

CLOSING A LAW PRACTICE

(Updated with permission of Frank O. Brown)

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These materials are intended to provide a general guide for closing a law practice. Because lawyers may practice law through a variety of entities, such as sole proprietorships, partnerships, professional corporations, limited liability entities, etc., no single checklist can provide such exhaustive, detailed and comprehensive guidance which will apply to the closing of every law practice in every circumstance; however, general guidance is provided, and individual lawyers can adapt this checklist to the particular situation at hand, whether it involves closing the lawyer's own practice, or closing the law practice of another lawyer. As a general guide for a lawyer desiring to close the lawyer's own practice, the planning should begin at least two years prior to the projected closing date.

NOTE: If sale of the lawyer's practice is contemplated (instead of closing the practice), then the provisions of Rule 1.17, amended effective January 4, 2010, should be followed

In closing a law practice, it is possible that a lawyer may do so under any of the following methods:

A. By being appointed by the Circuit Court as a Receiver in accordance with Virginia Code Sections 54.1-3900.01 or 54.1-3936.

B. By acting on behalf of another lawyer under an Agreement as described in the Virginia State Bar Ethics CLE program "ETHICS: Protecting Your and Your Clients' Interests in the Event of Your Disability, Death or Other Disaster". A copy of that Agreement can be adapted to your needs.

C. By acting on his or her own behalf, or on behalf of another lawyer who has engaged him or her to do following this checklist.

D. By being engaged by the Administrator or Executor of a deceased lawyer to do so following this checklist.

This checklist is not intended to provide guidance for the closing of a law practice in those circumstances in which the Circuit Court has appointed a Receiver for the law practice of a lawyer. Specific guidance is provided to Receivers in the Virginia State Bar's *Handbook for Receivers*, which is available through the office of the Ethics Counsel of the Virginia State Bar, and which provides a copy to the receiver when the receiver is appointed.

The Senior Lawyers Section has free CLE programs available on the VSB Website that provide valuable resources not only for closing a law practice, but also for selling and

buying a law practice. The important thing throughout is to act in a reasonable manner and in the best interests of the clients of the law practice. The important first step is to gather the information about the law practice which is to be closed. Here is a suggested checklist for gathering the basic information. As with any suggested checklist, you should add to or modify the checklist to meet your specific needs.

INFORMATION CHECKLIST

BASIC INFORMATION: (ATTACH ADDITIONAL SHEETS AS NEEDED)

Lawyer's Full Name _____

Lawyer's Social Security Number _____

Lawyer's Office Address (Physical and/or Post Office Address)

Lawyer's Office Telephone No.'s _____

Lawyer's Office Fax No.'s _____

Lawyer's Home Address _____

Lawyer's Home Telephone No.'s _____

Lawyer's Home Fax No.'s _____

Lawyer's Passwords for Computer Access _____

Lawyer's E-mail Address _____

Lawyer's Website _____

Jurisdictions in which Lawyer is admitted to practice _____

Lawyer's Virginia State Bar No. _____

Lawyer's Bar No.'s for other jurisdictions _____

Name, Address, and Telephone Number of State Bar Ethics Counsel

Name of Lawyer's Law Practice

What Type of Legal Entity is the Law Practice

What is the Federal EIN for the legal
entity _____

What is the State EIN for the legal
entity _____

What is the State Employment Commission account No. for the legal
entity _____

Name, Policy No., Term, Address, Telephone and Fax No.'s of Professional Liability
Insurance Carrier _____

What Federal and State Tax Returns are required to be filed for the Law Practice

Names, Addresses and Telephone No.'s for employees of Law Practice

Names of Banks, Addresses, Telephone No.'s, Account No.'s and Contact Persons for Law Practice's General Bank Accounts

Names of Banks, Addresses, Telephone No.'s, Account No.'s and Contact Persons for Law Practice's Trust Bank Accounts

List of All Client Property Being Held By the Law Practice _____

Names of Issuers, Account No.'s, Addresses, Telephone No.'s, Contact Persons, regarding Lawyer's Business Credit Cards

Names of Lenders, Account No.'s, Addresses, Telephone No.'s, Contact Persons, regarding Lawyer's Business Loans

Locations of Law Practice's Files, stored at the Law Practice and at other locations, including files stored in the "cloud"

Names of Files Management, Docket Control, Calendaring, and Client Database Systems and Password for each

Name of Bank, Address, Telephone No. and contact person, regarding Law Practice bank safe deposit boxes _____

List of All Pending Cases and Active Matters, Including Those in Which Lawyer Is Counsel, Fiduciary, Co-Fiduciary, or Party

Name, address, telephone and fax numbers, and e-mail address of assisting or backup lawyer

Names, addresses, telephone and fax numbers, and e-mail addresses for vendors, insurance carriers, and others with whom the law practice has accounts, policies and ongoing relationships

Other information _____

CHECKLIST OF ACTIONS TO BE TAKEN IN CLOSING A PRACTICE

___ Make arrangements with a backup or assisting lawyer.

___ Inventory All Files, Take Appropriate Action Regarding Each File, and Make Appropriate Disposition of Each File. This is probably the most time-consuming and intensive aspects of closing a law practice

___ Return to client all original client documents (such as Wills and Deeds) and obtain appropriate receipts.

___ Write to clients with active files, advising them that lawyer is closing lawyer's practice and is unable to continue representing them and that they need to retain new counsel. The letter should inform them about time limitations and time frames important to their cases. The letter should explain how and where they can pick up their files and should give a time deadline for doing this.

___ For cases that have pending court dates, depositions, or hearings, discuss with the clients how to proceed, including retention of new counsel if appropriate. Where appropriate, request extensions, continuances, and resetting of hearing dates. Send written confirmations of these extensions, continuances, and resets to opposing counsel and to your client.

___ For cases before administrative bodies and courts, obtain the client's permission to submit a motion for an order to withdraw as attorney of record.

___ In cases where the client has chosen a new attorney, be certain that a Substitution of Counsel is filed.

___ Pick an appropriate date and check to see whether all cases either have a Motion and Order allowing your withdrawal as counsel or a Substitution of Counsel filed with the court.

___ If lawyer is serving as a fiduciary under Court supervision, arrange for Court Order appointing Court Substituted fiduciary, deliver assets to new fiduciary, and file final account with Commissioner of Accounts of the Circuit Court. [NOTE: Care must be taken to determine whether the lawyer individually or the law firm itself is serving as the fiduciary. Virginia Code Section 13.1-546.1 permits a professional corporation engaged in the practice of law, as part of the practice of law, to act as an executor, trustee or administrator of an estate, or guardian of an infant, or in any other fiduciary capacity. In addition, Virginia Code Section 13.1-1108 permits a professional limited liability company engaged in the practice of law, as part of the practice of law, to act as an executor, trustee or administrator of an estate, guardian of an infant, or in any other fiduciary capacity.]

___ If lawyer is serving as a fiduciary not under Court supervision (for example, as trustee under a trust agreement), arrange for successor fiduciary in accordance with the terms of the trust agreement, deliver assets to new fiduciary, and prepare final account.

___ Notify Clerks of Court and Commissioners of Accounts for jurisdictions in which the lawyer practices.

___ File all appropriate United States and Virginia tax returns, including income, employment, unemployment, fiduciary, pension and profit-sharing, and other information returns.

___ File all required reports with the Virginia State Corporation Commission.

___ Deliver to Client and Account for All Client Property and Obtain Proper Receipts under Rule 1.15.

___ Take all appropriate actions regarding law practice bank general account(s).

___ Take all appropriate actions regarding law practice bank trust account(s) and retain necessary records under Rule 1.15.

___ Notify Professional Liability Insurance Carrier and obtain Tail Coverage. (NOTE: Often, the time period within which this must be done is very short. It is stated in the policy itself.)

___ File Appropriate Change of Address notice with United States Postal Service and other courier and delivery services.

___ Take appropriate action regarding any real estate leases and other property interests of the law practice.

___ Safeguard and make appropriate disposition of electronic media, such as computers, computer disks, cards, internal and external hard drives, zip drives, flash drives, tapes, cell phones, personal digital assistants, smart phones, printers, fax machines and scanners. Remember that these may contain client confidences and secrets.

___ Take appropriate actions regarding law practice's web site and e-mail address.

___ Take appropriate actions regarding law practice's telephone services (including land line, cellular and mobile access, etc.) and for providing forwarding of calls for a specified period of time.

___ Take appropriate actions regarding law practice's internet service provider and e-mail accounts.

___ Take appropriate actions regarding law practice's on-line and hard copy law publications and subscriptions.

___ Take appropriate actions regarding law practice's credit cards, loans, suppliers, vendors, and other creditors.

___ Take appropriate actions to collect law practice's accounts receivable.

___ Dispose of furniture, fixtures and equipment of law office.

___ Take appropriate actions regarding law practice's pension, profit-sharing or other qualified plans.

___ Take appropriate actions regarding law practice's health insurance plans, disability plans, and other insurance coverages (such as general liability coverage, property insurance, etc.)

___ Notify Virginia State Bar Membership Department of closing of practice and change of status.

___ Make all appropriate final dispositions/disbursements.

___ NOTE: ADD TO THIS CHECKLIST BELOW ANY ITEMS OR MATTERS WHICH YOU BELIEVE NECESSARY AND IMPORTANT.

Bank Safe Deposit Box

Keys to Law Office