

CHECKLIST FOR BUYING A LAW PRACTICE

1. Discuss the following issues with the selling lawyer:

- Why is the lawyer selling his or her practice?
- Inquire into the profitability of the practice – is there a consistent income stream or peaks and valleys? What type of fee arrangements does the selling lawyer have with clients? Flat fees? Hourly fees? Contingent? Hybrid fee arrangement?
- Do the selling lawyer's clients have discrete (one and done) legal matters or do they require ongoing legal services? For example: corporate clients who must hold annual meetings and prepare minutes or estate planning clients who request periodic updates to their documents.
- Does the selling lawyer track how clients are referred to his or her office? Can the selling lawyer provide referral statistics that reveal referral sources? What percentage of new business comes from the selling lawyer's past or present client base?
- Will the selling lawyer commit to stay for 6 to 12 months to help transition or mentor the buying lawyer?
- What is the selling lawyer's assessment of his or her staff, if any? What skills do staff possess? How knowledgeable are they? Are they likely to remain through and after the transition?
- What is the selling lawyer's malpractice and discipline record? Does the selling lawyer have excess coverage with the Professional Liability Fund (PLF) or another carrier? (All lawyers in private practice in Oregon are required to carry minimum coverage of \$300,000 indemnity/\$50,000 claims expense annually under the PLF primary claims made plan. For more information, visit the PLF website, <https://www.osbplf.org>).
- Is the selling lawyer involved in any state or local bar sections or committees? Other activities in the community?
- What systems does the selling lawyer use for opening files, case management, calendaring, conflict checking, trust accounting, and closing files?
- What does the selling lawyer recommend for integrating clients, staff, technology, office systems, and operational management when the firm transitions to the buying lawyer?
- Will the sale of the practice include the selling lawyer's closed files? If so, where and how are the closed files stored? (Paper files in bankers boxes or scanned PDFs on the selling lawyer's computer system?) How many years' worth or total boxes of closed files does the selling lawyer have?
- Does the selling lawyer retain original wills? Determine whether these original wills are something you'd want included in the sale. The disposal of original wills is governed by ORS 112.815 and ORS 112.820. These statutes specify how long the custodial lawyer must keep the original wills before disposing of them and the disposal procedures. If this is not a responsibility you want as buying lawyer, make sure you discuss it with the selling lawyer. See File Retention and Destruction Guidelines, available on the PLF website, www.osbplf.org. Click on Services tab > CLE & Resources > Forms > Office Systems and Procedures > File Retention and Destruction Guidelines.
- Can the selling lawyer provide a list of personal and professional references, including legal staff and lawyers?

2. Independently research the selling lawyer:

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- Check his or her discipline history on the Oregon State Bar website. (Find the selling lawyer in the online Member Directory and select “Show Discipline History.”) To review disciplinary files of the selling lawyer, complete the request form available here: https://www.osbar.org/secured/review_request.asp.
- Ask the selling lawyer to request a list of his or her legal malpractice claims history from the PLF and provide it to you. NOTE: Although it is helpful to discuss and look over the lawyer’s malpractice claims history, please keep in mind some important things. (1) The only information that the PLF will provide to the lawyer is a list with the date of the malpractice claim, the claimant, and the amount of money paid on the claim. (2) If the claim is currently pending, the lawyer who is the subject of the claim will be unable to discuss the facts of the case with you or anyone else. (3) In addition, the PLF wants all lawyers to be mindful that malpractice claims are not necessarily an indicator of a lawyer’s legal skills or character. Professionally, the odds are that every lawyer will have one or more malpractice claims during the course of his or her career.
- Talk to people who have interacted or worked with the selling lawyer, including co-counsel, opposing counsel, committee or bar group volunteers, or community members.
- Speak to personal and professional references provided by the selling lawyer.
- Observe the selling lawyer in court or administrative venues, if possible.

3. Assess the condition of selling lawyer’s files:

- The buying lawyer cannot review the selling lawyer’s files. However, the buying lawyer can request the following *if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients* - ORPC 1.6(b)(6):
 - The identity of the clients
 - The identity of the adverse parties
 - The nature and extent of legal services involved in each case
 - Fee and payment information
- The buying lawyer has the same responsibilities as the selling lawyer to preserve client confidentiality regardless of the outcome of the contemplated transaction. ORPC 1.6(b)(6).
- The buying lawyer can independently determine how many active cases the selling lawyer has pending in state or federal court by searching OJCIN or PACER databases, respectively.
- To determine if the selling lawyer is associated with any business entities in Oregon – as registered agent or otherwise - the buying lawyer can search the Oregon Secretary of State (SOS) Business Registry Database: http://egov.sos.state.or.us/br/pkg_br_web_assoc_name_srch.main.
- The buying lawyer may wish to conduct court and business registry searches in other states where the selling lawyer is admitted.
- The buying lawyer may also be able to assess the condition of the selling lawyer’s files by evaluating the selling lawyer’s office systems or lack thereof (see next item).

4. Ask the selling lawyer or the selling lawyer’s staff to walk you through the selling lawyer’s office systems and technology. Assess the effectiveness of the following:

- File management – opening, maintaining, organizing, closing, and storing files;

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- Calendaring and docketing – entering and tracking dates and deadlines;
 - Task management – tracking client projects;
 - Conflict systems – performing, clearing, and documenting conflict checks;
 - Trust accounting – recordkeeping, tracking funds, disbursing funds, reconciling accounts;
 - Billing and collection – keeping time records, invoicing clients, aging of accounts receivable, collection issues (if any);
 - Technology – assessing hardware and software. For hardware, evaluate age, general condition, availability of support/repair contracts, and ownership. If any equipment is leased, review lease terms and cost. For software, identify age, version, license/ownership status. If any cloud computing programs are used, determine the monthly/yearly subscription fees and if ownership can be transferred to another user.
5. Assess the condition of the business and the financial aspects of the practice:
- Request access to income tax returns, balance sheets, profit and loss reports, or other records documenting income, expenses, assets, and liabilities of the firm for the last 3-5 years.
 - Request access to payroll tax returns, accounts receivable, collection accounts, business loans, lines of credits, and third-party/vendor agreements, including leases.
 - Search Oregon Secretary of State UCC filings for secured liens on property owned by the selling lawyer: <https://secure.sos.state.or.us/ucc/searchHome.action>.
6. Screen for possible conflicts of interest with the clients of the selling lawyer.
7. Consider hiring a business attorney and a business valuation expert.
8. Review the checklist and resources for lawyers selling a practice, available on the PLF website, www.osbplf.org. Click on Services tab > CLE & Resources > Forms > Buying or Selling a Law Practice. This will help you become familiar with the ethical requirements that apply to sale of a law practice, including the process for notifying clients. It is also helpful to look at the purchase of a practice from the seller's perspective.
9. Review the *Checklist for Sale of a Small Business*, available on the PLF website, www.osbplf.org. Click on Services tab > CLE & Resources > Forms > Business > Checklist for Sale or Acquisition of a Small Business. This checklist has some points that are applicable to sale of a law practice that may be helpful to a potential buyer.

IMPORTANT NOTICES

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