

SDCooper Company

(a CA Corporation)

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ERSOP[®]

**Entrepreneur Rollover
Stock Ownership Plan[®]**

1974

- **ERISA Passed by Congress.**
- **“If you have a Corporation and the Corporation sponsors a real Plan, then . . .**
- **An Individual may be the Trustee of that Plan . . .**
- **Who is the most trust worthy individual you know?**

- **Extended to un-incorporated Plans in 1983, but not to IRAs [Individual Retirement Plans].**
- **This may be in jeopardy!**

First:

Are you going to be Active or Passive?

- All of our clients have that entrepreneurial spirit.
- You choose **ACTIVE**.
- You are going to be in charge, make the decisions, take possession of the assts as Trustee, business owner —
 - No custodians
 - No banks
 - No brokers
- You can use IRA funds once rolled over; **HOWEVER** you cannot use a an IRA, self directed or not, as the **vehicle**.

What is an ERSOP[®] Plan?

- **First and Foremost:** it is an “ERISA” profit sharing plan in which the employer accumulates funds, tax deferred, for all eligible employees.
- **Secondarily:** the ERSOP[®] plan accepts rollovers.
- **Tertiarilly:** the ERSOP[®] plan is drafted to permit assets rolled into the plan to be used *to fund the capital needs of the sponsoring employer* by investing those assets in “qualifying employer securities” [stock].
- **Optionally:** it may have a 401(k) [CODA - salary deferral] and a 401(m) [employer match].

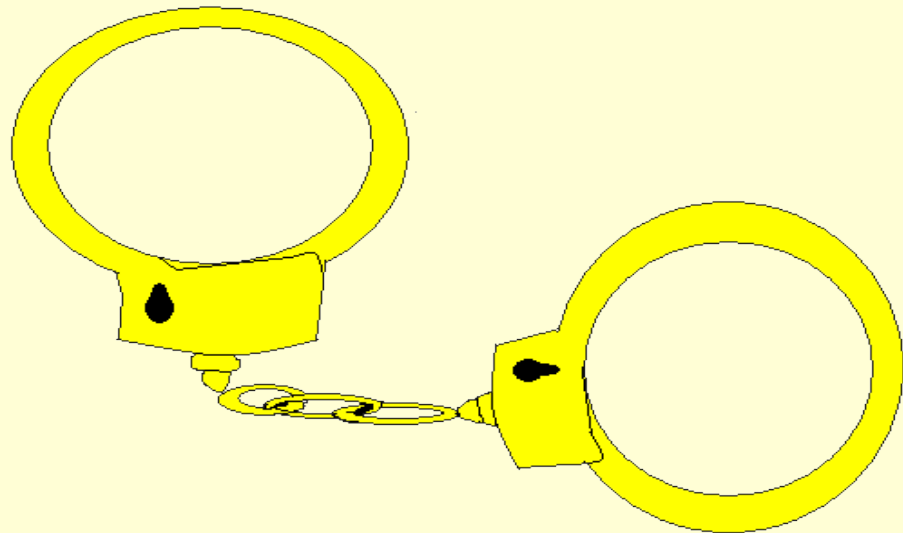
What Money Can Be Used -

- 401(a): Pensions, Profit Sharing, ESOPs
- 401(k) (all are first Profit Sharing Plans)
- 403(b) “Teachers’ Annuities”
- 457 State, County & City
 - (government plans only)
- U. S. Gov. Thrift & Savings
- IRAs –
 - Traditional IRAs
 - Rollover IRAs
 - SEPs & SIMPLEs
 - Roth IRA*
- Except – (sort of)
 - Inherited Non-spouse IRAs

Who Can Use It -

Those -

- **Who have or will have terminated employment with 401(k) employer, because the employer does not want to release the funds (i.e. golden handcuffs), or**
- **Whose employers offer “In Service Distributions”**



**Partial list of companies that allow some form of
"in-service, non-hardship, non-suspension withdrawals"
(aka "in service distributions") from 401(k) Plans**

Abbott Labs	BP	First Union	RJR
Allstate	Caterpillar	Ford	Sara Lee
American Airlines	CBS/Westinghouse	GM	Scana
Ameritech	Delphi Auto	John Deere	Sears
Anheuser Busch	Deluxe Fin'l Services	Lowe's	Sherwin Williams
AP Amoco	Dominion Resources	Lucent Techs	Southern Company
AT&T	Duke Power	Marsh & McLennan	Southwest Bell
BB&T	Dupont	Monsanto	Tiffany's
Belks	Eli Lilly	Nationwide	Toyota
Bell Atlantic	Equitable	Philips 66	US Steel
Bell South	PPG	Philip Morris	Verizon
Black & Decker	Erickson	PPG	Whirlpool
Boeing	Exxon	Quest Comm	Winn Dixie

(Note: since plans can amend, this may not be complete, and some companies listed may have amended to not allow such distributions. Please ALWAYS check the plan document or call the plan administrator for verification.)

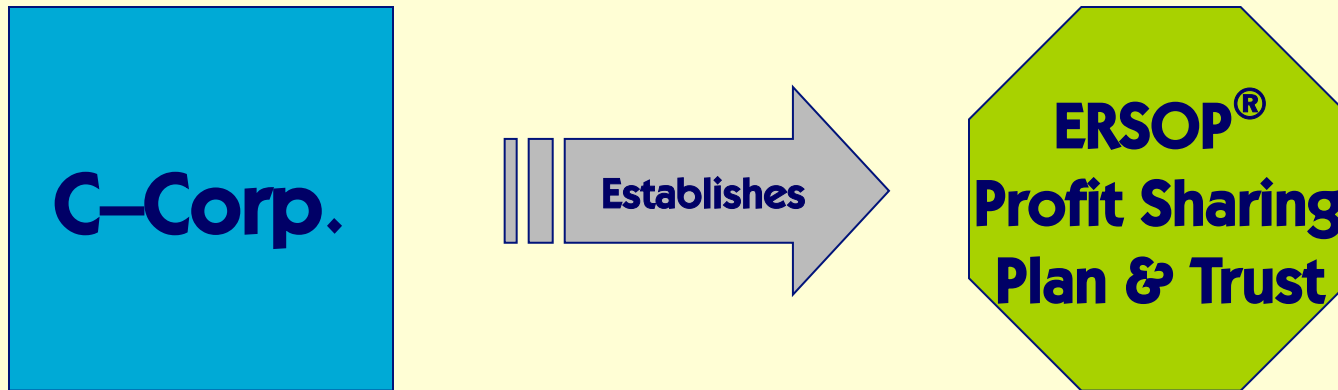
Step 1 – The CORPORATION



Even if you are doing business as another type of entity, you need:

- a Corporation because ERISA §407 requires “Stock”,
- a C-Corp. because Sole Proprietors, Partners and S-Corp. Shareholders are Excluded by IRC §4975(f)(6) and ERISA §408(d),
 - LLC Members are Partners under the Code and
 - LLCs do not have stock as required under ERISA.
- For any pass-through entity this would be too good to be true.

Step 2 – The ERSOP[®] Plan



- The retirement plan for you and any other employees that may become eligible,
- An ERISA profit sharing plan, with special enabling language.
- We submit the plan with full disclosure to the IRS for an individualized Favorable Determination Letter — not all firms do.

Step 2 – cont.



At your favorite bank, YOU establish a checking account for your new C-Corporation and another checking account for the Profit Sharing Plan & Trust.

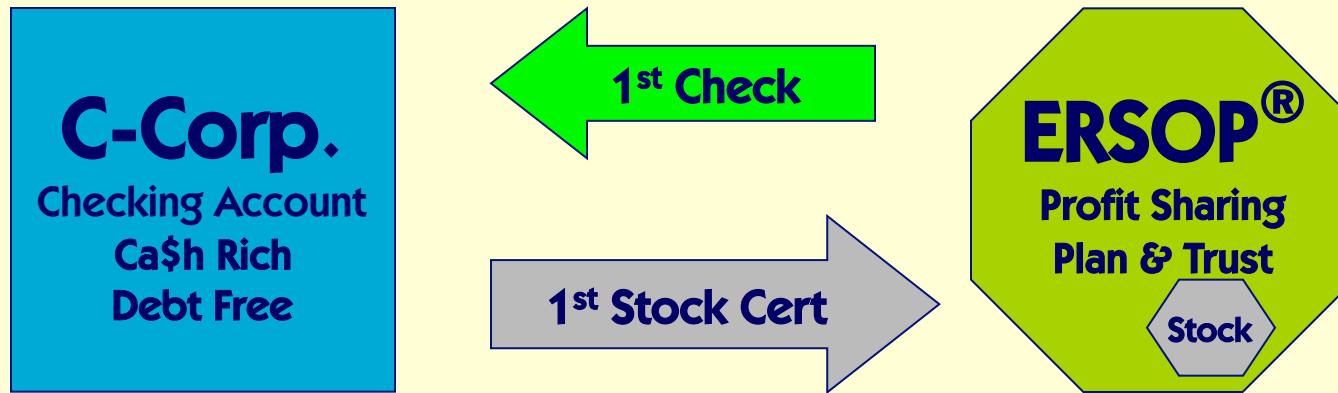
Step 3 – The Rollover



- We assist you with the rollover of your accounts from IRAs and 401(k)s into your ERSOP[®] Profit Sharing Plan & Trust checking account at your favorite bank.
- Still it generally takes just 2 weeks to get the money to move.

**We never touch
your money!**

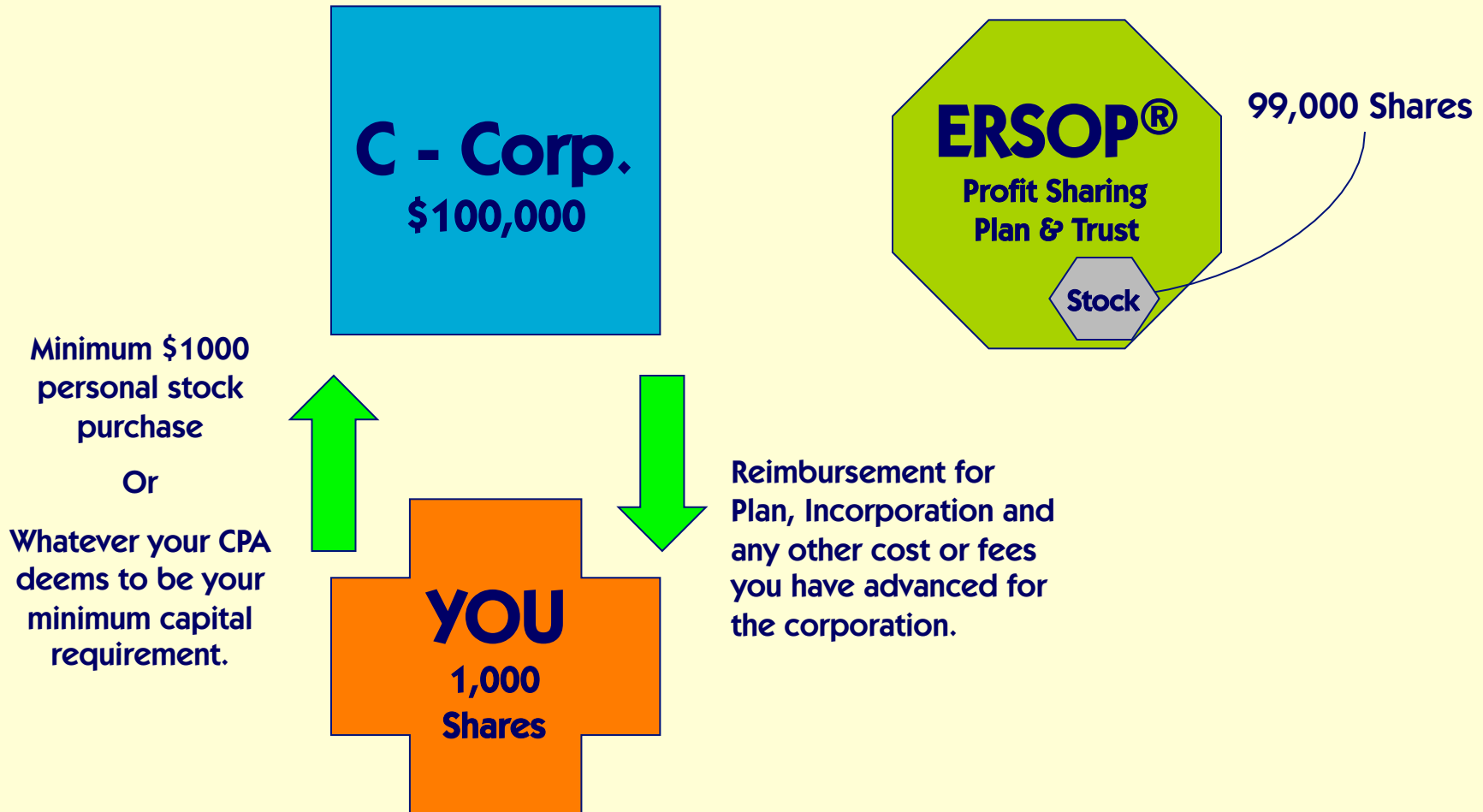
Step 4 – The Funding of the Corporation



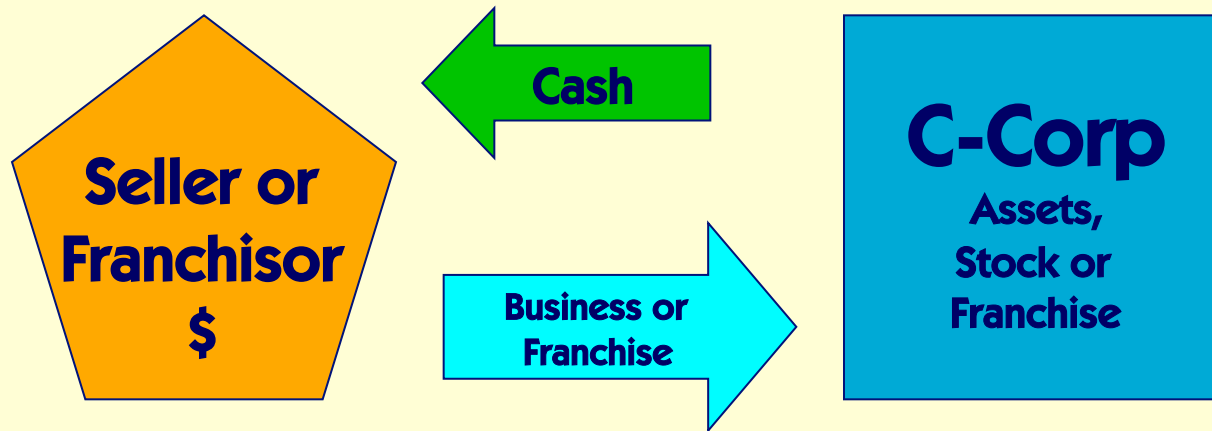
- You as Trustee, from the Trust checking account, issue the first check to be received by the C-Corp checking account.
- You as President issue the first stock certificate back to you as Trustee for the benefit of your rollover account.

Step 4 – cont.

100,000 Shares @ \$1 per Share



Step 5 – The Purchase – Franchise or Business Asset(s)



The C-Corporation, with its initial capital and some additional borrowing if need be, invests in a new or existing business or franchise.

Startup Costs

Stimulus Sale:

Corporation and ERSOP® Plan

\$4,000*

***Most states**

Annual Fees

- ✓ **Administration ~\$800**
 - plus per participant / account fees in excess of 5.
 - less 50% [limit \$500] non refundable tax credit first 3 year
- **Allocations of Trust Gains & Losses**
- **Allocations of Contributions & Forfeitures**
- **Discrimination Testing, Class Allocations**
- **Participant Statements**
- **Summary Annual Reports**
- **Summary of Material Modifications**
- **IRS Form 5500**
 - **\$25 per day, \$15,000 max penalty for failure to file**
- **Exit Planning**
- **Continuing Situation Reassessment**

The Three Rules of ERISA Section 408(e)

1. If such acquisition, sale, or lease is for adequate consideration (fair market value),
2. If no commission is charged with respect thereto” . . . “to or from a disqualified person,”
3. If the plan is an eligible individual account plan (as defined in section 407(d)(3).

Why you cannot use a self-directed IRA?

- **ERISA 407(d)(3) excludes IRAs from the definition of “eligible individual account plans.”**
- **IRC Sec. 4975(e)(2)(H) . . . Officer, director or having any of the powers or duties of an officer or director . . . is a “disqualified person.”**
- **Our clients are Entrepreneurs.**

**Still, it generally
takes just 2 weeks to get the
money to move!**

**We tell the client everything they need to
know before they commit.**

Your assignment:

Go forth and find that business for which you cannot wait to get up in the morning to go do – even if it is only for the @#%&* money.