

WHEN A SOLE PRACTITIONER DIES

Understanding and planning for what happens to a practice when the principal dies is good risk management.

When a sole practitioner dies there are a number of things their legal personal representative must do for the deceased's legal practice. Forward planning by the practitioner can make that job easier for those dealing with their estate.

Legal personal representative

The legal personal representative (LPR) should notify the Victorian Legal Services Board (LSB) of the practitioner's death. If the practice is an incorporated legal practice (ILP), the LPR must notify the LSB as soon as possible after a sole director has died (see s2.7.12(2) of the *Legal Profession Act* 2004) (the Act) because the ILP is taken to contravene s2.7.12 of the Act if it is without a legal practitioner director for a period of more than seven days. The LSB may appoint another legal practitioner as a director of the ILP to overcome this problem.

Where there are no other lawyers in the firm the LPR may need to take immediate steps to ensure urgent current files are looked after. This is often done by seeking assistance from a local lawyer who knew the deceased. They may be appointed as an informal manager until a decision is made whether to sell or close the practice.

The LSB recommends that the LPR advise the LSB of any proposed appointment of an informal manager. While the appointment of an informal manager need not be approved by the LSB, it will undertake an assessment of the informal manager chosen by the LPR to determine their suitability.

If it appears that the interests of the public are not being appropriately attended to, and the relevant conditions under Chapter 5 are enlivened, the LSB may exercise its right to formally appoint a manager to the law practice to discharge the functions under Part 5.4 of the Act. If this occurs, the fees, costs and expenses of the appointment are payable by the law practice. The LSB manager of practitioner services can be contacted on ph 9679 8001.

The LPR should also give written notice of the death to LPLC along with any current clients and service providers to the law practice as soon as possible.

What to do with the practice

The LPR must decide whether to sell or close the practice and what to do with the files, both open and closed, and the deeds.

Usually the purchaser of the practice would take over all current files. All current clients should be notified that the firm has been sold.

Deed packets and old files may be taken over by the purchaser or remain in the possession of the LPR.

Closing a practice with open files

Where a firm is to be closed, the LPR should contact the clients of all open files and obtain instructions where to send the file. The same should also be done for deeds held by the firm.

Closed files

There is an obligation on whoever holds the client's closed files to keep them for seven years or obtain instructions from the client to otherwise deal with them. See Rule 7.2 LIV Professional Conduct and Practice Rules 2005. This choice will involve an assessment of both time and cost. For more information also see the ethics guideline prepared by the LIV, file ownership, retention and destruction guidelines (www.liv.asn.au/For-Lawyers/Ethics/Ethics-Resources/Ethics-guidelines).

In order to destroy client documents after seven years firms need clear instructions from their clients or make reasonable efforts to obtain those instructions. See s7.2.16 of the Act.

Many practitioners include in their precedent retainer letter a statement that says the client is taken to have consented to their files being destroyed seven years after the file is closed unless the client gives a written objection. Sole practitioners should leave details for their LPR as to when this statement was included in their retainer letter so they know on what basis the files should be dealt with. If consent has previously been obtained, files more than seven years old can be destroyed. However, there are some files that should never be destroyed or only in certain circumstances. See the LPLC blog *You've got to know when to hold them* (<http://lplc.com.au/youve-got-know-hold/>).

Subsequent claims

Where the deceased's practice is sold, a practitioner who acquires the whole or part of the practice may be liable for claims subsequently brought against the practice. Practitioners should refer to the information on the LPLC website about buying a legal practice.

Where the deceased's legal practice is closed, any claims against the sole practitioner will be dealt with by the LPLC in accordance with the terms of the LPLC run-off policy.

Plan for the future

The LPLC recommends that practitioners establish a plan setting out matters which need to be dealt with by the LPR on the death of the practitioner. As part of this plan, the practitioner should include directions to the LPR on how to locate the following:

- contact information for any practitioner who may be willing to assist the LPR;
- keys to access the business premises, filing cabinets, safes and storage units; a list of codes/passwords for safes, alarms, computer systems and details for any trust and office accounts, and digital signatures;
- the practitioner's diary system whether hardcopy or electronic and any passwords;
- both current and closed files, with details of the basis on which files are destroyed;
- deeds register;
- contact information for LSB, LPLC, employees, clients, suppliers, service providers and membership organisations such as the LIV;
- a draft letter for the LPR to provide to those on the client list and contact list about the practitioner's death;
- details of any outstanding insurance claims and disputes involving the practice;
- a copy of any business insurance policies;
- the title or original lease for the land;
- any service contracts such as the service contract for a photocopier;
- tax returns for the last seven years.

The location list can be disclosed in a letter that is kept with the practitioner's will. ●

This column is provided by the **LEGAL PRACTITIONERS' LIABILITY COMMITTEE**. For further information ph 9672 3800 or visit www.lplc.com.au.