

Practice Continuation Planning – Your Legacy for Others

When a sole proprietor or a partner in a small-sized firm unexpectedly becomes temporarily or permanently incapacitated or passes away, the Institute's Practice Advisors receive calls from family members and employees, as well as potential successors for the practice, wondering what to do. These individuals are left to respond to clients who are concerned about their looming deadlines and want access to their files. In many cases, family members are too distraught to deal with clients' concerns.

This is why it's imperative to put a practice continuation plan in place well in advance of any potential problems (such as temporary/permanent incapacitation or premature death). A practice continuation plan will help retain the value of the practice, protect clients' interests, and reduce stress on family members and employees. This article, while not all-encompassing, is intended to help sole practitioners and partners of small-sized firms develop a practice continuation plan. To help plan for unexpected scenarios, it would be prudent for practitioners to provide a copy of this article now to family members and or an executor/trustee.

The steps below should be considered when developing a practice continuation plan.

Step 1: Identify scenarios that could arise

A practice continuation plan would be very helpful in the following two scenarios. If no plan is in place, then the custodianship scenario would arise.

Temporary Work Arrangement

An associate is required to help run a practice on a short or long-term basis because the sole practitioner or partner of a small firm is expected to recover and will be returning to the practice at some point in the future.

Permanent Work Arrangement

A successor is required to take over the practice because a practitioner is unable to return to work or dies. In this article, the term 'successor' is defined as a member/individual who will either purchase the practice or assist in selling the practice to another practitioner.

Custodianship

If there is no plan in place for a successor or an associate to take responsibility for the CA's files when a practitioner becomes incapacitated or dies, the practice may end up in unforeseen hands. For instance, if the practitioner dies, it would fall to the administrator of the estate (or, failing that, the public trustee) to find a responsible CA to act as a custodian of the practice. If it appears no one can or will take responsibility for the practice, the Institute does have the power, pursuant to the *Chartered Accountants Act, 2010*, to apply to the court for a custodianship order and become the custodian of the practice. In those circumstances, the Institute puts the clients' interests ahead of those of the practice – and of any beneficiaries.

Step 2: Identify an interim and/or permanent successor to operate your practice

A practitioner should consider employees or associates in order to identify a potential successor who can step in and operate the practice with little or no notice. A practitioner can find a potential successor in a number of ways, including:

- Choosing a staff member. This person is probably the best fit as the employee would have already established relationships with clients, thus providing a smooth transition.
- Finding a close associate in the community who has a similar approach to running a practice and serving clients. (Confidentiality considerations are covered below).
- Establishing a relationship with a local or national firm. A practitioner can refer to the Institute's CA Firm Directory to locate firms in their community. The directory can be found in *Find a CA Firm*, within the *Serving the Public* section of the Institute's website at www.icao.on.ca.
- Contacting a broker who specializes in finding buyers for public accounting practices.

Finding a successor will take some time, so it is advisable that practitioners do so before the need arises. In the situation where the practice of a deceased practitioner is being sold or wound up, potential successors are required to provide the executors with a reasonable opportunity to arrange for the transfer of clients to another member or firm. However, as noted in the Council Interpretation to Rule of Professional Conduct 217.2 (CI RPC 217.2), *Solicitation*, in the *Member's Handbook*, in "some cases, clients may require immediate service and may not be able to await the orderly disposal of the practice." (CI RPC 217.2 can be found at *Member's Handbook – Council Interpretations* in the *Resources* area of the Institute's website at www.icao.on.ca). Not planning ahead for this possibility may ultimately impact the value of the practice.

Step 3: Summarize information about the practice

Having up-to-date information about the practice readily available will expedite negotiations with a potential successor, and will also help someone stepping in temporarily. The following list of information is not all-inclusive and should be tailored to the specific practice:

- A description of the types of clients by service category (e.g., audits, reviews, compilations, tax work, consulting).
- A description of specialty services, if applicable.
- A list of clients, including length of service and details of comparative fees for at least a three-year period, including recovery rates.

- A fee schedule by major category, covering hourly rates, fixed-fee arrangements, retainers, etc.
- Information regarding employees, including compensation, roles and responsibilities, length of service, emergency contact information, etc.
- Copies of employment contracts, non-competition agreements and other relevant agreements.
- A list of furniture and fixtures and copies of existing leases for premises and equipment.
- Copies of insurance policies.
- Copies of the firm's financial statements for a three-year period.
- A current policies and procedures manual, including the record retention policy and key contact information.
- Information on how to access current passwords and related security information.

Before any information about the practice is released, a confidentiality agreement should be signed.

Step 4: Draft a Practice Continuation Agreement

A Practice Continuation Agreement ("Agreement") should be drafted and reviewed by legal counsel.

At a minimum, the following items should be addressed in the Agreement:

- The effective date of the Agreement or details of a future event (such as the practitioner's death and/or incapacitation) that will trigger the Agreement.
- A description of the financial arrangements:
 - Remuneration for temporary operation of the practice; and/or
 - Sale price of the practice and payment schedule.
- Confidentiality considerations, to prevent a successor, interim associate or custodian from inappropriately using information.
- A description of the successor, interim associate, or custodian's responsibilities, including how work in progress should be billed and how receivables should be collected.
- A statement directing staff how and when to release files to the successor, interim associate or custodian.
- A non-competition agreement that will be effective in the event of a practitioner's recovery or sale of the practice to an individual other than the custodian.
- Arrangements to be made to ensure that professional liability insurance coverage will still be effective and will cover claims clients could file against the successor or interim associate or custodian, as well as arrangements for discovery policies, as appropriate (if the practitioner is no longer practising public accounting).

- A description of how potential conflicts between the executor of a practitioner's estate and the custodian or successor or interim associate of the accounting practice will be resolved, including a description of situations where arbitration may be necessary, and whether arbitration will be binding.
- Identify executors and those who have powers of attorney to act on behalf of the practitioner, if incapacitated.
- A provision to protect the practitioner's employees. This could include a clause to require certain employees to continue to be employed or to receive a payout.
- A listing of outstanding client commitments that has been regularly updated, and any other practice commitments.
- Documentation confirming that the practitioner has notified their lawyer, banker, senior staff members, etc., that the Agreement exists.
- Sample client notification letters that will be sent to clients if the Agreement is executed.

Step 5: Draft client notification letters

Client notification letters should be drafted to cover the various scenarios contemplated. Timely communication will help reassure clients that their needs will be taken care of, so that they are not as inclined to look for a new accountant. Client retention is very important as it will ultimately impact the value of the practice if it is sold.

Client notification letters will help reassure the client and should include the following:

- A description of what has happened to the practitioner to make this communication necessary (e.g., emergency, death).
- A statement of how long the absence is expected to last.
- A description of the practice continuation arrangements that have been made, including contact information for the successor or interim associate or custodian.

Additional Resources:

The following resources may be helpful:

- "Practising Succession Planning" article published in *CAMagazine* (August 2005). This can be found under the *Archives CAMagazine* section of the *News* area of the CICA's website at www.cica.ca.
- "The Succession Planning Toolkit" published by the CICA, which can be purchased at www.knotia.ca.
- Courses listed in the Institute's *Professional Development Catalogue* regarding succession planning, which can be found in the *PD Catalogue* section of the *Professional Development* area of the Institute's website at www.icao.on.ca.
- The Institute's Practice Advisory service: 416- 962-1841, ext. 456 or 1-800-387-0735, ext. 456 or e-mail at practiceadvisory@icao.on.ca.