

CHECKLIST FOR SELLING YOUR LAW PRACTICE

Screen the Buying Lawyer

1. Screen the buying lawyer for skills, experience, and competence. Ask for a resume, personal and professional references, and the names of staff and other lawyers with whom the buying lawyer has worked. You may want to observe the buying lawyer's court or administrative appearances.
2. Verify the buying lawyer's bar admission.
3. Research the buying lawyer's reputation. Talk to people with whom the buying lawyer has had contact as co-counsel, as an adversary, through participation in bar groups, in the community, or elsewhere. Speak to personal and professional references provided to you by the buying lawyer.
4. Research the buying lawyer's discipline history on the Oregon State Bar website. (Find the lawyer in the online Member Directory and select "Show Disciplinary History.") To review disciplinary files of the buying lawyer, complete the request form available here: https://www.osbar.org/secured/review_request.asp.
5. Ask the buying lawyer to request a list of his/her/their legal malpractice claims history from the Professional Liability Fund (PLF) and provide it to you. NOTE: Although it is helpful to discuss and look over the lawyer's malpractice claims history, please keep in mind some important things. (1) The only information that the PLF will provide to the lawyer is a list with the date of the malpractice claim, the claimant, and the amount of money paid on the claim. (2) If the claim is currently pending, the lawyer who is the subject of the claim will not be able to discuss the facts of the case with you or anyone else. (3) In addition, the PLF wants all lawyers to be mindful that malpractice claims are not necessarily an indicator of the lawyer's legal skills or character. Professionally, the odds are that every lawyer will have one or more malpractice claims during the course of his/her/their career.
6. Discuss the following issues with the buying lawyer:
 - a. Why does the buying lawyer want to purchase a law practice?
 - b. What is the buying lawyer's legal experience?
 - c. What are the buying lawyer's professional goals?
 - d. What is the buying lawyer's philosophy toward clients and the practice of law?
 - e. What kind of office systems has the buying lawyer used? What technology are they familiar with?
 - f. Does the buying lawyer have an existing client base and office systems that need to be incorporated into the selling lawyer's practice as part of the transition?
 - g. Does the buying lawyer have excess coverage with the PLF or another carrier? (All lawyers in private practice in Oregon are required to carry minimum coverage of \$300,000 indemnity/\$50,000 claims expense annually under the PLF primary claims made plan. For more information, visit the PLF website, <https://www.osbplf.org>).
 - h. Is the buying lawyer involved in any state or local bar sections or committees? Other activities in the community?

Understand Your Obligations under the Oregon Rules of Professional Conduct

1. Oregon lawyers may sell all or part of a law practice, including goodwill.
ORPC 1.17(a).

CHECKLIST FOR SELLING YOUR LAW PRACTICE

2. There is no prohibition against payments to a selling lawyer for the sale of a law practice in accordance with ORPC 1.17. ORPC 1.5(e).
3. It is permissible for a selling lawyer to reveal the following information to a potential buyer of the practice provided it does not compromise the attorney-client privilege or otherwise prejudice any of the clients:
 - a. The client's identity;
 - b. The identities of any adverse parties;
 - c. The nature and extent of the legal services involved; and
 - d. Fee and payment information.

See ORPC 1.6(b)(6) for complete details.

4. Potential buying lawyers should screen for possible conflicts of interest involving the selling lawyer's clients.
5. Provide written notice of the proposed sale to each of your current clients whose legal work is subject to the transfer. ORPC 1.17(b). The notice must include the following information:
 - a. That a sale is proposed;
 - b. The identity of the buying lawyer or law firm, including office address and brief description of the size and nature of the buying lawyer's or law firm's practice;
 - c. That the client may object to the transfer of its legal work, may take possession of any client files and property, and may retain counsel other than the lawyer or law firm;
 - d. That the client's legal work will be transferred to the buying lawyer or law firm, who will then take over the representation and act on the client's behalf, if the client does not object to the transfer within forty-five (45) days after the date the notice was mailed; and
 - e. Whether the selling lawyer will withdraw from the representation not less than forty-five (45) days after the date the notice was mailed, whether or not the client consents to the transfer of its legal work.
6. Send the notices by certified mail, return receipt requested, to the clients' last known addresses. ORPC 1.17(b).
7. If certified mail is not effective to give a client notice, the selling lawyer must take such steps as may be reasonable under the circumstances to give the client actual notice of the proposed sale and the other information required. ORPC 1.17(d).
8. The notice may describe the buying lawyer's or law firm's qualifications, including the selling lawyer's opinion of the buying lawyer's or law firm's suitability and competence to assume representation of the client, *but only if the selling lawyer has made a reasonable effort to arrive at an informed opinion*. ORPC 1.17(c).
9. A client's consent to the transfer of its legal work to the buying lawyer or law firm will be *presumed* if no objection is received within forty-five (45) days after the date the notice was mailed.
10. If substitution of counsel is required by the rules of a tribunal in which a matter is pending, the selling lawyer shall assure that substitution of counsel is made. ORPC 1.17(f).

CHECKLIST FOR SELLING YOUR LAW PRACTICE

11. *Practice Tip:* Selling lawyers should prepare a current client list to use in monitoring the progress of transferring clients. If any client objects to the transfer of its legal work, a note can be made on the current client list. This same list can be used to track the preparation and submission of substitutions of counsel for clients whose work is transferred without objection.
12. If a client objects to the transfer of its legal work, the selling lawyer should review ORPC 1.16 (Declining or Terminating Representation) if the selling lawyer intends to withdraw prior to concluding the client's matter. Also, [see OSB Formal Opinion 2011-185](#) – Withdrawal from Litigation: Client Confidences.
13. The fees charged clients shall not be increased by reason of the sale except upon agreement of the client. ORPC 1.17(g).
14. The sale of a law practice may be conditioned on the selling lawyer's ceasing to engage in the private practice of law or some particular area of practice for a reasonable period within the geographic area in which the practice has been conducted. ORPC 1.17(h). The selling lawyer may wish to include terms in the sales agreement that permit the selling lawyer to continue working on the legal matters of any clients who object to the transfer of their work.
15. A buying lawyer or law firm may use, in a firm name or names, one or more of the retiring, deceased, or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation. See ORPC 7.1 and 7.5(a).

Preparing for and Selling Your Law Practice

- a. Consider hiring a business valuation expert who can assist you in the valuation of your business. See the PLF practice aid, *Resources for Lawyers Planning to Sell Their Law Practices*, available on the PLF website, www.osbplf.org. Consider such factors as:
 - a. Terms of payment;
 - b. Geography;
 - c. Nature of the practice;
 - d. History of client retention by the selling firm;
 - e. Size of practice;
 - f. Whether the client base will remain with the buying attorney for a designated period of time; and
 - g. Whether an earn-out or pay-out based on collections can be created assuring the buyer that payments will be made only for designated revenues received.
- b. Determine sales price and terms.
- c. Prepare a sales timeline that complies with ORPC 1.17.
- d. Advertise the sale of your practice in the *Oregon State Bar Bulletin*, online in the Oregon State Bar Career Center, <http://www.osbar.org/osbcenter/careerintro.html>, in your local bar newsletter, and other sites as desired.
- e. If office furniture, equipment, or library materials are not included in the sale of your practice, place a separate ad for these items in the *Oregon State Bar Bulletin*, your local bar newsletter, or online through resources such as Craigslist, <http://geo.craigslist.org/iso/us/or>.

CHECKLIST FOR SELLING YOUR LAW PRACTICE

Resources

1. Review the following PLF materials for other pertinent steps:
 - a. Closing a Law Office – Checklists, sample letters, resources
 - b. Office Systems and Procedures – File Retention and Destruction Guidelines
 - c. Retiring from Law Practice – Checklist, resources
 - d. Buying or Selling a Law Practice – Resources for Lawyers Planning to Sell Their Law Practices
 - e. Trust Accounting – Closing Your IOLTA Account

These resources are available on the PLF website, www.osbplf.org.

2. The Oregon Rules of Professional Conduct (ORPCs) may be found at <http://www.osbar.org/docs/rulesregs/orpc.pdf>.
3. The Oregon State Bar Formal Ethics Opinion Library is available here: <http://www.osbar.org/ethics/toc.html>.
4. Review the Checklist for Buying a Law Practice, also available on the PLF website, www.osbplf.org, to learn about the sale of a law practice from the buyer's perspective.
5. Call the PLF practice management attorneys at 503-639-6911 or 800-452-1639 for assistance or answers to any questions.

IMPORTANT NOTICES

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials for use in their own practices. © 2021 OSB Professional Liability Fund