



Practice Continuation in Event of a Death or Disability

Sample Agreement and Letter of Instruction

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The following sample agreement addresses a practices' transfer in event of a sole practitioner's or all of a firm's partners' sudden death; and the method of servicing clients in the event of a temporary or partial disability or inability to practice.

It is recommended that you execute a similar agreement with a fellow practitioner to protect your practice, clients and family wealth or cash flow.

The following was written in letter form without the guidance of an attorney. It would be advisable for you to have this arrangement reviewed by your attorney. Also, the tax treatment of the purchase and sale of Section 197 assets should be reviewed as of the date you execute such an agreement.

We suggest that you bring your spouse with you when you sign this agreement and explain to them the importance of quick action. An instructional letter is also illustrated.

Note that this letter represents the minimum that should be done and provides a method that can provide protection for the practice's value that can be quite effective under many circumstances.

LETTER AGREEMENT THAT CAN BE MADE WITH A FELLOW PRACTITIONER

Dear _____,

This letter is to give you our understanding of how we will acquire your practice.

In event of death

1. We will acquire your entire practice only in the event of your death during a time when there are no surviving partners of your practice. Upon your death, we will be contacted by either _____ spouse's name _____ or _____, either of whom will have the information necessary to effect the transfer of your practice and who are authorized to effect such transfer.
2. We will make a good-faith effort to retain the maximum number of your clients, but we will not be obligated to retain any clients we do not feel will be appropriate for our practice. We will make every effort to "sell" clients we don't wish to retain, but do not guarantee that we can or will sell such accounts. We will notify you as soon as we are sure we won't retain an account, but in no event later than six months after the files are turned over to us. In the event that we decide not to retain a client of yours, we will agree not to solicit or speak to that client for at least one (1) year following your death.
3. We will make a good-faith effort to sell those clients we decide not to retain, but we do not guarantee that we can or will sell such clients. If any of your clients that are not retained by us are sold through our efforts, we will pay to your estate eighty percent (80%) of the sales proceeds.
4. We will pay your estate (as used in this letter "your estate" will refer to either your estate, family or designated heirs, as the case may be and as indicated by you at the bottom of this letter) 20% of all fees billed and collected from your clients for all work done during the first five years of the transfer. This includes any work done for the client in every and all entities and business forms they operate or call themselves under and includes newly formed entities and ventures. It will not include fees from any referrals from those clients if the referring client has no financial or ownership interest in the new client.
5. We will use business efforts consistent with own practice regarding billing and collection for the work performed by us for your clients. We shall

provide your estate or designated heirs periodic reports regarding the work performed for your clients by us and the billings and collections with respect to your clients retained by us. This information shall also be made available to them upon written request.

6. Please note that we are providing no client retention guarantees and that if a client is lost for any reason, your estate will not be entitled to any payments other than amounts based upon billings and collections by us.
7. We will make payments to your estate by the tenth (10) day of the month following the month we collect the fees. However, if we collect any sums from your clients on account of work performed by you prior to transfer (your accounts receivable), we will remit one-hundred percent (100%) of those amounts within ten (10) days of collection. Nothing herein shall constitute a sale, transfer or assignment of your accounts receivable to us.
8. Your estate will turn over your workpaper files and computer disks or backup for each client for the last three (3) years. We will assume all of your professional responsibilities for maintaining and retaining these files and disks. The files and disks will be made available to your estate upon written request as long as that request is consistent with our professional and ethical responsibilities. It will be our choice to keep or discard those files. However, if we decide to discard any of your files or disks, we must first notify your estate and will allow your estate to take back the files and disks.
9. We will also receive all office equipment used in your practice with the exception of personal items in your offices selected by your spouse, or children. We will pay rent on your office premises as long as we continue occupying the premises, but it is our intention to vacate the premises as soon as possible and we will not be responsible for the remaining portion of the lease. Any costs of vacating will be borne by us.
10. Upon our receipt of the files you will advise the telephone company to transfer the business telephone number to us; and you will give us ownership and access of any email addresses, websites and social media names and addresses. We will also have the use of the deceased's name for two years following the transfer of the practice to us.

In event of temporary disability or inability to practice

11. In the eventuality of a temporary disability or inability to practice we agree to service your clients until you recover and return to work. The determination of your ability to return to work is solely at your discretion.

12. If you wish to return on a part time basis and want us to continue servicing selected clients, we will but we will solely perform the services on those clients without any client interaction by you.
13. During the period that we service your clients, we will be paid 80% of the fees that are collected for the services we performed. If you return part time, we will be paid for the clients we work on, as if you have not returned, and will not have any of the fees prorated to take into account work you performed, if any.
14. We will service your clients for a maximum period of one year. If you have not returned during that period, we will either be able to purchase the practice under the terms and conditions as if you died (see above), or terminate our services. We will not continue servicing your clients after one year of our commencement of services.
15. After we stop servicing your clients in accordance with this agreement, and in the event that some of your clients wish us to continue as their accountants, we agree to pay you 150% of what we would have paid you had you died and we acquired this client for a period of five years, with the following exceptions: The five year payment will be based on billings and eventual collection during the first year and then that amount will become fixed and payable for the remaining four years regardless of whether the client is retained for that full period. If the client is not retained, the payments will be made monthly during the remaining period.
16. During the period of disability or your inability to practice we will have access to the business telephone numbers, email addresses, websites and social media names and addresses. If the transfer to us becomes permanent, then we will acquire ownership of them in accordance with the provision under the transfer because of death.

Tax treatment of payments

17. With respect to death, all payments will be for the acquisition of the practice and will be treated as an installment sale of the practice with an estimate made of the full payment based on 80% of the fees collected by the decedent during the last full calendar year preceding their death.
18. The buyer will treat the payments as payment for the acquisition of a Section 197 intangible asset and will amortize it over 15 years. The gross purchase price will be the amount calculated in accordance with the preceding paragraph.

19. At the earlier of the completion of five years after the sale, or when the aggregate payments exceed the initial purchase price, the buyer will include the extra payments as additional cost of the practice, and will add that amount to the unamortized purchase price and will amortize the new amount over the remaining period. The seller will treat the extra payments as capital gain in the tax year payments are received.
20. No interest will be included in any payments, nor will interest be imputed.
21. Both parties will prepare IRS Form 8594 and jointly agree to the amounts reflected on the form.
22. Payments with respect to disability or inability to practice will be treated as nonemployee compensation and deductible as such by the payer, and income by the disabled accountant.

General provisions

23. This agreement is not to be construed in any sense to constitute a partnership agreement between us, or between your estate and us.
24. This agreement will in no way confer any responsibility upon us for any work done before we took over.
25. This agreement is fully transferable by us should we merge or in any other way change our practice.
26. This agreement is not to be construed as a sale or transfer of your practice under any circumstances other than death or temporary disability or inability to practice as described above. Nothing herein shall prevent or prohibit you from retiring or selling your practice prior to your death or temporary disability or inability to practice, or making any other arrangements that you may wish.
27. This agreement is cancelable by either party at any time for any reason.

Designated heirs

For purposes of this agreement and payment, the designated heirs are _____ and _____. Payments will be made to them equally.

If the above meets with your understanding, please sign a copy of this letter and return it to us. If you have any questions, please do not hesitate to call.

Cordially,

INSTRUCTIONAL LETTER TO ACCOMPANY ABOVE LETTER

Dear _____,

In connection with the agreement we signed today, following are some suggestions that could facilitate the transfer, should it need to be.

Nothing will be given to us unless the terms of the agreement are activated, and then the following should be provided as quickly as possible. Having this information available for your spouse or heirs to easily access is essential to a successful transfer or continuation of your practice.

1. You should prepare a list of every client including the contact person, their telephone number and full type and frequency of service with the fees charged and other billing information.
2. It would be helpful to have your billing and collection information available for the previous year.
3. We need a list of passwords used by you in every case that they have been used including e-mail accounts.
4. The location of current and old files for your clients.
5. Any special client requests – such as the way, frequency, manner or form they want information; whether they only want e-mails, or no faxes, or visa versa; whether they hate extensions or only want extensions; financial planning or estate, succession or retirement planning desires; family issues; or anything else that will help us retain and better serve the client.
6. A schedule of fees due you either billed or unbilled, and work in progress, or where these are maintained in your accounting system or records
7. Since timeliness is of the essence, it would be necessary for us to contact each client as soon as possible. We should meet with your wife, or family, and discuss how this procedure will occur, but if it appears that will cause a delay in our calls, we will proceed as quickly as we feel necessary.
8. It is important for your spouse and/or family to be aware of this arrangement and to understand the importance of it to them and how it will work. You should discuss it with them, and if you wish, we would like to be present when this is done.

If you have any questions or comments, please do not hesitate to call.

Cordially,

ABOUT THE AUTHOR

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Edward Mendlowitz is a partner in Withum Smith + Brown's New Brunswick, NJ, office and has over 40 years of public accounting experience. He is a licensed certified public accountant in the states of New Jersey and New York and is accredited by the American Institute of Certified Public Accountants (AICPA) in business valuation (ABV), certified in financial forensics (CFF) and as a personal financial specialist (PFS). Ed is also admitted to practice before the United States Tax Court and has testified as an expert witness in federal and state court regarding business valuations, and twice at the House Ways and Means Committee on tax reform, fairness and reduction.

A graduate of City College of New York, Ed earned his bachelor of business administration degree. He is a member of the AICPA, the New Jersey Society of Certified Public Accountants (NJSCPA) and the New York State Society of Certified Public Accountants (NYSSCPA). In addition, Ed was a founding partner of Mendlowitz Weitsen, LLP, CPAs, which merged with WS+B in 2005. Currently, he serves on the NYSSCPA Estate Planning Committee, and was chairman of the committee that planned the NYSSCPA's 100th Anniversary. The author of 19 books, Ed has also written hundreds of articles for business and professional journals and newsletters. He is the contributing editor to the Practitioners Publishing Company's 706/709 Deskbook, and the AICPA's Management of an Accounting Practice Handbook, Corporate Controller's Handbook and Wiley's Handbook on Budgeting and is on the editorial board of Bottom Line/Personal newsletter and the Journal of Accountancy Member Panel on Business Valuation. Appearing regularly on television news programs, Ed has also been quoted in numerous major newspapers and periodicals in the United States. He is the recipient of the Lawler Award for the best article published during 2001 in the Journal of Accountancy.

Ed is a frequent speaker to many professional and business groups, including the AICPA, NJSCPA, NYSSCPA, American Management Association, the National Committee for Monetary Reform, University of Medicine and Dentistry in NJ and many more. For 11 years, he taught courses on financial analysis, corporate financial policy and theory, monetary and fiscal policy and managerial accounting in the MBA program at Fairleigh Dickinson University.

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