

PRACTICE ADVISORY

SUCCESSION PLANNING

This advisory supplements the *Canadian Handbook of Practice* (CHOP), Chapter 2.1.2 Succession Planning.

It is intended to focus on the forced dissolution (rather than the sale) of a practice, by the estate of the firm's principal or its legal counsel in connection with, but not limited to, sole practitioners, caused by sudden death, permanent illness or disability and in the absence of a partner or shareholder(s) who own the authority to carry on the business. To a lesser degree, this type of dissolution can also be triggered through divorce, dispute, personal choice or bankruptcy.

While a majority of small firms dissolve upon the retirement of the principal architect or licensed interior designer without a succession plan, per se, there should nevertheless be an emergency contingency plan in place to protect family, estate and the residual obligations of the practice itself against personal loss or liability. This also goes to the protection of the public interest.

Many of the guiding principles of succession as described in detail in the CHOP remain applicable here and members are advised to review this manual with their legal counsel and insurer.

The following are major recommendations:

- Any dissolution must comply with the provincial regulations in effect at the time of dissolution.
- There should be a liability insurance policy in place that inures to the benefit and protection of the estate. Generally, liability for past work remains with the practice and it is important to ensure against liability, post dissolution.
- The work products of the practice, such as files, drawings and contractual data, should never be lost or destroyed but, instead, retained given the statutes of limitations on an architect or licensed interior designer's liability. These funds can be transferred to another architect or licensed interior designer, an archiving or storage agency, or legal counsel. For more detailed information in this regard, online loss control courses are available that address document retention (e.g. XL Catlin Insurance: [Document Retention: What You Need to Know](#)) and your insurer can provide specific recommendations in this regard.
- Above all, the intent is to facilitate an organized shutdown plan and transition of all matters related to the practice through legal counsel, accountants and insurers with minimum inconvenience and impact on family and the estate with regard to ongoing and outstanding business obligations.

The following page is a checklist that can be considered as a guide when seeking legal counsel advice to suit a specific practice. The checklist is not exhaustive, but outlines major subject areas relating to the dissolution of a practice.

NOTE

Contingency business planning is not static. Many of the listed items should be updated in accordance with normal accounting procedures on a regular (preferably monthly) basis.

CHECKLIST FOR CONSIDERATION UPON DISSOLUTION**Practice – Projects**

- Document management and release
- Copyright protection or release
- Succession
- Third party obligations to consultants, suppliers, contractors, authorities having jurisdiction
- Document preparation or assignment through succession – Field review, Progress claims, Alberta Building Code Schedules,
- Other

Identification of Business and Payment

- Assets (list land and leases inventory, WIP (work in progress) supplies and equipment, contracts and royalties as applicable, accounts receivable
- Liabilities and accounts payable
- Banking information as applicable such as personal guarantees, securities and collaterals

Securities and Other Regulations

- Provincial Jurisdictional requirements – Corporate registry, etc.
- Architect Association registration cancellations and return of seal

Pre-Closing Matters

- Insurance and good faith operation until closing
- Required consents – landlord, leasing agencies, etc.
- Right to conduct due diligence
- Deliver documents
- Seek legal counsel advice

Tax Issues

- GST
- Tax filing(s)
- Land transfer tax
- Loss carry forwards

Representations and Warranties

- Employment and consulting agreements
- Pending litigation or outstanding judgements
- Outstanding agreements
- Contractual approvals
- Financial statements

Indebtedness

- Commitments for capital expenditures
- Tax and source deductions and remittances
- Clients, consultants, suppliers and contractor agreements
- Affiliation and joint ventures
- Insurance
- Government assistance
- Liens, charges and title to assets
- Construction liens affecting the practice
- Real and intellectual property
- Equipment leases
- Status of vendors

Post Closing

- Confidentiality
- Employees - assisting in redeployment / re-employment
- Releases from guarantees and warranties
- Announcements
- Indemnifications
- Other obligations

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