

# What You Can Expect From Using FRANK SELDEN LAW, PS to Create Your Rollover Business Startup (ROBS)

## History of ROBS

I first became aware of ROBS as a concept working with self-directed IRAs in 2004. At the time, most people did not know about ROBS, a name which the IRS gave the concept in 2008.

Congress passed ERISA (the body of law that created 401K plans, etc) in 1974. My understanding is that Leonard Fischer, an ERISA attorney, first thought of the ROBS concept in the early 1980s. He started Benetrends in 1983. His company is still one of the strongest in the industry.

Steven Cooper, a pension plan consultant, began marketing a ROBS type plan in 1999. He calls his approach an ERSOP plan (Entrepreneur Rollover Stock Ownership Plan). The rules do not recognize a plan by that name, it is his marketing term for his concept.

As so often happens in America, when someone is making money with a concept other people want to do the same. Other companies entered the field, each creating their own version and giving it their own name.

Enter David Nilssen and Jeremy Ames, founders of Guidant. They were not ERISA attorneys or pension consultants. Rather, they understood internet marketing and how to hire smart people. With creative marketing backed with by solid ROBS program, Guidant soon vied with Benetrends as the largest ROBS creator in the country. Guidant also did one other thing differently than the other promoters, they required all of their clients to be represented by legal counsel to go through their process. They created a team of attorneys who worked for the clients, not Guidant, although Guidant paid the bill out of their fee. I was the 2<sup>nd</sup> attorney accepted into that program.

Many CPAs, attorneys and consultants wrote disparagingly about the concept, saying that people who engaged in this transaction either committed prohibited transactions or violated ERISA duties.

By 2008, the ROBS concept grew to become its own industry, each promoter creating a slightly different concept and calling it a unique name, as is the way of American business. The differences were enough to raise the eyebrows of the IRS.

## Enter the IRS

The IRS created a project team to study the concept in 2008. It contacted all of the known ROBS promoters and asked for them to describe their process, send copies of their marketing and product paperwork and a client list. The IRS assured the industry that they would only use the client list to ask random clients for copies of the materials the company sent them.

This IRS team created the name ROBS. Some naysayers rejoiced. One even wrote a column that the IRS used the term ROBS because it believed that it robbed 401K Plan assets. Not true, and rather self-

serving for the author of that article who owned a company poised to accept a tremendous amount of business if the IRS would shut down the ROBS industry. That, of course, is not what happened.

Instead, the IRS issued some cautions, some guidelines on how to create the concept properly. Some ROBS companies of that time closed their doors. Others modified their protocols to some into compliance. Today, the ROBS idea is cleaner and more standardized across the promoters because of the IRS. Imagine that.

### The Promoter Concept

In a nutshell, the promoter concept is a one-stop shop of a two-part process: the ROBS concept creation and ongoing 401K plan administration. Most of the promoters charge around \$5,000 for the setup and \$1,000 + per year for plan administration. The setup is nearly identical now because of the IRS involvement. Some differences in the way they create corporate minutes, but overall the concept is the same. The promoters might offer discounts, especially if you are not coming to them through one of the numerous channels with whom they share fees. If that is the case, they simply deduct the fee they would have paid to their partner.

Many ROBS clients will notice more significant differences in the ongoing plan administration. Plan administration, not concept setup, is where people get in trouble.

Here is one example. Most ROBS promoter concepts make YOU, the client, the trustee of the plan. You are responsible to open bank or brokerage accounts in the name of the plan. You initially handle plan funds. Most people do not want to be plan trustees but the ROBS concept gives them no choice, until now.

I helped numerous clients fix issues created by this concept. They deposited plan funds in the corporate account by mistake, or used the plan account to pay company bills. They had trouble finding an investment company to accept a private 401K plan account which that investment company did not create and allowed investments into restricted securities, an issue which will grow under the new fiduciary guidelines for retirement funds effective July 2017.

While some promoters call the plan admin part of their program a “third party administrator” (TPA), the reality is that they are little more than plan recordkeepers, not true TPAs. You, their client, are responsible for proving them the plan financial information for the 5500 filings and you handle the plan funds.

### Enter Frank Selden Law, PS

For most of my experience with the ROBS industry I legally represented clients undertaking or having problems with a ROBS funded corporation. I accepted clients from, and became familiar with the products of, most of the ROBS promoters. I did not expand into creating the entire ROBS concept because I had no interest in starting a plan admin service. Fortunately, I found a true TPA who handles 401K plans that contain qualified employer securities. An ERISA attorney started that TPA specifically for ROBS clients unhappy with their promoter admin services.

This TPA does not create ROBS concepts for people. They do, however, offer what I believe is the best TPA service for your ROBS company. They design and write your 401K plan specifically for your corporation. They have an investment platform that allows employees, including you, to invest into mutual funds through the Mid-Atlantic Financial. When I first learned about their company at a 401K plan administration conference, I knew immediately that my clients needed this solution.

I now work with them to create the best ROBS concept available. Frank Selden Law, PS creates your ROBS concept as a legal service. The TPA creates and administers your plan. We do not create or administer your plan, and they do not act as your attorney. We do not share fees with them, and do not receive any compensation for referring you to their company. By the way, if you have a TPA you prefer to use, I will work with them instead. You are not required to use that TPA in order to use my ROBS creation services, but you are required to have a TPA.

### What is the difference of a legal service versus a promoter?

I believe that the ROBS concept created as a legal service is better for the client, and that a true TPA is better for the client. However, neither of them are easier.

When I create the ROBS as a legal service that means, among other things, you have an attorney answering your legal questions for you. We still have administrative staff handling the paperwork or non-legal functions. Right now, I am the only attorney in the firm. We accept only 1, no more than 2 clients per week. To expand that, I need another attorney. A promoter simply hires another sales person and (hopefully) trains them well.

The ROBS promoters are not regulated. They are not backed up by E&O insurance or by an equivalent to the BAR association. You can check out my bar listing here:

[https://www.mywsba.org/LawyerDirectory/LawyerProfile.aspx?Usr\\_ID=34350](https://www.mywsba.org/LawyerDirectory/LawyerProfile.aspx?Usr_ID=34350)

Who not create a promotion company like Fischer (an ERISA attorney) did with Benetrends? Lots more money in that. Just not my style. Anything illegal about the ROBS promotion business? No, just a different experience and result. You are my legal client, and that means something to me. My goal is 100% Right, 100% of the time, treating each client as an individual.

### Why are we less expensive?

In some sense, we're not. I charge a flat fee of \$4,000 for our ROBS legal product, which includes the filing fee for the State in which you want to incorporate and a custom design of your 401K plan. I do not have the overhead of the bigger companies, but also not the economy of scale. I currently do not accept more than 2 clients per week.

I can sleep at night with my fee the way it is. Yes, we could charge more. If I billed this as a typical legal service with a billable rate of \$300 / hr (less for non-legal work) I could not compete with the ROBS promoters on price. The bottom line is, I love this work. It's creative, entrepreneurial, helping people realize their dreams. I dreamed of a Jerry McGuire kind of law firm and I have it. As Dicky Fox said: *"In life, to be honest, I failed as much as I have succeeded. But I love my wife. I love my life. And I wish you my kind of success."*