

Succession Planning Agreement Between Member and Accepting Lawyer

Preparing the Agreement - Points to Consider

The following points should be considered by both parties when developing a Succession Agreement:

1. The parties should consider and discuss all situations involving temporary disability, long term disability and death.
2. The agreement should authorize specific people to make decisions and also provide guidelines or parameters for decision making. For example who decides if the firm will continue or be wound down? What factors trigger this decision? This could be a point of conflict in the case of a disability where the accepting member thinks the practice should be sold (i.e. excessive time commitment) and the family wants the business to continue.
3. The agreement should provide Power of Attorney to the accepting lawyer. There are various options, including:
 - a) an immediate grant on the understanding that it would only be used in certain circumstances (some risk involved);
 - b) an immediate grant with a termination date (some risk as well as a renewal involved);
 - c) a conditional grant with all documentation in place to be activated under specified circumstances.

For Power of Attorney on bank accounts, the bank may have specific forms available for completion.

4. Funding continuation or wind down the business. Funds may be available from:
 - a) the firm's general account;
 - b) personal bank accounts;
 - c) the estate (should be covered in the will);
 - d) an insurance policy purchased for this purpose (i.e. business interruption, life insurance, etc.)

Whatever the source, the member should ensure that funds necessary for business continuation (i.e. disability) or winding down the business are available.

5. Work in progress. Will the accepting member be compensated for work done subsequent to the "*incident*"? At what rate? If the accepting member completes a file already underway, how will the fees be allocated?

6. Disposition of funds remaining at the end of the process (i.e. remain with the firm, paid to estate, etc.). Trust funds which cannot be distributed (i.e. trust conditions, etc.) must be dealt with in a manner agreed to by the Law Society of Saskatchewan.
7. Compensation for non-billable time. At what rate and how will the accepting lawyer be compensated for:
 - a) legal practice issues, i.e.
 - i) completion/disposition of active files;
 - ii) disposition of closed files;
 - iii) disposition of Wills or other custodial documents;
 - b) office management/administrative functions, i.e.
 - i) billings/collection of accounts receivable;
 - ii) payment of expenses;
 - iii) receipt/payment of trust funds;
 - iv) trust and general bank account reconciliations;
 - v) maintenance of accounting records;
 - vi) direction/payment of staff.

In conclusion, it is very important that others (i.e. family, executors, partners, colleagues, staff, etc.) are made aware of succession arrangements on at least a “*need to know*” basis.

Please note that each situation is different and this list is intended for discussion purposes only and not intended to be all-inclusive.

Ensuring a Smooth Transition - Practice/Planning Checklist *

1. Create and maintain an office procedure manual and review and update the manual from time to time, providing detailed directions regarding every aspect of your office’s operations:
 - a) how to check for a conflict of interest;
 - b) how to use the diary/bring forward system;
 - c) how to generate a list of active client files, including client names, addresses, and phone numbers;
 - d) where client ledgers are kept;
 - e) how the open/active files are organized;
 - f) how the closed files are organized and assigned numbers;
 - g) where the closed files are kept and how to access them;
 - h) the office policy on keeping original documents of clients;
 - i) where original client documents are kept;
 - j) where the safe deposit box is located and how to access it;

- k) the bank name, address, account signors, and account numbers for all law office bank accounts;
 - l) the location of all law office bank account records (trust and general);
 - m) where to find, or who knows about, the computer passwords;
 - n) how to access your voice mail (or answering machine) and the access code numbers;
 - o) where the post office or other mail service box is located and how to access it.
2. Ensure that you are able to generate complete client and file open lists with up-to date contact information.
 3. Have secure documentation recording all accounting and financial information, access codes and passwords and identify document location in your planning instructions.
 4. Record all deadlines (i.e. court dates, limitation periods, etc.) on every file in a system which is easily accessible.
 5. Thoroughly document all files sufficiently to allow the conduct of file to be assumed without delay and expense to clients.
 6. Keep all time and billing records up-to-date.
 7. Avoid keeping clients' property or clients' original documents. Return original documentation to clients as soon as possible.
 8. Purge and close files regularly.
 9. Familiarize the back-up lawyer with your office systems and staff and keep back-up lawyer apprised of office changes.
 10. Store all critical information regarding client matters, trust accounts, financial information in a location easily and efficiently accessed by the back-up lawyer.
 11. Draft detailed written letters of instruction/guidelines to family members, the back-up lawyer and office staff and review and update these instructions from time to time and advise necessary person as to location of instructions.
 12. Have discussions with all appropriate persons regarding plans - family, office staff, back-up lawyer, banking personnel.
 13. Make formalized arrangements for trust accounts to be accessed and maintained.
 14. Consider including in retainer agreements provisions indicating your arrangement for a back-up lawyer to close practice in the event of your disability, incapacity or death.
 15. Prepare powers of attorney for the practice and trust accounts.

16. Prepare your will, including terms to deal with practice related issues, providing executor/trustee with appropriate powers and authority, and be sure to review and update regularly.
17. Make sure colleagues, partners, family and staff are aware of your plans.

*** This checklist was prepared from information contained on the Law Society of British Columbia website. Thank you to the Law Society of British Columbia.**

Succession Agreement

(Sample)

I, _____, operating as _____ Law Firm (hereinafter the Grantor) and _____, of _____ Law Firm (hereinafter the Grantee) being a practising member of the Law Society of Saskatchewan, agree as follows:

1. The Grantor hereby appoints the Grantee to be responsible for the operation of the Grantor's law practice if by reason of incapacity the Grantor becomes incapable of practicing law.
2. Incapacity of the Grantor to be defined as follows:
[insert required]
3. If it is reasonable to believe that due to incapacity the Grantor will not resume the practice of law for a period in excess of _____ months/years, or in the case of the death of the Grantor, the Grantee is authorized to wind down, sell or otherwise dispose of all assets of the Grantor's practice.
4. The Grantee agrees to use all commercially reasonable efforts to operate or wind down the Grantor's practice.
5. The Grantee is entitled to compensation for services as follows:
[insert required]

6. Once the Grantor's practice has been wound down and/or otherwise disposed of (if that is the case), all funds remaining, excluding trust funds, shall be paid to the Grantor's estate forthwith. Any and all trust funds remaining that cannot be distributed to the appropriate person(s) or entity(s) (i.e. trust conditions, etc.) shall be dealt with in a manner approved by the Law Society of Saskatchewan.

SIGNED this _____ day of _____, 20____, at _____, in the Province of Saskatchewan.

Witness:_____

Signed:_____

I, _____, being an active member of the Law Society of Saskatchewan, agree to accept responsibility for the continuation, winding down, sale or disposal, as the case may be, of _____ Law Firm in accordance with the terms, conditions and intent of this agreement.

SIGNED this _____ day of _____, 20____, at _____, in the Province of Saskatchewan.

Witness:_____

Signed:_____

Note: When entering into a Succession Agreement, both the Grantor and the Grantee should ensure they are aware of any/all tax implications particularly if either one or both are operating as professional corporations.

Note: This is a "sample" only and will have to be adapted and expanded to each individual situation.