

# AGREEMENT BETWEEN PLANNING ATTORNEY AND ASSISTING ATTORNEY

## CONTEXT

The sample Agreement provided below gives the Assisting Attorney the power to determine whether you are disabled, impaired, or incapacitated and provides the Assisting Attorney with authority under the designated circumstances to sign on your bank accounts (including your trust account) and to close your law practice. The Agreement also enumerates powers such as termination, payment for services, and resolution of disputes.

**If you do not want the Assisting Attorney to be the person who determines whether you are disabled, incapacitated, or impaired, you will need to modify this agreement.**

**If you want a separate Trust Account Signor and you do not want the Assisting Attorney to be the person who signs on your trust account, you will need to modify this agreement.**

## AGREEMENT TO CLOSE LAW PRACTICE

Between: \_\_\_\_\_, hereinafter referred to as "Planning Attorney,"

And: \_\_\_\_\_, hereinafter referred to as "Assisting Attorney."

### 1. Purpose.

The purpose of this agreement is to protect the legal interests of the clients of Planning Attorney in the event Planning Attorney is unable to continue Planning Attorney's law practice due to death, disability, impairment, or incapacity.

### 2. Parties.

The term Assisting Attorney refers to the attorney designated in the caption above or the Assisting Attorney's Alternate. The term Planning Attorney refers to the attorney designated in the caption above and the Planning Attorney's representatives, heirs, or assigns.

### 3. Establishing Death, Disability, Impairment, or Incapacity.

In determining whether Planning Attorney is dead, disabled, impaired, or incapacitated, Assisting Attorney may act upon such evidence as Assisting Attorney shall deem reasonably reliable, including, but not limited to, communications with Planning Attorney's family members, representative, or a written opinion of one or more medical doctors duly licensed to practice medicine. Similar evidence or medical opinions may be relied upon to establish that Planning Attorney's disability, impairment, or incapacity has terminated. Assisting Attorney is relieved from any responsibility and liability for acting in good faith upon such evidence in carrying out the provisions of this Agreement.

### 4. Consent to Close Practice.

Planning Attorney hereby gives consent to Assisting Attorney to take all actions necessary to close Planning Attorney's law practice in the event that Planning Attorney is unable to continue in the private practice of law and Planning Attorney is unable to close his/her own practice due to death, disability, impairment, or incapacity. Planning Attorney hereby appoints Assisting Attorney as attorney-in-fact, with full power to do and accomplish all of the actions contemplated by this Agreement as fully and as completely as Planning

Attorney could do personally if Planning Attorney were able. It is Planning Attorney's specific intent that this appointment of Assisting Attorney as attorney-in-fact shall become effective only upon Planning Attorney's death, disability, impairment, or incapacity. The appointment of Assisting Attorney shall not be invalidated because of Planning Attorney's death, disability, impairment, or incapacity, but instead the appointment shall fully survive such death, disability, impairment, or incapacity and shall be in full force and effect so long as it is necessary or convenient to carry out the terms of this Agreement. In the event of Planning Attorney's death, disability, impairment, or incapacity, Planning Attorney designates Assisting Attorney as signatory, or in substitution of Planning Attorney's signature, on all of Planning Attorney's law office accounts with any bank or financial institution, including, but not limited to, checking accounts, savings accounts, and trust accounts. Planning Attorney's consent includes but is not limited to:

- Entering Planning Attorney's office and using the Planning Attorney's equipment and supplies as needed to close Planning Attorney's practice;
- Opening Planning Attorney's mail and processing it;
- Taking possession and control of all property comprising Planning Attorney's law office, including client files and records;
- Examining files and records of Planning Attorney's law practice and obtaining information as to any pending matters that may require attention;
- Notifying clients, potential clients, and others who appear to be clients, that Planning Attorney has given this authorization and that it is in their best interest to obtain other legal counsel;
- Accessing any desktop or laptop computers, telephones, applications or software programs or any other electronic media or device that Assisting Attorney reasonably believes may contain client files or other law office information;
- Copying Planning Attorney's files;
- Obtaining client consent to transfer files and client property to new attorneys;
- Transferring client files and property to clients or their new attorneys;
- Obtaining client consent to obtain extensions of time and contacting opposing counsel and courts/ administrative agencies to obtain extensions of time;
- Applying for extensions of time pending employment of other counsel by the clients;
- Filing notices, motions, and pleadings on behalf of clients where the clients' interests must be immediately protected and other legal counsel has not yet been retained;
- Contacting all appropriate persons and entities who may be affected, and informing them that Planning Attorney has given this authorization;
- Arranging for transfer and storage of closed files;
- Winding down the financial affairs of Planning Attorney's practice, including providing Planning Attorney's clients with a final accounting and statement for services rendered by Assisting Attorney, return of client funds, collection of fees on Planning Attorney's behalf or on behalf of Planning Attorney's estate, payment of business expenses, and closure of business accounts when appropriate;
- Advertising Planning Attorney's law practice or any of its assets to potential purchasers; and
- Arranging for an appraisal of Planning Attorney's practice for the purpose of selling Planning Attorney's practice.

Planning Attorney's bank or financial institution may rely on the authorizations in this Agreement unless such bank or financial institution has actual knowledge that this Agreement has been terminated or is no longer in effect.

**5. Payment For Services.**

Planning Attorney agrees to pay Assisting Attorney a reasonable sum for services rendered by Assisting Attorney while closing the law practice of Planning Attorney. Assisting Attorney agrees to keep accurate time records for the purpose of determining amounts due for services rendered. Assisting Attorney agrees to provide the services specified herein as an independent contractor.

**6. Preserving Attorney-Client Privilege.**

Assisting Attorney agrees to preserve the confidentiality of Planning Attorney's clients and their attorney-client privilege and shall only make disclosures of information reasonably necessary to carry out the purpose of this Agreement.

**7. Delete one of the following paragraphs as appropriate:**

**Assisting Attorney is Attorney for Planning Attorney.**

Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney will protect the attorney-client relationship and follow the North Carolina State Bar Code of Professional Responsibility.

**OR:**

**Assisting Attorney is Not Attorney for Planning Attorney.**

Assisting Attorney is not the attorney for Planning Attorney.

**8. Providing Legal Services.**

Planning Attorney authorizes Assisting Attorney to provide legal services to Planning Attorney's former clients providing Assisting Attorney has no conflict of interest and obtains the consent of Planning Attorney's former clients to do so. Assisting Attorney has the right to enter into an attorney-client relationship with Planning Attorney's former clients and to have clients pay Assisting Attorney for his or her legal services. Assisting Attorney agrees to check for conflicts of interest, and when necessary, to refer the clients to another attorney.

**9. Informing North Carolina State Bar.**

Assisting Attorney agrees to inform the North Carolina State Bar of the location of Planning Attorney's closed files and the name, address, and phone number of the contact person for retrieving those files.

**10. Contacting Lawyers Mutual Liability Insurance Company (or other professional liability insurance carrier).**

Planning Attorney authorizes Assisting Attorney to contact Lawyers Mutual Liability Insurance Company or other professional liability insurance carrier concerning any legal malpractice claims or potential claims.

**11. Providing Clients With Accounting.**

Assisting Attorney agrees to provide Planning Attorney's former clients with a final accounting and statement for legal services of Planning Attorney based on the Planning Attorney's records. Assisting Attorney agrees to return client funds to Planning Attorney's former clients and to submit funds collected on behalf of Planning Attorney to Planning Attorney or Planning Attorney's estate representative.

**12. Indemnification.**

Planning Attorney agrees to indemnify Assisting Attorney against any claims, loss, or damage arising out of any act or omission by Assisting Attorney under this agreement, provided the actions or omissions of

Assisting Attorney were made in good faith, were made in a manner reasonably believed to be in Planning Attorney's best interest, and occurred while Assisting Attorney was assisting Planning Attorney with the closure of Planning Attorney's office. This indemnification agreement does not extend to any acts, errors, or omissions of Assisting Attorney while rendering or failing to render professional services in Assisting Attorney's capacity as attorney for the former clients of Planning Attorney. Assisting Attorney shall be responsible for all acts and omissions of gross negligence and willful misconduct.

**13. Option to Purchase Practice.**

Assisting Attorney shall have the first option to purchase the practice of Planning Attorney under the terms and conditions specified by Planning Attorney or Planning Attorney's representative in accordance with the North Carolina State Bar Rules of Professional Conduct and other applicable law.

**14. Arranging to Sell Practice.**

If Assisting Attorney opts not to purchase Planning Attorney's practice, Assisting Attorney will make all reasonable efforts to sell Planning Attorney's practice and will forward all monies received to the Planning Attorney or Planning Attorney's estate.

**15. Fee Disputes to be Submitted to the North Carolina State Bar.**

Planning Attorney and Assisting Attorney agree that all fee disputes between them will first be submitted to the North Carolina State Bar Fee Dispute Resolution Program.

**16. Termination.**

This Agreement shall terminate upon:

- (a) delivery of written notice of termination by Planning Attorney to Assisting Attorney during any time that Planning Attorney is not under disability, impairment, or incapacity as established under Section 3 of this Agreement;
- (b) delivery of written notice of termination by Planning Attorney's representative upon a showing of good cause; or
- (c) delivery of a written notice of termination given by Assisting Attorney to Planning Attorney, subject to any ethical obligation to continue or complete any matter undertaken by Assisting Attorney pursuant to this Agreement.

If this Agreement is terminated for any reason, Assisting Attorney or Assisting Attorney's Alternate acting on his or her behalf shall (1) provide a full and accurate accounting of financial activities undertaken on Planning Attorney's behalf within thirty (30) days of termination or resignation; and (2) provide Planning Attorney with Planning Attorney's files, records, and funds.

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[Planning Attorney]

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[Date]

(Continue to Notarization next page)

**Additional Resources**

Another excellent resource is Lawyers Mutual's Risk Management Practice Guide entitled Closing a Law Practice: Through Retirement, Moving to a New Firm, or Death of a Fellow Lawyer. [https://nmcdn.io/e186d21f8c7946a19faed23c3da2f0da/556712d9bf0f4cb2a916cc810687d52b/files/risk-management-resources/practice-guides/Closing\\_Practice.pdf](https://nmcdn.io/e186d21f8c7946a19faed23c3da2f0da/556712d9bf0f4cb2a916cc810687d52b/files/risk-management-resources/practice-guides/Closing_Practice.pdf)

NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid mentioned, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
[Notary Public]

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
[Assisting Attorney] [Date]

NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid mentioned, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
[Notary Public]

My commission expires: \_\_\_\_\_