

SUCCESSION PLANNING AGREEMENT—SAMPLE

The sample *Agreement* beginning on the next page gives the Assisting Attorney the power to determine whether you (the Planning Attorney) are disabled, impaired, or incapacitated. It also authorizes the Assisting Attorney to sign on your business bank accounts (except your trust account) and to close your law practice under designated circumstances. With respect to your trust account, the *Agreement* grants the Authorized Signer the authority to sign. (See *Caveat* directly below.) The *Agreement* also enumerates powers such as termination, payment for services, and resolution of disputes.

Caveat: The Assisting Attorney must determine ahead of time whether they are going to represent the Planning Attorney, and/or clients of the Planning Attorney, or no one (acting exclusively as a neutral file-transferring agent). If the Assisting Attorney (1) represents the Planning Attorney on issues related to office closure, (2) is an Authorized Signer on the Planning Attorney's trust account, (3) finds misappropriations in the Planning Attorney's trust account, and (4) is instructed by the Planning Attorney not to inform the clients about the misappropriations, the Assisting Attorney will have conflicting fiduciary duties and may have mandatory reporting obligations under California Rules of Professional Conduct Rule 1.15 and Business and Professions Code Section 6068(o)(3). To avoid this potential conflict, it is best if the Planning Attorney selects one person to represent them as their Assisting Attorney and another person to serve as the Authorized Signer on the trust account, when the Assisting Attorney is also representing the Planning Attorney.

Please be advised that authorizing someone to sign on bank accounts in an agreement may not meet the banking institution's recordkeeping requirements. The Planning Attorney should consult their banking institution to complete the paperwork required for its records.

If you do not want the Assisting Attorney to be the person who determines whether you are disabled, incapacitated, or impaired, you will need to modify this agreement.

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Between: _____, hereinafter referred to as “Planning Attorney”

And: _____, hereinafter referred to as “Assisting Attorney”

And: _____, hereinafter referred to as “Authorized Signer”

1. Purpose.

The purpose of this Agreement to Close Law Office (hereinafter “this Agreement”) is to protect the legal interests of Planning Attorney’s clients in the event Planning Attorney is unable to continue practicing law due to death, disability, impairment, or incapacity.

2. Parties.

The term *Assisting Attorney* refers to the attorney designated in the caption above or the Assisting Attorney’s alternate. The term *Planning Attorney* refers to the attorney designated in the caption above or the Planning Attorney’s representatives, heirs, or assigns. The term *Authorized Signer* refers to the person designated to sign on Planning Attorney’s trust account and to provide an accounting for the funds belonging to Planning Attorney’s clients.

3. Establishing Death, Disability, Impairment, or Incapacity.

To determine whether Planning Attorney is unable to perform their duties due to death, disability, impairment, or incapacity, Assisting Attorney may rely on evidence that they consider to be reasonably trustworthy. This evidence may include communication with Planning Attorney’s family or representative, or written opinions from one or more physicians licensed to practice medicine in California. The same kind of evidence can be used to show that Planning Attorney has recovered from disability, impairment, or incapacity. Assisting Attorney shall not be held responsible for any problems or claims arising from their reliance on this evidence to carry out the terms of this Agreement, provided they acted in good faith.

4. Consent to Close Practice.

Planning Attorney agrees to allow Assisting Attorney to take any actions reasonable and necessary to close Planning Attorney’s law practice if Planning Attorney is unable to do so because of death, disability, impairment, or incapacity, as determined by the Assisting Attorney. Should such circumstances occur, Planning Attorney appoints Assisting Attorney as attorney-in-fact under California Probate Code Section 4000 et seq., with full power to do everything required by this Agreement as if Planning Attorney were doing it themselves. This appointment of Assisting Attorney only goes into effect if Planning Attorney dies or becomes disabled, impaired, or incapacitated. This is a durable power of attorney that remains valid even if Planning Attorney becomes incapacitated, as provided in California Probate Code Section 4124. The Assisting Attorney is also authorized to sign all of Planning Attorney’s law office accounts at banks or financial institutions, except for the lawyer trust account(s), if Planning Attorney is unable to do so.

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Planning Attorney's consent includes, but is not limited to:

- Accessing Planning Attorney's office equipment and supplies as necessary to close Planning Attorney's practice;
- Opening Planning Attorney's mail and processing it;
- Taking possession and control of all property in Planning Attorney's law office, including client files and records;
- Reviewing client files and records and obtaining information regarding any pending matters that may require attention;
- Notifying clients, potential clients, and others who appear to be clients, with the Planning Attorney's authorization, that it is in their best interest to obtain other legal counsel;
- Copying Planning Attorney's files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- Obtaining client consent to seek extensions of time and contacting opposing counsel, courts, and administrative agencies to obtain extensions of time;
- Applying for extensions of time pending employment of new counsel by clients;
- Filing notices, motions, and pleadings on behalf of clients to protect their interests where legal counsel has not yet been retained;
- Contacting all relevant persons and entities who may be affected and informing them of Planning Attorney's authorization;
- Arranging for transfer and storage of closed files;
- Winding down the financial affairs of Planning Attorney's practice, including providing clients with a final accounting and statement for services rendered by Planning Attorney, returning client funds, collecting fees on Planning Attorney's behalf or on behalf of Planning Attorney's estate, paying business expenses, and closing business accounts if necessary;
- Advertising Planning Attorney's law practice or any of its assets to find a buyer for the practice; and
- Arranging for an appraisal of Planning Attorney's practice for the purpose of selling it.
- Entering into and executing a contract for sale of the Planning Attorney's practice in the event of the Planning Attorney's death or permanent disability, in accordance with California Rules of Professional Conduct Rule 1.17 governing the sale of a law practice.

5. Authorized Signer.

Planning Attorney authorizes Authorized Signer to sign on Planning Attorney's lawyer trust account(s). Planning Attorney's bank or financial institution may rely on the authorizations in this Agreement, unless it has actual knowledge that this Agreement has been terminated or is no longer in effect.

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6. Personal Expense Responsibility.

Assisting Attorney and Authorized Signer will not be responsible for processing or payment of Planning Attorney's personal expenses.

7. Payment For Services.

Planning Attorney agrees to pay Assisting Attorney and Authorized Signer a reasonable sum for services in closing the Planning Attorney's law practice. To determine the amounts owed, Assisting Attorney and Authorized Signer will keep accurate records of the time spent performing these services.

8. Independent Contractor. Assisting Attorney and Authorized Signer will provide their services outlined in this Agreement as independent contractors.

9. Preserving Attorney-Client Privilege.

Assisting Attorney and Authorized Signer agree to maintain and preserve the confidentiality and attorney-client privilege of Planning Attorney's clients. They shall only disclose information to the extent reasonably necessary to carry out the terms of this Agreement.

10. Assisting Attorney Is Attorney for Planning Attorney. (Delete one of the following paragraphs as appropriate.)

While fulfilling the terms of this Agreement, Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney will protect the attorney-client relationship and follow the California Rules of Professional Conduct. Assisting Attorney has permission and, where required by California Rules of Professional Conduct, the obligation to inform the State Bar of California of errors or potential errors of Planning Attorney.

Additionally, Assisting Attorney has permission to inform Planning Attorney's clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Planning Attorney's clients of any ethics violations committed by Planning Attorney.

OR:

Assisting Attorney Is Not Attorney for Planning Attorney.

While fulfilling the terms of this Agreement, Assisting Attorney is not the attorney for Planning Attorney. Assisting Attorney has permission and, where required by California Rules of Professional Conduct, the obligation to inform the State Bar of California of errors or potential errors of Planning Attorney. Assisting Attorney may also inform Planning Attorney's clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission and, where required by law, the obligation to inform Planning Attorney's clients of any ethics violations committed by Planning Attorney.

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- 11. Authorized Signer Is Not Attorney for Planning Attorney.**
While fulfilling the terms of this Agreement, Authorized Signer is not the attorney for Planning Attorney. Authorized Signer has permission to inform Planning Attorney’s present and former clients of any misappropriations in Planning Attorney’s trust account and instruct them to obtain independent legal advice or to contact the State Bar of California.
- 12. Providing Legal Services.**
Planning Attorney authorizes Assisting Attorney to provide legal services to Planning Attorney’s clients, provided Assisting Attorney has no conflict of interest and obtains the consent of Planning Attorney’s clients to do so. Assisting Attorney has the right to enter into an attorney-client relationship with Planning Attorney’s clients and charge them for legal services. Assisting Attorney agrees to check for conflicts of interest and refer the clients to another attorney when necessary.
- 13. Informing State Bar of California (Applicable to Estate Planning Docs Only)**
Assisting Attorney agrees to inform the State Bar of California that Planning Attorney has transferred estate planning documents to the court or a successor attorney. If Planning Attorney has transferred estate planning documents to the court, Assisting Attorney can complete the [Transfer of Estate Planning Documents to Superior Court](#) form. If Planning Attorney has transferred estate planning documents to a successor attorney, Assisting Attorney can complete the [Transfer of Estate Planning Documents to Attorney](#) form.
- 14. Contacting the State Bar of California.**
Planning Attorney authorizes Assisting Attorney to contact the State Bar of California concerning any potential attorney misconduct claims. **(Note to Planning Attorney:** Assisting Attorney’s role in contacting the State Bar will be determined by Assisting Attorney’s arrangement with Planning Attorney. See Section 7 of this Agreement.)
- 15. Providing Clients with Accounting.**
Authorized Signer and/or Assisting Attorney agree[s] to provide Planning Attorney’s clients with a final accounting and statement for Planning Attorney’s legal services based on Planning Attorney’s records. Authorized Signer agrees to return client funds to Planning Attorney’s clients and to submit funds collected on behalf of Planning Attorney to Planning Attorney or the personal representative of the Planning Attorney’s estate. Furthermore, Assisting Attorney and Authorized Signer are authorized to communicate as necessary to effectuate the terms of this agreement.
- 16. Assisting Attorney’s Alternate.** (Delete one of the following paragraphs as appropriate.)
If Assisting Attorney is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints _____ as Assisting Attorney’s alternate (hereinafter “Assisting Attorney’s Alternate”). Assisting Attorney’s Alternate is authorized to act on behalf of Planning Attorney under this Agreement. Assisting Attorney’s Alternate shall comply with the terms of this Agreement. Assisting Attorney’s Alternate consents to this appointment, as shown by the signature of Assisting Attorney’s Alternate on this Agreement.

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OR:

If Assisting Attorney is unable or unwilling to act on behalf of Planning Attorney, Assisting Attorney may appoint an alternate (hereinafter “Assisting Attorney’s Alternate”). Assisting Attorney shall enter into an agreement with the Assisting Attorney’s Alternate, under which Assisting Attorney’s Alternate consents to the terms and provisions of this Agreement.

- 17. Authorized Signer’s Alternate.** (Delete one of the following paragraphs as appropriate.) If Authorized Signer is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints _____ as Authorized Signer’s alternate (hereinafter “Authorized Signer’s Alternate”). Authorized Signer’s Alternate is authorized to act on behalf of Planning Attorney under this Agreement. Authorized Signer’s Alternate shall comply with the terms of this Agreement. Authorized Signer’s Alternate consents to this appointment, as shown by the signature of Authorized Signer’s Alternate on this Agreement.

OR:

If Authorized Signer is unable or unwilling to act on behalf of Planning Attorney, Authorized Signer may appoint an alternate (hereinafter “Authorized Signer’s Alternate”). Authorized Signer shall enter into an agreement with the Authorized Signer’s Alternate, under which Authorized Signer’s Alternate consents to the terms and provisions of this Agreement.

- 18. Indemnification.** Planning Attorney agrees to indemnify Assisting Attorney and Authorized Signer against any claims, loss, or damage arising out of any act or omission by Assisting Attorney and Authorized Signer under this Agreement, provided the actions or omissions of Assisting Attorney and Authorized Signer were made in good faith, were made in a manner reasonably believed to be in Planning Attorney’s best interest, and occurred while Assisting Attorney and Authorized Signer were assisting Planning Attorney with the closure of Planning Attorney’s law practice as described in this Agreement. This indemnification shall include reasonable attorneys’ fees and costs incurred in defending such claims. Assisting Attorney and Authorized Signer shall be responsible for all acts and omissions constituting gross negligence, willful misconduct, fraud, or violation of law, and no indemnification shall apply to such acts or omissions.

This indemnification provision does not extend to any acts, errors, or omissions of Assisting Attorney as attorney for the clients of Planning Attorney.

- 19. Option to Purchase Practice.** Assisting Attorney shall have the first option to buy the Planning Attorney’s law practice under the terms and conditions specified by Planning Attorney or Planning Attorney’s

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representative in accordance with the California Rules of Professional Conduct and other applicable law.

20. Arranging to Sell Practice.

If Assisting Attorney opts not to buy the Planning Attorney's law practice, Assisting Attorney will make all reasonable efforts to sell Planning Attorney's law practice and will pay all money received from the sale to the Planning Attorney or their estate.

21. Arbitration of Fee Disputes.

Planning Attorney, Assisting Attorney, and Authorized Signer agree that all fee disputes among them will be decided by _____.

22. Termination.

This Agreement shall terminate upon: (1) delivery of written notice of termination by Planning Attorney to Assisting Attorney and/or Authorized Signer during any time that Planning Attorney is not disabled, impaired, or incapacitated, as established under Section 3 of this Agreement; (2) delivery of written notice of termination with good cause by Planning Attorney's representative; or (3) delivery of a written notice of termination given by Assisting Attorney and/or Authorized Signer to Planning Attorney, subject to any ethical obligation to continue or complete any matter undertaken by Assisting Attorney and/or Authorized Signer pursuant to this Agreement.

If Assisting Attorney and/or Authorized Signer or their respective Alternates terminate this Agreement, or are terminated for any reason, Assisting Attorney and/or Authorized Signer or their respective Alternates shall: (1) provide a full and accurate accounting of financial activities carried out on Planning Attorney's behalf within 30 days of termination or resignation, and (2) hand over Planning Attorney's files, records, and funds to the Planning Attorney.

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[Planning Attorney]

[Date]

STATE OF CALIFORNIA)

County of _____) ss.
_____)

This instrument was acknowledged before me on _____ (date)
by _____ (name(s) of person(s)).

NOTARY PUBLIC FOR CALIFORNIA

My commission expires: _____

[Assisting Attorney]

[Date]

STATE OF CALIFORNIA)

County of _____) ss.
_____)

This instrument was acknowledged before me on _____ (date)
by _____ (name(s) of person(s)).

NOTARY PUBLIC FOR CALIFORNIA

My commission expires: _____

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[Assisting Attorney's Alternate]

[Date]

STATE OF CALIFORNIA)
County of _____) ss.
_____)

This instrument was acknowledged before me on _____ (date)
by _____ (name(s) of person(s)).

NOTARY PUBLIC FOR CALIFORNIA
My commission expires: _____

[Authorized Signer]

[Date]

STATE OF CALIFORNIA)
County of _____) ss.
_____)

This instrument was acknowledged before me on _____ (date)
by _____ (name(s) of person(s)).

NOTARY PUBLIC FOR CALIFORNIA
My commission expires: _____

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[Authorized Signer's Alternate]

[Date]

STATE OF CALIFORNIA)

County of _____) ss.
_____)

This instrument was acknowledged before me on _____ (date) by _____
_____ (name(s) of person(s)).

NOTARY PUBLIC FOR CALIFORNIA

My commission expires: _____

DISCLAIMER: The State Bar as a regulatory entity does not provide legal advice to licensees. The information provided in this document should not be used as a substitute for obtaining legal advice. You should always consult a suitably qualified attorney regarding any specific legal problem or matter.

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