



Law Firm Succession: Secrets to a Successful Transition or Sale of a Law Practice

May 20, 2015

Embassy Suites
CARY, NC

Law Firm Succession: Secrets to a Successful Transition or Sale of a Law Practice

TABLE OF CONTENTS

Page	
2	■ Agenda
3-4	■ Panelists for Law Firm Succession Program
5-6	■ Insurance Considerations When Buying or Selling a Law Firm
7-26	■ Challenges of Selling Your Practice (Ethics)
	■ Buying and Selling Checklists
27	• Does Your Law Practice Have Value?
28	• How Prepared Is Your Practice?
29	• Confidential Seller Information
30	• Confidential Buyer Information
31-34	• Checklist for Selling a Law Practice
35-38	• Checklist for Buying a Law Firm
39-41	• Checklist for Transitioning Leadership in a Law Firm
42	■ Notes
43	■ Evaluation

Law Firm Succession: Secrets to a Successful Transition or Sale of A Law Practice (Applied for 3.5 hours of CLE Credit)

- 9:00 – 9:15 Introduction to Selling Your Law Practice**
Will Graebe, Lawyers Mutual
- 9:15 – 10:15 Goals of a Successful Transition**
*Rachel Blunk, Sharpless & Stavola, P.A.; Gordon Grimes, SunTrust Bank; and
Natalie Smailes, SunTrust Bank;*
- 10:15 – 11:00 Challenges of Selling a Practice**
Rachel Blunk, Sharpless & Stavola, P.A.
- 11:00 – 11:15 Break**
- 11:15 – 12:15 How to Find or Groom a Potential Buyer**
*Julie Beavers, Campbell Law School; Tom Lenfestey, The Law Practice Exchange;
and Chris Vaughan, Firm Transitions and the EBOSS Group*
- Who Should Do the Negotiating - Consider a Broker**
Cindy Anderson, thinc and Tom Lenfestey, The Law Practice Exchange
- 12:15 – 1:00 Networking Lunch**
- 1:00 – 2:00 How to Value a Law Practice**
Cindy Anderson, thinc and Anna Townsend, Cherry Bekaert
- 2:00 – 3:00 What is the Process? Determine the Transition Plan**
*Cindy Anderson, thinc; Tom Lenfestey, The Law Practice Exchange; and
Anna Townsend, Cherry Bekaert*
- 3:00 – 3:15 Break**
- 3:15 – 3:45 Motivating Factors Affecting Successful Transitions**
*Cindy Anderson, thinc; Tom Lenfestey, The Law Practice Exchange; and
Chris Vaughan, Firm Transitions and the EBOSS Group*
- 3:45 – 4:30 How to Transition Leadership within a Law Firm**
*Julie Beavers, Campbell Law School; Tea Hoffmann, Law Strategy Corp., LLC and
Camille Stell, Lawyers Mutual*
- Insurance/Risk Management Considerations**
Camille Stell, Lawyers Mutual

Panelists for Law Firm Succession Program

May 20, 2015 – Embassy Suites, Cary

Cindy Anderson, Managing Partner, thinc, – Cindy founded Thinc Strategy to help business leaders and their management teams increase their corporate value. She has owned five businesses, selling three of those businesses. She has also guided over 100 clients in the past 15 years in growing their value, with many selling for a higher premium. She specializes in leadership and financial management for growing exceptional teams from the CEO on down. She understands what it takes to start, manage, grow, lead and transition businesses successfully. cindy.anderson@thincstrategy.com; Phone: 888-501-3216

Julie Beavers, Director of Career Services, Campbell Law School – Julie has spent her 20+ year legal career recruiting for the law firm Womble Carlyle, the accounting firm RSM McGladrey and now heads up career services at Campbell Law. She currently serves on the NCBA Transitioning Lawyers Commission and is president of the Triangle Area of Legal Recruiting Professionals. Julie has also worked with a recent graduate and a retiring lawyer in the sale of a law firm. beaversj@campbell.edu; Phone: 919-865-5894

Rachel Blunk, Esq., Sharpless Stavola – A Chicago native, Rachel graduated from Gustavus Adolphus College in Minnesota with a B.A. in Classics, and obtained her law degree from UNC-Chapel Hill and joined Sharpless & Stavola in 2015. She practices both civil litigation and business law. In her litigation practice, she handles business disputes, like breach of contract actions, intellectual property disputes, and enforcing and defending non-compete covenants. In her transactional practice, she focuses on closely held corporations, particularly intellectual property, government contracting and employment issues. Ms. Blunk frequently speaks and writes on a variety of topics, including legal issues facing the LGBT community in NC. rmb@sharpless-stavola.com; Phone: 336-333-6380

Will Graebe, Esq., Lawyers Mutual– Will is the Vice President of Claims at Lawyers Mutual where he manages a department of 6 claims attorneys involved in offering risk management advice, repairing potential malpractice claims and resolving active malpractice claims. willg@lawyersmutualnc.com; Phone: 919-677-8900

Gordon Grimes, II, SunTrust Investment Services, Inc. – A native of Roanoke, VA Gordon graduated from Bluefield College and Duke University. He is a Private Financial Advisor with SunTrust Private Wealth Management and earned the professional designation of Certified Financial Planner. He has more than 20 years of wealth management experience, utilizing a team of specialists in investment management, financial planning, credit, business succession, liquidity management and estate strategies. gordon.grimes@SunTrust.com; Phone: 919-785-3589

Tea Hoffmann, Esq., Law Strategy Corp, LLC– Tea is the Managing Principal for Law Strategy Corp, providing strategic planning resources and in-person training on various topics. As a lawyer who has practiced in a firm, served as a GC for a publicly traded company, acted as a CBDO at an AmLaw 100 and Chief Strategy Officer at an AmLaw 200 firm, she understands how hard it is to create "sustainable" change. Tea is a member of the National Speakers Association, the National Association of Professional Women and serves as Senior Trial Counsel for the Tennessee Army National Guard. teahoffmann@lawstrategycorp.com Phone: 615-330-5129

Tom Lenfestey, Esq., The Law Practice Exchange – Tom is the Managing Member of The Law Practice Exchange, LLC as well as a practicing North Carolina attorney. In his legal practice he came to recognize the lack of knowledge, attention and business planning options that were provided to attorneys for their own practices, specifically in the realm of succession planning and other transition or exit opportunities that were regularly adopted and used by other businesses and professions. As a result Tom formed The Law Practice Exchange. The Law Practice Exchange aims to curb this lack of knowledge in the profession by educating and advising attorneys on the number of different options available in the legal marketplace and also serving as a confidential broker and advisor to seek and provide connections for those right opportunities between an exiting attorney and a growth-focused attorney or firm. tom@thelawpracticeexchange.com; Phone: 919-789-1931 www.TheLawPracticeExchange.com

Natalie R. Smailes, Client Advisor & Senior Vice President, SunTrust Private Wealth Management – Natalie is a native of Columbus, Ohio and is a graduate of Furman University with an Economics degree. She offers clients more than 25 years of wealth management experience. She provides holistic wealth management services through comprehensive financial planning; to include retirement cash flow, risk analysis, tax planning and estate issues. natalie.smailes@SunTrust.com; Phone: 919-785-3587

Camille Stell, Lawyers Mutual – Camille is the Vice President of Client Services at Lawyers Mutual. She manages the risk management and education effort along with marketing and business development functions. She is also a member of the NCBA Transitioning Lawyer Commission. Camille will make announcements, introductions and moderate the panels. Camille@lawyersmutualnc.com; Phone: 919-677-8900

Anna Townsend, Cherry Bekaert – A Manager with the Valuation Services group at Cherry Bekaert, Anna has extensive experience providing business valuation and financial modeling services. Prior to joining the Firm, Anna held business valuation and modeling roles with both Big Four and regional accounting firms. Anna primarily serves large financial services clients valuing intangible assets, financial assets, and reporting unit/business enterprises. atownsend@cbh.com; Phone: 919-782-1040

Chris Vaughan, Firm Transitions and the EBOSS Group – Chris is the founder of Firm Transitions and the EBOSS Group. He is also a public speaker and business consultant focused on helping attorneys and their firms grow through strategic planning, branding, and improved operational efficiency. He has worked with attorneys in firms of all sizes – from solo practitioners to Am Law 200 firms. chris@firmtransitions.com Phone: 336-383-1007

Insurance Considerations When Buying or Selling a Law Firm

Professional liability coverage is issued on the “claims made” basis instead of the “occurrence” basis like automobile insurance. This means that the policy in effect at the time the claim is made against the insured (not the time of the act/omission occurs) – so long as the alleged act/error/omission occurred after the first effective date of the policy (“prior acts date”) – is the policy that covers the loss. This means that it is very important to maintain continuous coverage in order to have coverage for a claim made in the future based on past actions. For some more information on maintaining coverage you can see the following article:
<http://www.lawyersmutualnc.com/risk-management-resources/articles/maintaining-continuous-coverage>

This topic becomes especially important when buying or selling a law firm. The seller wants to make sure there is a mechanism in place to afford coverage should a claim be asserted in the future based on their actions before selling the firm. The buyer wants to make sure coverage exists for their practice going forward, and would not want to have exposure for liabilities based on situations arising prior to the sale. Both parties have likely entered into or will enter into an Asset Purchase Agreement to define the liabilities of all of the parties, and the buyer has likely set up a new legal entity for the firm going forward (not just a mere name change). The next item would be how to handle the insurance.

The most clean and clear method would be for the seller to terminate their policy at the sale and obtain an Extended Reporting Endorsement to cover future claims based on pre-sale situations. The general information regarding the Extended Reporting Endorsement (“ERE” or “Tail Coverage”) is that it would extend the current coverage levels of your policy in effect now for claims made and reported to your carrier within a defined time period after you terminated your last policy– where the alleged act, error, or omission giving rise to the claim occurred between your prior acts date and the date the policy is terminated. An ERE does not cover against acts/errors/omissions occurring after that date, and an ERE must be obtained within a defined time period after the last policy is terminated.

You would need to refer to your insuring agreement to determine what duration of ERE’s are available to you as it is important to choose one that would offer sufficient coverage against future claims. At Lawyers Mutual, an ERE must be obtained within 30 days of the policy termination (or when the attorney is removed from the policy if it is not a solo practice), and is available with either a 4-year term or an unlimited time term.

With the seller’s side covered, it is now important for the buyer to obtain a new insurance policy to cover both the buyer and the new firm going forward from the date of sale.

As mentioned earlier, professional liability coverage is issued on the “claims made” basis. This creates a situation whereby attorneys can expect to see substantial discounts in their premium for their first year of insured practice in a jurisdiction (measured from the “prior acts date”), which

discount slowly erodes during the following several years. This is due to the industry perception that if the practice has not been insured for a long time in a jurisdiction, the chances of claims being made against the policy are less than many years later when a firm has represented many more clients, any of whom could file a claim.

If there is a situation where the seller is going to remain on with the new firm in a role of partner, associate, or of-counsel, then the seller may need to be added on to the buyer's new policy as well. Such a determination is fairly fact-specific and you should have a discussion with your carrier to determine the best route to take based on everyone's future roles.

In the situation where the buyer was an associate of the seller's firm for a number of years prior to the sale, then the buyer may have multiple options. The buyer may be able to contribute with the seller to purchasing an ERE on the entire prior firm and then starting their prior acts date over with the new firm. Alternatively, the buyer may be able to carry forward their individual prior acts date so that the new policy could cover the new firm and the buyer going forward from the sale and also cover claims against the buyer that arose out of their prior covered work with the seller's firm. Once again, this would be fact-specific and you should have a discussion with your carrier to determine the best route to take.

In all of the other considerations at hand in buying or selling a law firm, it is easy for insurance to become an after-thought. However, it is important to be sure you consider insurance early on and have a plan in place for how to proceed forward. The seller does not want their assets from a newly sold firm to be exposed to liability for matters that could be covered by insurance. Likewise, the buyer does not want to be caught in a matter without coverage, or end up surprised by a claim based on the seller's prior practice.

To avoid potential headaches in the future, be sure to contact your carrier for more information and recommendations to be sure everyone is properly covered both now and in the future.

THE CHALLENGES OF SELLING YOUR PRACTICE

Rachel M. Blunk

Sharpless & Stavola, P.A.
Greensboro, NC

May 20, 2015

Are You Ready?

- Law Firm Owner = Small Business Owner
- You've spent years building this practice. What happens next?
 - Closing the doors
 - Selling
- Does your law firm represent 75% of your net worth?

Prerequisites for Successful Transition Planning – What Needs to be Done?

- Cobbler's Children Problems
- Time
- Profitable Business
- Management Team
- Qualified Team of Advisors

Prerequisites for Successful Transition Planning Requires -

- Efficient Exit Planning Process
- Facilitator to Drive Process and Coordinate, especially when there are multiple owners.
- Comprehensive Written Plan
- Plan for Implementation/Accountability

The Questions

- There are questions you need to consider before undertaking this process...
- What do you want?
- No, really, what do you want?
- Realistically, what do you want?
- Could you get what you want today?

What About You?

- What is Your Plan?
- When do you want to retire?
- How much after tax income do you need?
- Do you have particular charitable goals post-retirement?

The GAP

Where are you now? What's the gap?

- Net worth
- Cash Flow
- Current Value
- Projected Cash Flow

Filling the Gap

- Identify Value Drivers
- Identify Risk
- Specific steps to employ value drivers and mitigate risk

The Gap and Selling Your Practice

- Issues regarding selling your practice often stem from the gap between value drivers and risk.
- What are value drivers?
 - Human Capital
 - Customer Base
 - Product/service offering

Issues with Value Drivers for Small Practices

- Human Capital
 - Management Team
 - Structure
 - BUSINESS OWNER
- Customer Base
 - Diversified Customer Base
 - Financial Health – Accounts Receivable
 - Relational health

Issues with Value Drivers for Small Practices

- Product/Service Offering
 - Vibrant, growing markets in your area
 - Continuous improvement of product/services
- Issues
 - Legal field is relationship based
 - Changes to the market generally
 - Transitioning clients appropriately
 - Real Estate- condition of the building?
 - What about the stuff (computers, etc)? Up to date?

What are the Risks?

- Employees
- Contracts
- Competitive Advantage
- Financial
- Taxes
- Structural
 - Liability Protection
 - Owners' Agreements

Calculating your Value

- Discussions Later On in the Program
- Multiple of Fee Income
- Net Income after Expenses
- Multiple Factors

Finding Buyers?

- INTERNALLY?
- EXTERNALLY?
- SERVICE?

Ethical Issues

- Interplay of Ethics Rules
- Rule 1.17 Sale of a Law Practice (last amended Oct 2014)
- A lawyer or a law firm may sell or purchase a law practice, or an area of a law practice, including good will if the following conditions are satisfied:

(a)

- The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, from an office that is within a one-hundred (100) mile radius of the purchased law practice, **except the seller may continue to practice law with the purchaser** and may provide legal representation at no charge to indigent persons or to members of the sellers family.

TERMINATION OF PRACTICE BY THE SELLER

- 100 mi radius geographic limit
- EXCEPTIONS:
 - **Working for Purchaser**
 - Indigent
 - Family
- OTHER EXCEPTIONS:
 - Unanticipated Change in Circumstances
 - Can continue to work as employee or independent contractor for purchaser to provide
 - Mentoring
 - Smooth transitions

(b)

- The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms
 - Protection of clients whose matters are less lucrative and who might find it difficult to secure alternate counsel.
 - Purchaser MUST undertake all client matters, subject to consent. (Exception = Conflict of Interest)

(c)

- Written notice is sent to each of the seller's clients regarding:
 - (1) the proposed sale, including the identity of the purchaser.
 - (2) the client's right to retain other counsel and to take possession of the client's file prior to the sale or at any time thereafter.
 - (3) The fact that the client's consent to the transfer of the client's files and legal representation to the purchaser will be presumed if the client does not take any action or does not otherwise object within thirty (30) days of receipt of the notice.

Notes on Client Confidences, Consent, and Notice

- Although not required, the commentary recommends placing a notice of the proposed sale in a local newspaper of general circulation.
- What if some of these clients cannot be given of actual notice?

(d)

- If the seller or purchaser identifies a conflict of interest that prohibits the purchaser firm from representing the client, the seller's notice to the client shall advise the client to retain substitute counsel.

(e)

- If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file. In the event that the court fails to grant a substitution of counsel in a matter, that matter shall not be included in the sale and the sale otherwise shall be unaffected.

Court Orders

- If they cannot be given notice, then a court order must be entered authorizing the transfer or disposition. Determinations made by the court
 - Reasonable efforts to locate the client have been exhausted
 - Authorizing transfer of the file is served by authorizing the transfer

(f)

- The fees charged to clients shall not be increased by reason of a sale.
- Existing agreements between seller and client as to fees and scope of work must be honored by the purchaser.

(g)

- The seller and purchaser may agree that the purchaser does not have to pay the entire sales price for the seller's law practice in one lump sum.
- The seller and purchaser may enter into reasonable arrangements to finance the purchaser's acquisition of the seller's law practice without violating Rules 1.5(e) and 5.4(a) (fee allocation provisions). The seller, however, shall have no say regarding the purchaser's conduct of the law practice.

Other Ethical Standards that Apply

- Rule 1.1 – Competence
 - Judgment when choosing a buyer
- Rule 1.7 – Conflicts
 - Obligation to avoid disqualifying conflicts
- Rule 1.0(e) – Informed Consent
- Rule 1.6 – Confidentiality and Rule 1.9 – Duties to Former Clients
- Rule 7.5 – Retention of Firm Name

Confidentiality?

- When negotiating with your buyer, Rule 1.6 still applies
 - Disclosure of information relating to a specific representation of an identifiable client no more violate Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer of mergers between firms, and client consent is not required.
 - Providing any SPECIFIC INFORMATION to your purchaser related to representation requires consent.
 - Prior to disclosure, prior written notice of the potential sale along with identity of buyer must be provided to client.
 - 30 days to decide, if no response, consent is presumed.

Non-Competes?

- Keep in mind Rule 5.6 – A lawyer shall not participate in offering or making
 - A partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after the termination of the relationship.
 - Settlement exception
- Restrictions provided by Rule 1.17 after the sale of a law practice.

Name of Firm and Letterhead

- Can keep the same name subject to Rule 7.5
- On letterhead
 - Retirement or discontinuation of affiliation must be disclaimed on letterhead
 - “of counsel” can be used to show no longer owner but is an employee or contract attorney

Applicability of this Rule

- Sale of a practice by representatives of a deceased, disabled, or disappeared lawyer.
- Admission to or retirement from a law partnership or professional association, retirement plans, and similar arrangements, and sale of tangible assets of a law practice DO NOT = sale of law practice!
- This does NOT apply to the transfers of legal representation between lawyers when it is not part of a sale of a law practice.

The Ethics of Sales to Insiders

- Rules for the sale to insider vs. stranger are different.
- There are advantages to transfers to insiders rather than to a stranger...
- HYPOTHETICALS

HYPOTHESIS 1

- Founding Lawyers have practiced law together for many years. Each Founding Lawyer is a shareholder in Dewey Cheatem & Howe Law Firm, P.A., a professional association (the "firm"). The firm employs Younger Attorneys who have expressed an interest in taking over the practice from Founding Lawyers. Younger Attorneys **are not currently shareholders in the firm**. Founding Lawyers anticipate retiring from the practice of law at different times over the ensuing years. They are interested in transferring the practice to Younger Attorneys and continuing to practice law as employees of the firm.
- Founding Lawyers are considering two different ways of transferring the firm to Younger Attorneys. By the first method, Younger Attorneys would make sizable **capital contributions to the firm in exchange for shares in the firm and the firm would, in turn, redeem the shares of Founding Lawyers**. Under Rule 1.17(a) of the Revised Rules of Professional Conduct, a lawyer who sells a law practice is required to "[cease] to engage in the private practice of law in North Carolina." If the firm is transferred to Younger Attorneys by this method, will Founding Lawyers be required to cease to engage in the private practice of law in North Carolina?

ANSWER

- No. Rule 1.17 applies to the sale of an entire law firm to a purchasing lawyer or law firm. The rule does not apply to the transfer of shares of a professional corporation to existing employees of the firm in exchange for capital contributions to the firm.
- The rule is intended to protect clients from breaches of confidentiality, conflicts of interests, and other abuses that may occur when a lawyer who is not a current member of a law firm purchases the good will of the law firm. **Therefore, the sale of all of the shares of a professional association of lawyers to a lawyer who is not a member of the firm or a law firm that includes principals who are not members of the firm is subject to the requirements of the rule.**

HYPO 2

- In the second method of transferring the firm to Younger Attorneys under consideration, the Younger Attorneys will form a new professional association and own 100% of the stock of the new professional association. The new professional association will purchase substantially all of the assets of Dewey Cheatem & Howe Firm including the good will and the right to use the name of the firm. **If the firm is transferred to Younger Attorneys by this method, will Founding Lawyers be required to cease to engage in the private practice of law in North Carolina?**

Answer

- Although structured like a purchase of assets by a third party, the second method of transfer is essentially a retirement plan or "similar arrangement."
- THESE are not governed by Rule 1.17. When the assets of a firm are purchased by a professional association of lawyers who are all current employees of the firm, there is no potential for harm to the interests of the clients of the firm due to conflicts of interests, breaches of confidentiality, or abuse of fee agreements.

HYPO 3

- Is there any ***prohibition against the continued use of the firm's present name***, regardless of the method of transfer used, as long as Founding Lawyers continue as employees of the professional association or, when they leave the firm, they retire from the practice of law in North Carolina?

Answer

- Regardless of the method of transfer employed, there is no prohibition on the continued use of the firm's present name because "...there [is] a continuing succession in the firm's identity...." Rule 7.5, Comment [1].
- As noted in RPC 13, "[a] law firm may continue to include in the firm name that [sic] of a retired attorney who practiced with the firm up to the time of his retirement." **However, the name of a retired principal in a firm "may be used in the name of a law firm only if the [principal] has ceased the practice of law."**

HYPO 4

- Founding Lawyers may finance the purchase of the firm by Younger Attorneys. Regardless of how the purchase is financed, after their retirement, Founding Lawyers want to provide advice and input to Younger Attorneys as to the conduct of the law practice. Will Founding Lawyers assistance to Younger Attorneys violate Rule 1.17(g)'s provision that ***"[t]he seller...shall have no say regarding the purchaser's conduct of the law practice?"***

Answer

- No. Rule 1.17 does not apply to the purchase of a law firm by lawyers who are **currently members of the firm**. Therefore, the prohibition in paragraph (g) of Rule 1.17 is also inapplicable.

In Closing

- Identify your Risks
- Identify your Value Drivers
- What's your Overall Value?
- Think Ahead
- Read the Ethics Rules and Plan your Transition

THE LAW PRACTICE EXCHANGE

THE BUYING AND SELLING OF LAW PRACTICES

Does Your Law Practice Have Value?

Take a quick moment to complete the following questions to consider the value of your practice. Please note that the Revenues or Earnings Methods are guidelines only. In considering the Additional Factors determine how each category would look for your individual practice and whether you feel it would have a positive or negative impact on overall value.

Revenues or Earnings Methods

Average annual revenue over last 3 years (multiply by .5 to 1.2) \$ _____

OR

Average Owner Comp over last 3 years including profit, benefits and salary (multiply by 2 to 3) \$ _____

Additional Factors Which May Impact Value:

Positive or Negative Impact?

- | | |
|---|--------|
| ▪ Positive historical financial performance, growth, and margins? | + or - |
| ▪ Positive stability of revenue stream month-to-month? | + or - |
| ▪ Future expectation of revenue? | + or - |
| ▪ Repeat clients? | + or - |
| ▪ Likelihood clients would remain with practice after transition? | + or - |
| ▪ Depth and breadth of client and referral base? | + or - |
| ▪ Key Personnel likely to remain? | + or - |
| ▪ Geographic location | + or - |
| ▪ Sublet, assignment, and/or buyout options in lease agreement | |
| ▪ Proximity to courthouse | |
| ▪ Office furnishings and decor | + or - |
| ▪ IT, computer, and phone systems | + or - |
| ▪ Office equipment and supplies | + or - |
| ▪ Client management software and proprietary processes | + or - |
| ▪ Overall reputation of firm | + or - |
| ▪ Well-known phone number | + or - |
| ▪ Focus on maintaining ongoing relationships | + or - |
| ▪ Attorney track record, expertise, and reputation | + or - |
| ▪ Marketable brand recognition | + or - |
| ▪ Age of practice | + or - |
| ▪ Emerging area(s) in high demand | + or - |

DISCLAIMER: The information contained herein is for personal informational purposes only and should not be relied upon for any other purposes.

The Law Practice Exchange aims to curb the lack of knowledge in the profession by educating and advising attorneys on the number of different options available in the legal marketplace and also serving as a confidential broker and advisor to seek and provide connections for those right opportunities between an exiting attorney and a growth-focused attorney or firm. Find out more at www.TheLawPracticeExchange.com

© 2014 The Law Practice Exchange, LLC. Reproduction in whole or in part is strictly prohibited.

THE LAW PRACTICE EXCHANGE

THE BUYING AND SELLING OF LAW PRACTICES

How Prepared Is Your Practice?

Take a quick moment to complete the following questions and items.

Introductory Questions:

1. Do you have a law firm closing checklist and knowledge source readily available? Yes/No
2. Do you have information about transition plan in engagement letters? Yes/No
3. Upon what events do you want to consider a transition plan?: _____
4. What are your objectives in transitioning your practice (client service, financial, etc)? _____
5. Do you have a partnership, buy-sell or assumption agreement in place?: Yes/No
6. Do you have a retirement plan and what is your timeline?: Yes/No Timeline: _____

Follow-Up Tasks:

Date to Complete: **Completed:**

_____ []
_____ []

Important Individuals:

1. Assisting Attorney* _____
2. Authorized Signer† _____
3. Transition advisors‡ _____
4. Emergency Response Team§ _____
5. Who knows security codes and passwords to computers and voicemail? _____
6. Who has keys to offices, safety deposit boxes, and storage facilities? _____

Follow-Up Tasks:

Date to Complete: **Completed:**

_____ []
_____ []

Important Things to Have and Keep Current:

- | | |
|---|--|
| <input type="checkbox"/> Time and billing records | <input type="checkbox"/> Staff directory |
| <input type="checkbox"/> List of all of suppliers and service providers | <input type="checkbox"/> Record of your insurance policies |
| <input type="checkbox"/> Office procedures manual | <input type="checkbox"/> Inventory of client matters |
| <input type="checkbox"/> Inventory of key office records | <input type="checkbox"/> Inventory of trust accounts |
| <input type="checkbox"/> Calendar system with deadlines and follow-up dates | |
| <input type="checkbox"/> Inventory of original documents and client property held by firm | |

Follow-Up Tasks:

Date to Complete: **Completed:**

_____ []
_____ []

The Law Practice Exchange aims to curb the lack of knowledge in the profession by educating and advising attorneys on the number of different options available in the legal marketplace and also serving as a confidential broker and advisor to seek and provide connections for those right opportunities between an exiting attorney and a growth-focused attorney or firm. Find out more at www.TheLawPracticeExchange.com. © 2014 The Law Practice Exchange, LLC. Reproduction in whole or in part is strictly prohibited.

* An attorney to make arrangements with to close down your practice or to hand it while you are incapacitated

† A person to authorize as a signer on your lawyer trust account

‡ i.e. CPA, financial advisor, insurance advisor, valuation expert, law practice broker

§ Individuals everyone in the office will listen to for instruction and who can make independent decisions for the firm, coordinate disaster preparations and responses, periodically review disaster plans and make updates if necessary, and make final decisions during emergencies

THE LAW PRACTICE EXCHANGE

THE BUYING AND SELLING OF LAW PRACTICES

Confidential Seller Information

The Law Practice Exchange, LLC is a modern day marketplace for law practices and firms.

Name _____ Date _____
Address _____ City _____ State _____ Zip Code _____
Telephone HM _____ Office _____ Cell _____
Email _____ How would you like to be contacted? _____

TYPE OF PRACTICE: (Place a ✓)

General _____ Concentrated or Specialty _____ Type(s) _____ Partnership _____
Location: _____

Are you considering a direct sale, merger or associate buy-out? _____

Do you want to sell your building/facility? _____ Is it essential to your practice sale? _____
Is your legal team aware of your plans to sell? _____ If yes, how long have they known? _____

TRANSITION TIMEFRAME: Now ___ 6 months ___ 1 year ___ 2 years ___ 3 years ___ 5 years ___ Unsure ___

BRIEF PRACTICE CHARACTERISTICS:

Annual Gross Revenues _____ Annual Net Compensation _____
Associate Attorneys _____ Facility Sq. Ft _____ Age of practice _____
Are you setup on client software? _____ If yes, type of software(s) _____
Other special characteristics: _____

Do you have a transition plan? _____ If no, would you like some assistance with planning? _____
Have you contracted to sell with any other brokerage? _____ If yes, who? _____
Please explain _____

How can we best assist you? _____

I acknowledge that the above information is true and accurate to the best of my knowledge. Must have signature.

Signature _____ Date: _____

*The Law Practice Exchange aims to curb the lack of knowledge in the profession by educating and advising attorneys on the number of different options available in the legal marketplace and also serving as a confidential broker and advisor to seek and provide connections for those right opportunities between an exiting attorney and a growth-focused attorney or firm. Find out more at www.TheLawPracticeExchange.com
© 2014 The Law Practice Exchange, LLC. Reproduction in whole or in part is strictly prohibited.*

www.thelawpracticeexchange.com
(919) 789-1931
info@thelawpracticeexchange.com

THE LAW PRACTICE EXCHANGE

THE BUYING AND SELLING OF LAW PRACTICES

Confidential Buyer Information

The Law Practice Exchange, LLC is a modern day marketplace for law practices and firms.

Name _____ Date _____
Address _____ City _____ State _____ Zip Code _____
Telephone HM _____ Office _____ Cell _____
Email _____ How would you like to be contacted? _____

INTEREST: (Place a ✓)

Associate _____ Practice Purchase _____ General _____
Specialty _____ Type _____
Location: _____

(This must be completed)

PRACTICE CHARACTERISTICS:

Annual Gross Revenues _____ Annual Net Compensation _____
Associate Attorneys _____ Office Sq. Ft _____ Other _____

EDUCATION: Law Degree/s _____

College/University _____ Year Graduated _____

LEGAL EXPERIENCE:

Office/Corporation _____ City _____ State _____

Dates: _____

Office/Corporation _____ City _____ State _____

Dates: _____

Other: _____

Do you have a resume or CV? _____ Please attach it to this form. (Must present with this form)

Are you working with a licensed broker? _____ If so, who or what company _____

FINANCIAL:

Credit status: A+ ___ A ___ B ___ less than B ___ Have you ever declared bankruptcy? _____

Have you been pre-approved for financing? _____ If yes, lender _____

Will you need 100% financing? _____ Do you have access to earnest money for down payment? _____

If necessary, do you have a co-signer? _____ If yes, relationship _____

I acknowledge that the above information is true and accurate to the best of my knowledge. Must have signature.

Signature _____ Date: _____

The Law Practice Exchange aims to curb the lack of knowledge in the profession by educating and advising attorneys on the number of different options available in the legal marketplace and also serving as a confidential broker and advisor to seek and provide connections for those right opportunities between an exiting attorney and a growth-focused attorney or firm. Find out more at www.TheLawPracticeExchange.com

© 2014 The Law Practice Exchange, LLC. Reproduction in whole or in part is strictly prohibited.

www.thelawpracticeexchange.com

(919) 789-1931

info@thelawpracticeexchange.com

Checklist for Selling a Law Practice

Review Your Ethical Responsibilities:

- N.C. Rules of Prof'l Conduct Rule 1.17 (2003) (SALE OF LAW PRACTICE)
(Note: A change is afoot to make selling a law practice more attractive to retiring lawyers. At its meeting on October 25, 2013, the State Bar Council adopted, subject to the Supreme Court's approval, an amendment to Rule 1.17 of the Rules of Professional Conduct governing the sale of a law practice. The amendment would clarify that a lawyer who sells his or her practice to another lawyer may continue to practice law with the purchaser as an employee.)
- 98 Formal Ethics Opinion 6. (Opinion rules that the requirements set forth in Rule 1.17 relative to the sale of a law practice to a lawyer who is a stranger to the firm do not apply to the sale of a law practice to lawyers who are current employees of the firm.)
- Protect client confidences - N.C. Rules of Prof'l Conduct Rule 1.6 (2003).
- Properly handle client files and funds - N.C. Rules of Prof'l Conduct Rule 1.6 (2003); N.C. Rules of Prof'l Conduct Rule 1.15 et seq. (2003);
- Avoid conflicts with purchasing lawyer's existing clients - N.C. Rules of Prof'l Conduct Rule 1.7 – 1.12 (2003).
- Properly terminate representation - N.C. Rules of Prof'l Conduct Rule 1.16 (2003).

Establish your timeline – several years out is optimal.

- Time is your friend – and your enemy!

Engage your team of professionals:

- Law firm management consultants;
- Business opportunity brokers;
- Accountants;
- Valuation experts;
- Marketing consultants;
- Executive search consultants;
- Lawyers.

There are several organizations that credential business valuers, including the National Association of Certified Valuators and Analysts (NACVA), the American Society of Appraisers (ASA) and the Institute of Business Appraisers (IBA).

Consider professionals who focus on or have specific knowledge and experience with assisting law practices in their transitions if possible.

Create a transition plan:

- Develop sales plan – strategies, targets, etc.
- Get your staff on board
- Define your personal goals and desired outcomes
- Finalize preferred transaction terms

Consider your options:

- Groom an associate to take over the practice?
- Develop a relationship with a younger lawyer who is not in your firm?
- Outright sale?
- Merger with another firm or lawyer?

Prepare your law practice for sale - Get your financial and organizational house in order:

Organizational preparation:

- Create systems and processes.
- Create a database of former and current clients.
- Review closed physical files and dispose of files as appropriate and permissible under the Ethics Rules.
- Review and prioritize all open files with emphasis on time-sensitive issues.

Financial preparation:

- Prepare financial statements and have them reviewed by a professional
- Gather federal and state income tax returns for the past five years
- Collect fee schedules, if any, for the past five years
- Accounts receivable listing and current accounts receivable aging schedule
- Notes payable, mortgages (Deeds of trust), etc.
- Leases in effect for the premises and all equipment
- Bank statements, cancelled checks, and bank reconciliations
- Work in progress schedule
- Data on key personnel of the firm who will assist in transition or remain with the firm.
- Insurance policies in effect
- Brochures, if any, about the firm
- Additional relevant documents

Determine the value of your practice. Consider:

- Nature of the practice;
- Recurring business;
- Number of clients and concentration of work in a few clients;
- Likelihood clients (and perhaps staff) will remain with the practice after the sale;
- Stability of the practice's revenue stream from month to month and perhaps year to year;
- Strengths and weaknesses of your practice;
- Overall reputation of the firm.

Valuation Methods:

- Cost or book value method (tangible assets);
- Fair market value method (requires comparable assets – difficult in law firm environment);
- Income or cash flow method (most widely used in law firm environment).

In certain instances seeking the opinion of a legal focused transition professional can assist in valuation. Consider seeking an opinion from a lender, CPA or practice business broker who has experience and specific knowledge of law practice sales and related valuations used.

Create an offering memorandum

Search and seek potential buyers

- Consider a Buy/Sell Agreement or Assumption Agreement with an internal attorney or an outside firm for a potential future buyout or merger
- Use Non-Disclosure Agreements, private and limited listings, and/or third-party brokers to ensure initial confidentiality about the transition is maintained

Sort potential buyers for matches. Consider:

- Ability of new attorney to pay for the practice – obtain financing and note;
- Personality, knowledge and ability of buyer to relate to clients and staff;
- Transition time required of seller after the sale.

Preliminary commitment:

- Due diligence process with commence
- Check for conflicts among all parties to the transaction
- Discuss and finalize a transition plan

Draft a Contract:

- Memorializing the agreements
- Include an Asset Purchase Agreement
- May include a Non-Disclosure Agreement

Notice to clients – Rule 1.17:

- Document receipt of notice by the client. Keep good records of what was sent to whom as well as their responses.
- Get instructions from clients as to how their files should be handled, i.e., transferred to new lawyer, stay with purchasing lawyer, etc.
- Get receipts from clients who pick up their files.

Closing:

- File appropriate pleadings, including motion to withdraw or substitution of counsel for all litigated matters.
- If an outright sale, consider firm dissolution filings with the NC State Bar and NC Secretary of State.
- If a merger or other transition option is used, consider responsibilities and needs to update firm name, addresses, etc.

Post-closing:

- Contact your professional liability insurance carrier for an Extended Reporting Endorsement commonly called “tail insurance.”
- Contact the State Bar concerning “Inactive-Retired” status.
- Notify utilities, phone companies, internet service providers, re: transfer of service date.
- Notify vendors and suppliers of intent to terminate relationship.
- Arrange for transfer or forwarding of mail as appropriate.
- Schedule times to mentor/assist Buyer going forward, if part of the agreement.

Checklist for Buying a Law Firm

Ethics:

- Review NC RPC Rule 1.17 – Sale of Law Practice
- Review 98 FEO 6
- Are there any conflicts between your current/former clients and the Seller's?
- Determine how to notify Seller's clients of change at the firm

Timing – it is a marathon, not a sprint!

- Research the local legal market
- Determine how many attorneys are in the geographic area
- Determine how many attorneys are in your areas of practice
- Is the local population growing, stable, or shrinking (remember, this is your potential client base)
- Begin talks early once you identify a potential firm to purchase and ensure confidentiality is maintained
- Both Buyer and Seller should take their time during the process to ensure a smooth transition by complete disclosure and discussions during the due diligence period

Engage your team of professionals:

- Law firm management consultants;
- Business opportunity brokers;
- Accountants;
- Valuation experts;
- Marketing consultants;
- Executive search consultants;
- Lawyers.

There are several organizations that credential business valuers, including the National Association of Certified Valuers and Analysts (NACVA), the American Society of Appraisers (ASA) and the Institute of Business Appraisers (IBA).

Business profile:

- Are you comfortable with the Seller's areas of practice?
- Do you plan on adding other areas?
- Do you plan on removing areas?
 - If so, determine a referral plan to send those clients to another attorney (you may get referral business in return!)

Location:

- Does Seller own the building or rent?
- If Seller owns, will you purchase it as well or lease it?
- If Seller rents, be sure to discuss terms with the Landlord
- How is parking managed?
 - Adequate spaces for you, staff, clients?
 - Cost of parking?
 - Condition of parking areas?

Personnel:

- Will the Seller stay on as “of counsel” for a year or more to introduce you to the community?
- Will the staff stay and continue to work with you?
- What are the salaries of the staff you will need to pay?
 - Are any benefits provided?
 - Any bonuses?
 - Etc.?

Valuation:

- Contact a CPA or other business valuation professional
- Items that may indicate increased value:
 - Regular repeat business (e.g. small businesses, creditors, etc.)
 - Estates practice where the firm probates most of the wills it drafts
 - Well-known phone number for non-repeat business (e.g. criminal law, personal injury, etc.)
 - Proximity to courthouse
 - Firms that maintain ongoing relationships through a focus on continued client communications
- Some common valuation methods:
 - Cost or book value method (tangible assets);
 - Fair market value method (requires comparable assets – difficult in law firm environment);
 - Income or cash flow method (most widely used in law firm environment)

Asset Purchase Agreement

- Specifically list what is being purchased
- Specifically list whether liabilities will be assumed (generally not assumed)
- Purchase price and funding terms can be listed here

Financing

- Contact several financing sources to determine the best fit, and consider focusing on those that have a law practice focus or experience:
 - Local bank
 - Your personal bank
 - Seller's bank where the firm has its trust account
 - Contact the local Small Business Administration loan officer
 - Is seller financing an option in lieu of or in addition to the above?
 - If so, what would the structure be? (e.g. flat figure, percentage of revenue, etc.)
 - What about the payment terms? (probably will be 5 years or less)

Legal Structure

- What will the name of your firm be?
- Review NCRPC Rule 7.5 – Firm Names and Letterheads
- Will you be a sole proprietor, partnership, corporation, limited liability company, etc?
- Be sure to file the appropriate paperwork with the NC Secretary of State and the NC State Bar
- It is advisable to start a new legal entity rather than change the name of the Seller's entity

Banking

- Research available banks (including where Seller banks) for Trust Accounts and Operating Accounts
- Establish new accounts for your new firm
- Research online banking and online payroll options
- Talk with several banks to ensure you receive the best fit for your needs

Insurance

- Contact your insurance company or agent to determine what coverages you need
- Review Seller's insurance portfolio to determine current coverages
- Common types of insurance needed:
 - Professional Liability Insurance (LPL)
 - Business Owner's Policy (BOP)
 - Worker's Compensation (check regulations on minimum number of employees)
 - Health Insurance
- Other additional types to consider:
 - Dental Insurance
 - Disability Insurance
 - Life Insurance
 - Fidelity Bonds
 - Employee Dishonesty Bonds
- Determine if Seller will be purchasing an Extended Reporting Endorsement on the Seller's professional liability insurance policy (also called "ERE" or "Tail")

Other Service Providers:

- What services does Seller use?
- What services will you continue using? (contact those providers to begin service)
- Which services will you not use? (inform Seller so the services can be cancelled)
- Which other services do you need?
- Make a list of other services that you want (this will be used as a reference tool in the future as revenue increases and needs change)
- Some common services include:
 - Phone, Internet, Cable, Power, Gas, Heating Oil, Copier, Computer, Backup, Technical Support, Temporary Staffing, Fed Ex, UPS, USPS, Mail Metering, Shredding, Recycling, Custodial Services, Plumber, HVAC Servicing Company, Security, Landscaping, Office Supplies, Water Cooler, Coffee, Vending (drinks, snacks, etc.)

Post Closing:

- Set Client and referral meetings with Seller, if permissible
- Schedule times and needs for Seller to mentor/assist you going forward
- Review all systems to ensure they are operating as needed and determine any necessary upgrades or changes
- Contact clients and other practice contacts, referral sources, etc. (possibly with Seller's assistance) to explain the transition and answer questions

Checklist for Transitioning Leadership in a Law Firm

Are you ready to retire?

- Why do you want to leave your practice?
- What do you want to do with your life once you leave?
- Do you want to quit working and retire or start a new adventure?
- Can you achieve the same objective without leaving the practice of law?
- Are you really ready to let it go?

Create an "estate plan" for the practice:

- Prepare client list with all current contact info and status of cases
- Create a file memo with case strategy, outcome planned and tactics anticipated
- Groom a successor within the firm and develop timeframe for transitioning clients
- If there is no partnership agreement that controls the buy-out of your interest, then you'll need to broach the subject for consideration with how to deal with your interest, what the value is, and how to pay for your interest.
- Set up career counseling program to help mentor lawyers into retirement
- Set up alumni clubs for retired partners
- Transition plans should be structured gradually so client and rainmaking responsibilities gradually shift over a period of up to 5 years

Organized client transfer process:

- Create a client profile
- Create a client map (relationships within the client entity)
- Create a matter map (recurring matters, types of matters, potential matters)
- Create a relationship tree (business partners, referral sources, community contacts, potential client targets)
- Create a client service checklist (for each client: how to bill, credit terms extended, how to best communicate)
- Develop an accountability plan for client transfer
- Develop process of including successor in client meetings and communications
- Maintain client contact during transition

Succession plan when selling practice:

- Safeguard clients interest, confidences, and property
- Review and satisfy record keeping responsibilities
- Keep diligent records
- Implement a file retention policy
- Return all client property
- Deal with unearned fees
- Close out trust accounts
- Review all open files
- File appropriate pleadings
- Review closed files
- Update clients contact info
- Retain or store files for specified period

Additional closing responsibilities as business owner:

- Inventory assets and liabilities
- Focus on collecting accounts receivable
- Consider engaging a collection agency
- Review insurance policies
- Assess bank obligations
- Negotiate debt with creditors
- Arrange to terminate lease and storage space
- Consider dissolution of entity
- Take control business assets
- Determine requirements for public notice
- Determine tax requirements
- Notify utility and telecommunications providers
- Notify vendors and suppliers
- File instructions with the post office
- Set moving date

Insurance:

- TAIL coverage
- Personal insurance (home, auto, jewelry, collectibles)
- Life insurance
- Long term care insurance
- Disability income insurance

For more information regarding insurance options, contact Lawyers Insurance (Lawyers Mutual subsidiary) at www.lawyersinsuranceagency.com or 800-662-8843.

Life after retirement:

- Changing careers
- Giving back to the profession
- Self assessment tools (Myers Briggs, Strengthfinders, MAPP Career Assessment)
- Develop an exit strategy planning process
- Develop an individual development plan

Additional resources:

- www.theretiringmind.com
- ABA senior lawyers division www.americanbar.org/groups/senior_lawyers.html
- Planning Ahead: Protecting Your Clients' Interests in the Event of Your Disability or Death
http://files.lm2014.gethifi.com/risk-management-resources/risk-management-handouts/Planning_Ahead.pdf
- Closing A Law Practice: Through Retirement, Moving to a New Firm, or Death of a Fellow Lawyer
http://files.lm2014.gethifi.com/risk-management-resources/risk-management-handouts/closing-a-law-practice-through-retirement-moving-to-a-new-firm-or-death-of-a-fellow-lawyer/Closing_Practice.pdf
- What to Expect When You're Expecting to Retire <http://www.lawyersmutualinc.com/risk-management-resources/articles/from-start-to-finish-what-to-expect-when-youre-expecting-to-retire>
- Retire, Reset or Reinvent? <http://www.lawyersmutualinc.com/risk-management-resources/articles/retire-reset-or-reinvent>
- North Carolina Bar Association Transitioning Lawyer Commission
<https://www.ncbar.org/members/committees/transitioning-lawyers-commission/>
- Osher Lifelong Learning Institute at NC State University
<https://onece.ncsu.edu/mckimmon/divisionUnits/olli/index.jsp>

Of the sessions you attended, please provide an overall rating for each session, and rate the presentation of each:

	Excellent	Good	Fair	Poor
Goals of Transition (overall)	___	___	___	___
Usefulness of information	___	___	___	___
Quality of presentation	___	___	___	___
Knowledge of speaker(s)	___	___	___	___
Comments: _____				

	Excellent	Good	Fair	Poor
Value a Practice (overall)	___	___	___	___
Usefulness of information	___	___	___	___
Quality of presentation	___	___	___	___
Knowledge of speaker(s)	___	___	___	___
Comments: _____				

	Excellent	Good	Fair	Poor
Challenges of Selling (overall)	___	___	___	___
Usefulness of information	___	___	___	___
Quality of presentation	___	___	___	___
Knowledge of speaker(s)	___	___	___	___
Comments: _____				

	Excellent	Good	Fair	Poor
Transition Plan (overall)	___	___	___	___
Usefulness of information	___	___	___	___
Quality of presentation	___	___	___	___
Knowledge of speaker(s)	___	___	___	___
Comments: _____				

	Excellent	Good	Fair	Poor
Potential Buyer (overall)	___	___	___	___
Usefulness of information	___	___	___	___
Quality of presentation	___	___	___	___
Knowledge of speaker(s)	___	___	___	___
Comments: _____				

	Excellent	Good	Fair	Poor
Motivating Factors (overall)	___	___	___	___
Usefulness of information	___	___	___	___
Quality of presentation	___	___	___	___
Knowledge of speaker(s)	___	___	___	___
Comments: _____				

	Excellent	Good	Fair	Poor
Consider a Broker (overall)	___	___	___	___
Usefulness of information	___	___	___	___
Quality of presentation	___	___	___	___
Knowledge of speaker(s)	___	___	___	___
Comments: _____				

	Excellent	Good	Fair	Poor
Transition Leadership (overall)	___	___	___	___
Usefulness of information	___	___	___	___
Quality of presentation	___	___	___	___
Knowledge of speaker(s)	___	___	___	___
Comments: _____				