



The State Bar of California

Guidelines for Closing or Selling a Law Practice

Closing A Law Practice

These guidelines were written because there is a need for them. Many anecdotal stories have been written by surviving spouses and others describing how no one was prepared to close the office and there was nowhere to get help.

Hopefully this checklist will help the lawyer who is voluntarily retiring or who has the time to do many of the things on the list in advance. The checklist may also be of help to those who are called upon to close down a law practice of another where there was no preparation for closing.

When it is Necessary to Close a Law Practice

A law practice may have to be closed permanently or temporarily, completely or partially when a lawyer:

- dies.
- is physically or mentally unable to practice law.
- wants to retire.
- is disbarred.
- is suspended.
- is elected or appointed to public office.
- accepts an employment opportunity, which requires leaving practice
- is drafted or activated into military service.
- is leaving the state.
- is merging practice with another firm and withdraws from certain types of cases (plaintiff lawyer is joining defense firm for example).
- is selling part or all of the practice.
- walks out the door due to "burn out."
- suffers temporary or permanent problems with drugs or alcohol addiction (stress, drugs, alcohol, money problems).

There may be hundreds or thousands of necessary communications to and from clients, opposing counsel and courts. Staff has to be retained or terminated. Occupancy of the

office premises must be dealt with. Record and file disposition must be accomplished. Final tax returns must be prepared and filed and taxes paid.

A. Who is going to do the work?

1. The lawyer, if alive and competent and available.
2. The executor of the lawyer's estate.
3. The conservator or guardian of the lawyer.
4. Another lawyer or firm with whom prior arrangements have been made.
5. The lawyer's surviving spouse, if licensed.
6. Other attorneys, as appointed through the superior court under the auspices of Business & Professions Code sections 6180 and 6190, which lists procedures for the assumption over a law practice.
7. The purchaser of the practice.

B. Why is closing down a law practice any different than closing down any other business?

The major differences are the ethical considerations superimposed on the task that can make the tasks difficult.

Most of the ethical conditions are designed to either protect the confidentiality of client information and/or to prevent other lawyers from offering to help the clients because of solicitation concerns. (See [Rules of Professional Conduct](#), rule [1-400](#) - Advertising and Solicitation; rule [2-300](#) – Sale or Purchase of a Law Practice of a Member, Living or Deceased; rule [3-310](#) – Avoiding the Representation of Adverse Interests; [4-100](#) Preserving Identity of Funds and Property of a Client; and [Business & Professions Code](#) section [6068\(e\)](#) – confidentiality.

C. Procedurally, what has to be done?

If an attorney dies or is disabled resulting in either the cessation of the law practice or the incapacity to attend to the law practice, Business & Professions Code [section 6180](#) (cessation) or [6190](#) (incapacity) can come into play if there are unfinished client matters for which no other active member of the State Bar has (with the consent of the client) agreed to assume responsibility.

These two sections authorize the assumption by the superior court of jurisdiction over the law practice and allow for the appointment of attorneys to act under its direction with broad powers granted in order to wind down the practice.

D. Specifically, what has to be done?

8. Get a set of keys to the premises and to interior locked file cabinet and offices. If there is a safe, try to locate the combination.

Make sure to check for "satellite" offices. Ask the landlord for help. Ask the most recent employee for help. Change the locks and combinations to protect the office files and assets.

9. Contact the current or most recent staff to arrange for their employment, (if available) on a full, part time or temporary basis, to help in the closing down process.

10. Open all mail as it arrives to look for information on pending client matters, bills that have to be paid, tax returns that have to be filed, income that may come in, etc.

11. Arrange with the landlord or other entity for both a cancellation of the old lease or tenancy arrangement and the creation of a new arrangement.

12. If there is a known CPA or bookkeeper or file system, try to locate all existing insurance policies, including malpractice, workers compensation, medical, life, general liability, etc.

13. Arrange with the insurance agents or companies involved for a termination of the policies or the issuance of new policies to protect the person(s) or entities closing down the practice.

14. Determine if a "tail" malpractice policy can be obtained to protect the lawyer's estate.

15. Look for checkbooks, canceled checks, bank statements and incoming mail for information on existence of checking accounts, savings accounts and safe deposit boxes. Notify banks. Determine if old accounts must be closed and new accounts opened.

16. Determine which "final" and new tax returns must be filed. Consider federal, state and local payroll, occupancy and sales taxes. Identify federal and state Employer Identification Numbers.

17. Ask local court clerks to run a computer search to determine if attorney is attorney of record on any open matters.

18. Examine all incoming mail to determine open client matters. Be especially alert for documents indicating the possible existence of a successor attorney.

19. Determine if attorney had an arrangement with another attorney (sometimes called an successor attorney) who previously agreed to assume practice of deceased or disabled attorney.

20. Check with surviving spouse or office staff if attorney had a close friend who might have agreed to be a successor attorney.

21. Ask local bar association(s) to send e-mail alerts to members and place a public notice in bar publications announcing death or disability of attorney. The notices should

ask for information as to any assuming attorney or attorneys with client matters with the deceased or disabled attorney.

22. Take possession and protect all computers. Get technical assistance if necessary to make a back-up disk or tape in the event something happens to the computer(s).

23. Check to see if there are back up tapes or discs and where they would be located. Take possession of them.

24. Look for desk calendars, computer calendars and secretarial calendars to seek information on cases in process and due dates.

25. There may be lists of clients divided into active files and closed files. These people will have to be notified.

26. Closed files may be kept in more than one location. Closed files may be stored in public warehouses, the attorney's garage or basement, or in the attorney's home or even with a client. All staff and family members should be quizzed to determine if they know of out of office locations.

27. Closed files must be examined before destruction or returned to clients. The examination of closed files (and open files) raises questions of attorney-client confidence and possible violation of confidence.

In some states only an attorney or someone working under the direct supervision and control of an attorney can look into the file.

In other states a non-attorney spouse or relative or personal representative of the attorney's estate may be able to examine the files.

In some states the attorney for the executor or personal representative can cause the files to be examined. The rules concerning confidentiality vary from state to state.

28. Anything in the closed file that is the property of the client should be returned to the client. Any original document should be removed from the file for return to the client.

Typical items found in files include wills, stock certificates, original signed contracts, promissory notes, deeds, mortgages and other items returned to the attorney's office from a county recorder or governmental filing office.

29. Determine if there is a provision concerning destruction of files in the fee agreement or on closing the file or at any time in the file.

30. Determine if the attorney had a file retention - destruction policy that had been communicated to the clients. There may be special rules for the files of minors. If there are no clear published rules ask for guidance from both the malpractice carrier and the State Bar.

31. The safest way to destroy closed files is simply to shred them or get them shredded. Unfortunately this can be an expensive process. Often lawyers just dump closed files

into the trash. This is a risky procedure as many people before destruction handle the trash and the file contents may be of interest to one or more of these people.

32. Depending on the price of paper, some paper recyclers will buy old files by weight. Paper used in law firms has high scrap value. The buyer will both buy the files and haul them away. The files get torn apart as they move down a conveyor belt. The paper is then sorted by type of paper and processed. Take precautions to make sure no client confidences would be violated.

33. Files of unlocated clients pose a special problem. If the applicable statutes of limitations have run and no one has responded to notices, the files probably can be destroyed. Determine if the deceased lawyer's jurisdiction has a place to send unclaimed files.

34. In most jurisdictions, the superior court will have a system for deposit of non-returnable client wills.

35. Law books may have little or no value unless they are a complete up to date set, and are simply a disposal problem. The law school from which the deceased graduated may accept law books as donations from their alumni.

Other suggestions:

- Check with your local law librarian.
- Contact your local bar association.
- Your public library's "Friends of the Library" may accept them as a donation to its annual book sale.
- Ask your local used bookstore.
- A company that rents stage props may be interested.
- Do a Web search for used law book dealers.
- Use an online auction to sell them.

36. With rare exceptions, used law office equipment has relatively little value. You might consider offering the equipment to the staff and give the balance to a charity that will haul it away.

37. Determine who can sign checks on the attorney's client trust account(s). Inform the bank that the account should be frozen. Determine if a non-lawyer can audit the account. Give a sense of urgency to determine which clients are entitled to the money and make distribution to the clients as rapidly as possible. If the superior court has assumed jurisdiction over the practice, get approval through the court for disbursements.

38. For closed offices, notify post office, building management and some nearby offices. Post office forwarding will prevent mail from being delivered and left at an empty office. Request building management and nearby office to collect mail, express deliveries and anything else that might be important.

39. In smaller communities and where appropriate, post a notice on the door for clients who may drop by to seek their file or status of their matter. In the notice inform the client of when and where and with whom contact should be made. Do not do this if you feel the

notice would serve as an invitation for a burglar or disappointed client to return and steal or vandalize the office.

40. You might consider placing appropriate notifications on the attorney's Web site.

41. If you can obtain passwords, clear all voice mails that may contain client or other important communications. If passwords are not available disconnect all voice mails for which there is no password and consider using a simple answering machine instead.

42. Arrange for automatic forwarding of all e-mails to a mailbox of the responsible person. It is also possible to reject or answer all e-mails with a notice instructing the sender whom to contact.

43. If a database of client e-mails is monitored, consider notifying clients and others by e-mail notifications. Bad e-mail addresses can be quickly spotted. It may be possible to program e-mails to be notified when the e-mail has been read.

44. Immediately upon making arrangements for a successor lawyer or firm notify all courts, agencies, opposing counsel, etc., of the change in representation by appropriate substitution or other documents. Some court or agencies might require a motion to make the change.

45. If arrangements for a successor lawyer or firm have not been made, it may be necessary to file an appropriate document or letter to the court to prevent a default proceeding or to otherwise protect the client.

46. Non-client records such as: books of account, bank statements, paid bills, etc. can usually be trashed after the necessary time for income tax or malpractice or other laws.

47. Retiring lawyers or successors in interest may not want to devote the time or money to reviewing old client and office files with the attendant expenses of contacting clients.

Many lawyers just dump the files into boxes with the file names on the outside of the box. The boxes containing the files are then stored in a garage or basement with the hope that the files will never be requested.

This system seems to work although it would still seem necessary to remove original client documents from files before doing so.

48. Delivering an active file to a client or attorney may be necessary to protect the client's interests. Some consideration must be given to photocopying what is given for malpractice protection. Active files delivered directly to clients must be carefully examined before delivery. Misfiled paper relative to other clients must be recovered. A receipt for the file must be obtained.

49. Examine incoming mail to determine what subscriptions must be canceled. Newsletters, magazines, lawyer listings, legal supplements, yellow pages, web and Internet services, etc. must be canceled.

50. Credit card and check authorizations periodic charges. Many publications and memberships continue unless canceled. Monthly or other periodic charges might automatically be made to a credit card or by charges to a bank account. These must be canceled.

51. Make appropriate notifications to bar associations, professional associations and other organizations. In addition to ending dues billing, the organization may wish to notify others of the death of the member.

Selling A Law Practice - in Whole or in Part

These guidelines are just that - guidelines. Every practice situation is different. The urgency or lack of urgency in buying or selling may affect the price. You must also consider the ethical ramifications such as the previously listed Rules of Professional Conduct and Business & Professions Code sections

Hopefully, the lawyer will have begun the process of selling the practice to another lawyer or law firm as part of a retirement plan while there is time for give and take negotiation with a potential buyer.

There are many different techniques used by professionals. An appraiser hired by a seller may consciously or unconsciously use a method designed to set a high price.

Conversely, an appraiser hired by the buyer may try for as low a price as possible. Many of the methods used are intended for large firms, for mergers, or for a divorce court or estate taxes rather than the real world of a lawyer or firm buying or selling a practice.

Since few, if any lawyers regularly buy or sell practices, the lawyer rarely has any expertise or experience in setting the price or terms for his or her own practice. A lawyer buying or selling a law practice is well advised to get help.

It may be helpful to examine Internet listings and descriptions of practices for sale. A visit to www.SeniorLawyers.org may be helpful.

A Multiple of Fee Income. This is relatively simple and reflects what is really happening in the world, but there are other methods used by professional appraisers that are not described in this checklist.

1. Average the fee income over the previous five years by category of fees. A five-year average will hopefully balance out the highs and lows. It is necessary to classify the type of fees. Fee income from trusts and a safety deposit crammed full of original wills may be much more valuable than fee income from criminal law cases which depended on the selling attorney who personally had the skill and reputation that caused the phone to ring.

2. Examine the sources of the clients. Do the clients come from referrals to a specific lawyer? Do the clients come due to the firm, the firm's expertise or the expertise of a specific lawyer in a particular area of law? Do the clients come from institutions that are

likely to continue referring clients when the selling lawyer closes or retires? Do they come from yellow pages or the Internet?

- 3.** Examine the areas of law that are the sources of the fees. Are they in growth areas such as mediation, arbitration and elder law as opposed to medical malpractice or other areas that could likely be capped by legislatures?
- 4.** Determine if the selling attorney can remain during a time period of from 6 months to 1 year or more.
- 5.** Determine if the support staff with knowledge of the clients and matters will remain.
- 6.** Look at the net income after expenses. Typically, net income after expenses will run 40 to 50 percent of the income. If the income percentage is lower, the practice may possibly not support higher fees and may depend on high volume and turnover. If the percentage is higher, it is possible that the lawyer is working long, hard hours without adequate support, staff or equipment.
- 7.** Start with a figure of six times the average monthly gross fees. Increase the multiple or decrease the multiple, keeping in mind all of the various factors. A corporate or business or probate practice with the departing lawyer staying on for three to six months to meet and introduce clients may be worth 12 - 15 times the monthly average. The criminal law practice of a deceased lawyer may only be worth as little as one or two months the average income, or may have to be given away to avoid ongoing expenses.
- 8.** Determine if the seller is willing to guarantee an amount of fee income from existing and previous clients and referrals.
- 9.** Determine an appropriate adjustment to price and terms if it should be made six months later, twelve months later or at any time based on going over or under the guarantee income figure.
- 10.** Return on investment, or capitalizing net profit is another method used.
- 11.** "Hard" assets including books, computers, computer systems, telephone systems and office furniture may have little or no value beyond their book value. Liabilities on rentals or contract payments must be taken into account. This amount is in addition to the multiple amount.
- 12.** "Soft" assets including cases in process with partially earned or contingent fees must also be valued. This amount is also in addition to the multiple amount.
- 13.** Contingent fees based on results. It will probably be impossible to ethically divide actual fees between a successor lawyer and an executor or spouse or non-lawyer. This is a major incentive for a lawyer to sell before death or disability. Sometimes a system of dividing fees on earnings can be effectuated.

Get Help. This checklist will help you get started. Get help from a lawyer and appraiser. You can't be objective enough alone.

There are several Web sites that can assist you in finding the help you need. One such site is www.SeniorLawyers.org

Every practice and situation will be unique to the facts of the situation. There are hundreds of possible factors that could affect a price of a practice. There will be many expert appraisers, accountants, lawyers and others who will find fault with what is set forth here and who will feel they have a better system, or method, or formula.

Other Contract Terms to be Considered

The previous 13 points deal primarily with determining price. The following points are some of the terms that should be covered in the agreement between the parties.

14. List of "client accounts" to be used for determining price and price adjustment.
15. Warranty that every "client account" has a written fee agreement in the file.
16. List of assets being transferred.
17. List of assets NOT being transferred.
18. Obligations being assumed.
19. Obligations not being assumed
20. Lease status. Assumability or assignability
21. Status and treatment of deposits and prepaid expenses.
22. Basic purchase price before adjustments.
23. Definitions of "income" to be used in determining adjustments.
24. Adjustments based on actual income from client accounts at specific points in time.
25. Payment of purchase price. Down payment, monthly payments, adjustments to payments, retention or hold back if any.
26. Covenant(s) not to compete as permitted by law and agreed to by buyer and seller.
27. Guarantees by third parties.
28. Income not included as transfer (sublets investments, etc.).
29. Accounts receivable. Allocation between buyer and seller, and collection and pay over from collections. Charge backs of uncollectible accounts.
30. Work in process. Determine what amounts go to the buyer and seller.
31. Notices to clients. Agreed upon wording.

- 32.** Responsibility for closed files and destruction of closed files.
- 33.** Transition assistance. Compensation rates for specific assistance.
- 34.** Status of errors and omissions, insurances and claims, and possible claims.
- 35.** Identify employees who may not be selected. Penalty for hiring employees.
- 36.** Manner of use of name(s) of attorney names.
- 37.** Dispute resolution. Which items are to be resolved by mediation, arbitration, litigation.
- 38.** Specify which person or institution is to mediate or arbitrate disputes.
- 39.** Consent of spouses where appropriate.
- 40.** Review of terms by ethics attorney(s).

As indicated, these are just some of the possible terms to be included in an agreement of purchase and sale of a practice --- which should be expanded or contracted as appropriate to the practice and attorneys involved.

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