



Business Excellence Solutions

## IS YOUR ORGANIZATION CONSIDERING AN OMBUDSMAN PROGRAM?

### Why an Ombudsman Program?

Many organizations today, including large state and federal agencies, colleges and universities, municipalities, and private corporations and professional organizations, are exploring more effective and efficient ways of addressing questions and concerns and resolving disputes within their organizations through the use of an ombudsman program. Often, referred to as an “ombuds,” the concept of an ombudsman originated in Scandinavia and was originally designed to provide a conduit for individuals to voice concerns to their governments. The concept has expanded dramatically, and now includes a variety of models, depending on the needs of the particular community or organization.

### What Does an Ombudsman Program Offer?

An ombudsman program in your organization can potentially provide a highly confidential way for employees or members, and potentially, clients, citizens, and customers, to seek answers to questions, express concerns, or seek informal resolution of an issue. Regardless of the particular model, an ombudsman program typically provides a neutral, informal, and flexible avenue to address a wide range of concerns with a variety of tools and approaches. It provides a non-escalating, off-the-record resource to work with the user to give them timely answers to questions and to explore the options, approaches, and alternatives available to help resolve matters without resorting to more formal channels. Users of the program remain in control of their options and can confidentially explore their concerns. After consultation with the ombudsman, they can choose their own approach. Invariably, an ombudsman program does not replace other more formal mechanisms for resolving concerns, but supplements them. In many settings, the ombudsman will often suggest other services as the appropriate resource to help address the particular concern.

### Are There Different Program Models for Ombudsman Programs?

There are many different models currently in use worldwide. They differ significantly depending on the specific organization or user-base that they serve. There are even variations in approaches and models within each of the predominant models. Programs are often adapted to fit the individual needs of the organization or user-base. There are common elements in all ombudsman programs, regardless of the variation in their approach. As an overview, the American Bar Association acknowledges three major types of ombudsman programs: *Classical Ombudsman Programs*, which include programs created by Legislative or Executive authorization, *Organizational Ombudsman Programs*, which are typically found in place in corporate and academic settings, and *Advocacy Ombudsman Programs*, which are more often used in long-term care settings or for other programs involving patients or persons with disabilities. All programs share common attributes, but there are very distinct differences among the approaches. While this adaptability contributes to some confusion in the public and the judicial system, it also

enables many organizations to provide an important, adaptable service to their stakeholders in a way best suited to the specific organization.

### What are the Shared Essential Characteristics of an Ombudsman Program?

Regardless of the particular model, all ombudsman programs share three important essential characteristics: *Independence, Impartiality, and Confidentiality*. Depending on the environment in which the particular program operates, each of these essential characteristics may be adapted to the context of the program. There are standards that apply each of these essential characteristics. The American Bar Association, the United States Ombudsman Association, and the International Ombudsman Association, among others, have each developed standards for the operation of ombudsman programs. The most general discussion is included in the ABA Standards for the Establishment and Operation of Ombuds Offices, promulgated in February 2004. This document generally describes these essential elements as follows:

**Independence:** “The ombuds is and appears to be free from interference in the legitimate performance of duties and independent from control, limitation, or a penalty imposed for retaliatory purposes by an official of the appointing entity or by a person who may be the subject of a complaint or inquiry.”

**Impartiality:** While there is significant variation in the approaches, all ombudsman models conduct some fact finding to varying degrees. Regardless of how limited or extensive this aspect of the function may be, to be effective, the ombudsman must be genuinely regarded as free from any initial bias involving the people involved or the issue in question. The models differ in their requirements regarding continued neutrality through the process.

**Confidentiality:** As described in the ABA standards, an “ombuds does not disclose and is not required to disclose any information provided in confidence, except to address an imminent risk of serious harm. Records pertaining to a complaint, inquiry, or investigation are confidential and not subject to disclosure outside the ombuds’s office. An ombuds does not reveal the identity of a complainant without that person’s express consent.”

### What are the Key Differences Between the Ombudsman Program Models?

Each major type of ombudsman program is described here briefly.

#### Classical Ombudsman Programs:

**Legislative Ombuds:** A legislative ombuds is established by the legislature as part of the legislative branch who receives complaints from the general public or internally and addresses actions and failures to act of a government agency, official, public employee, or contractor.

**Executive Ombuds:** An executive ombuds may be located in either the public or private sector and receives complaints from the general public or internally and addresses actions and failures to act of the entity, its officials, employees, and contractors.



**Bruce MacAllister, J.D.**  
**Business Excellence Solutions**

1473 Bishop's Lodge Road, Santa Fe, New Mexico 87506-0004

☎ 505.660.7800 📠 505-983-4951 ✉ [Transformations@bizexteam.com](mailto:Transformations@bizexteam.com) 🌐 <http://www.bizexteam.com>

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## Organizational Ombuds Programs:

**College and University Ombuds Programs and Corporate Ombuds Programs:** Typically use an organizational ombudsman program approach to facilitate fair and equitable resolutions of concerns that arise within the entity.

## Advocacy Ombuds Programs:

**Long-term Care and Similar Ombuds Programs:** Typically use an advocate ombudsman approach where the ombudsman serves as an advocate on behalf of a population that is designated in the charter.

## How Does Ombuds Confidentiality Work, and are there Exceptions to Confidentiality?

Confidentiality is a fundamental element of all types of ombudsman programs. The professional organizations of each of the major types of programs have developed rules and professional standards around confidentiality and exceptions, appropriate to their ombudsman approach. The American Bar Association Standards promulgated general standards regarding ombudsman confidentiality, as follows:

*“An ombuds does not disclose and is not required to disclose any information provided in confidence, except to address an imminent risk of serious harm. Records pertaining to a complaint, inquiry, or investigation are confidential and not subject to disclosure outside the ombuds’s office. An ombuds does not reveal the identity of a complainant without that person’s express consent. An ombuds may, however, at the ombuds’s discretion, disclose non-confidential information and may disclose confidential information so long as doing so does not reveal its source. An ombuds should discuss any exceptions to the ombuds’s maintaining confidentiality with the source of the information.”*

Exceptions to confidentiality are rare, but invariably include the requirement that the ombudsman disclose information in any situation where the failure to disclose information would create *an imminent risk of serious harm* to the person involved or to others. Organizations using ombudsman programs often add definitional language appropriate to the context of their individual circumstances. Examples include, among others, national research laboratories, which may define imminent risk as automatically including any information which could jeopardize national security if not disclosed, or REALTOR® associations, which may include within this definition that there is an imminent risk of serious harm, when a violation of public trust is involved in the visitor’s claim.

## Does Speaking with an Ombudsman Put an Organization on Legal “Notice” of an Alleged Infraction?

Because the ombudsman is an informal, confidential resource, as the ABA standards observe, “[a]n ombuds is intended to supplement, not replace, formal procedures.” All organizations are still expected to have formal reporting mechanisms in place to serve as points for formal notice. Ombudsman programs are not intended to serve that function or to serve in any way as the agent of the organization for purposes of receiving notice. The confidentiality afforded the ombudsman is necessary to provide a sense of safety and



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☎ 505.660.7800 📠 505-983-4951 ✉ [Transformations@bizexteam.com](mailto:Transformations@bizexteam.com) 🌐 <http://www.bizexteam.com>

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security to those using the program, so that they feel confident that they can discuss their concerns without fear of disclosure. To provide this sense of safety, it is imperative that program users understand that speaking with an ombudsman does not impute notice to the organization, and if putting the organization on notice is important to the program user, an additional step or steps will be required. Because of the confidentiality afforded programs, it is imperative that ombudsman programs make program users aware that speaking with the ombudsman does not serve to put the organization involved on official notice of a concern or issue. It is therefore important that program users have a full understanding of the limitations and implications of using an ombudsman program and how that could potentially impact their legal rights.

The American Bar Association Standards include important provisions designed to ensure that ombudsman programs communicate these important issues. These provisions include the following:

1. "An ombuds should provide the following information in a general and publicly available manner and inform people who contact the ombuds for help or advice that –
  - a. "the ombuds will not voluntarily disclose to anyone outside the ombuds office, including the entity in which the ombuds acts, any information the person provides in confidence or the person's identity unless necessary to address an imminent risk of serious harm or with the person's express consent
  - b. "important rights may be affected by [and] [*sic*] when formal action is initiated and by and when the entity is informed of the allegedly inappropriate or wrongful behavior or conduct
  - c. "communications to the ombuds may not constitute notice to the entity unless the ombuds communicates with representatives of the entity as described in ... [the ABA discussion on notice] ...
  - d. "working with the ombuds may address the problem or concern effectively, but may not protect the rights of either the person contacting the office or the entity in which the ombuds operates
  - e. "the ombuds is not, and is not a substitute for, anyone's lawyer, representative or counselor, and
  - f. "the person may wish to consult a lawyer or other appropriate resource with respect to those rights."

The ombudsman himself or herself *may* in appropriate circumstances be the person who places the organization on notice of a concern. This may happen in the case where the individual reporting the concern is too fearful of reprisal to come forward publically, or a situation where the ombudsman has observed allegations by multiple complainants that reflect a pattern of concern. While the pattern would not necessarily be apparent to each individual reporting the concern, it could become apparent to the ombudsman under the circumstances.

### Is an Ombudsman Program Right for My Organization?

The decision to implement an ombudsman program must essentially be a public entity or management decision. To be effective, an ombudsman program cannot be imposed from the bottom up, because it is imperative that public official or organizational management support the concept and assure potential users of the safety and usefulness of the program. Officials or managers must also be prepared to respond to reports of concerns and to implement the changes appropriate to address individual and thematic



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concerns. An ombudsman program can be an extremely useful adjunct to a government entity or organization's current services when some or all of the following symptoms exist in the organization:

- An overloaded, or slow and ineffective formal complaint processing system;
- Formal grievances or complaints that include claims (such as formal discrimination claims) that, when fully investigated, appear to have been included to "get the person" in the door of the formal process, but are not at the root of the real issue;
- Recurrent conflicts within the same unit;
- Widespread accusations of misconduct, wrong-doing, or questionable actions or motives and mistrust of management;
- High staff turn-over and difficulties in recruiting new employees
- Competing and incompatible "truths" being shared with management, when it is not positioned to assess which perspectives are valid.

### Who Can I Contact for Questions or to Receive More Information?

In addition to *Business Excellence Solutions*, there are many resources available to provide information and to answer questions. Some of the key resources are listed below:

#### **The International Ombudsman Association**

<http://www.ombudsassociation.org/>

390 Amwell Road, Suite 403

Hillsborough, NJ 08844 USA

Tel: 1+908-359-0246

Fax: 1+908-842-0376

Email: [info@ombudsassociation.org](mailto:info@ombudsassociation.org)

#### **The United States Ombudsman Association**

<http://www.usombudsman.org/>

Association 5619 NW 86th St., Ste.

600 Johnston, IA 50131-2955 Telephone: 515-

225-2323 Fax: 515-327-5050 E-mail:

[usoa@assoc-serv.com](mailto:usoa@assoc-serv.com)

#### **The National Long Term Care Ombudsman**

Resource Center

<http://www.ltombudsman.org/>

NORC 1828 L Street, NW, Suite

801 Washington, DC 20036

Tel.202.332.2275

Fax.202.332.2949

Email: [ombudcenter@theconsumervoice.org](mailto:ombudcenter@theconsumervoice.org)



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