



PRACTICE BRIEFING

Closing down or selling a law firm

INTRODUCTION

There are a variety of reasons why a firm might close, merge with another firm, or be sold. These include retirement, incapacity, lifestyle or career change or dissolving of the partnership.

There are some regulatory and procedural requirements when a firm is closing down, merging or being sold. Forward planning will assist with the process. The information in this Practice Briefing is not exhaustive, and we recommend seeking your own legal advice.

COMMUNICATION WITH CLIENTS

Communicate your plans to the affected clients promptly so that they can decide whether they wish to stay with any new structure or instruct another firm. In some situations the firm may have to make arrangements for another firm to take on any remaining clients.

Consideration should be given as to whether public notices about a firm closure or merge would be of assistance to the public in local publications and to the profession in NZLS publications such as *LawTalk* or local branch e-bulletins.

COMMUNICATION WITH STAFF

All staff should be notified of the intentions as appropriate. Staff entitlements such as unused annual leave, long service leave and redundancy payments may need to be considered. If there is a new employer, new contracts may need to be entered into.

SOCIAL MEDIA

Remember to close down any social media presence the firm may have, including the website, and to update any LinkedIn, Twitter or Facebook etc profiles.

ADVISING THE LAW SOCIETY

Regulation 11 of the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 (Practice Rules) requires every lawyer to disclose to the Law Society, as soon as practicable, of

any changes, so that the Law Society may fulfill its obligation to keep the Register of Lawyers accurate and up to date.

INCORPORATED LAW FIRMS

If the practice is an incorporated law firm then the Companies Office should be notified of any closure. Provided the firm is not in financial difficulty or insolvent, it can be deregistered through a members' voluntary winding up or by application for voluntary deregistration.

ADVERTISING THE SALE OF A PRACTICE

To reach a number of potential purchasers, the sale of the practice may be advertised through local branch e-bulletins, LawTalk or LawPoints. For information regarding this, please email the Law Society Communications Team by emailing: advertising@lawsociety.org.nz

VALUING A PRACTICE

Various accountancy and consultancy firms specialise in the valuation of law firms. Lawyers who may be considering the sale or purchase of a practice are advised to engage a suitably qualified professional.

SOME FINANCIAL MATTERS

The following matters should be considered:

- » Terminate or retain insurance cover for liabilities after closedown.
- » Make arrangements to dispose of unused letterhead, business cards, or compliment slips, etc.
- » Review the amount of work in progress (WIP), how and by when it will be completed.
- » Invoice all completed WIPs.
- » Follow up all overdue accounts for fees.
- » Ensure that a full system back-up is undertaken.
- » Consider whether any leases have been or need to be varied/terminated where appropriate in relation to office space, communications equipment and computers etc.
- » Consider whether the IRD has been notified re GST, PAYE, RWT and FBT.
- » Make arrangements to dispose of any assets the firm may have.
- » All bank accounts including IBDs should be closed down, or if the account is being retained as a business account then re-designated accordingly.
- » Any trust account must have a \$0 balance before being closed.
- » Update any register of assets.
- » Consider staff entitlements

POWER OF ATTORNEY (SOLE PRACTITIONER)

An attorney may step in for a number of reasons as set out in clause 7 (a) - (h) and clause 8 (a) to (h) of Schedule 1 of the Lawyers and Conveyancers Act 2006 (LCA). The power of attorney (POA) does not terminate by reason of death of the donor or by the donor becoming of unsound mind. When active the responsibility for reporting falls to the donee under the power of attorney as required by s 44 of the LCA.

Where the disposal of a practice is as the result of the death of a sole practitioner the donee under the POA should speak to the executors/trustees of the estate to determine how the disposal of the practice should proceed.

The donee's actions are covered under clause 9(1) of schedule 1 of the LCA.

For more information see sole practitioner powers of attorney guidelines on www.lawsociety.org.nz/_data/assets/pdf_file/0003/47982/SP-PoA-for-website-APRIL-2013.pdf

PRACTISING CERTIFICATES

If a lawyer decides to cease practising, they may choose to surrender their practising certificate and apply to the Law Society for a pro-rated refund once the practice is closed.

Associate membership may be available for those who wish to remain involved with the legal profession.

CLIENT FILES AND DEEDS

The practitioner must consider client confidentiality and authority at all times when transferring client files, monies or storing files. Archiving closed files is a cost of closure and you need to manage any archiving services to ensure that closed files are archived and destroyed appropriately.

It is recommended that a detailed record be kept of which files and deeds are transferred, and that the NZLS Registry is advised of where the documentation is held so that any future queries can be answered. Client authority is needed to transfer files and deeds to another lawyer.

For guidance regarding what documents should be retained and for how long after the instruction to act has ceased, please refer to lawsociety.org.nz/_data/assets/pdf_file/0003/2883/opinion-ownership-retention-of-records.pdf.

PROFESSIONAL INDEMNITY INSURANCE

Insurers or brokers need to be promptly informed in relation to any Professional Indemnity Insurance policy. Consideration should be given to the amount of runoff insurance (provides liability coverage against firms that have closed, merged or been sold) that may be appropriate.

The practitioner needs to remain clear over what matters remain covered and when the period of cover ceases.

POST CLOSURE

If you have surrendered your practising certificate, you must take care not to practise in the areas of law reserved for lawyers or call yourself a lawyer while tying up loose ends. Submitting an application for registration in respect of a client's matter, would be classed as practising which may be an offence under the LCA. Refer to s 6 regarding the reserved areas of work, and s 21 regarding what you cannot call yourself. If in doubt check with the Law Society.

UNDERTAKINGS

Former lawyers remain responsible for any undertakings given when in practice, so any undertakings should be discharged wherever possible. The lawyer remains liable unless the recipient(s) releases them from the undertaking.

CONTINUING TRUSTEESHIPS

If you have been acting as a personal representative or trustee, then following the closure of the practice, you will need to consider whether you should continue to act in a personal or professional capacity or at all.

To continue to act in a professional capacity you will need to continue to hold a practising certificate and practise through an authorised structure. To act in a private capacity you will need to:

- » Ensure that you do not call yourself any of the titles restricted under s 21 of the LCA;
- » Notify all parties involved and inform them that you will no longer be undertaking the work as a lawyer and the consequences of that; and
- » Explain to all parties the effects of ceasing to be a practising lawyer, particularly the position regarding professional indemnity, and charging as a professional trustee or executor.

TRUST ACCOUNTS

Whether closing a practice with a trust account or just closing down the trust account, it is important you undertake several key steps in order to comply with the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (Trust Account Regulations) and the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008.

The responsibility falls to you to advise the New Zealand Law Society. This must happen within two weeks of the event occurring; but earlier notification is encouraged.

You must:

- » Notify the NZLS Registry via email (see below) with the intended date of closure (Regulation 18 (1) (d) of the Trust Account Regulations).
- » Reconcile the trust account and any interest bearing deposit (IBD) accounts up to the date of closure.

- » Complete a full back up of the accounting records at that date.
- » Effect closure of all trust bank accounts and IBD accounts at the due date and issue final RWT certificates as required.
- » Refund credit balances to clients.
- » Destroy any unused trust account cheques or return them to the bank, keeping a note of the numbers.
- » Provide to the NZLS Inspectorate a letter from the bank confirming the date that the trust account was closed.

Regulation 15 (1) of the Trust Account Regulations requires that if a practice ceases to provide regulated services the practice must immediately:

- (a) Deliver all unused trust account receipt forms relating to the practice to the relevant society or dispose of them as directed by that society; and
- (b) Ensure all trust accounts are closed and all money in them is paid to persons entitled; and
- (c) If it generates receipt forms electronically, take appropriate steps to ensure that no further trust account receipts are generated.

Even if there is a nil balance, there may be a requirement for the trust bank account to be held open for a period of time to collect debtor monies payable by automatic direct credit (only). In these circumstances the practitioner must continue in the role of the Trust Account Supervisor. You may wish to approach the bank to change the designation to a normal practice account or to advise clients of a change of bank account number for continuing payments.

Monthly/quarterly trust account certificates will need to continue to be filed. A final monthly/quarterly certification should still be submitted for any part month when the trust account is closed. Notification should be given to the Law Society when the account is finally closed.

Any dormant or stale client balances remaining must not be taken as fees.

Ensure client authorities exist or are obtained to disburse monies from the trust account. Disburse all client funds to the relevant clients, or if unable to locate the clients, remit the funds to the IRD, under s 337 LCA, as unclaimed monies after appropriate and exhaustive inquiries have been made.

Unclaimed Monies
Inland Revenue Department
PO Box 38 222
Wellington Mail Centre

TRUST ACCOUNT RECORDS

Regulation 11(5) of the Trust Account Regulations requires that all trust account records are to be retained for a period of at least six years from the date of the last recorded transaction in the trust account.

EXIT REVIEW

The Law Society Inspectorate must be advised of the decision to close the trust account and will need to carry out an exit review. The Inspectorate will decide whether an exit review is required in person at the firm's premises or completed through relevant records being provided.

Practitioners need to ensure all prime records are complete and up to date.

IN SUMMARY

This Practice Briefing has provided some guidance to assist in the closing down or selling of a law firm to make the process smoother for the firm, the public and other members of the profession. If you have any queries regarding this information, contact the Law Society Registry via email at registry@lawsociety.org.nz or phone Registry on 0800 22 30 30 during normal office hours.

NEW ZEALAND LAW SOCIETY

Law Society Building
26 Waring Taylor Street
WELLINGTON 6011

PO Box 5041
Lambton Quay
WELLINGTON 6145

(04) 472 7837

Information in the Practice Briefing series is provided by the Law Society as a service to members. This briefing is intended to provide guidance and information on best practices. Some of the information and requirements may change over time and should be checked before any action is taken.

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