Death, Disability and the Sole Practitioner

The death or disability of a sole practitioner often causes not only grief and stress for the practitioner’s next of kin but also causes much anxiety for the practitioner’s clients and employees. Clients need to be assured that their matters will still be competently taken care of or they will take their files elsewhere. Employees are more likely to stay on to assist in the running or the sale of the practice if plans have been laid out for their future. Death and incapacity may not be avoidable, but stress, anxiety and uncertainty arising from such events can be avoided or minimised with some simple planning.

WHAT HAPPENS IF I DO NOT HAVE A PLAN?
The Legal Profession Act 2008 empowers the Legal Practice Board to intervene in a law practice where the sole practitioner has died or is not properly attending to the affairs of the practice.

This external intervention can involve appointing a supervisor of trust money of the law practice, appointing a manager for the law practice, or applying to the State Administrative Tribunal for the appointment of a receiver for the law practice.

The fees, costs and expenses of the external intervener are payable by, and can be recoverable by the Board from, the law practice or the deceased practitioner’s estate. In the Board’s experience, external intervention can be costly and time-consuming, especially where the law practice has not maintained proper records or kept them up-to-date. It is clearly in the sole practitioner’s financial interest to have a contingency plan.

WHAT SHOULD I INCLUDE IN MY PLAN?
An effective contingency plan should deal with the following:

1. Consider giving an enduring power of attorney to another legal practitioner with powers to run or to sell the law practice during illness or incapacity.

2. Identify and keep a list of legal practitioners who would be able to run your law practice in the event of illness or incapacity.

3. Identify and keep a list of legal practitioners who may be interested in purchasing your law practice.

4. Make a will which provides for business succession.

5. Keep a list of parties for office staff to contact in the event of your illness, incapacity or death. These parties should include:
   a. The Legal Practice Board.
   b. All courts and tribunals before which you have pending matters.
c. Clients with appointments or outstanding matters.
d. Bankers to the law practice.

6. Maintain an up-to-date client list with contact particulars and with matter details.

7. Maintain an up-to-date diary noting all upcoming matters such as limitations, settlements, court dates, conferences and appointments and so on. Failure to meet such deadlines may expose you to claims or complaints to the Legal Profession Complaints Committee.

8. Ensure that clients’ instructions are written down and are kept together with the other documents relating to their matters.

9. Develop and implement a plan to regularly backup all data, files and records kept by your law practice in electronic form. Ensure that someone else can access such data, files and records in the event you are unable to do so.

10. If you operate a trust account, the trust account should be kept up-to-date and reconciled monthly. Look out for unidentified deposits. Any unpresented and stale cheques should be promptly dealt with. Develop and implement a strategy to deal with any stagnant balances and unclaimed trust monies.

11. If you receive controlled money, keep and maintain an up-to-date register of controlled money.

12. Keep copies of statements issued under regulation 60 of the Legal Profession Regulations 2009 as these statements can be used to reconstruct the trust and clients’ accounts.

13. Keep a record of all trust and other bank account signatories. Consider having an alternative account signatory.

14. Keep and maintain a record of where all client documents and files are stored.

15. Develop and implement a strategy for the retention, storage and destruction of completed client files and trust records.

16. Review and update your plan at least annually.

As you can see, it does not take much time or effort on your part to develop and implement an effective contingency plan. With a little planning, you can ensure that unexpected death or disability does not adversely affect your next-of-kin, your practice, your employees or your clients.

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