax-deductible dividends (in the case of a C corporation) and contributions to the ESOP to pay debt service on corporate borrowings
- Facilitate the leveraged purchase of a subsidiary or affiliate, or use tax-deductible ESOP debt to buy another business with pre-tax funds – while keeping company management in control

Is an ESOP the Right Choice for You?

Krieg DeVault has the experience to initially offer the insight you need to judge whether an ESOP is the right choice. To those who do choose an ESOP, we offer informed guidance to give business owners the most desirable combination of financial and operating advantages. A properly structured and communicated ESOP creates a company that typically outperforms counterparts that lack employee ownership – one that has higher earnings, better safety records, more rapid product innovation and higher stock values.

Most successful businesses faced with succession or shareholder liquidity issues want to decrease financing costs, maximize tax advantages, maintain effective management control, sustain the company's unique culture, and structure incentive compensation for key employees to enhance performance. A well-designed ESOP can play a prominent role in accomplishing all of these goals.

The Krieg DeVault ESOP Advantage

Krieg DeVault knows how to harness the strengths of an ESOP to our clients' advantage. Used properly, ESOPs are an intricate tool of corporate finance that also provides retirement benefits for employees. Likewise, ESOPs can be particularly useful in financing acquisitions, "going private" transactions and spin-offs of subsidiaries.

ESOPs can provide business owners with the liquidity they require while perpetuating the company and its culture by placing it in trusted hands. Krieg DeVault's experienced ESOP team knows that a successful transition requires more than legal knowledge. We demonstrate keen sensitivity as we guide owners and employees through the often emotional transition to employee ownership and provide supportive guidance to make the transaction a long-term success. As our clients have known for nearly 40 years, with Krieg DeVault as your partner, you get the right ESOP, structured and maintained the right way.

In addition to implementing ESOPs, we go beyond the transaction to help you maintain your ESOP and make it a success. This is an important point because many attorneys who put in ESOPs don't stay with you to help

you keep the ESOP in compliance and keep you and your ESOP on the right path.

Takeovers of Existing ESOPs

Approximately 60% of our ESOP Practice is based on “takeovers” of existing ESOPs, where the ESOP company has no ESOP counsel or is looking for new counsel, especially when the ESOP is in difficulty due to:

- Stock valuation
- Record keeping or plan administration
- Improperly or poorly structured ESOP transactions
- Unintentional fiduciary violations

In these cases, we correct the errors, make remedial filings with the IRS and Department of Labor, as applicable, and attempt to recoup the cost of corrections from the responsible service provider(s). In addition, we keep by your side to help you avoid these issues in the future.

ESOP Financing

Krieg DeVault’s ESOP lending attorneys have significant experience representing financial institutions and seller shareholders to ensure their ESOP meets ERISA and IRS guidelines. Our attorneys provide counsel to clients for loan structuring, due diligence, contract drafting, and legal and compliance requirements. We routinely represent leading lending commercial banks and other financial institutions, underwriters, and issuers — enabling our firm to be at the forefront of lending trends and ESOP regulations to secure the best loan structure possible for our clients.

Krieg DeVault has been embedded in the financial services industry since the firm’s founding, giving our attorneys comprehensive knowledge of ESOP formation and the extensive financing process. We are able to work comprehensively with our clients to negotiate loan and security agreements, identify tax benefits and potential issues, and to oversee that the entire lending process runs smoothly.

We have represented clients in structuring ESOP financing for a wide variety of industries, including manufacturing, distributing, retailing and wholesaling, transportation, construction and technology, and regulated industries, insurance companies, accounting firms, architectural and engineering firms and health care firms. Our in-depth experience with these and other issues results in more efficient and cost-effective services for our clients. We are able to isolate potential problems and construct safeguards in the financing documentation, enabling our clients to take advantage of business opportunities as they arise. We know that ESOP lenders expect their outside counsel to have vast insight into both lending and ESOP trends. We are able to draw upon our experience as an ESOP services industry leader to provide lenders with the quality and depth of industry knowledge that these specialized transactions require.

Litigation and Audits

No one likes to face the unpleasantness of a DOL audit or litigation brought by ESOP participants or the DOL. Yet our attorneys are ready to assist and handle such actions. We have extensive experience working with the IRS and DOL with regard to audits or investigations, voluntary filings and litigation. Our attorneys have handled some of the largest ESOP litigation matters filed and routinely deal with more moderate ESOP related audit and litigation matters.