

Closing a legal practice

Closing a legal practice is generally a decision reached after lengthy consideration, and well in advance of the intended departure date.

There are many matters to consider, for example, the disposal of current files, closing the trust account and arranging final trust audits, surrendering the lease of equipment or premises and storage of closed files.

The following are some suggestions for orderly closure.

1. A law practice that holds trust monies must give the Law Society at least 14 days written notice of its intention to cease practice, cease practising in this jurisdiction, or cease practising in such a way as to receive trust monies: regulation 73 of the Legal Profession Act 2006. The appropriate notification forms may be downloaded from the Society's website.

2. Notify the Law Society and the Master of the storage location of closed files and contact details, in the event there are any queries concerning a closed file.

3. The Legal Profession Act 2006 now applies, and will require that both professional indemnity insurance and practising certificates will be renewable on 1 July 2008.

4. Notify your professional indemnity insurer.

5. Advise all clients well in advance of the proposed date that you intend to close the practice, and that they will need to make arrangements to collect the file and avail themselves of another practitioner. This should be done in two ways. First, an individual notice to the client by letter, a copy of which should be placed on the file. Secondly, by placing a notice in a public spot, for example on the door of the office, or by

advertisement in the newspaper. Failing to advise a current client that the practice is closing may be a conduct issue.

6. If the matter is litigious and is due for hearing in Court, ensure that notice is given well in advance. For example, the Family Court requires at least seven clear days notice of ceasing to act, and may decline to release the practitioner if notice is insufficient. Inadequate notice may be grounds for a complaint to the Law Society.

7. Account to the client for any monies owed or owing, particularly trust monies. Render any final accounts or reimburse unspent trust monies. Emptying the trust account of monies in an appropriate manner can take considerable time and should be one of the first issues to be considered in the wind-down time line. Obtaining the appropriate instructions for the handling of trust monies and clearing all funds from the trust account can take six months or longer.

8. If a file is to be transferred to another practitioner and trust monies are held in relation to the matter, you must obtain specific written instructions from the client to transfer monies from your trust account to the other practitioner's trust account.

9. If you hold unclaimed trust monies (an amount that has been held for two years with no knowledge of the existence or address of the person on whose behalf the money is held, or where the person has refused to accept payment when tendered) then the practitioner must, within one month after the amount becomes an unclaimed amount, pay the amount to the Funds Management Committee: s 259 LPA 2006. The practitioner may be called on to



*Josephine Stone,
Professional Standards and Ethics
jstone@lawsocnt.asn.au*

explain what attempts have been made to locate the client.

10. Note s 271 and regulations 55(3) and 73 of the Legal Profession Act, require the trust account must be externally examined and a report provided to the Law Society. Failure to comply with the trust requirements of the Legal Profession Act may result in criminal sanction. Although there is no specified date for closure for the trust account, failure to do so in a reasonable or timely manner may result in a conduct issue. The appropriate notification forms may be downloaded from the Society's website.

11. Trust records must be kept for seven years, and tax records must be kept for five years. Trust records can include any authorities, written directions or other documents required to be kept and as these are often recorded on the client file rather than in the trust ledger, it is recommended that client files should be kept for seven years: s 257 and regulation 69. Original documents such as wills, deeds, mortgage documents, marriage or death certificates etc. should be returned to the client.