



NOVA SCOTIA
BARRISTERS' SOCIETY

Legal Services Support - Sample Succession Plan

In development

This sample is designed to help lawyers, particularly in sole practice or, with adaptation, in small firms, to develop and maintain a succession plan. It covers many things a successor needs to deal with and should know. It should help you think about the preparations you ought to make.

This sample walks you through making a succession plan. It:

- *describes what you must have per the regulation,*
- *invites you to think about what will trigger and how you will effect succession*
- *invites you to consider practices and preparations for a wide range of considerations common in practice, in checklist format. Some might not apply to your practice.*
- *discloses to your successor how you organize your practice for each consideration*
- *suggests possible wording for any direction to your successor related to these considerations*

If you choose to use this sample, check off (or describe) the circumstances that apply to your practice and make choices. Add customized text where needed – it is meant to be adapted by you for your circumstances. Please note that you need to provide for execution of your plan in your will and in an enduring power of attorney.

If you are a sole practitioner, you can use this Sample Plan with minimal adaptation. If you are in a firm of 2 or more lawyers, you will need a plan for the practice including all lawyers. There will be planning for individual lawyers and for the firm. You can adapt this plan or create one of your own: colleagues will already be familiar with the practice, planning for associates will likely be easier, but many provisions will nevertheless apply.

Regulation pursuant to the *Legal Profession Act* - Succession Plan

4.6.4 A law firm or sole practitioner must:

- (a) maintain a current succession plan for the practice including all lawyers in the firm;
- (b) annually review the succession plan; and
- (c) pursuant to Regulation 4.11, report to the Executive Director regarding the succession plan.

4.6.5 A succession plan must contemplate the unique arrangements that will be necessary in the event of the cessation of the lawyer's practice for any reason, including:

- (a) temporary disability or incapacity;
- (b) long term disability or incapacity; and
- (c) death of the lawyer.

4.6.6 At a minimum, a succession plan must include information and adequate arrangements to allow for the handling of clients and management of the practice with regard to the following, where applicable:

- (a) open and closed files;
- (b) wills and wills indices;
- (c) foundation documents and other important records;
- (d) other valuable property;
- (e) passwords and the means to access computers, email, accounting and other electronic records;
- (f) trust accounts and trust funds;
- (g) other accounts related to the member's practice; and
- (h) any other arrangements necessary to carry on or wind up the lawyer's unique practice.

Who

1. This is the Succession Plan of _____ ("I," "me," or "my").
2. The lawyer who will take responsibility for my practice ("my Successor") in the event I am unable to continue is _____.¹
3. My Successor consents in writing to be my Successor by signing the bottom of this Succession Plan.

General

4. This Succession Plan constitutes a memorandum of understanding between me and my Successor as to how succession of my practice will take place and what steps I will take in advance to get ready for that eventuality.
5. This plan contains sensitive information and belongs in a locked safe or similar location, by both Firm/Lawyer and Successor.

¹ While some lawyers want to choose their spouse or a staff member to be their successor, only practising lawyers are insured, and only lawyers are bound by the *Code of Professional Conduct*. A spouse or staff member may assist with succession under the appropriate supervision of a successor lawyer, if the successor lawyer agrees.

How to effect

This section touches on many personal preferences. You are encouraged to draft your will and power of attorney carefully to accomplish what you want.

6. My will provides my Successor with the authority to deal with my law practice (including a law corporation) and implement my Succession Plan in the event of my death.² Location/access information: _____.

7. An enduring power of attorney provides my Successor the ability to deal with my law practice (including a law corporation) and implement my Succession Plan in any circumstance of cessation of my practice for any reason, other than death, including (a) temporary disability or incapacity and (b) long term disability or incapacity. Location/access information: _____.

8. My enduring power of attorney provides (*choose*):
 - a Gatekeeper with the power to trigger this plan by determining if my practice has ceased for any reason contemplated in Regulation 4.6.5. My Gatekeeper is _____.³
 - the determination of whether my practice has ceased for any reason contemplated in Regulation 4.6.5 shall be based on facts evidenced in a manner set out in my enduring power of attorney.⁴

9. My enduring power of attorney may provide for circumstances where my practice or part thereof can be returned to me (if, for examples I return to wellness).

10. My will and enduring power of attorney:
 - cover the issue of any compensation to my Successor.

There are many possible ways to handle this issue, including a fee, a favour, an expectation that receiving fees for the Successor's work on open files is enough, a transfer of ownership etc. You have to think about what the Successor should receive and what your family might receive. Is there life insurance involved? Be clear.

11. For my trust accounts,⁵ I have met with my financial institution's manager and determined what their organization will accept. I and my Successor have executed whatever documentation is required to allow my Successor to assume control of my trust account.

² This might be as a trustee. It can be as a bequest. Circumstances will vary widely, and might require tax planning. Or the practice might have limited value in the absence of the testator.

³ This is the BC model. A Gatekeeper can be a trusted family member or friend who is different than the Successor.

⁴ This is the Ontario model. (Be careful if looking at Ontario as their probate practice allows the use of two wills).

⁵ NSBS hopes to develop with financial institutions a standard acceptable way to effect the transfer of control of a trust account at succession; for now, bank practices vary so you and your bank must be in agreement on this point.

Preparing my practice for succession & Succession Plan

12. My Succession Plan is set out below. I describe my practice and define my plan by checking items and completing blanks. (*Preparations will make it easier for your Successor, but will also make it easier for you to retire/pass on your practice voluntarily when you want.*)

13. Open files (*check all which apply*):

- I have electronic files. I scan as documents come in. Location(s)_____.
- I have paper files. Location(s) _____.⁶
- My practice is to return any original documents I don't need to my clients.
- My files contain original documents which need to be returned at the conclusion of the matter.
- My open files are all cataloged in the following location (eg your file management/billing software).

How will Successor find files, backups, passwords? _____.

Succession Plan (*sample*): My Successor, after obtaining the consent of the client, may succeed me as counsel on any file my Successor chooses, may make suitable recommendations of other counsel who might be appropriate, and absent a choice of new counsel within a reasonable period of time shall provide the file to the client as if transferring a file of my Successor's own.

14. Schedule (*indicate where Successor can quickly find my schedule showing all court appearances, deadlines, closings etc. and how to access it*): _____.

15. Closed files (*check all which apply*):

- I have electronic closed files: everything/many files are scanned.
- I have a written destruction policy, location _____.
- That policy provides for the orderly eventual destruction of most of my electronic files.

How will Successor find files, backups, passwords? _____.

- I have paper closed files.
- I have a written destruction policy located _____.
- My closed files are located in boxes. Location _____.
- My closed files have been culled, especially of material that must or could be returned to my clients.
- My closed files are both grouped together and labelled by destruction date.

⁶ Lawyers take files home, keep different types of files in different places.

- My files are ready to shred as is (including being culled and grouped and labelled by destruction date).
- Where files contain materials that must be kept (eg foundation documents) they are kept separate from files ready to shred.
- My closed files are catalogued in the following location: _____.

How will Successor find passwords? _____.

Succession Plan (*sample*): My Successor will store my closed files and continue to destroy older files in accordance with my policy or my Successor's policy.

16. Foundation documents for Property Matters (*check all which apply*).

- I do not have foundation documents as I have never practised property law or taken responsibility for another lawyer's foundation documents.
- I am familiar with the definition of "foundation documents" [Regulation 1.1.1 ma](#).⁷
- My foundation documents are indexed, and may be part of my closed file catalogue (*location, and how will Successor find passwords?*) _____.
- I have scanned my foundation documents; they are electronic because it facilitates indefinite storage (*location, and how will Successor find passwords?*) _____.
- I currently hold the foundation documents of the following lawyers who no longer practise (*location, form (paper or electronic), and how will Successor find passwords?*) _____.

Succession Plan (*sample*): My Successor will retain all foundation documents currently in my possession and will provide for them to be held by another practising lawyer whenever my Successor ceases to practise, unless released of that obligation by law.

17. Minute Books / Company Agent / Company Registered Office / Seals (*check all which apply*):

- I have no minute books or seals, do not serve as recognized agent nor do I have any client corporate entity who uses my office address as registered office.
- I maintain approximately ____ minute books, an index of which is located _____.

⁷ (ma) "foundation documents" means information on which a practicing lawyer relied in support of the exercise of professional judgment in rendering an opinion of title or certificate of legal effect, and includes an abstract of title, searches, documents, notes, survey fabric, or other title information, whether prepared by the lawyer or others and all information required to be kept pursuant to the Land Registration Administration Regulations.

- How will Successor find passwords?* _____.
- I have made reasonable efforts⁸ to find clients to return any minute books and seals in any situation where I am not regularly in contact with the client.
 - I have ceased to be the recognized agent and my address is no longer registered office for any company where I am not in regular contact with the client.
 - I recognize that minute books and seals are client property and that NS law allows companies to be revived.
 - For companies which have been struck off and for which I cannot locate the client, I have scanned evidence of legal and beneficial ownership and minutes, then shredded the minute book and discarded or recycled the seal.
 - A list of the companies for which I am recognized agent and for which my address is registered office is located _____.
- How will Successor find passwords?* _____.

Succession Plan (*sample*): My Successor will treat any of these like open files.

18. Trust accounts (*check all which apply*):

- I do not hold any money in trust.
- I have eliminated all old⁹ trust balances or will do so by _____ date, and will keep to that standard.
- Where appropriate, I will take advantage of the applications to dispose of undistributable trust funds by _____ date.
- I will work with the NSBS trust assurance team to eliminate old trust balances.
- I list all my general trust accounts and trust accounts for specific clients, attached, including account numbers and bank branch.
- All of the files and records relating to outstanding trust balances are available and not slated for destruction.
- Location of trust account records: _____

Succession Plan: see 11, above.

19. Undertakings (*check all which apply*):

- I have no outstanding undertakings and will not have any.

⁸ An internet search involving sites such as LinkedIn, Facebook, POL, Canada 411 can help.

⁹ Aim to get to the point where you have no balances over a year old, unless necessary – it will make things easier for you in different ways. Our Trust Assurance Team can help you.

- A full record of all my outstanding undertakings can be found at _____ location.
- My plan to fulfill my undertakings is as follows: _____.

Succession Plan (sample): My Successor will discharge any remaining undertakings as best they are able.

20. Operating accounts (often called “general accounts”), accounts receivable, and work in progress check any which apply

- The details of any operating accounts under my control are as follows:

Succession Plan (*this is a sample so you can change this*): My Successor may use the operating account, accounts receivable and render accounts for the work in progress to pay for any expense related to my practice, and any projected future expense.

- My Successor may bill for and pay to them self a reasonable fee for services rendered.
- My Successor shall pay any balance to my Estate if I am dead or, if I am alive, to me or whomever has lawful authority over my property.
- Other (*please set out*): _____.

21. Wills, will instructions/evidence of capacity and will indices (*check all which apply, add anything necessary*):

- I have never had a wills practice, so this is not applicable.
- I have no original wills (*recommended*)
- I keep approximately ___ original wills in _____ location.
- My will index is located _____ and is kept up to date.
- My closed will files are organized together and not sprinkled through my other files (*recommended*)
- My closed will files (instructions/capacity information) are located _____.
- My closed will files are electronic (*recommended*).
- I have made reasonable efforts to return all original wills to the care of the clients. (*recommended*)
- I have noted any special instructions or concerns with the will, e.g. if I appear to have lost touch with the client.
- The wills I possess all have affidavits of execution (*recommended*)
- _____ wills are missing an affidavit of execution. I have made appropriate efforts to obtain them and documented any relevant information, kept with the will.

- I have made reasonable efforts to keep the contact information up to date for any will I hold.

Succession Plan (*sample, if you have any wills*): I would like my Successor to contact each client and notify them of the location of their will. It is up to my Successor whether she/he offers the service of continuing to hold wills for clients.

22. Powers of Attorney *pick one*:

- I have no original POAs
- I have original POAs, and my client always also has an original (*describe where they are kept*)

23. Other Valuable Client Property and Documents (*choose*):

- I hold no client property, other than in any trust account mentioned above.
- I have a list of client property which I hold, along with current contact information for the client(s). I will keep this list up to date. Location: _____.

Succession Plan (*sample*): I would like my Successor to contact each client and notify them of the location of their property. It is up to my Successor whether she/he offers the service of continuing to hold such property for clients.

24. Passwords and Means to Access computers, programs, email, accounting and other electronic records:

- Attached in strict confidence and with a request that it be kept locked in a safe (or located in the following secure location) is a complete list of all access information and passwords relating to my practice.
- A complete list of all access information and passwords relating to my practice can be found as follows: _____.

25. Access to safe(s) and safety deposit boxes:

- The combination for my safe(s) is (are) listed _____.
- The keys for my safety deposit box(s) is (are) _____.
- The safety deposit box is (identifying info and location) _____.

26. Office access (*check all which apply*):

- You may obtain access to my office by (*deliver spare keys, describe from whom the Successor can obtain keys*): _____.
- I have storage space located at _____.
The keys are _____.

27. Personnel records and issues (*check all which apply*):

- I have no current or former employees.
- My current employees¹⁰ and their job titles are: _____.
- You can find personnel files/records at _____.

Succession Plan (*customize this sample plan as required*): I leave it to your discretion to deal with my employees.

28. Financial records (other than trust account records):

- These records are located _____.
- List any accountant or bookkeeper _____.

Succession Plan: I ask you to keep these records long enough to satisfy any standards in place with CRA and NSBS and to share them as required with my personal representative or holder of any power of attorney dealing with financial matters.

29. Any other arrangements necessary to carry on or wind up my unique practice:

- Describe anything else about financial wind up, e.g. who is to file tax for law corp, HST.
- Describe anything else.

30. Annual review:

- It is acknowledged that this plan must be reviewed annually by me pursuant to Subregulation 4.6.4 (b), and any changes must be agreed to by both parties.

This memorandum of understanding respecting a lawyer's Succession Plan is entered into on the _____ day of _____, 20____.

Lawyer making plan

Successor lawyer

- **Diarize for review in one year (or less).**

¹⁰ The Successor has to bear in mind that there might be remittances, unpaid salary/vacation pay or other liabilities, depending on the circumstances of the succession. Parties should not forget to discuss employees. For a successor, keeping an employee can make a huge difference.