



The Law Society of  
Upper Canada

Barreau

du Haut-Canada

# The Contingency Planning Guide

**FOR PARALEGALS**

October 2014

Visit *For Paralegals* at [www.lsuc.on.ca](http://www.lsuc.on.ca) or phone 416-947-3315 or 1-800-668-7380 ext 3315

# **THE CONTINGENCY PLANNING GUIDE**

Contingency planning for the operation of the paralegal practice in the event of death, disability or other unexpected periods of absence from the practice should be considered by the paralegal as a means of providing peace of mind for loved ones, clients and employees. This Guide has been prepared to encourage and assist paralegals who are in private practice to make such plans.

## **How to Use This Guide**

The sample documents and other resources contained in this Guide are not intended to provide legal advice. They should be used thoughtfully and adapted by paralegals to suit their own individual circumstances.<sup>1</sup>

This Guide contains the following sample documents and resources.

## **Sample Documents**

- Sample Continuing Power of Attorney for Property Excluding Paralegal Practice
- Sample Continuing Power of Attorney for Property for Paralegal Practice
- Sample Direction for the Release of the Power of Attorney for Property for Paralegal Practice
- Sample Last Will and Testament Clauses
- Sample Paralegal Office Coverage Agreement Between the Planning Paralegal and the Replacement Paralegal

## **Other Resources**

- Planning Paralegal: Steps For Managing Your Paralegal Practice to Facilitate the Task of the Replacement Paralegal
- Checklist for the Replacement Paralegal Who Takes Over the Paralegal Practice of another Paralegal
- Practice Tips – Preparation of a Paralegal Office Procedural Manual

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<sup>1</sup> This Guide is not intended to replace a paralegal's professional judgment or to establish a one-size-fits-all approach to planning for such contingencies. Paralegals should make plans that take into consideration the particular circumstances of their practice including the nature and the locality of the paralegal practice. Subject to the Guide provisions that incorporate legal, by-law or *Rules of Professional Conduct* requirements, a decision not to follow the provisions in the Guide will not, in and of itself indicate that a paralegal has failed to provide quality service. Whether a paralegal has provided quality service will depend upon the circumstances of each case.

- Checklist of Issues to Consider when Preparing Continuing Power of Attorney for Property Documents
- Checklist of Issues to Consider when Preparing Wills
- Article entitled “*Preparing for the Death and Disability of a Paralegal Partner or Shareholder*”<sup>2</sup>

This Guide outlines a number of key steps for paralegals making such plans. The recommended steps differ depending on whether the paralegal is a sole proprietor or is providing legal services in partnership or in a professional corporation with more than one paralegal.

### **Terminology**

The term “sole proprietor” for the purposes of this Guide means a paralegal providing legal services as a sole proprietor, a paralegal providing legal services as a sole proprietor in association with another paralegal(s) or a paralegal providing legal services through a professional corporation of which the paralegal is the sole shareholder.

The term “Planning Paralegal” for the purposes of this Guide means the paralegal who makes arrangements for a Replacement Paralegal to take over the paralegal’s practice and protect the interests of the paralegal’s clients in the event of the paralegal’s death, disability or unexpected absence from practice. The term “Replacement Paralegal” means a paralegal or lawyer entitled to provide legal services in Ontario who takes over the Planning Paralegal’s practice in the event that the Planning Paralegal dies, becomes disabled or is unexpectedly absent from practice.

In preparing their plan, paralegals should seek the advice of a lawyer with expertise in the area and depending on the paralegal’s circumstances, the paralegal may also wish to consult with a financial adviser.

Successful planning for death, disability or other unexpected absences from practice depends upon the existence of a Replacement Paralegal who is willing and able to take over the Planning Paralegal’s practice. Paralegals are encouraged to assist their colleagues and protect the interests of their colleagues’ clients by agreeing to act as Replacement Paralegals if their circumstances permit.

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<sup>2</sup> This article was adapted from an article entitled “*Preparing for the Death and Disability of a Law Partner or Shareholder*” by Rachel Blumenfeld.

## KEY STEPS FOR A PARALEGAL PRACTISING AS A SOLE PROPRIETOR

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If you are a Sole Proprietor consider taking the following key steps when planning for death, disability and other prolonged unexpected absences from your paralegal practice,

### STEP ONE

Choose a Replacement Paralegal and an alternate Replacement Paralegal entitled to provide legal services in Ontario to take control of your practice and protect the interests of your clients in the event of your death, disability or unexpected absences from practice.

### STEP TWO

Discuss with your Replacement Paralegals, the plans that you intend to make and ensure that they are agreeable to assuming the role

*The following are some issues that you may wish to discuss at this time with your Replacement Paralegals:*

- *The role of the Replacement Paralegal (e.g. wind up the paralegal practice or preserve and sell it)*
- *When will the Replacement Paralegal step into your paralegal practice*
- *Compensation for the Replacement Paralegal*
- *The location of your Power of Attorney document, Last Will and Testament and how the Replacement Paralegal will obtain the document when required*
- *The steps that you have taken or will take to facilitate the work of the Replacement Paralegal if the Replacement Paralegal should need to step into your practice*
- *Where the Replacement Paralegal will find information about your paralegal practice if the Replacement Paralegal is required to step into your practice (e.g. the location of an office manual containing information about your practice and key contacts)*

### STEP THREE

Discuss with your bank(s), the bank's requirements to ensure that the Replacement Paralegal can access your trust/general accounts in the event of your death, disability, or unexpected absence from your practice.

### STEP FOUR

Grant a power of attorney for property to the Replacement Paralegal and to an alternate Replacement Paralegal to take control of your paralegal practice and protect the interests of your clients in the event of your disability or unexpected absence from practice.

*We recommend that you consider having separate Continuing Power of Attorney Documents for your personal assets and for your paralegal practice. In this way your Replacement Paralegal will have full power and authority to operate, sell or wind down your paralegal practice, while simultaneously ensuring that control over your personal assets such as your family home and bank and investment accounts remain with your spouse, family member or whomever else you have named as attorney for property with respect to your personal assets. Naming a different person to act as attorney for the personal assets also gives someone other than the Replacement Paralegal (most often a family member or trusted friend) the ability to review the transactions undertaken by the Replacement Paralegal in respect of the paralegal practice, and to negotiate and approve the price and terms of a possible sale of the paralegal practice to the Replacement Paralegal.*

**Resources**

Sample Continuing Power of Attorney for Property Excluding Paralegal Practice .....page 7  
Sample Continuing Power of Attorney for a Paralegal Practice .....page 10  
Sample Direction for the Release of the Power of Attorney for Property for Paralegal Practice .....page 13  
Checklist of Issues to Consider When Preparing Continuing Power of Attorney for Property Documents.....page 36

**STEP FIVE**

Appoint a Replacement Paralegal and a successor Replacement Paralegal as estate trustee for your paralegal practice in your last will and testament.

*We recommend that you consider preparing two Wills, one dealing with assets related to your paralegal practice and the other dealing with all other assets. The purpose of having two Wills is to provide the Replacement Paralegal with full power and authority to operate, sell or wind down the paralegal practice, while simultaneously ensuring that control over personal assets such as a family home and bank and investment accounts remains with the Planning Paralegal's spouse, family member or whomever else the Planning Paralegal has currently named as his or her executor.*

**Resources**

Sample Last Will and Testament Clauses .....page 14  
Checklist of Issues to Consider When Preparing Wills .....page 39

**STEP SIX**

Consider entering into a written agreement with your Replacement Paralegal outlining both your responsibilities and the responsibilities of the Replacement Paralegals

**Resource**

Sample Paralegal Practice Coverage Agreement between the Planning Paralegal and the Replacement Paralegal.....page 18

## STEP SEVEN

Prepare your paralegal practice so as to make the task of your Replacement Paralegal easier.

*You should ensure that your paralegal practice is managed in a way that facilitates the task of your Replacement Paralegal when he or she is required to step into your paralegal practice. In this regard in addition to ensuring that your paralegal practice is managed effectively, you should consider preparing an office manual outlining the procedures and other important information about your firm.*

### Resources

Planning Paralegal: Steps for Managing Your Paralegal Practice to Facilitate the Task of the Replacement Paralegal .....	page 24
Practice Tips - Preparation of a Paralegal Office Procedural Manual .....	page 32
Checklist for the Replacement Paralegal Who Takes Over the Paralegal Practice of Another Paralegal .....	page 26

## STEP EIGHT

Ensure that there are sufficient funds available to the Replacement Paralegal to cover for a period of time office overhead and expenses and if appropriate any arrangements for compensation to the Replacement Paralegal (e.g. unused line of credit if available, life or disability insurance or other arrangements).

**KEY STEPS FOR A PARALEGAL PROVIDING LEGAL SERVICES IN A PARTNERSHIP  
OR A PROFESSIONAL CORPORATION WITH MORE THAN ONE PARALEGAL**

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A paralegal operating as a partnership of paralegals or a professional corporation with more than one paralegal shareholder should deal with the death, disability or other prolonged unexpected absence of a partner or shareholder of the paralegal firm by way of agreement among the partners or shareholders of the firm.

**Resource**

Article entitled "*Preparing for Death and Disability of a Paralegal Partner or Shareholder*" adapted from an article entitled "*Preparing for Death and Disability of a Law Partner or Shareholder*" by Rachel Blumenfeld .....page 42

## SAMPLE CONTINUING POWER OF ATTORNEY FOR PROPERTY EXCLUDING PARALEGAL PRACTICE

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*The following sample form continuing power of attorney for property excluding paralegal practice may be used by paralegals when developing a contingency plan for their paralegal practice in the event of their own incapacity or other disability preventing a return, whether temporary or otherwise, to their paralegal practice. This sample form should be modified to suit the personal circumstances of the paralegal.*

Continuing Power of Attorney for Property made in accordance with the Powers of Attorney Act and the Substitute Decisions Act, 1992, as amended.

**This Continuing Power of Attorney** for property is given by **(NAME OF DONOR)**, of the \_\_\_\_\_ (*insert* "City" or "Town") of \_\_\_\_\_, in the Province of Ontario.

1. I revoke any continuing power of attorney for property previously given by me, save and except for any continuing power of attorney for property which I have executed in connection with the management and disposition of my Paralegal Practice as defined in paragraph 2 below. I declare that this continuing power of attorney for property applies only to my Personal Assets, as defined in paragraph 2 below.
2. For purposes of this continuing power of attorney for property:
  - (a) "Paralegal Practice" means all property, both real and personal, of every nature and kind whatsoever, used in connection with my paralegal practice including without limiting the generality thereof all bank accounts, investments, trust funds, client lists, client property, leasehold interests in any business premises, accounts receivable, goodwill, equipment, software and software licences, intellectual property and passwords and includes my Paralegal Practice Corporate Properties.

<p><i>Delete reference to Paralegal Practice Corporate Properties if no corporations form part of the Paralegal Practice.</i></p>
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- (b) "Paralegal Practice Corporate Properties" means all shares, debt and other interests which I may own in [*name of paralegal professional corporation*], any successor corporation, and any other corporation that owns assets used in the carrying on of my Paralegal Practice or that has employees who are involved in the carrying on of my Paralegal Practice; and
    - (c) "Personal Assets" means all my assets personally owned by me both real and personal of every nature and kind whatsoever save and except for my Paralegal Practice.
3. I appoint **(NAME OF PERSON BEING APPOINTED)** to be my attorney for property in respect of my Personal Assets, and I authorize my attorney to do on my behalf anything in respect of my Personal Assets that I could do if capable of managing property, except make a Will, subject to the law and any conditions or restrictions contained in this document.

If **(FIRST PERSON)** cannot or will not be my attorney because of refusal, resignation, death, mental incapacity, removal by the court or any other reason, I substitute **(NAME OF ALTERNATE PERSON)** to act as my attorney for property in respect of my Personal Assets in place of **(FIRST PERSON)** in the same manner and subject to the same authority as **(FIRST PERSON)**.

*The parties being named in this continuing power of attorney do not have to be the same as the parties named in the continuing power of attorney prepared for the paralegal's paralegal practice.*

4. It is my intention that this document is a continuing power of attorney for property pursuant to the *Substitute Decisions Act, 1992* and may be used during my incapacity to manage property.
5. This power of attorney includes the following powers:
  - (a) I authorize my attorney to exercise all powers in connection with my Personal Assets as I would be able to exercise had I chosen to exercise such powers myself, or had I legal capacity to exercise such powers. This therefore authorizes my attorney to bind, secure information, and execute documents in connection with any Personal Assets in respect of my attorney's dealings with any person. Without restricting the generality of the foregoing, I expressly constitute my attorney as my "legal representative" for the purposes of s.150 (1) (d) and all other purposes of the *Income Tax Act (Canada)*, and authorize my attorney to bind, secure information and execute documents on behalf of my Personal Assets in respect of any matter involving the government of Canada or any institution, such as a bank or trust company, regulated by the government of Canada.
  - (b) I authorize my attorney to delegate any act my attorney may exercise to some other person, and to revoke or suspend such delegation.
  - (c) I authorize my attorney to take physical possession of all of my Personal Assets, including property held in a safety deposit box, property held in safekeeping by others on my behalf, and property held by others subject to some professional privilege, which privilege I waive for this purpose. For greater certainty, my attorney shall be entitled to review my Will, in order to be able to manage my Personal Assets in a manner that is sensitive thereto.
  - (d) My attorney may take compensation out of my Personal Assets for any work done in connection with this continuing power of attorney for property by him, her, or them, in accordance with the prescribed fee scale established pursuant to the provisions of the *Substitute Decisions Act, 1992*, as amended, for the compensation of attorneys under a continuing power of attorney.
  - (e) I authorize my attorney to provide any consent on my behalf with respect to any right of possession or other interest I may have in a matrimonial home under the *Family Law Act*.
6. Any other general or limited power of attorney, whether continuing or not, granted by me with respect to my Paralegal Practice is not revoked and all such powers of attorney shall

co-exist with this continuing power of attorney for my Personal Assets as multiple powers of attorney.

7. This continuing power of attorney will come into effect on the date it is signed and witnessed.

I have signed this power of attorney in the presence of both of the witnesses who names appear below.

**I have signed this power of attorney on \_\_\_\_\_, 20\*\* (insert date)**

**[Signature of the Donor]**

\_\_\_\_\_  
**NAME OF DONOR**

*We are the witnesses to this power of attorney. We have signed this power of attorney in the presence of the person whose name appears above, and in the presence of each other, on the date shown above. Neither one of us is the attorney, a spouse or partner of the attorney, a spouse or child of the grantor or person whom the grantor has demonstrated a settled intention to treat as a child of the grantor, a person whose property is under guardianship or who has a guardian of the person, or less than eighteen years old. Neither one of us has any reason to believe that the grantor is incapable of giving a continuing power of attorney.*

**[Signature of Witness]**

**[Signature of Witness]**

\_\_\_\_\_  
**Insert name and address of witness**

\_\_\_\_\_  
**Insert name and address of witness**

## SAMPLE CONTINUING POWER OF ATTORNEY FOR PROPERTY FOR A PARALEGAL PRACTICE

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*The following sample form continuing power of attorney for property for paralegal practice may be used by paralegals when developing a contingency plan for their paralegal practice in the event of their own incapacity or other disability preventing a return, whether temporary or otherwise, to their paralegal practice. This sample form should be modified to suit the personal circumstances of the paralegal.*

Continuing Power of Attorney for Property made in accordance with the Powers of Attorney Act and the Substitute Decisions Act, 1992, as amended.

**This Continuing Power of Attorney** for property is given by **(NAME OF DONOR)**, of the \_\_\_\_\_ (*insert* "City" or "Town") of \_\_\_\_\_, in the Province of Ontario.

1. I revoke any continuing power of attorney for property previously given by me in connection with the management and disposition of my Paralegal Practice as defined in paragraph 2 below.

*Include this clause if there is an existing continuing power of attorney for the paralegal practice that the paralegal wants revoked.*

2. For purposes of this continuing power of attorney for property:
  - (a) "Paralegal Practice" means all property, both real and personal, of every nature and kind whatsoever, used in connection with my paralegal practice including without limiting the generality thereof all bank accounts, investments, trust funds, client lists, client property, leasehold interests in any business premises, accounts receivable, goodwill, equipment, software and software licences, intellectual property and passwords, and includes my Paralegal Practice Corporate Properties.

*Delete reference to Paralegal Practice Corporate Properties if no corporations form part of the Paralegal Practice.*

- (b) "Paralegal Practice Corporate Properties" means all shares, debt and other interests which I may own in [*name of paralegal professional corporation*], any successor corporation, and any other corporation that owns assets used in the carrying on of my Paralegal Practice or that has employees who are involved in the carrying on of my Paralegal Practice; and
    - (c) "Personal Assets" means all my assets personally owned by me both real and personal of every nature and kind whatsoever save and except for my Paralegal Practice.
3. I appoint **(NAME OF FIRST REPLACEMENT PARALEGAL)** to be my attorney for property in respect of my Paralegal Practice and I authorize my attorney to do on my behalf anything

in respect of my Paralegal Practice that I could do if capable, except make a Will, subject to the law and any conditions or restrictions contained in this document.

If **(FIRST REPLACEMENT PARALEGAL)** cannot or will not be my attorney for property in respect of my paralegal practice because of refusal, resignation, death, mental incapacity, removal by the court, or any other reason, I substitute **(NAME OF ALTERNATE REPLACEMENT PARALEGAL)** to act as my attorney for property in respect to my Paralegal Practice in place of **(FIRST REPLACEMENT PARALEGAL)** in the same manner and subject to the same authority as **(FIRST REPLACEMENT PARALEGAL)**.

*The parties being named in this continuing power of attorney do not have to be the same as the parties named in the continuing power of attorney prepared for the paralegal's personal property.*

4. It is my intention that this document is a continuing power of attorney for property pursuant to the *Substitute Decisions Act, 1992* and may be used during my incapacity to manage property.
5. This power of attorney includes the following powers:
  - (a) I authorize my attorney to exercise all such powers in connection with my Paralegal Practice as I would be able to exercise had I chosen to exercise such powers myself, or had I legal capacity to exercise such powers. This therefore authorizes my attorney to bind, secure information, and execute documents on behalf of my Paralegal Practice in respect of my attorney's dealings with any person. Without restricting the generality of the foregoing, I expressly authorize my attorney to bind, secure information, and execute documents on behalf of my Paralegal Practice in respect of any matter involving my clients, the Law Society of Upper Canada, my professional liability insurer, any institution in which I maintain a professional membership for my Paralegal Practice, the government of Canada or any institution, such as a bank or trust company, regulated by the government of Canada.
  - (b) I authorize my attorney to delegate any act my attorney may exercise to some other person, and to revoke or suspend such delegation.
  - (c) I authorize my attorney to take physical possession of my Paralegal Practice, including property held in a safety deposit box, property held in safekeeping by others on my behalf, and property held by others subject to some professional privilege, which privilege I waive for this purpose. For greater certainty, my attorneys shall be entitled to review my Will, in order to be able to manage my Paralegal Practice in a manner that is sensitive thereto.
  - (d) My attorney shall be entitled to be compensated at the rate of \$\_\_\_\_\_ per hour for all reasonable time spent administering my Paralegal Practice under this continuing power of attorney.
  - (e) My attorney shall be permitted to purchase any of my assets governed by this continuing power of attorney at fair market value with the consent of my attorney appointed in my continuing power of attorney dated \_\_\_\_\_, 20\*\* in respect of my Personal Assets.

6. Any other general or limited power of attorney, whether continuing or not, granted by me with respect to my Personal Assets is not revoked and all such powers of attorney shall co-exist with this continuing power of attorney for my Paralegal Practice as multiple powers of attorney.
7. This continuing power of attorney will come into effect on the date it is signed and witnessed.

I have signed this power of attorney in the presence of both of the witnesses whose names appear below.

**I have signed this power of attorney on \_\_\_\_\_, 20\*\* (insert date)**

*[Signature of the Donor]*

\_\_\_\_\_  
**NAME OF DONOR**

*We are the witnesses to this power of attorney. We have signed this power of attorney in the presence of the person whose name appears above, and in the presence of each other, on the date shown above. Neither one of us is the attorney, a spouse or partner of the attorney, a spouse or child of the grantor or person whom the grantor has demonstrated a settled intention to treat as a child of the grantor, a person whose property is under guardianship or who has a guardian of the person, or less than eighteen years old. Neither one of us has any reason to believe that the grantor is incapable of giving a continuing power of attorney.*

*[Signature of the Witness]*

*[Signature of the Witness]*

\_\_\_\_\_  
**Insert name and address of witness**

\_\_\_\_\_  
**Insert name and address of witness**

**SAMPLE DIRECTION FOR THE RELEASE OF THE POWER OF ATTORNEY FOR  
PROPERTY FOR PARALEGAL PRACTICE**

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**To:** *(insert name of person or law firm holding the document in safekeeping)*  
Paralegal/ Barristers and Solicitors

**From:** *(insert name of paralegal granting the power of attorney)*

**RE:** Continuing Power of Attorney for Property for  
Paralegal Practice made by me in favour of: *(insert name of Replacement  
Paralegal)*

**Replacement Paralegal:** *(insert name of Replacement Paralegal)*

**Alternate:** *(insert name of alternate Replacement Paralegal)*

You have agreed to hold the above document in safekeeping for me. In view of the fact that a need for the use of the document may arise in circumstances where I might lack the capacity to direct you or may otherwise be unavailable, you may rely upon this direction at that time. I agree that in consideration for your undertaking to hold the document for me, you shall be indemnified from any liability to my estate or to any third party as a consequence of relying on this Direction, or exercising any judgement this Direction requires you to exercise. You may also, where necessary, provide this Direction to any physician for the purpose of exercising such judgement, and such physician shall be similarly indemnified in relying on this document or exercising any judgement the circumstances require him or her to exercise.

You may release my Continuing Power of Attorney for Paralegal Practice to the Replacement Paralegal or the Alternate Replacement Paralegal at the request of said person upon the receipt of one (1) or more of the following documents:

1. A written direction from the undersigned to the Replacement Paralegal or the Alternate Replacement Paralegal to commence to act under this Power of Attorney for Property for Paralegal Practice; or
2. A written confirmation from a qualified medical doctor advising that the doctor has examined the undersigned and, in the opinion of the doctor, it would be unwise for the undersigned to continue to independently handle his (or her) own financial affairs, or words to that effect; or
3. A sworn statement by the Replacement Paralegal, or the Alternate Replacement Paralegal that, based on the information available to him (or her), it would be in the undersigned's best financial interests for the Replacement Paralegal, or the Alternate Replacement Paralegal, to begin to act under the Continuing Power of Attorney for Paralegal Practice, and the undersigned is unable to give instructions under paragraph 1 above and the Replacement Paralegal or Alternate Replacement Paralegal is unable to obtain an opinion from a medical doctor as in paragraph 2 above.

\_\_\_\_\_, 20\*\*  
*(insert date)*

\_\_\_\_\_  
*(insert name of Donor)*

## SAMPLE LAST WILL AND TESTAMENT CLAUSES

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*The following sample last will and testament clauses may be used by paralegals when preparing their will for their paralegal practice. These sample clauses should be modified to suit the personal circumstances of the paralegal.*

The cross references in square brackets after each heading are to the corresponding paragraphs in the *Checklist of Issues to Consider When Preparing Wills*.

### 1. Introduction [1]

#### *General Will*

I, *[name of Planning Paralegal]*, of *[City]*, Ontario, hereby declare that this is my Last Will and Testament with respect to my General Estate (as hereinafter defined) and shall be referred to as “my General Will”.

#### *Paralegal Practice Will*

I, *[name of Planning Paralegal]*, of *[City]*, Ontario, hereby declare that this is my Last Will and Testament with respect to my Paralegal Practice Estate (as hereinafter defined) and shall be referred to as “my Paralegal Practice Will”.

### 2. Revocation [2]

#### *General Will*

I hereby revoke all Wills and Codicils made by me prior to *[date]* regarding those of my assets that form part of my General Estate. For greater certainty, nothing in this my General Will shall revoke, or override, any Will made by me that purports to dispose of my Paralegal Practice Estate (as hereinafter defined), which other Will shall be referred to as “my Paralegal Practice Will”.

#### *Paralegal Practice Will*

I hereby revoke all Wills and Codicils made by me prior to *[date]* regarding those of my assets that form part of my Paralegal Practice Estate. For greater certainty, nothing in this my Paralegal Practice Will shall revoke, or override, any Will made by me that purports to dispose of my General Estate (as hereinafter defined), which other Will shall be referred to as “my General Will”.

### 3. Life Insurance [3]

#### *Paralegal Practice Will*

I hereby revoke all previous bequests, declarations or agreements made by me in connection with the payment of the insurance policy on my life with *[name of insurance company]*, policy number *[number]*, and I declare that the proceeds of the said policy

shall be payable to [Name of Replacement Paralegal] as Special Trustee as a separate trust upon the same terms and conditions contained in paragraph [ *insert the paragraph number of the dispositive provisions of the Paralegal Practice Will*] of my Paralegal Practice Will. This declaration shall be a declaration within the meaning of the *Insurance Act* (Ontario).

#### **4. Executors of Paralegal's Estate [4 and 5]**

##### *General Will*

I appoint [name] to be the sole Estate Trustee, Executor and Trustee of this my General Will. In the event that [name] predeceases me, or is or becomes at any time unable or unwilling to act or to continue to act as the Estate Trustee, Executor and Trustee of this my General Will, then I appoint [name] to be the sole Estate Trustee, Executor and Trustee of this my General Will in the place and stead of [name]. The person or persons from time to time acting as the Estate Trustee, Executor and Trustee of this my General Will is or are referred to herein as "my Trustee".

##### *Paralegal Practice Will*

I appoint [name of first Replacement Paralegal] to be the sole Estate Trustee, Executor and Trustee of this my Paralegal Practice Will. In the event that [name of first Replacement Paralegal] predeceases me, or is or becomes at any time unable or unwilling to act or to continue to act as the Estate Trustee, Executor and Trustee of this my Paralegal Practice Will, then I appoint [name of alternate Replacement Paralegal] to be the sole Estate Trustee, Executor and Trustee of this my Paralegal Practice Will in the place and stead of [first Replacement Paralegal]. The person or persons from time to time acting as the Estate Trustee, Executor and Trustee of this my Paralegal Practice Will is or are referred to herein as "my Trustee".

#### **5. Executors of Other Estates [6]**

##### *General Will*

If at my death I am the sole executor of the estate of my spouse or of any parent, child or sibling of mine or my spouse, and where by reason of devolution of appointment, my executor would otherwise become successor executor or trustee of such estate or trust, then I appoint my Trustee to be the successor executor or the successor trustee of such estate or trust.

#### **6. Compensation [7]**

##### *Paralegal Practice Will*

I authorize my Trustee to claim and receive from my Paralegal Practice Estate, as compensation for his/her time, trouble, care and skill in administering my Paralegal Practice Estate, compensation calculated at the rate of [select one alternative]

\_\_\_\_ % of [net monthly billings / gross monthly billings / monthly accounts collected]  
from my paralegal practice

\$\_\_\_\_ per hour/day/month  
his/her hourly rate

Such compensation may be taken at intervals with the prior written approval of the person or persons from time to time acting as the estate trustee, executor and trustee of my General Will, or with the approval of the Superior Court of Justice upon application by my Trustee to pass his or her accounts.

## 7. Definitions [1 and 8]

### *Both Wills*

In this Will,

- (a) "My Paralegal Practice Estate" means all property, both real and personal, of every nature and kind whatsoever, used in connection with my paralegal practice including, without limiting the generality of the foregoing, [my Paralegal Practice Corporate Properties and] all bank accounts, investments, trust funds, client lists, client property, leasehold interests in any business premises, accounts receivable, goodwill, equipment, software and software licences, intellectual property and passwords.
- (b) "My Paralegal Practice Corporate Properties" means all shares, debt and other interests which I may own at my death in [*name of paralegal professional corporation*], any successor corporation, and any other corporation that owns assets used in the carrying on of my paralegal practice or that has employees who are involved in the carrying on of my paralegal practice.
- (c) "My General Estate" means all of my property of every nature and kind whatsoever and wheresoever situate, but excluding my Paralegal Practice Estate.

### *General Will*

- (d) "my property" and "my estate" shall, unless the context otherwise requires, mean only my General Estate and shall not include my Paralegal Practice Estate.

### *Paralegal Practice Will*

- (e) "my property" and "my estate" shall, unless the context otherwise requires, mean only my Paralegal Practice Estate and shall not include my General Estate.

## 8. Vesting Clause

### *General Will*

I give, devise and bequeath my General Estate to my Trustee upon the following trusts, namely:

*Paralegal Practice Will*

I give, devise and bequeath my Paralegal Practice Estate to my Trustee upon the following trusts, namely:

**9. Debts Clause [9]**

*General Will*

My Trustees shall pay out of and charge to the capital of my General Estate my debts (including any income or profits tax payable by me or by my primary estate in respect of myself or my General Estate for the year of my death or any previous or succeeding year), funeral and testamentary expenses, and all estate, legacy, succession and inheritance taxes or duties, whether imposed by or pursuant to the law of this or any other jurisdiction whatsoever, that may be payable as a consequence of my death and that have not been paid by the executors and trustees of my Paralegal Practice Estate out of my Paralegal Practice Estate. In addition, if my Trustees deem it to be necessary or advisable, my Trustees may pay out of my General Estate all or any portion of my debts specifically related to my Paralegal Practice Estate.

*Paralegal Practice Will*

My Trustees shall pay out of and charge to the capital of my Paralegal Practice Estate my debts (including any income or profits tax payable by me or by my Paralegal Practice Estate in respect of myself or my Paralegal Practice Estate for the year of my death or any previous or succeeding year) specifically related to my Paralegal Practice Estate and if my Trustees deem it to be necessary or advisable, my Trustees may also pay out of my Paralegal Practice Estate all or any portion of my other debts, funeral and testamentary expenses, and all estate, legacy, succession and inheritance taxes or duties, whether imposed by or pursuant to the law of this or any other jurisdiction whatsoever, that may be payable as a consequence of my death and that are not specifically related to my Paralegal Practice Estate.

**10. Purchase by Trustee [14]**

*Paralegal Practice Will*

Notwithstanding trusteeship, my Trustee may purchase any asset from my Paralegal Practice Estate either at public auction or by private contract, provided that in the latter case the sale shall be at a price and on terms and conditions approved in writing by the person or persons from time to time acting as the estate trustee, executor and trustee of my General Estate.

## SAMPLE PARALEGAL PRACTICE COVERAGE AGREEMENT<sup>3</sup> BETWEEN THE PLANNING PARALEGAL AND THE REPLACEMENT PARALEGAL

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This Agreement is made the *[insert the date]*.

**Between:**

X *[insert the Planning Paralegal's name]*

(the "Planning Paralegal")

**and**

Y *[insert the Replacement Paralegal's name]*

(the "Replacement Paralegal")

**WHEREAS** the Planning Paralegal is a sole proprietor providing legal services in Ontario.

**AND WHEREAS** the Replacement Paralegal is a paralegal providing legal services in Ontario.

**AND WHEREAS** the Planning Paralegal wishes to put a plan in place for the management, sale or winding up of his/her Paralegal Practice (as defined in section 1), in the event that the Planning Paralegal becomes incapacitated or unable to manage the affairs of the Paralegal Practice for any reason or if he/she dies while still in practice.

**AND WHEREAS** the Planning Paralegal has appointed the Replacement Paralegal as his/her Paralegal Practice Attorney and Paralegal Practice Estate Trustee (as defined in section 1 ).

**AND WHEREAS** the parties wish by this Agreement to clarify when and on what terms the Replacement Paralegal shall act as Paralegal Practice Attorney or Paralegal Practice Estate Trustee.

**NOW THEREFORE** in consideration of the mutual covenants herein contained and for other good and valuable consideration, the parties agree as follows:

### **Definitions**

1. Wherever used in this Agreement, the following terms shall have the meanings set out below:

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<sup>3</sup> This sample form agreement may be used by sole proprietors or paralegals who are the sole shareholders of a professional corporation when developing a contingency plan for their paralegal practice in the event of their death, own incapacity or other disability preventing a return, whether temporary or otherwise, to their law practice. This sample form should be modified to suit the personal circumstances of the paralegal.

This sample form agreement has been adapted from a sample form agreement prepared by the Law Society of British Columbia. We wish to thank the Law Society of British Columbia for its assistance.

(a) **“Authorized Person”** means the following:

- i. the Planning Paralegal, if alive and capable of managing his/her affairs;
- ii. if the Planning Paralegal is alive but incapable of managing his/her affairs, the person(s) from time to time acting as the attorney(s) for property or guardian(s) of property of the Planning Paralegal with respect to the Planning Paralegal’s assets other than the Paralegal Practice; or
- iii. if the Planning Paralegal has died, the person(s) from time to time acting as the executor(s) or estate trustee(s) of a Will governing the Planning Paralegal’s assets other than the Paralegal Practice.

Each person whom the Planning Paralegal has appointed as an Authorized Person at the date hereof is listed in Schedule “A” to this Agreement. The Planning Paralegal agrees to notify the Replacement Paralegal promptly in writing of any change to the Authorized Persons.

(b) **“Paralegal Practice”** means all property, both real and personal, of every nature and kind whatsoever, used in connection with the Planning Paralegal’s paralegal practice including without limiting the generality thereof all bank accounts, investments, trust funds, client lists, client property, leasehold interests in any business premises, accounts receivable, goodwill, equipment, software and software licences, intellectual property and passwords and includes the Planning Paralegal’s Paralegal Practice Corporate Properties.

(c) **“Paralegal Practice Attorney”** means the attorney appointed by the Planning Paralegal under The Paralegal Practice Power of Attorney.

(d) **“Paralegal Practice Corporate Properties”** means all shares, debt, and other interests that the Planning Paralegal may own in *[insert the name of the paralegal professional corporation if applicable]*, any successor corporation, and any other corporation that owns assets used in carrying on the Paralegal Practice or that has employees who are involved in the carrying on of the Paralegal Practice.

(e) **“Paralegal Practice Estate Trustee”** means the estate trustee appointed under the last will and testament of the Planning Paralegal with respect to the Paralegal Practice executed on *[insert the date of signing]*, a copy of which is attached to this Agreement as Schedule “A”.

(f) **“Paralegal Practice Power of Attorney”** means the continuing power of attorney for property of the Planning Paralegal with respect to the Paralegal Practice executed on (insert the date of signature), a copy of which is attached to this Agreement as Schedule “B”.

### **Assumption of Duties**

2. The Replacement Paralegal accepts his/her appointments as, and subject to sections 3 and 4, agrees to act as, Paralegal Practice Attorney and/or as Paralegal Practice Estate Trustee.

3. The Replacement Paralegal's duties as Paralegal Practice Attorney or as Paralegal Practice Estate Trustee shall commence only on the date the Replacement Paralegal receives actual notice of (the "Commencement Date"):
  - (a) grounds to request the release of the Paralegal Practice Power of Attorney, in accordance with the Direction Regarding the Release of the Document attached to this Agreement as Schedule "D"; or
  - (b) the death of the Planning Paralegal.

Until the Commencement Date, the Replacement Paralegal shall be under no obligation to monitor the Paralegal Practice or the circumstances of the Planning Paralegal.

4. The Replacement Paralegal shall have two weeks from the Commencement Date to review the books, records and files of the Paralegal Practice and notify the Authorized Person whether or not the Replacement Paralegal is able and willing to accept at that time the duties under this Agreement and the attached Schedules. While conducting the review of the Paralegal Practice, the Replacement Paralegal will take reasonable steps to deal with urgent matters to protect the interests of the Planning Paralegal and his or her clients.

### **Practice Management**

5. If the Replacement Paralegal accepts the duties under this Agreement, the Replacement Paralegal will take possession and control of the Paralegal Practice, and will manage the Paralegal Practice on behalf of the Planning Paralegal in the same manner that a prudent and competent paralegal would manage his or her own legal practice. Without limiting the generality of the foregoing, the Replacement Paralegal will, if and to the extent appropriate in the circumstances, follow the guidance set out in the Law Society of Upper Canada's *Checklist for the Replacement Paralegal who takes over the Paralegal Practice of Another Paralegal*, which is attached to this Agreement as Schedule "E".
6. If the Planning Paralegal has died or if there is no reasonable expectation, after consultation with the Planning Paralegal, the Planning Paralegal's immediate family or the Planning Paralegal's doctor, that the Planning Paralegal will be able to return to his or her paralegal practice in a timely manner to retain the clients and preserve the good will of the Paralegal Practice, the Replacement Paralegal will sell or wind down and dispose of the Paralegal Practice.

### **Financial Management**

*Paralegals should consider how the Replacement Paralegal will cover the office overhead and expenses for a period of time. Sections 7 and 8 are only relevant if the funding mechanism is insurance purchased for this purpose. Insurance, however, is not the only option. Other funding methods might include payment of expenses from the general account, personal bank account or, by the estate as provided for in the will. Sections 7 and 8 should be modified to reflect the funding mechanism chosen.*

7. The Planning Paralegal will purchase disability and life insurance for the purpose of paying the Replacement Paralegal and funding the expenses of the Paralegal Practice. The Planning Paralegal will name the Replacement Paralegal as the beneficiary of such policies.

8. The Replacement Paralegal shall:

- (a) hold the proceeds received from the disability and life insurance policies referred to in section 7 in trust and use those proceeds for paying the expenses of the Paralegal Practice, which includes the Replacement Paralegal's fees;
- (b) account for the proceeds of the disability and life insurance policies and their use as part of the reporting requirements under this Agreement; and
- (c) give to the Authorized Person, any proceeds remaining after the Planning Paralegal returns to the paralegal practice or the paralegal practice is sold or wound up.

*Include section 9 below only if the Paralegals would like to specify tasks that are mandatory for the Replacement Paralegal to perform. If section 9 is not included in the Agreement, then section 5 of the Agreement would apply and the Replacement Paralegal would be required to consider all the matters referred to in Schedule "E" but could exercise his or her own judgment as to whether any particular action was required. Examples of items that the Planning Paralegal might wish to make mandatory, by listing them in section 9, are the payment of paralegal office expenses for a period of time, the collection of accounts receivable, and dealing with the paralegal's bank accounts including trust accounts.*

9. Without limiting the generality of section 5 and the powers and duties under this Agreement and the attached Schedules, the Replacement Paralegal will:

[List duties]

10. If the Replacement Paralegal wishes to buy some part or all of the Paralegal Practice, he/she may do so, if acceptable terms can be reached with the Authorized Person.

**Indemnity**

11. Each party (the "Responsible Party") agrees to indemnify and save harmless the other party (the "Innocent Party") from all loss or damage that the Innocent Party may sustain in any manner as a result of an error or omission made by the Responsible Party, so long as the Innocent Party did not have actual knowledge of the error or omission or, having actual knowledge, so long as the Innocent Party acted honestly and reasonably in attempting to correct the error or omission.

**Reporting**

12. The Replacement Paralegal will provide to the Authorized Person, on a quarterly or other reasonable periodic basis, or on request by the Authorized Person, a written report(s) to include, but not limited to, an accounting for accounts billed, accounts collected and expenses paid, and any efforts to sell or otherwise dispose of the Paralegal Practice.
13. If the Replacement Paralegal decides to sell or wind down the Paralegal Practice, the Replacement Paralegal will provide a written explanation to the Authorized Person.

## Compensation

14. In consideration of carrying out the duties of Paralegal Practice Attorney and Paralegal Practice Estate Trustee, the Planning Paralegal agrees to pay to the Replacement Paralegal, and the Replacement Paralegal agrees to accept as sufficient, the compensation set out in the last will and testament of the Planning Paralegal and/or the Paralegal Practice Power of Attorney attached as Schedules B and C.

## Termination

15. If the Replacement Paralegal has not assumed any duties under this Agreement, this Agreement may be terminated:
- (a) by the Replacement Paralegal on two weeks' written notice to the Planning Paralegal, or
  - (b) by the Planning Paralegal, if alive and capable of managing his/her affairs, immediately on providing written notice to the Replacement Paralegal.
16. Subject to the paralegal's duties pursuant to the Law Society of Upper Canada *Paralegal Rules of Conduct* and in particular Rule 3.08 on Withdrawal from Representation, if, after assuming any duties under this Agreement, the Replacement Paralegal decides that he/she can no longer act, he/she will:
- (a) give the Authorized Person two weeks' written notice of this decision;
  - (b) prepare to hand over the Paralegal Practice or what remains of it and any funds the Planning Paralegal holds in trust from disability and life insurance proceeds;
  - (c) provide a written report to the Authorized Person as described in section 12;
  - (d) take any steps necessary in this two week period to deal with urgent matters to protect the interests of the Planning Paralegal and the clients;
  - (e) advise Trustee Services of the Law Society of Upper Canada of the decision to withdraw; and
  - (f) provide any additional information requested by the paralegal taking over the duties outlined in this Agreement.
17. If the Replacement Paralegal has assumed any duties under this Agreement, this Agreement may be terminated:
- (a) by the Planning Paralegal, if alive and capable of managing his/her affairs, on two weeks' written notice to the Replacement Paralegal;
  - (b) by any Authorized Person, immediately upon providing written notice to the Replacement Paralegal in which the Authorized Person shows good cause for such termination.

Subject to the duties of the Replacement Paralegal pursuant to the Law Society of Upper Canada *Paralegal Rules of Conduct* and in particular Rule 3.08 on Withdrawal from Representation, the Replacement Paralegal will cooperate with the Planning Paralegal or other

Authorized Person in returning the Paralegal Practice to the Planning Paralegal and follow the steps set out in paragraphs 16 (b), (c), and (d).

**Miscellaneous**

- 18. In carrying out his/her duties under this Agreement and the attached Schedules, the Replacement Paralegal shall not be liable to the Planning Paralegal or his/her estate for decisions made by the Replacement Paralegal in good faith which may result in a loss to the Planning Paralegal or to his/her estate.
- 19. If the Replacement Paralegal has any problems or concerns in carrying out the duties under this Agreement and the attached Schedules, and, in particular, in accessing the Paralegal Practice bank accounts, he/she is urged to contact Trustee Services of the Law Society of Upper Canada for help and support.
- 20. If a disagreement arises between the Replacement Paralegal and the Authorized Person as to the handling by the Replacement Paralegal of the Paralegal Practice and such disagreement cannot be resolved in a timely way, the parties are urged to seek help to resolve the matter by mediation or binding arbitration.
- 21. For greater clarity, save and except for restrictions contained in the Paralegal Practice Power of Attorney, a copy of which is attached as Schedule B in the event of any inconsistency between this Agreement and the Paralegal Practice Power of Attorney, the provisions of this Agreement shall prevail.

**The parties have agreed to its terms and signed this Agreement as of the date written above.**

SIGNED BEFORE ME )  
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 at \_\_\_\_\_ )  
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 on \_\_\_\_\_ )  
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**Witness**

SIGNED BEFORE ME )  
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**Witness**

\_\_\_\_\_  
**Planning Paralegal**

\_\_\_\_\_  
**Replacement Paralegal**

## PLANNING PARALEGAL: STEPS FOR MANAGING YOUR PARALEGAL PRACTICE TO FACILITATE THE TASK OF THE REPLACEMENT PARALEGAL

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Consider taking the following steps to prepare your paralegal practice for the entry of a Replacement Paralegal.

- Have a system in place for the opening, closing and destruction of client files and ensure that this system is followed.

### Resources

- Law Society File Management Guideline  
<http://www.lsuc.on.ca/For-Lawyers/Manage-Your-Practice/File-Management/Document-Management/File-Management-Practice-Management-Guideline/>
- Guide to Retention and Destruction of Closed Client Files for Paralegals  
<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491155>

- Have a complete client list with contact information that can be produced at any time.
- Document your files well so that the Replacement Paralegal reviewing the file will know what has transpired in the file.
- Confirm your retainer in writing with the client and have a copy of the retainer agreement or correspondence in the file. Also consider inserting a provision into your retainer agreement with the client indicating your arrangement with the Replacement Paralegal to manage or dispose of your paralegal practice in the event of your death, disability or unexpected absence from your practice.

### Resources

- Establishing the Retainer  
<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491171>
- Sample Retainer Agreements  
<http://www.practicepro.ca/practice/financesbookletprecedents.asp>

- Have a conflict checking system in place and keep it up to date.

### Resources

- Selecting a Conflict Checking System  
<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491184>
- Checklist of Essentials of a Conflict Checking Systems  
<http://www.practicepro.ca/practice/conflict/appendix5.asp>

- Have a tickler or reminder system in place and keep it up to date.

#### Resources

- Manual Limitation Reminder or Tickler Systems  
<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491202>

- Keep your bookkeeping and accounting records up to date.

- Keep your time and billing records up to date.

#### Resources

- The Bookkeeping Guide for Paralegals  
<http://www.lsuc.on.ca/For-Paralegals/Manage-Your-Practice/Financial-Management/Bookkeeping/Paralegal-Bookkeeping-Guide/>

- Prepare a paralegal office procedural manual outlining the key processes in your paralegal firm and important information about your firm and keep it up to date.

#### Resources

- Practice Tips – Preparation of a Paralegal Office Procedural Manual at page 32.

- Have a contingency plan in place and periodically review and update the plan.

- Ensure that you have sufficient funds available to the Replacement Paralegal to cover office overhead and expenses for a period of time.<sup>4</sup>

- Discuss with your bank or determine what happens to your bank accounts, line of credit and other loans if you die or become disabled.

- Consider all types of insurance, including: professional liability insurance coverage, property insurance (if you own your building); contents insurance, including extra riders for computers or other equipment of significant value; commercial general liability for third-party bodily injury or property damage; business interruption insurance; crimes coverage; and disability, life, or other appropriate personal coverage.

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<sup>4</sup> A line of credit issued to a paralegal may not advance funds after the paralegal's death or disability.

## CHECKLIST FOR THE REPLACEMENT PARALEGAL WHO TAKES OVER THE PARALEGAL PRACTICE OF ANOTHER PARALEGAL

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### Steps Before and Shortly After Entering the Paralegal Practice

- Determine whether you have the authority to take over the paralegal practice and if so, the scope of your authority.

*If you do not have the authority, determine what steps you will need to take in order to obtain the authority. If you have the authority, determine whether your role is to wind down the paralegal practice or preserve it.*

- Ensure that you have appropriate professional liability insurance in place.
- Secure the office, client property, client files and all paralegal firm bank accounts (trust and general).
- Meet with the paralegal firm staff to address employment and related issues.
- Determine whether there are any matters that require your immediate attention.

*This might involve: reviewing the firm's paralegal office procedural manual, if any, the firm's calendaring or tickler system, books and records and accounts payable, the paralegal's desk diary or calendar, any unopened mail, email and facsimiles; retrieving voice mail messages and speaking to staff and others.*

- If there are matters that require your immediate attention, consider whether you have any conflicts of interest and how you will deal with these.

*If you have a conflict of interest and cannot act, you may need to make arrangements for another paralegal or a lawyer to deal with the matter.*

- Contact clients for matters that are urgent and obtain instructions to act on their behalf.

*Depending on the nature of the matter, you may need to obtain adjournments or extensions of other deadlines.*

- Advise the court and opposing counsel that the Planning Paralegal has died or is incapacitated.
- Determine whether you have access to the paralegal firm bank accounts (trust and general) and lines of credit or what steps you will need to take to gain access.

- Establish how you will be compensated.

## **Additional Steps Once You Have Entered the Paralegal Practice**

### *Office Procedures*

- Familiarize yourself with the paralegal firm's office procedures.

*This might involve reviewing the firm's office procedure manual and/or interviewing staff to obtain an understanding of the paralegal firm procedures.*

### *Conflict Checking System*

- Determine the paralegal firm procedure for checking for conflicts of interest.
- Do a conflicts check before you start working on files.
- If there is a conflict of interest, determine how you will deal with it.

### *Calendar/Tickler System*

- Determine the paralegal firm procedure(s) used to record deadlines and significant dates.
- Ensure the calendar or tickler system is up to date.
- Identify any matters that need immediate or early attention and determine how you will deal with these.

### *Files*

- Locate the list of active files including names and addresses of clients.
- Locate the list of closed files.
- Determine where active/closed files are stored.
- Determine how files are organized.
- Determine how the filing system works – opening, closing, filing, organization of the information in the file, destroying the file.
- Review the status of active files and determine how you will deal with each file.
- Determine how you will deal with closed files.

### *Notification of Clients*

- Notify clients of the death or disability of the Planning Paralegal.

*If the client wishes to retain you to act in the matter, you should consider confirming in writing the terms of the retainer with the client. If the client wishes to retain another paralegal or lawyer, prepare the file for transfer and consider having the client execute either a direction authorizing you to release the file to another paralegal or lawyer or a receipt confirming the delivery of the file to the client and the termination of the retainer with the Planning Paralegal. In addition if applicable notify the court or tribunal that the Planning Paralegal is no longer acting and take steps to ensure that the Planning Paralegal has been removed as the paralegal of record and notify the opposing paralegal that the Planning Paralegal is no longer acting with regards to the matter.*

#### *Paralegal Firm Bank Accounts/ Financial Records*

- Identify the bank accounts related to the paralegal practice (trust, general, special trust accounts).
- Notify the bank(s) of the death or disability of the paralegal.
- Determine who has signing authority on the account(s) and make changes if required.
- Deposit any funds that require depositing.
- Notify the paralegal firm's accountant/bookkeeper of the death or disability of the Planning Paralegal.
- Determine the type of bookkeeping system in place.
- Locate and review accounting records, cheque books and most recent bank statements.
- Determine the procedure used for recordkeeping and the individuals involved.
- Ensure that the books and records are up to date.
- Determine how the books and records will be kept up to date.
- Determine whether you need to establish any internal controls regarding the firm's books and records.

#### *Client Property*

- Determine the firm's policy and procedure with regards to client property.
- Locate safety deposit box, key and inventory of contents.
- Examine contents and make inventory of contents.
- Secure all client property in the Planning Paralegal's possession.
- Notify clients of the death or disability of the Planning Paralegal and how they may retrieve their property.

### *Original Documents*

- Determine the firm policy regarding original documents.
- Locate any original documents being stored and determine how you will deal with these (return to owner or continue storing).
- Notify clients of the death or disability of the Planning Paralegal and how they may retrieve their original documents.
- If a client cannot be reached determine how you will deal with that client's original documents.

### *Mail, Email and Facsimiles*

- Review unanswered mail, email and facsimiles and determine whether responses are required and if so, when and how responses will be prepared.
- Determine the office procedure for filing mail, email and facsimiles.
- Determine how you will handle mail, email and facsimiles going forward.

### *Client Billing*

- Determine the type of billing system.
- Determine how and when bills are prepared.
- Determine how and who will prepare bills going forward.
- Identify accounts receivable and procedures used for collection.
- Determine what steps if any should be taken to collect account receivables.

### *Docketing System*

- Determine the type of timekeeping system used.
- Locate time records.
- Determine if and how time records will be kept going forward.

### *Accounts Payable*

- Determine whether there are any lines of credit or loans and how you will deal with these.
- Determine the status of accounts payable (operating costs, taxes, insurance, rent, utilities, supplies, services, benefits, employee expenses, withholding taxes, levies, insurance premiums, membership fees etc.).
- Determine how you will deal with the accounts payable.

- Determine how you will deal with payroll and remittances.

#### *Computer System*

- Determine the type of computer system and software applications in place.
- Determine computer passwords.
- Determine back-up procedures and locate and secure back-up disks or records.
- Determine how back-up will occur going forward.

#### *Other Office Equipment (telephones, photocopier, fax machine etc)*

- Determine if equipment is owned or leased.
- Determine how you will deal with equipment.
- Determine how the equipment works.
- Determine how voice mail system works.
- Determine how phone calls, voice mail messages and emails and facsimiles will be dealt with going forward.

#### *Office Lease/Ownership*

- If the premises are leased, obtain a copy of the lease and review it, determine what payments if any need to be made, any notices to be given and whether the lease will continue.
- If required, notify the Landlord of the Planning Paralegal's death or incapacity if required.
- If the premises are owned, determine if there are any outstanding payments relating to the premises, how they will be paid and how you will deal with the premises going forward.

#### *Employees*

- Identify the employees of the Planning Paralegal and the terms of their employment.
- Obtain advice if required regarding employer obligations and determine how the Planning Paralegal's employer obligations will be met.
- Determine whether the employees will remain or be terminated.

#### *Law Society and Professional Liability Insurer*

- Notify the Law Society of the change in status of the Planning Paralegal.
- Notify the Planning Paralegal's professional liability insurer of the change in status of the Planning Paralegal.

## Additional Resources

- Law Society Guide to Closing Your Practice for Paralegals  
<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491156>
- Law Society Guide for Retention and Destruction of Closed Client Files for Paralegals  
<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491155>
- Law Society Practice Management Guidelines  
<http://www.lsuc.on.ca/with.aspx?id=2147490535>
- Managing a Practice Interruption booklet published by LAWPRO  
[www.practicepro.ca/disasterbooklet](http://www.practicepro.ca/disasterbooklet) or  
[http://www.practicepro.ca/practice/pdf/Practice Interruptions booklet.pdf](http://www.practicepro.ca/practice/pdf/Practice_Interruptions_booklet.pdf)
- Law Society Bookkeeping Guide for Paralegals  
<http://www.lsuc.on.ca/For-Paralegals/Manage-Your-Practice/Financial-Management/Bookkeeping/Paralegal-Bookkeeping-Guide/>

## **PRACTICE TIPS – PREPARATION OF A PARALEGAL OFFICE PROCEDURAL MANUAL**

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In order to facilitate the task of the Replacement Paralegal, you should consider preparing an office procedural manual outlining your firm's office procedures and other important information about your paralegal practice. The manual should be reviewed periodically and kept up to date.

A paralegal office procedural manual may include the following information.

### **Information about your filing system and procedures**

- How to generate a client list including client names, addresses and phone numbers
- How to generate a file list
- How active files are opened and assigned numbers
- Where and how active files are stored
- Whether closed files are assigned numbers
- How can closed files be accessed
- How files are closed, retained and destroyed

### **Client Property**

- Whether your firm retains original client documents and where these may be found
- What is your firm's policy and procedure regarding the receipt and return of client documents/property
- Does your firm have a safety deposit box and if so how do you obtain access to it

### **Office Administration**

- What are your office hours
- How do you access the office
- Where can you obtain information about the security of the office (e.g. alarm system)
- How do you deal with mail (in-going and outgoing)
- How do you deal with deliveries (in-going and outgoing)
- How do you deal with facsimiles
- How do you organize/file your email
- Who are your service providers and contractors and where can information about the arrangements with them be obtained
- How do you accept or admit service
- Who is responsible for the firm website
- What are the rules regarding the use of technology in your firm

### **Information about your tickler or reminder system**

- What type of tickler or reminder system does your firm use
- How does it work
- Who is responsible for inputting dates, retrieving dates, reminders and ensuring that the deadline is met
- How do you ensure that undertakings given and received are fulfilled

### **Information about your conflicts checking system**

- What type of conflicts checking system does your firm have
- How does it work
- What information is inputted into the system and when
- Who is responsible for inputting the information
- Who is responsible for doing the conflicts check and identifying potential conflicts

### **Information about your bookkeeping system and financial records**

- What type of bookkeeping system do you have
- Where are your financial records kept
- Who is responsible for keeping them up to date
- Who is responsible for doing the monthly reconciliations
- Where do you bank (name, address and phone number) and name and contact information of account manager
- Information on all of your paralegal office bank accounts (trust, general, special trust accounts, account numbers and bank)
- What is the procedure for transferring trust monies (e.g. cheque , electronic, cheque requisitions, who is responsible for this)
- Outline internal controls in place
- Contact information for your bookkeeper, if applicable
- Contact information for your accountant
- How do you deal with petty cash
- Where do you keep your general and trust account cheques

### **Accounts Payable/Filings**

- Where do you keep accounts payable information
- How do you deal with the payment of accounts
- Where do you keep information regarding outstanding loans (eg. line of credit)
- Do you have business credit cards and if so particulars
- How do you handle payroll and remittances
- How do you handle Law Society filings and your filings with your professional indemnity insurer
- Where do you keep records of filings
- How do you deal with tax filings (income tax, HST ) and where do you keep records of filings
- What is your record retention and destruction policy

### **Docketing System**

- Describe your timekeeping/docket system
- Where do you keep time records
- Who is responsible for keeping time records

## Billings

- When and how do you bill clients
- Who is responsible for billing
- Where do you keep information regarding billings
- How do you handle collections of outstanding accounts

## Office Equipment

### Photocopier

- Where can information about your photocopier and codes required to access it, if any, be found
- Who services your photocopier (contact information)
- Is it owned or leased and if leased where is the copy of the lease stored
- Where is the warranty kept

### Computers/Printers

- Where can information about your computers be found
- Where can information about your computer systems and software applications be found
- Where can information about your passwords be found
- Where can information about your printers be found
- Who services your computers (contact information)
- Who services your printers
- Are the computers/printers owned or leased and if leased where is the copy of the lease stored
- What is the system for backing up data on your computer and who is responsible for this
- Where are the software disks and information about the software kept
- Where are the warranties for the computers and printers kept

### Facsimile

- Where can information about your fax machine be found
- Who services your fax machine (contact information)
- Is it owned or leased and if leased where is the copy of the lease stored
- Where is the warranty is kept

### Telephone

- Where can information about your telephone system and passwords required to access voice mail be found
- Who services your telephone system (contact information)
- Is it owned or leased and if leased where is the copy of the lease stored
- How do you retrieve voice mail
- Do you keep a record of your voice mail and what is the procedure for this
- Where is the warranty is kept

### **Client Identification and Verification**

- What are your paralegal firm procedures for identifying and verifying the identity of a client
- Where are client identification and verification records stored (in file, centralized system)

### **Employees**

- Names and addresses of your employees and description of their jobs
- Where can terms of employment of each employee be found (e.g. copy of contract)
- Where are records relating to employees kept
- Where can information about employee pensions and other benefits be obtained

### **Contact Information (Name, Address and Phone Number)**

- Attorney for Property
- Executor (s)
- Bank Manager
- Landlord
- Accountant
- Excess Insurer
- Disability Insurer
- Property Insurer
- Business Credit Card Company
- Bookkeeper
- Staff
- Contractors ( process server, law clerk)
- Technology Service Provider
- Service providers

### **Office Premises**

- Where may information regarding your lease or ownership of the office premises be obtained

### **Power of Attorney/Will**

- Where is your will and continuing power of attorney for property

## **CHECKLIST OF ISSUES TO CONSIDER WHEN PREPARING POWER OF ATTORNEY FOR PROPERTY DOCUMENTS**

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Contingency planning for the operation of a paralegal practice in the event of a paralegal's incapacity or other extended periods of absence from the paralegal practice should be considered by the Planning Paralegal as a means of providing peace of mind for loved ones, clients and employees. A Planning Paralegal should consider how the paralegal practice will be dealt with on his or her incapacity or for other extended periods of absence and address these considerations by establishing the appropriate documentation to facilitate either maintenance of the paralegal practice or a sale or winding up of the paralegal practice to another paralegal or a lawyer.

The use of separate Continuing Power of Attorney documents for Personal Assets and a Paralegal Practice may assist a sole proprietorship or a professional corporation of which the Planning Paralegal is the sole shareholder to maintain financial stability both personally and professionally and to facilitate a smooth transition for clients of the Paralegal Practice. The purpose of having two Continuing Power of Attorney documents is to provide the Replacement Paralegal with full power and authority to operate, sell or wind down the paralegal practice, while simultaneously ensuring that control over Personal Assets such as a family home and bank and investment accounts remains with the Planning Paralegal's spouse, family member or whomever else the Planning Paralegal has currently named as his or her attorney for property with respect to Personal Assets. Naming a different person to act as attorney for the Personal Assets also gives someone other than the Replacement Paralegal (most often a family member or trusted friend) the ability to review the transactions undertaken by the Replacement Paralegal in respect of the Paralegal Practice, and to negotiate and approve the price and terms of a possible sale of the Paralegal Practice to the Replacement Paralegal. The use of such documents should be considered a preferable means of addressing contingency planning, as opposed to not having such documentation in place and running the risk of an appointment of a guardian of property pursuant to the *Substitute Decisions Act* or of having Trustee Services of the Law Society of Upper Canada take over your paralegal practice.

When preparing such Continuing Power of Attorney documents, the Planning Paralegal should consider the following issues:

1. Ensure that all assets are dealt with, either under the Continuing Power of Attorney for Property for Paralegal Practice [Page 10] or under the Continuing Power of Attorney for Property Excluding Paralegal Practice [Page 7], and that there is no overlap that might cause confusion. The precedent documents accomplish this by defining what assets are to form part of the Paralegal Practice, and providing that the Continuing Power of Attorney for Property Excluding the Paralegal Practice covers all Personal Assets as defined in both types of documents. The precedent documents also make it clear from the very beginning of each document the nature of the assets for which authority is granted to the attorney for property to manage.
2. Ensure that neither Continuing Power of Attorney revokes the other. Each of the precedent documents stipulates that it only revokes prior Continuing Power of Attorney documents dealing with one particular group of assets (Paralegal Practice or Personal Assets). This means that the subsequent preparation of a new Continuing Power of Attorney for only one

set of assets will not affect the other Continuing Power of Attorney that is in existence for the other set of assets. Consequently, changes can be made with respect to naming a new attorney for property or changing other terms independently for each type of document.

3. When selecting a Replacement Paralegal to act as attorney for property for the Paralegal Practice, consider:
  - The proposed Replacement Paralegal's age, health, financial circumstances and family and business relationships and experience. It is advisable to name someone who is likely to be available not only if the Planning Paralegal becomes incapacitated or requires an extended period of absence from the paralegal practice but also for as long as it takes to sell or wind up the paralegal practice, if necessary. In essence, a Replacement Paralegal has full and absolute discretion to make decisions regarding the paralegal practice, subject to any restrictions contained in the Continuing Power of Attorney for Paralegal Practice so it is important to choose wisely and have regard to the fiduciary responsibilities being assumed by the Replacement Paralegal.
  - The ability of the Replacement Paralegal to communicate effectively with the attorney for property for Personal Assets as there will be a need to discuss management of the Paralegal Practice assets, allocation of payment of Paralegal Practice debts, taxes and other expenses and allocation of debts, taxes and other expenses to be paid from Personal Assets.
  - The nature and location of the proposed Replacement Paralegal's own paralegal practice. A Replacement Paralegal with a well-established, well-run practice and reliable staff may be better able to take the time necessary to manage the Planning Paralegal's practice. A Replacement Paralegal whose office is in the same town or the same part of the city as that of the Planning Paralegal may find it easier to go back and forth as required to attend to matters in both offices.
  - The impartiality of the proposed Replacement Paralegal. If the proposed Replacement Paralegal has a conflict of interest with another role (e.g. a landlord, tenant or creditor of the Planning Paralegal, a client of the Planning Paralegal or a potential purchaser of the Planning Paralegal's paralegal practice), consider whether the conflict can be adequately addressed by requiring that certain decisions (such as the sale price and terms of the Planning Paralegal's paralegal practice) be determined by agreement between the Replacement Paralegal and the attorney for property of the Planning Paralegal's Continuing Power of Attorney for Personal Assets or by some other reasonable decision-making process.
4. Approach the people selected to be the primary and alternate attorneys for property for each document to confirm that they are willing to act in these roles. In the case of the Continuing Power of Attorney for Paralegal Practice, the consent of the Replacement Paralegal(s) to act may be contained in an agreement of the type included in this Contingency Planning Guide on page 18. Consider appointing more than one Replacement Paralegal to act as attorney for property for the Paralegal Practice with joint or joint and several responsibilities. In certain circumstances this may be a good and practical option for the Planning Paralegal. In selecting such Replacement Paralegals, the Planning Paralegal may wish to consider the ability of the Replacement Paralegals to work together with each other so as to minimize conflicts. Additionally consideration should also be given to any changes required to the

Replacement Paralegals' Professional Liability Insurance coverage as a result of the assumption of joint responsibilities.

5. If appropriate, negotiate ahead of time the rate of compensation to be paid to the Replacement Paralegal and, if desired, set it out in an agreement between the Planning Paralegal and the Replacement Paralegal. Due to the nature of the work and the assets, it may not be appropriate to allow compensation to be claimed by a Replacement Paralegal in accordance with the regulations to the *Substitute Decisions Act*.
6. If the Planning Paralegal runs his or her paralegal practice through a professional corporation, or owns shares or debt in a management company that runs the practice, or in a corporation that owns real property leased by the paralegal practice, the shares and debt in the corporation would normally be included in and administered as part of the Paralegal Practice. Additional consideration should be given by the Planning Paralegal to addressing matters unique to these types of structures.
7. Any restrictions on the authority of the attorney for property, whether for the Paralegal Practice or Personal Assets should be clearly set out in the respective Continuing Power of Attorney.
8. The terms governing the payment of any gifts or making of loans to family members or other parties should be clearly set out in the respective Continuing Power of Attorney.
9. If there is the possibility that the Replacement Paralegal may wish to purchase the Planning Paralegal's practice, consider making provision for an option to purchase and address the terms of such a transaction in an agreement of the type included in this Contingency Planning Guide.

## CHECKLIST OF ISSUES TO CONSIDER WHEN PREPARING WILLS

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A Planning Paralegal who runs his or her paralegal practice as a sole proprietorship, or as a professional corporation of which the Planning Paralegal is the sole shareholder, should consider preparing two Wills, one dealing with assets related to his or her paralegal practice (the "Paralegal Practice Estate") and the other dealing with all other assets (the "General Estate"). The purpose of having two Wills is to provide the Replacement Paralegal with full power and authority to operate, sell or wind down the paralegal practice, while simultaneously ensuring that control over personal assets such as a family home and bank and investment accounts remains with the Planning Paralegal's spouse, family member or whomever else the Planning Paralegal has currently named as his or her executor.

When preparing two Wills, the Planning Paralegal should consider the following issues:

1. Ensure that all assets are dealt with, either under the Paralegal Practice Will or under the General Will, and that there is no overlap that might cause confusion. The precedent clauses accomplish this by defining what assets are to form part of the Paralegal Practice Estate, and providing that the General Will covers all assets other than the Paralegal Practice Estate. The precedent clauses also make it clear from the very beginning of each Will which set of assets is being dealt with.
2. Ensure that neither Will revokes the other. Each of the precedent documents stipulates that it only revokes prior Wills dealing with one particular group of assets (Paralegal Practice Estate or General Estate). This means that even if a Codicil is later prepared to one of the Wills, thus republishing the revocation clause, it will not affect the other Will.
3. If the Planning Paralegal has secured a separate life insurance policy to fund the ongoing expenses of the Paralegal Practice (including compensation due to the Replacement Paralegal), consider designating the Replacement Paralegal as the beneficiary, in trust to use the proceeds as part of the Paralegal Practice Estate. If the Planning Paralegal also has other life insurance, take care that any life insurance beneficiary declaration in the General Will excludes the policy that is being dealt with under the Paralegal Practice Will. If the Planning Paralegal only has one policy to cover both professional and personal obligations, consider dealing with it in the Paralegal Practice Will with possibly a direction to pay a portion of the proceeds immediately to the Trustee of the General Will.
4. When selecting a Replacement Paralegal to act as executor for the Paralegal Practice Will, take into account:
  - The proposed Replacement Paralegal's age and health. It is advisable to name someone who is likely to be available not only when the Planning Paralegal dies but also for as long as it takes to sell or wind up the paralegal practice.
  - The nature and location of the proposed Replacement Paralegal's own paralegal practice. A Replacement Paralegal with a well-established, well-run practice and reliable staff may be better able to take the time necessary to manage the Planning Paralegal's practice. A Replacement Paralegal whose office is in the same town or the same part of the city as that of the Planning Paralegal may find it easier to go back and forth as required to attend to matters in both offices.

- The impartiality of the proposed Replacement Paralegal. If the proposed Replacement Paralegal has a conflict of interest with another role (e.g. a landlord, tenant or creditor of the Planning Paralegal, or a potential purchaser of the Planning Paralegal's paralegal practice), consider whether the conflict can be adequately dealt with by requiring that certain decisions (such as the sale price and terms of the Planning Paralegal's paralegal practice) be determined by agreement between the Replacement Paralegal and the executor of the Planning Paralegal's General Will.
5. Consider approaching the people selected to be the primary and alternate executors of each Will to confirm that they are willing to act in this role. In the case of the Paralegal Practice Will, the consent of the Replacement Paralegal(s) to act may be contained in an agreement of the type included in this Contingency Planning Guide.
  6. If appropriate, negotiate ahead of time the rate of compensation to be paid to the Replacement Paralegal and, if desired, set it out in an agreement between the Planning Paralegal and the Replacement Paralegal. Due to the nature of the work and the assets, it would not normally be appropriate to allow compensation to be claimed as a percentage of receipts and disbursements, as in a personal situation.
  7. If the Planning Paralegal runs his or her paralegal practice through a professional corporation, or owns shares or debt in a management company that runs the practice, or in a corporation that owns real property leased by the paralegal practice, the shares and debt in the corporation would normally be included in and administered as part of the Paralegal Practice Estate. The precedent clauses contain extra provisions to deal with interests in corporations, specifically the wording in square brackets in paragraph (a) and the whole of paragraph (b) in Section 7, the Definitions Section of the Last Will and Testament Sample Clauses.
  8. Allocate debts, taxes and other expenses appropriately between the Paralegal Practice Estate and the General Estate. The precedent debts clauses require the Trustees of the Paralegal Practice Will to pay all debts and taxes related to the Paralegal Practice out of the Paralegal Practice Estate, and the Trustees of the General Estate to pay all other debts, taxes, funeral and testamentary expenses. There is also discretion to pay debts and taxes related to one set of assets out of the other. More care may need to be taken in allocating debts and taxes to the correct pool of assets if the beneficiaries of the two Wills are different.
  9. If there are to be any specific bequests, take care that they appear in whichever Will governs the particular asset which is the subject of the bequest.
  10. Where a legacy is to be paid, satisfy yourself that there will be sufficient funds in the Will that contains the legacy to pay it in full. Alternatively, the Planning Paralegal may wish to include the legacy in both Wills but, to avoid doubling up, may stipulate that the sum payable under the Paralegal Practice Will is to be reduced by the sum, if any, paid under the General Will (or vice versa).
  11. Include a residue clause in each Will to avoid any intestacy. In most cases (although this is not necessary), the residue clauses in the two Wills will be identical, so that income from and proceeds of sale of the Paralegal Practice Estate can be distributed to the same beneficiaries of the Planning Paralegal, in the same proportions, and on the same terms and conditions as the Planning Paralegal's other assets.

12. The Replacement Paralegal may not want to be involved in the long term administration of a trust for a spouse, minor child, or other beneficiary of the Planning Paralegal. Therefore, if there are to be ongoing trusts, consider authorizing or directing the Replacement Paralegal to pay or transfer the funds to the executors and trustees of the General Will, or to another trustee, as and when they become available (generally upon the sale or winding up of the paralegal practice).
13. If there is any chance of the Replacement Paralegal wanting to buy the Planning Paralegal's paralegal practice, consider authorizing such a purchase in the Will. Without a power to purchase assets from the estate, the purchase would require the approval of either the court or of all the beneficiaries (if there are no minor, unborn, unascertained or mentally incapable beneficiaries). Instead, the sample clause allows the estate trustee of the Planning Paralegal's General Estate (most often a family member or trusted friend) to negotiate and approve the price and terms of a possible sale of the Paralegal Practice to the Replacement Paralegal. The easy availability of such an independent review is a strong argument for having two separate Wills and for naming a different person from the Replacement Paralegal to act as estate trustee for the General Estate. Note that the precedent clause is an administrative power only. If the Planning Paralegal wishes to give a first option to the Replacement Paralegal to purchase the practice, or set out a formula for determining price or other terms and conditions of sale, this should be done in the main body of the Paralegal Practice Will or in a separate agreement.

## PREPARING FOR DEATH AND DISABILITY OF A PARALEGAL PARTNER OR SHAREHOLDER

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*This article has been adapted from an article entitled "Preparing for the Death and Disability of a Law Partner or Shareholder" by Rachel Blumenfeld*

Paralegals may carry on business together through a partnership, a limited liability partnership (LLP) or through a professional corporation. Paralegals may hold their partnership interests through professional corporations. In addition, smaller firms may be structured as professional corporations.

Where paralegals provide legal services together, either in a partnership or through a corporation, consideration should be given as to what will happen in the event that a paralegal retires, becomes disabled or dies. Both the paralegal firm and each paralegal providing legal services in the firm should prepare for such events.

As in any business with multiple owners, problems can arise where a paralegal who is a partner or shareholder in a paralegal firm retires, becomes disabled or dies. In order to minimize the disruption that such events may cause to the business, the partnership or shareholders agreement governing a paralegal firm should specifically contemplate what would happen upon the occurrence of such events.

### *(i) Considerations for Partnerships and Partnership Agreements*

An established paralegal firm may have a comprehensive agreement that contemplates the retirement, disability or death of a partner. However, smaller or newly formed firms may not have an agreement in place.

A partnership agreement should contain specific provisions to address what happens when a partner becomes disabled or dies. First, a partnership agreement will typically provide that a partner will cease to be a partner upon disability or death, and that the personal representative of the partner be treated as a retired partner for certain purposes. For example, the agreement may include the following:

Upon the disability or death of a partner, that partner shall cease to be a partner and the provisions in this Agreement that apply to retired partners shall apply, *mutatis mutandis*, to the legal personal representative of the deceased partner.

Further, upon the death or disability of a partner, a partnership agreement will typically provide that the units held by the partner will be cancelled and the legal representative has no say in the conduct of the affairs of the partnership. A partnership agreement that governs partners that are professional corporations should contain a provision that deems references to the death or disability of a partner to be references to an approved shareholder where the partner is a professional corporation. For example, the agreement may include the following:

The references to retirement, death or disability of a partner in this Agreement shall be deemed to be references to the shareholder where the partner is a professional corporation and, for greater certainty, upon the death of a shareholder, the professional corporation of which he or she is a shareholder shall cease to be a partner.

The partnership agreement should define what the term “disability” encompasses; for example, a partner might be considered “disabled” if the partner is unable to engage, in any material respect, in the full-time provision of legal services. Further, the agreement could grant a particular partner or committee of partners (the firm’s executive committee) the power, authority and discretion to determine whether a particular partner is disabled for purposes of the agreement. The agreement could also provide for a particular period of time during which a partner can be away from work because of a disability without being forced to withdraw from the partnership.

The partnership agreement should set out the timing of the repayment of the partner’s capital account, as well as any other accounts (e.g., the partner’s interest in unbilled disbursements and WIP), and the partner’s *pro rata* interest on his or her capital account. Where life insurance proceeds are available to the partnership, the agreement may stipulate that such payments are accelerated (compared to the schedule of payments on the retirement or expulsion of a partner). The agreement could provide that the firm pay such partner, or his or her estate, in a lump sum or in annual or more frequent instalments, over a specified period of time, the partner’s partnership interest multiplied by the value of the firm’s work-in-progress at the end of the month preceding the death of the partner.<sup>5</sup>

In addition, the agreement could include a clause that either requires each partner to obtain and maintain disability insurance and/or life insurance, or expressly states that obtaining and maintaining such insurance is the sole responsibility of each individual partner. In smaller partnerships, it may be prudent for the partners to hold term life (and/or disability) insurance policies on each other in order to have a source of funds to pay out the capital account of a deceased (or disabled) partner.

If life insurance proceeds are available to the partners or the partnership, the agreement may provide that a payment to a partner’s estate as a result of the partner’s death may be made as, when, and to the extent of the amount of, life insurance proceeds received by the partnership as a result of the death of a partner.

It would be prudent for the agreement to contain a general limitation on payments that would prevent the partnership from being required to pay an amount that exceeds a certain percentage of the net profit of the partnership for the year, notwithstanding the other provisions of the agreement. This would ensure the continued viability of the firm despite the disability or death of one of its partners.

The partnership agreement would also typically deal with the continued use of the name of a deceased partner and may include an indemnity for the estate of the deceased partner for liability resulting from the continued use of the partner’s name.

(ii) *Considerations for Professional Corporations*

As noted above, paralegals in Ontario are permitted to provide legal services through a professional corporation. Where a paralegal firm is organized as a professional corporation under the OBCA and *Law Society Act*, the shareholders should enter into a shareholders

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<sup>5</sup> The partners should obtain advice from an accountant or valuator.

agreement to govern their relationship. The shareholders agreement should contain provisions that are substantially similar to those described above, adjusting for the inherent differences between a partnership and a corporation.

If the deceased or disabled paralegal had a shareholder loan account, the agreement should set out the terms of payment of the loan; as with a partnership, for a smaller corporation, life insurance policies held by the corporation may be a practical solution to ensuring funds are available to pay out the loan.

Where a paralegal firm carries on business as a professional corporation with more than one shareholder, the shareholders agreement should also address what should happen to the shares of an individual who retires, becomes disabled or dies. In particular, the agreement should address whether the individual's shares should be redeemed or purchased for cancellation and, if so, how those shares should be valued.

If the shares were acquired by the individual for nominal consideration, redemption of the individual's shares may occur for nominal consideration, whereas if the shares were acquired by the individual for value, the agreement may provide that the individual's shares be redeemed for value.

In addition, a professional corporation must comply with the provisions of applicable legislation *i.e.*, the *Law Society Act*, and applicable Bylaws,<sup>6</sup> and the OBCA. The OBCA provides that a corporation does not cease to be a professional corporation despite the death of a shareholder.<sup>7</sup>

### *(iii) Considerations for the Paralegal Providing Legal Services through a Professional Corporation*

Paralegals may incorporate a professional corporation that becomes the partner in the paralegal firm. The individual paralegal providing legal services through a professional corporation or as a shareholder in a firm (*i.e.*, not as an employee) must also prepare for death and disability. The OBCA requires that all of the issued and outstanding shares of a professional corporation formed under the *Law Society Act* be legally and beneficially held, directly or indirectly, by one or more members of the same profession, and that all of the officers and directors of the corporation be shareholders of the corporation.<sup>8</sup> The OBCA further provides that the name of a professional corporation must include the words "Professional Corporation" or the French equivalent, and must carry on a business related to the particular profession.

Bylaw 7 of the Law Society of Upper Canada provides that a professional corporation must apply for permission to surrender its certificate of authorization when, *inter alia*, the corporation does not wish to renew the certificate or will no longer provide legal services in Ontario.<sup>9</sup> The corporation is also generally required to publish a notice of its intention to surrender its certificate of authorization and to retain proof of such publication.

Accordingly, an individual who provides legal services through a professional corporation should include a provision in his or her Will that provides that the shares of his or her professional corporation will be held and dealt with by a special trustee who is a paralegal or lawyer in

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<sup>6</sup> See Part II of Bylaw 7 at <http://www.lsuc.on.ca/For-Lawyers/Manage-Your-Practice/Practice-Arrangements/Professional-Corporations/>

<sup>7</sup> Subsection 3.3(1).

<sup>8</sup> Subsection 3.2(2).

<sup>9</sup> Section 10.

Ontario. This can be accomplished by having a separate Will that deals only with the shares of the testator's professional corporation (and any debt owing to him or her by the corporation). Further, provisions of the practitioner's Will with respect to the paralegal practice should expressly direct the estate trustees to abide by any laws, rules, regulations and restrictions imposed by the Law Society of Upper Canada. For example, the Will may include the following:

In the event that my Trustees are dealing with my paralegal practice and my shares of **ABC PARALEGAL PROFESSIONAL CORPORATION**, I direct my Trustees to abide by any laws, rules, regulations and restrictions imposed by the *Business Corporations Act* (Ontario), the *Law Society Act* (Ontario) and the Bylaws of the Law Society of Upper Canada.

Where the deceased paralegal is not the sole shareholder of the corporation, a shareholders agreement should be in place that dictates the manner in which the deceased shareholder's interest in the firm can be extracted, as described above with respect to a partnership interest. Where the deceased paralegal is the sole shareholder of the corporation and he or she has a separate Will dealing with the paralegal practice and naming another paralegal or a lawyer as estate trustee, or the Will of the deceased paralegal provides that the shares of his or her corporation be held and dealt with by a special trustee, the estate trustee or special trustee can appoint himself or herself as the director of the corporation. Depending on the circumstances and any specific direction in the deceased paralegal's Will, the estate trustee or special trustee will then have two choices:

1. The estate trustee or special trustee of the deceased paralegal may have the shares of the professional corporation valued and may arrange for the sale of the shares to a paralegal or lawyer licensed to provide legal services in Ontario. The purchasing paralegal or lawyer would then appoint himself or herself as the director of the corporation, change the corporate name to reflect the purchasing paralegal or lawyer's name, notify the Law Society of the sale as required by section 11 of By-Law 7, and continue the paralegal practice. The proceeds of sale of the shares would be distributed in accordance with the deceased practitioner's Will; or
2. Alternatively, the estate trustee or special trustee of the deceased paralegal could cause the professional corporation to surrender its certificate of authorization. Pursuant to section 10 of By-Law 7, a professional corporation must apply for permission to surrender its certificate of authorization when, *inter alia*, the corporation does not wish to renew the certificate or will no longer provide legal services in Ontario. The corporation is also generally required to publish a notice of its intention to surrender its certificate of authorization and to retain proof of such publication. The Law Society will grant the application if it is satisfied that certain matters related to the protection of clients' interests have been dealt with. Once the certificate of authorization has been surrendered, the estate trustee or special trustee, as director, can file for a change of the corporation's name to delete references to paralegal practice and enable the corporation to continue as a holding corporation. Once the corporation ceases to be a professional corporation and, if necessary, its name has been changed, the shares of the corporation can either remain with the special trustee or be transferred to the general trustee(s) of the estate to be dealt with as ordinary shares of a private holding corporation.

## SUMMARY

A partnership agreement should contain specific provisions to address what happens when a partner becomes disabled or dies. For example, the agreement may provide that:

- A partner will cease to be a partner upon disability or death, and the legal representative of the partner will be treated as a retired partner for certain purposes;
- The units held by a disabled or deceased partner will be cancelled;
- References to the death or disability of a partner are be deemed to be references to an approved shareholder where the partner is a professional corporation;
- A partner will be deemed to be disabled in certain circumstances;
- The partner's capital account and other accounts will be paid to the personal representative of the partner in a certain manner;
- The repayment of a partner's accounts and interest will be accelerated;
- Each partner will be required to maintain disability insurance and/or life insurance;
- In smaller partnerships, partners may hold life/disability insurance policies on each other;
- Payments of amounts exceeding a certain percentage of the net profit of the partnership for the year are prohibited; and
- The use of the name of a deceased partner is permitted.

Where a firm operates as a professional corporation, a shareholders agreement should contain substantially similar provisions to the ones described above.

An individual paralegal providing legal services as a professional corporation or as a shareholder in a firm must also prepare for death and disability. In particular:

- The paralegal should consider having a separate Will prepared that deals with his or her shares of the professional corporation, appointing a paralegal or lawyer in Ontario as the estate trustee. At the very least, the practitioner's Will should provide that the shares of the corporation will be held and dealt with by a special trustee who is a paralegal or lawyer in Ontario; and
- The estate trustee or special trustee can appoint himself or herself as the director of the corporation in order to either sell the paralegal practice to a paralegal providing legal services or lawyer practising law in Ontario who could apply for a certificate authorizing the corporation as a Professional Corporation, or apply to surrender the certificate of authorization of the corporation and, if necessary, file for a change of the corporation's name to exclude references to paralegal practice and enable the corporation to continue as a holding corporation. The corporation could then continue as a holding company.