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The Duty to Plan Ahead





It is hard to think about events that could render you unable to continue practicing law. Unfortunately, accidents, unexpected illnesses, and untimely deaths do occur. If any of these events happen to you, your clients' interests may be unprotected.

For this reason, a lawyer's duty of competent representation *includes* arranging to safeguard clients' interests in the event of the lawyer's death, disability, impairment, or incapacity. OSB Legal Ethics Op 2005-129. See ABA Formal Op 92-369.

Most commercial malpractice carriers require the lawyers they insure to make arrangements for office closure in the event of death or disability. The Professional Liability Fund (PLF) has created this handbook to help you fulfill your ethical responsibilities and reduce the likelihood of future malpractice claims against you and your estate.

In addition to the guidelines in this handbook, the PLF's practice management attorneys (PMAs) can help you understand the steps necessary to plan ahead. The PMAs can also assist you in developing a process for winding down your practice. To ensure that your clients get a copy of their file to take to a new lawyer and that their money in your lawyer trust account is returned to them promptly, use this handbook and the PLF PMAs to put an appropriate plan in place.

WHY PLAN AHEAD WITH THE HELP OF ANOTHER PERSON?

When you can no longer represent your clients, someone else has to step in to close or help you close your law practice. Without a proper plan, that burden will likely fall on a family member, whether your spouse, an adult child, or a sibling. That person may be already caring for you or grieving your loss. You can reduce the pressure on your loved ones by having a different person, preferably another lawyer, help you instead. Arranging for assistance in advance enables you and that person to be prepared and respond appropriately to safeguard your clients' interests, giving your loved ones peace of mind to focus on you and your personal affairs.

TERMINOLOGY

The term *Assisting Attorney* as used throughout this handbook refers to the lawyer you have made arrangements with to close your practice. The term *Authorized Signer* refers to the person you have authorized as a signer on your lawyer trust account. The term *Planning Attorney* refers to you, your estate, or your personal representative.

HELPING YOU PLAN AHEAD

To help you plan ahead, we have prepared a 10-step checklist to assist you in this process. The checklist includes the major tasks involved in working with an Assisting Attorney to close your practice. It contains information for: choosing an Assisting Attorney and Authorized Signer on your bank accounts; deciding how your incapacity will determined and the type of access you want others to have to your files and accounts; preparing a written agreement and the necessary paperwork; discussing your arrangements with appropriate parties; notifying your clients; preparing pertinent information for the Assisting Attorney; performing regular maintenance of your office systems; and reviewing your planning documents annually.



This checklist is also available as a stand-alone document on the PLF website:

osbplf.org > Services > CLEs & Resources > Practice Aids.

A sample *Agreement to Close Law Office* appears in the Appendix. You can also download a Word version from our website, *osbplf.org > Services > CLEs & Resources > Practice Aids*. This form authorizes the Assisting Attorney to transfer client files and take other steps needed to close your practice. It also provides for payment to the Assisting Attorney for services rendered, designates the procedure for termination of the Assisting Attorney's services, and provides the Assisting Attorney with the option to purchase your law practice. Finally, the form provides for the appointment of an Authorized Signer on your lawyer trust account. You may modify the *Agreement to Close Law Office* to meet your needs.





with the help of an assisting attorney





The goals of planning ahead to protect your clients' interests are to help you fulfill your ethical obligations and to reduce your and your estate's legal malpractice exposure. To these ends, the following ten steps are intended to guide you through the process of preparing and implementing your plan to close your law practice with the help of an assisting attorney.

- STEP 1 ▶ Understand What It Takes to Close Your Practice
- STEP 2 ▶ Choose an Assisting Attorney and Authorized Signer
- STEP 3 ▶ Decide How Your Incapacity Will Be Determined and Type of Access to Files and Accounts
- STEP 4 ▶ Prepare Written Agreement and Necessary Authorization Paperwork
- **STEP 5** ▶ Discuss Your Arrangements With Appropriate Parties
- STEP 6 ▶ Notify Your Clients
- **STEP 7** ▶ Prepare Pertinent Information for Assisting Attorney
- **STEP 8** ▶ Perform Regular Maintenance of Your Office Systems
- **STEP 9** ▶ Review Annually
- STEP 10 ▶ Take a Deep Breath

STEP 1: UNDERSTAND WHAT IT TAKES TO CLOSE YOUR PRACTICE

Planning ahead is about taking steps to close your practice. This involves two primary duties: (1) contacting clients and dealing with client files and (2) winding down your office's financial affairs. The following are some of the tasks and responsibilities of each duty:

1. Contacting clients and dealing with client files:

- Access your client files, computer, phone, emails, and any systems or locations where your client files may be located;
- · Contact your clients for instructions on transferring their files;
- Send files to the clients or their new attorneys and retain a physical or scanned copy of the files;
- · Obtain extensions of time in litigation matters;
- Provide all relevant people with notice of your law office closure;
- Contact the PLF, if necessary, to assist in addressing potential malpractice exposures in specific matters;
- Take other steps necessary to notify clients, return their files, and store closed files.

2. Winding down your office's financial affairs:

- Review trust accounting records to determine the balance of each client's funds in the lawyer trust account(s);
- · Provide clients with a final accounting and billing statement;
- Make proper disbursements from the trust account, including refunding unearned money to clients;
- · Close the trust account:
- Collect attorneys' fees;
- Draw checks on your operating or business account to pay current office liabilities:
- · Cancel lease, phone, email, and other business services;
- Take other steps necessary to wind down your office's financial affairs.

STEP 2: CHOOSE AN ASSISTING ATTORNEY AND AUTHORIZED SIGNER

To ensure a seamless closure of your practice, selecting an **Assisting Attorney** is a pivotal step in the process. This person—preferably an attorney—should be someone you trust and who is willing and capable to assist you. Once you've identified your Assisting Attorney, meet with them to discuss your objectives and particular needs. Create a detailed task list based on Step 1's guidelines, tailored to your situation. Through this collaborative effort, you and your Assisting Attorney will determine the scope of their responsibilities to both you and your clients.

Another key decision is whether you want the Assisting Attorney to also serve as your personal attorney. Carefully consider the implications of each option:

- If the Assisting Attorney is your attorney That person may be limited
 in their ability to represent your clients on certain or all matters. In this
 situation, the Assistant Attorney owes a fiduciary duty to you, meaning
 they must act in your best interests. For example, the Assisting Attorney
 could inform your clients of your legal malpractice or ethical violations
 only if you consented.
- If the Assisting Attorney is not your attorney That person may still
 have an ethical obligation to inform your clients of any error you've
 made. Whether or not the Assisting Attorney is representing you, that
 person must be aware of potential conflicts of interest and must check
 for conflicts when providing legal services to your clients or accessing
 confidential file information to assist with transferring clients' files.

The next critical action is to arrange for an **Authorized Signer** to access your bank accounts. Consider choosing someone other than your Assisting Attorney to ensure checks and balances and to avoid conflict of interests regarding the lawyer trust account.

Be aware of the benefits and risks of granting another person access to your trust account. If no one else can access your trust account, clients' money will remain there until a court orders access, which takes time, burdens the clients, and can be expensive. However, if your chosen person misappropriates funds, clients will be harmed, and you will be held responsible. Evaluate your options, weigh the risks, and make an informed choice as to the Authorized Signer.



STEP 3: DECIDE HOW YOUR INCAPACITY WILL BE DETERMINED AND TYPE OF ACCESS TO FILES AND ACCOUNTS

Begin by identifying the circumstances in which you would want your Assisting Attorney to step in and make decisions on your behalf. Choose who will determine your incapacity and the criteria they will use.

If you delegate this determination to your Assisting Attorney, be clear about the terms of this delegation. Specify the process for determining whether a triggering event has occurred. For example, will the Assisting Attorney need a physician's letter to confirm your incapacitation? Or will their reasonable belief suffice? Also consider whether this authority should be limited to a particular period, such as during a vacation. Thoroughly discuss and agree on the terms with your Assisting Attorney. These same considerations apply if you appoint a family member or friend with general power of attorney to act if the event or contingency occurs. Clear instructions are essential for all involved.

If you opt to delegate the determination of incapacity to someone else (e.g., a spouse or partner, trusted friend, or family member), have that person keep the relevant documents (e.g., a limited power of attorney for the Assisting Attorney) until that person confirms that a triggering event has occurred. Record this arrangement in a signed letter of understanding between you and the chosen individual. When the event or contingency occurs, that person will provide your Assisting Attorney with the required power of attorney and other necessary documents.

Additionally, it's important to decide how much access the Assisting Attorney will have to your files and accounts. There are two approaches to consider:

- Contingent access This approach allows your Assisting Attorney
 to access your files and accounts during a particular period or after a
 specific event. You can have your Assisting Attorney or another designated
 individual determine whether the contingency has occurred.
- Non-contingent access This approach gives the Assisting
 Attorney complete access to your records and accounts at all times.
 No contingency must occur for that person to gain access.

Regardless of which option you choose, it's vital to establish a clear and well-defined agreement with your Assisting Attorney.



STEP 4: PREPARE WRITTEN AGREEMENT AND NECESSARY AUTHORIZATION PAPERWORK

Prepare a written agreement and the necessary authorization paperwork for your Assisting Attorney. These documents will help ensure the clarity and effectiveness of the arrangements you've made in the previous steps. First, prepare a written agreement with your Assisting Attorney that clarifies their role and authority, the scope of their anticipated assistance, their duties and responsibilities, and the terms of compensation. Also prepare a separate written agreement with your Authorized Signer if that person is different from the Assisting Attorney.

Second, generate the necessary documentation that will authorize the Assisting Attorney and/or Authorized Signer to access your bank accounts, including your trust account. The types of documents required will depend on the authorization:

- If authorization is conditional This authorization restricts access to your bank accounts until a specific condition occurs (e.g., your death, disability, hospitalization, etc.). The necessary paperwork may vary by financial institution. Some have specific forms that you and your Assisting Attorney and/or Authorized Signer are required to sign. Absent forms required by your financial institution, consider a limited power of attorney, as it is widely accepted by banks. Get written confirmation that your bank will accept your limited power of attorney or other written agreement. Be cautious about using bank-provided power of attorney forms, as they typically grant unconditional authorization to sign on your account.
- If authorization is unconditional This authorization grants complete access to your accounts immediately. This is generally accomplished by adding the Assisting Attorney and/or Authorized Signer as co-signer on your accounts. You must visit the bank with your Assisting Attorney and/or Authorized Signer and complete the necessary paperwork. Unconditional authorization allows the person to write checks, withdraw money, transfer money, or close the account at any time, regardless of your health status. It is important to note that you will have no control over a co-signer's access. Considering these risks, your choice of co-signer becomes crucial to protecting both your clients' interests and your own.

Carefully consider these options in light of your needs as you decide whether to grant conditional or unconditional authorization to your bank accounts.

STEP 5: DISCUSS YOUR ARRANGEMENTS WITH APPROPRIATE PARTIES

At this juncture, it is essential to communicate with key individuals about your plan. Inform your spouse, partner, or closest living relatives, as well as the personal representative of your estate, about the existence of this agreement. Provide instructions for how they can contact the Assisting Attorney and/or Authorized Signer.

Make sure your staff knows where you keep the written agreement and how to get in touch with your Assisting Attorney and/or Authorized Signer if an emergency occurs before or after normal office hours. If you practice without staff, make sure your Assisting Attorney and/or Authorized Signer knows how to gain access to your office and accounts.



STEP 6: NOTIFY YOUR CLIENTS

Once your agreement has been finalized, notify your clients about your plan and arrangement with the Assisting Attorney and/or Authorized Signer. You may include this information in your retainer agreements and engagement letters, which provides clients with details about your arrangement and gives them an opportunity to object. Your client's signature on a retainer agreement would then be written authorization for the Assisting Attorney to proceed on the client's behalf, if necessary.

STEP 7: PREPARE PERTINENT INFORMATION FOR ASSISTING ATTORNEY

Prepare two documents for your Assisting Attorney to equip them with the necessary information to begin the closure of your practice when the time comes.

The first document contains location and access information about following:

- The software programs you use for case management, file management, calendaring, conflict systems, time/billing, trust accounting, and general accounting, and the login credentials for each program;
- Instructions on how to generate a list of active cases, including client names, addresses, and phone numbers;
- Login information and credentials for your computer, email, voicemail, or any office equipment that requires a password/passcode and instructions for access;
- Location of your open and closed files;
- Names of banks, addresses, account signers, and account numbers for all law office bank accounts and login credentials for each bank;
- Location of post office box or other mail service box and instructions for access:
- Location of all law office banking records;
- Location of trust accounting records, including trust journal, client ledgers, reconciliation reports, etc., or instructions on how to generate reports and pull client trust balances from your trust accounting software.

The second document is a list of names, titles/roles, and contact numbers of people your Assisting Attorney may need to contact, including:

- Spouse, adult children, other close family members, or personal representative;
- Professional Liability Fund practice management attorneys, 503.639.6911;
- Office staff members;
- Landlord;
- Bookkeeper;
- Other important contacts.

Keep these documents with the written agreement and provide them to your Assisting Attorney.



STEP 8: PERFORM REGULAR MAINTENANCE OF YOUR OFFICE SYSTEMS

Regularly maintain your office systems so they are reliable and up-to-date, minimizing the risk of disruption when the Assisting Attorney steps in to close your practice. Make sure you or your staff consistently perform the following tasks:

- Accurately calendar all deadlines and reminders;
- · Maintain current timekeeping and billing records;
- Return original documents to clients; and
- · Diligently document client files.

Familiarize your Assisting Attorney with your office systems and staff so they have a comprehensive understanding of how your practice operates. Finally, keep your Assisting Attorney apprised of office changes in procedures and personnel.



STEP 9: REVIEW ANNUALLY

Set aside time each year to review the written agreement and other authorization paperwork with your Assisting Attorney. Also annually review the provisions in your retainer agreement or engagement letter regarding your Assistant Attorney to make sure everything is current. This proactive step will keep your documents relevant and effective and ensure that your arrangements still align with your practice's evolving needs.



STEP 10: TAKE A DEEP BREATH

Congratulations for making it to the last step of your plan to protect your clients' interests! We hope your plan will give you peace of mind as you continue serving your clients in your law practice.



Questions That May Arise





This chapter reviews various arrangements and potential issues between the Planning Attorney and the Assisting Attorney.

QUESTIONS THAT YOU, AS THE PLANNING ATTORNEY, MAY HAVE:

1. Why is it important to establish and clarify the role of the Assisting Attorney at the beginning of the planning process?

Clearly delineating the Assisting Attorney's role at the beginning of the relationship will help avoid misunderstandings later when the Assisting Attorney interacts with the Planning Attorney's former clients. If these roles are not clarified, the Planning Attorney and the Assisting Attorney may be surprised to find that the Assisting Attorney (1) has an obligation to inform the Planning Attorney's clients about a potential malpractice claim or (2) may be required to report the Planning Attorney to the Oregon State Bar for an ethics violation.

The best way to avoid these problems is for the Planning Attorney to have a written agreement with the Assisting Attorney and, when applicable, with the Planning Attorney's clients. Without a written agreement clarifying the obligations and relationships, an Assisting Attorney may find that the Planning Attorney believes the Assisting Attorney is representing the Planning Attorney's interests. At the same time, the former clients of the Planning Attorney may also believe that the Assisting Attorney is representing their interests. Keep in mind that an attorney-client relationship can be established by the reasonable belief of a would-be client. See *The Ethical Oregon Lawyer* (Oregon CLE 2015).

2. What are the pros and cons of giving someone access to my trust account? How do I make arrangements to give my Authorized Signer access?

The most important "pro" of authorizing someone to sign on your trust account is the convenience it provides for your clients. If you (the Planning Attorney) suddenly become unable to continue in practice, an Authorized Signer can transfer money from the trust account to pay appropriate fees, send your clients settlement checks, and refund unearned fees. If these arrangements are not made, the clients' money must remain in the trust account until a court allows access, possibly through a conservatorship or custodianship order pursuant to ORS 9.705 to 9.757. This delay could disadvantage your clients, as they might need the settlement funds or unearned fees held in trust to hire a new lawyer.

On the other hand, the most important "con" of authorizing trust account access is your inability to control the actions of the person who has been granted signing authority. An Authorized Signer with unconditional access can write trust account checks, withdraw funds, or close the account at any time, even if you are not disabled, impaired, or otherwise unable to conduct your business affairs. For this reason, it is very important to carefully choose the person you authorize as a signer and, when possible, to continue monitoring your accounts.

If you choose to have an Authorized Signer, carefully weigh whether you want to give (1) access only during a particular time period or when a specific event occurs or (2) access at any time. (See *The Duty to Plan* Ahead in Chapter 1.)

QUESTIONS THE ASSISTING ATTORNEY MAY HAVE:

3. Do I have to notify the Planning Attorney's former clients if I discover a potential malpractice claim against the Planning Attorney?

The answer is largely determined by your agreement with the Planning Attorney and the Planning Attorney's former clients. If you do not have an attorney-client relationship with the Planning Attorney, and you are the new lawyer for the Planning Attorney's former clients, you must inform your client (the Planning Attorney's former client) of the error and advise them to submit a claim to the PLF, unless the scope of your representation of the client excludes actions against the Planning Attorney. If you and the Planning Attorney want to limit the scope of your representation, do so in writing and advise all affected clients to get independent advice.

If you are the Planning Attorney's lawyer, and not the lawyer for their former clients, discuss the error with the Planning Attorney and inform them of their obligation to notify the client. As the attorney for the Planning Attorney, you are obligated to follow the Planning Attorney's instructions. You must also be careful not to make any misrepresentations. See ORPC 8.4(a)(3). This situation could arise if the Planning Attorney refused to fulfill their obligation to inform the client – and also instructed you not to tell the client. If that occurred, you must be sure you do not say or do anything that would mislead the client.

In most cases, the Planning Attorney will want to fulfill their obligation to inform the client. As the Planning Attorney's lawyer, you and the Planning Attorney can include a clause in your agreement that gives you (the Assisting Attorney) permission to inform the Planning Attorney's former clients of any malpractice errors. This is not the same as giving permission to represent the former clients on malpractice actions against the Planning Attorney. Rather, it would authorize you to inform the Planning Attorney's former clients that a potential error exists and that they should seek independent counsel. This authorization is especially important in situations when the Planning Attorney is unavailable to inform the client.

4. I know sensitive information about the Planning Attorney. The Planning Attorney's former client is asking questions. What information can I give the Planning Attorney's former client?

This answer depends on your relationship with the Planning Attorney and the Planning Attorney's clients. If you are the Planning Attorney's lawyer, you would be limited to disclosing only information that the Planning Attorney consented to have you to disclose. You would, however, want to make clear to the Planning Attorney's clients that you do not represent them and that they should seek independent counsel. If the Planning Attorney did not want you to disclose information about his or her condition to the client, you could not do so. This could be a delicate situation to navigate, so plan your conversations with former clients carefully.

5. Since the Planning Attorney is no longer in practice, does the Planning Attorney have malpractice coverage?

Attorneys who carry primary coverage through the Professional Liability Fund have an extension of coverage when they leave private practice. Their unused Coverage Plan limits for the year that they leave are extended to cover claims that occur after they leave private practice. Called Extended Reporting Coverage (ERC) or Tail Coverage, this extension of coverage is available to all attorneys

when they leave private practice and is provided by the PLF without charge. Malpractice coverage is available for claims after an attorney leaves private practice, provided the attorney did not use up his or her coverage limits for the entire year. For example, if an attorney leaves private practice in 2024 and no payments have been made on 2024 claims, the attorney will have \$300,000 of coverage (defense and indemnity combined), plus an additional \$75,000 claims expense allowance for defense costs available for future claims. This coverage limit is available without a time limit on when the claim is made and is available even after the attorney dies. However, if the attorney has used some of their coverage limits in the year they leave private practice, the available limits are restricted to the unused portion of the coverage plan from the last year in private practice. For example, if the attorney leaves private practice in 2024 and a 2024 malpractice claim used \$250,000 of the \$300,000 limit and all of the \$75,000 claims expense allowance, the attorney would have only \$50,000 of malpractice coverage remaining for all claims arising after leaving private practice.

Many firms carry excess coverage above the PLF primary coverage limits. If the Planning Attorney was a solo practitioner with excess coverage (or if the firm plans to drop excess coverage when the Planning Attorney leaves private practice), either the Planning Attorney or the Assisting Attorney needs to ask the excess carrier about ERC. The excess carrier may have deadlines for acquiring the ERC, so check with the carrier as soon as the Planning Attorney or Assisting Attorney is aware that the Planning Attorney is going to leave private practice. In most cases, an extended reporting period for future claims is available for a period of up to five years for an additional premium; however, this optional coverage may be available for purchase only during the first few days after termination or expiration of the existing excess coverage policy.

If the Planning Attorney's firm will continue in existence after they leave private practice, in most cases the firm's existing excess coverage will continue to cover both the firm and the Planning Attorney at no charge for new claims after the Planning Attorney leaves private practice. However, if the firm drops its excess coverage at a future date (or is turned down at renewal time) and the firm chooses not to buy the available ERC, the Planning Attorney will no longer have any excess coverage for new claims. The best protection for the Planning Attorney is to have an agreement with the firm that requires the firm to (1) continue purchasing excess coverage for a period of time after the Planning Attorney's departure (and to purchase whatever ERC is available if the firm's excess coverage is not renewed); and (2) demonstrate to the Planning Attorney (or Assisting Attorney) each year that the relevant coverage is in place.

6. In addition to transferring files and helping to close the Planning
Attorney's practice, I want to represent the Planning Attorney's former
clients. Am I allowed to do this?

Whether you are permitted to represent the former clients of the Planning Attorney depends on (1) whether the clients want you to represent them and (2) who else you represent.

If you are representing the Planning Attorney, you cannot also represent their former clients on any matter against the Planning Attorney. This would include representing the former clients on a malpractice claim, ethics complaint, or fee claim against the Planning Attorney. If you do not represent the Planning Attorney, your potential representation is limited by conflicts arising from your other cases and clients. You must check your client list for possible client conflicts before undertaking representation or reviewing confidential information of a Planning Attorney's former client.

Even if a conflict check reveals that you are permitted to represent the client, you may prefer to refer the case to another lawyer. A referral is advisable if the matter is outside your area of expertise or if you do not have adequate time or staff to handle the case. In addition, if the Planning Attorney is a friend, bringing a legal malpractice claim or fee claim against them may make you vulnerable to the allegation that you did not zealously advocate on behalf of your new client. To avoid this potential exposure, provide the client with names of other attorneys or refer the client to the Oregon State Bar Lawyer Referral Service.

7. What procedures should I follow for distributing the funds in the trust account?

If your review or the Authorized Signer's review of the trust account indicates that there may be conflicting claims to the funds in the trust account, initiate a procedure for distributing the existing funds, such as an interpleader under ORCP 31.

8. If I discover an ethical violation, do I have to tell the Planning Attorney's former clients or report the Planning Attorney to the Oregon State Bar?

The answer depends on the arrangement you have agreed upon with the Planning Attorney. The answer is: (1) no, if you are the Planning Attorney's lawyer; (2) maybe, if you are not representing the Planning Attorney or the Planning Attorney's former clients; and (3) yes, if you are the attorney for the Planning Attorney's former clients.

If the Planning Attorney violated a disciplinary rule and you are his or her lawyer, you are not obligated to inform the Planning Attorney's former clients of any ethical violations or report any of the Planning Attorney's ethical violations to the Oregon State Bar if your knowledge of the misconduct is the result of confidential information obtained from your client, the Planning Attorney. ORPC 8.3(c); 1.6(a). Although you may have no duty to report to the Bar, you may have other responsibilities. For example, if you discover that client funds are missing from the trust account, you, as the attorney for the Planning Attorney, must determine your ethical and professional obligations to discuss this matter with the Planning Attorney and encourage them to correct the shortfall. If the Planning Attorney does not correct the shortfall and you believe their conduct violates the disciplinary rules, consult the Oregon Rules of Professional Conduct and OSB Legal Ethics Op 2005-53. If you are the attorney for the Planning Attorney and they are now deceased, contact the personal representative of the estate. If the Planning Attorney is alive but unable to function, you (or the Authorized Signer) may have to disburse the funds available and inform the Planning Attorney's former clients that they have the right to seek independent legal advice.

If you are the Planning Attorney's lawyer, you will want to be certain that their former clients do not perceive you as their attorney. Informing them in writing that you do not represent them documents your role for you and for them.

If you are a signer on the trust account and (1) you are not the attorney for the Planning Attorney, and (2) you are not representing any of the Planning Attorney's former clients, you may still have a fiduciary obligation to notify the clients of the shortfall. You may also have an obligation under ORPC 8.3(a) to report the Planning Attorney to the Oregon State Bar.

If you are the attorney for a former client of the Planning Attorney, you have an obligation to inform the client about the shortfall and advise the client of available remedies, which may include: (1) pursuing civil or criminal remedies against the Planning Attorney for the funds; (2) filing a claim with the OSB Client Security Fund; (3) filing a claim with the PLF; and/or (4) filing an ethics complaint with the Oregon State Bar. You also have an obligation under ORPC 8.3(a) to report the Planning Attorney to the Oregon State Bar. If you are a friend of the Planning Attorney, this is a particularly important issue. You should determine ahead of time whether you are prepared to assume (1) the obligation to inform the Planning Attorney's former clients of ethical errors; and (2) the duty to report the Planning Attorney to the Oregon State Bar if you discover a violation. If you do not want to inform the Planning Attorney's former clients of possible ethics violations, you must explain to the clients that you are not providing them with any advice on ethics violations of the Planning Attorney. You should advise the clients — in writing — to seek independent representation on such issues. Limiting

the scope of your representation, however, does not eliminate your duty to report pursuant to ORPC 8.3(a).

9. If the Planning Attorney stole client funds, do I have exposure to an ethics complaint against me?

You do not have exposure to an ethics complaint for the Planning Attorney's theft of client funds, unless you somehow aided or abetted the unethical conduct.

Whether you have an obligation to inform the Planning Attorney's former clients of the misappropriation depends on your relationship with the Planning Attorney and the Planning Attorney's former clients. Similarly, whether you have an obligation to report the Planning Attorney to the Oregon State Bar depends on your relationship with the Planning Attorney and their former clients. (See questions 6 and 8 above.)

If you are the new attorney for a former client of the Planning Attorney and you fail to advise the client of the Planning Attorney's ethical violation, you could be exposed to the allegation that you have violated your ethical responsibilities to your new client.

10. The Planning Attorney wants to authorize me as a trust account signer.

Am I allowed to also be the Planning Attorney's lawyer?

Although this arrangement generally works out fine, it could result in a conflict of fiduciary interests. As an Authorized Signer on the Planning Attorney's trust account, you would have a duty to properly account for the funds belonging to the former clients of the Planning Attorney. That duty could conflict with your duty to the Planning Attorney if: (1) you were hired to represent them on issues related to the closure of their law practice; and (2) there were misappropriations in the trust account and the Planning Attorney did not want you to disclose them to the clients. To avoid this potential conflict, the most conservative approach is to choose one role or the other: be an Authorized Signer **OR** be an Assisting Attorney representing the Planning Attorney on issues related to the closure of their practice. (See guestion 4 above.)

Death of a Solo Practitioner

special considerations





If you authorize another lawyer to administer your practice in the event of your disability, impairment, or incapacity, that authority terminates when you die. See ORS 127.015. The personal representative (PR) of your estate will be responsible for closing your practice, including ensuring that all obligations to your former clients are met. You must inform your PR of your arrangement with the Assisting Attorney and/or Authorized Signer, and your plan to have the Assisting Attorney and/ or Authorized Signer carry out the duties of your agreement. The PR can then authorize the Assisting Attorney and/or Authorized Signer to proceed per your plan.

It is critical that you have an up-to-date will nominating a PR (and alternates if the first nominee cannot or will not serve) so that the management and closure of your law practice can begin promptly without delay and harm to clients.

It is also important to reserve sufficient funds to pay an Assisting Attorney and/ or Authorized Signer and staff for services rendered on your behalf in closing your practice. For many solo practitioners, their law practice will be the only asset subject to probate. Other property will likely pass outside probate to a surviving joint tenant, usually the spouse. Unless you keep sufficient cash in your law practice bank account, there may not be adequate funds to compensate the Assisting Attorney and/or Authorized Signer or to continue to pay your clerical staff, rent, and other expenses during the transition period. Your Assisting Attorney and/or Authorized Signer may be unable to advance expenses or may be unwilling to serve without pay. To ensure funds are available for these services, consider maintaining a disability insurance policy in an amount sufficient to cover these projected office closure expenses. The beneficiary of the policy could be your estate, with specific instructions in your will or trust that the insurance proceeds be used to cover such expenses.

Oregon law gives broad powers to a personal representative to continue a decedent's business to preserve its value, to sell or wind down the business, and to hire professionals to help administer the estate. ORS 114.305, 114.325. Even though Oregon statutes authorize these actions, you may want to include language in your will that expressly authorizes your PR to arrange for closure of your law practice. The specific language in your will serves as a valuable reminder that they have the power and responsibility to close your practice. Your PR might not be familiar with the statutory provisions. The appropriate language will depend on the nature of your practice and the arrangements you make ahead of time.



Start Now





You can start protecting your clients' interests – and your law firm assets – by selecting an attorney to assist you. **It is something you can do now, at little or no expense.** While planning ahead may feel daunting and uncomfortable, you can kick start the process by using our 10-step checklist. This tool will help you clarify your objectives and map out your plan.

The PLF's practice management attorneys assist with office closures – whether it is you closing another lawyer's office, or you or a family member closing your own office. Closing a law office involves many steps, and the process is more manageable with help. We encourage you to call upon the expertise of our PLF practice management attorneys and the many resources on the PLF website. Our practice management services are free and confidential.



If you would like the free and confidential assistance of a PLF practice management attorney, call 503.639.6911 or 800.452.1639 or visit our website,

osbplf.org > Services > Practice Management Assistance.

We look forward to helping you through this process!

START NOW 33

Appendix

Forms

Letters

Checklists

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AGREEMENT TO CLOSE LAW OFFICE - SAMPLE

The sample *Agreement* beginning on the next page gives the Assisting Attorney the power to determine whether you are disabled, impaired, or incapacitated. It also provides the Assisting Attorney with authority under the designated circumstances to sign on your business bank accounts (except your trust account) and to close your law practice. The agreement gives an Authorized Signer authority to sign on your trust accounts. (See *Caveat* 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, 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 lawyer trust account, (3) finds misappropriations in the lawyer 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. 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.

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.

AGREEMENT TO CLOSE LAW OFFICE - SAMPLE

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 no longer able to work due to death, disability, impairment, or incapacity, Assisting Attorney can rely on evidence that Assisting Attorney considers to be reasonably trustworthy. This evidence can include communication with Planning Attorney's family or representative or written opinions from one or more medical doctors who are licensed to practice medicine. The same kind of evidence can be used to show that Planning Attorney has recovered from disability, impairment, or incapacity. Assisting Attorney is not responsible for any problems that arise for relying on this evidence to carry out the terms of this Agreement, as long as they acted in good faith.

4. Consent to Close Practice.

Planning Attorney agrees to allow Assisting Attorney to take any actions needed to close Planning Attorney's law practice if Planning Attorney is unable to do so because death, disability, impairment, or incapacity. Planning Attorney appoints Assisting Attorney as attorney-in-fact, 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. The appointment remains valid even if Planning Attorney is no longer able to do these tasks themselves. The Assisting Attorney is also authorized to sign on 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.

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 that Planning Attorney authorized to be contacted 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.

Planning Attorney authorizes Authorized Signer to sign on Planning Attorney's lawyer trust account(s).

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

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.

5. 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 their time spent performing these services. Assisting Attorney and Authorized Signer will provide their services outlined in this Agreement as independent contractors.

6. 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.

7. 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 Oregon Rules of Professional Conduct. Assisting Attorney has permission to inform the Professional Liability Fund 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 to inform the Professional

Liability Fund 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 to inform Planning Attorney's clients of any ethics violations committed by Planning Attorney.

8. 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 Oregon State Bar Client Security Fund.

9. 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.

10. Informing Oregon State Bar.

Assisting Attorney agrees to inform the Oregon State Bar Regulatory Services where Planning Attorney's closed files will be stored and the name, address, and phone number of the contact person for retrieving those files.

11. Contacting the Professional Liability Fund.

Planning Attorney authorizes Assisting Attorney to contact the Professional Liability Fund (PLF) concerning any legal malpractice claims or potential claims. (Note to Planning Attorney: Assisting Attorney's role in contacting the PLF will be determined by Assisting Attorney's arrangement with Planning Attorney. See Section 7 of this Agreement.)

12. 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.

13. 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.

- 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.

14. 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.

15. 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. Assisting Attorney and Authorized Signer shall be responsible for all acts and omissions of gross negligence and willful misconduct.

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

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

17. 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.

18. Arbitration of Fee Disputes.

Planning Attorney, Assisting Attorney, and Authorized Signer agree that all fee disputes among them will be decided by the Oregon State Bar Fee Arbitration Program.

19. 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.

[Planning Attorney]			[Date]	
STATE OF OREGON)			
) ss.			
County of)			
This instrument was ackn	owledge	ed before me on	(date)	
by			(name(s) of person(s)).	
		NOTARY PUBLIC FOR OREGON		
		My commission expires:		
STATE OF OREGON)			
) ss.			
County of)			
This instrument was ackn	owledge	ed before me on	(date)	
by			(name(s) of person(s)).	
		NOTA DV DUDUC	TOD ODECON	
		NOTARY PUBLIC I		
		wy commission ex	pires:	

[Assisting Attorney's Alternate]		[Date]		
STATE OF OREGON)	ss.			
County of)				
This instrument was acknowled	lged before me on	(date)		
by		(name(s) of person(s)).		
	NOTARY PUBLIC My commission ex	FOR OREGON xpires:		
[Authorized Signer]				
STATE OF OREGON)	ss.			
County of)				
	-	(date) (name(s) of person(s)).		
~,		(ae(e) e. pe.ee(e),		
	NOTARY PUBLIC	FOR OREGON		
	My commission ex	My commission expires:		
[Authorized Signer's Alternate]		[Date]		
STATE OF OREGON)	ss.			
County of)				
	_	(date) (name(s) of person(s)).		
	NOTARY PUBLIC My commission ex	FOR OREGON xpires:		

WHERE TO FIND FORMS, LETTERS, CHECKLISTS, AND RESOURCES



Forms, Checklists, and Other Resources Related to Establishing an Assisting Attorney

Go to the PLF website:

osbplf.org > Services > CLEs & Resources > Practice Aids > search by document name or by topic:

- Agreement to Close Law Practice Sample
- Law Office List of Contacts
- Notice of Designated Assisting Attorney
- Notice of Designated Authorized Signer
- Power of Attorney Documents and Letter of Understanding
- Specimen Signature of Attorney-in-Fact
- Will Provisions



Forms, Checklists, and Other Resources Related to Closing a Law Office

Go to the PLF website:

osbplf.org > Services > CLEs & Resources > Practice Aids > search by document name or by topic:

Checklists:

- · Checklist for Closing Another Attorney's Office
- Checklist for Closing Your Own Office
- Checklist for Closing Your IOLTA Account

Guidelines:

File Retention and Destruction

Letters, Forms, and Other Resources:

- Acknowledgment of Receipt of File
- Authorization for Transfer of Files
- Letters for Closing Your Law Office
- Office Closure File Tracking Chart
- Request for File
- Resources for Lawyers Closing Their Law Office

LINKS TO ETHICS OPINIONS AND OTHER ARTICLES



inBrief article: "Why Did We EVER Want to Keep Original Wills?" www.osbplf.org/assets/in_briefs_issues/Original%20Wills.pdf



Oregon Formal Ethics Opinion No. 2005-129 www.osbar.org/_docs/ethics/2005-129.pdf



American Bar Association Standing Committee on Ethics and Professional Responsibility Formal Opinion 92-369
www.osbplf.org/assets/forms/pdfs/ABA%20FORMAL%20
OPINION%2092-369.pdf

OTHER RESOURCES FOR CLOSING AN OFFICE



Practice Management Assistance

Professional Liability Fund 16037 SW Upper Boones Ferry Road, Suite 300, Tigard, OR 97224 PO Box 231600, Tigard, OR 97281-1600 503.639.6911 or 800.452.1639 osbplf.org

Practice Management Attorneys

osbplf.org/services/practice-management-assistance. html

Coverage Questions
 osbplf.org/coverage/do-i-need-coverage.html



Personal Assistance

Oregon Attorney Assistance Program (OAAP) 520 SW Yamhill, Suite 1050 Portland, Oregon 97204 503.226.1057 or 800.321.6227 oaap.org

Attorney Counselors

oaap.org/about/



Lawyer Referral Services (for Clients)

Oregon State Bar Lawyer Referral Service PO Box 231935 Tigard, OR 97281-1935 503.684.3763 or 800.452.7636 www.osbar.org/public/ris/#



Legal Ethics Questions

Oregon State Bar Legal Ethics Helpline PO Box 231935 Tigard, OR 97281-1935 503.431.6475 or 800.452.8260 www.osbar.org/ethics/











Ethics Complaints

Oregon State Bar Client Assistance Office PO Box 231935 Tigard, OR 97281-1935 503.620.0222 or 800.452.8260 (ext 332) www.osbar.org/ethics/

Oregon State Bar Discipline - Information Regarding **Attorneys Whose Offices Are Closed**

Oregon State Bar Disciplinary Counsel PO Box 231935

Tigard, OR 97281-1935

503.620.0222 or 800.452.8260

www.osbar.org/discipline

Contact: OSB Disciplinary Counsel

Client Security Fund Claims

Oregon State Bar Client Security Fund

PO Box 231935

Tigard, OR 97281-1935

503.620.0222 or 800.452.8260

www.osbar.org/csf/index.html

Contact: OSB General Counsel

Attorney Obituaries

Oregon State Bar Bulletin

PO Box 231935

Tigard, OR 97281-1935

503.620.0222 or 800.452.8260 (ext 340 or 391)

www.osbar.org/publications/bulletin/bulletin.html

Contact: Editor



