

AGREEMENT – FULL FORM

(Sample – Modify as appropriate)

The sample *Agreement – Full Form* beginning on the next page 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 business bank accounts (except your trust account) and to close your law practice. The agreement gives an Authorized Signer authority to sign on your trust accounts. (See *Caveat* below.) The agreement also enumerates powers such as termination, payment for services, and resolution of disputes.

Caveat: The Assisting Attorney must determine ahead of time whether he or she is going to represent the Planning Attorney, clients of the Planning Attorney, or no one (acting exclusively as a neutral file-transferring agent). If the Assisting Attorney (1) represents the Planning Attorney on issues related to office closure, (2) is an Authorized Signer on the lawyer trust account, (3) finds misappropriations in the lawyer trust account, and (4) is instructed by the Planning Attorney not to inform the clients about the misappropriations, the Assisting Attorney will have conflicting fiduciary duties. To avoid this potential for conflicting fiduciary duties, it is best if the Planning Attorney selects one person to represent him or her as Assisting Attorney and another person to serve as the Authorized Signer on the trust account. (See Chapter 1, *The Duty to Plan Ahead*, and Chapter 2, *What If? Answers to Frequently Asked Questions*, in this handbook for more detailed information on these topics.)

Authorizing someone to sign on bank accounts in an agreement may not meet the banking institution's record-keeping requirements. The Planning Attorney should consult his or her banking institution to complete the paperwork required for its records.

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. For a discussion of alternatives, see *The Duty to Plan Ahead, Access to the Trust Account*, in Chapter 1 of this handbook.

AGREEMENT TO CLOSE LAW PRACTICE

Between: _____, hereinafter referred to as “Planning Attorney”

And: _____, hereinafter referred to as “Assisting Attorney”

And: _____, hereinafter referred to as “Authorized Signer”

1. Purpose.

The purpose of this Agreement to Close Law Practice (hereinafter “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 or the Planning Attorney’s representatives, heirs, or assigns. The term *Authorized Signer* refers to the person designated to sign on Planning Attorney’s trust account and to provide an accounting of the funds belonging to Planning Attorney’s clients.

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 or 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 Planning Attorney’s 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 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 signator, in substitution of Planning Attorney’s signature, on all of Planning Attorney’s law office accounts with any bank or financial institution, except Planning Attorney’s lawyer trust account(s). Planning Attorney’s consent includes, but is not limited to:

- Providing all keys, access codes, etc. to enable Assisting Attorney to enter Planning Attorney's office and use Planning Attorney's equipment and supplies, as needed, access files and 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 client files and records of Planning Attorney's law practice and obtaining information about 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;
- 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 when their 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 Planning 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 find a buyer for the practice; and
- Arranging for an appraisal of Planning Attorney's practice for the purpose of selling Planning Attorney's practice.

Planning Attorney authorizes Authorized Signer to sign on Planning Attorney's lawyer trust account(s).

Assisting Attorney and Authorized Signer will not be responsible for processing or payment of Planning Attorney's personal expenses.

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 and Authorized Signer a reasonable sum for services rendered by Assisting Attorney and Authorized Signer while closing the law practice of Planning Attorney. Assisting Attorney and Authorized Signer agree to keep accurate time records for the purpose of determining amounts due for services rendered. Assisting Attorney and Authorized Signer agree to provide the services specified herein as independent contractors.

6. Preserving Attorney Client Privilege.

Assisting Attorney and Authorized Signer agree to preserve confidences and secrets of Planning Attorney's clients and their attorney client privilege. Assisting Attorney and Authorized Signer shall make only disclosures of information reasonably necessary to carry out the purpose of this Agreement.

7. Assisting Attorney Is Attorney for Planning Attorney. (Delete one of the following paragraphs as appropriate.)

While fulfilling the terms of this Agreement, Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney will protect the attorney client relationship and follow the Idaho Rules of Professional Conduct. Assisting Attorney has permission to inform the malpractice carrier, if any, of errors or potential errors of Planning Attorney.

While fulfilling the terms of this Agreement, Assisting Attorney is the attorney for Planning Attorney. Assisting Attorney has permission to inform Planning Attorney's clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Planning Attorney's clients of any violations of the rules of professional conduct committed by Planning Attorney.

OR:

Assisting Attorney Is Not Attorney for Planning Attorney.

While fulfilling the terms of this Agreement, Assisting Attorney is not the attorney for Planning Attorney. Assisting Attorney has permission to inform the malpractice carrier, if any, of errors or potential errors of Planning Attorney. Assisting Attorney has permission to inform Planning Attorney's clients of any errors or potential errors and instruct them to obtain independent legal advice. Assisting Attorney also has permission to inform Planning Attorney's clients of any violations of the rules of professional conduct committed by Planning Attorney.

8. Authorized Signer Is Not Attorney for Planning Attorney.

While fulfilling the terms of this Agreement, Authorized Signer is not the attorney for Planning Attorney. Authorized Signer has permission to inform Planning Attorney's present and former clients of any misappropriations in Planning Attorney's trust account and instruct them to obtain independent legal advice or to contact the Idaho State Bar Client Assistance Fund.

9. Providing Legal Services.

Planning Attorney authorizes Assisting Attorney to provide legal services to Planning Attorney's clients, provided Assisting Attorney has no conflict of interest and obtains the consent of Planning Attorney's clients to do so. Assisting Attorney has the right to enter into an attorney-client relationship with Planning Attorney's 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, refer the clients to another attorney.

10. Informing Idaho State Bar.

Assisting Attorney agrees to inform the Idaho State Bar Licensing where Planning Attorney's closed files will be stored and the name, address, and phone number of the contact person for retrieving those files.

11. Contacting the Malpractice Carrier.

Planning Attorney authorizes Assisting Attorney to contact the malpractice carrier, if any, concerning any legal malpractice claims or potential claims. (**Note to Planning Attorney:** Assisting Attorney's role in contacting the malpractice carrier, if any, will be determined by Assisting Attorney's arrangement with Planning Attorney. See Section 7 of this Agreement.)

12. Providing Clients with Accounting.

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

13. Assisting Attorney's Alternate. (Delete one of the following paragraphs as appropriate.)

If Assisting Attorney is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints _____ as Assisting Attorney's alternate (hereinafter "Assisting Attorney's Alternate"). Assisting Attorney's Alternate is authorized to act on behalf of Planning Attorney pursuant to this Agreement. Assisting Attorney's Alternate shall comply with the terms of this Agreement. Assisting Attorney's Alternate consents to this appointment, as shown by the signature of Assisting Attorney's Alternate on this Agreement.

OR:

If Assisting Attorney is unable or unwilling to act on behalf of Planning Attorney, Assisting Attorney may appoint an alternate (hereinafter "Assisting Attorney's Alternate"). Assisting Attorney shall enter into an agreement with any such Assisting Attorney's Alternate, under which Assisting Attorney's Alternate consents to the terms and provisions of this Agreement.

14. Authorized Signer's Alternate. (Delete one of the following paragraphs as appropriate.)

If Authorized Signer is unable or unwilling to act on behalf of Planning Attorney, Planning Attorney appoints _____ as Authorized Signer's alternate (hereinafter "Authorized Signer's Alternate"). Authorized Signer's Alternate is authorized to act on behalf of Planning Attorney pursuant to this Agreement. Authorized Signer's Alternate shall comply with the terms of this Agreement. Authorized Signer's Alternate consents to this appointment, as shown by the signature of Authorized Signer's Alternate on this Agreement.

OR:

If Authorized Signer is unable or unwilling to act on behalf of Planning Attorney, Authorized Signer may appoint an alternate (hereinafter “Authorized Signer’s Alternate”). Authorized Signer shall enter into an agreement with any such Authorized Signer’s Alternate, under which Authorized Signer’s Alternate consents to the terms and provisions of this Agreement.

15. Indemnification.

Planning Attorney and/or his/her estate agrees to indemnify Assisting Attorney and Authorized Signer against any claims, loss, or damage arising out of any act or omission by Assisting Attorney and Authorized Signer under this Agreement, provided the actions or omissions of Assisting Attorney and Authorized Signer 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 and Authorized Signer were assisting Planning Attorney with the closure of Planning Attorney’s law practice. Assisting Attorney and Authorized Signer shall be responsible for all acts and omissions of gross negligence and willful misconduct.

This indemnification provision does not extend to any acts, errors, or omissions of Assisting Attorney as attorney for the clients of Planning Attorney.

16. Option to Purchase Practice.

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

17. Arranging to Sell Practice.

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

18. Fee Disputes to be Arbitrated.

Planning Attorney, Assisting Attorney, and Authorized Signer agree that all fee disputes among them will be decided by the Idaho State Bar Fee Arbitration Program.

19. Termination.

This Agreement shall terminate upon: (1) delivery of written notice of termination by Planning Attorney to Assisting Attorney and/or Authorized Signer during any time that Planning Attorney is not under disability, impairment, or incapacity, as established under Section 3 of this Agreement; (2) delivery of written notice of termination by Planning Attorney’s representative upon a showing of good cause; or (3) delivery of a written notice of termination given by Assisting Attorney and/or Authorized Signer to Planning Attorney, subject to any ethical obligation to continue or complete any matter undertaken by Assisting Attorney and/or Authorized Signer pursuant to this Agreement.

If Assisting Attorney and/or Authorized Signer or their respective Alternates for any reason terminate this Agreement, or are terminated, Assisting Attorney and/or Authorized Signer or their respective Alternates shall (1) provide a full and accurate accounting of financial activities undertaken on Planning Attorney’s behalf within 30 days of termination or resignation and (2) provide Planning Attorney with Planning Attorney’s files, records, and funds.

[Planning Attorney]

[Date]

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of _____, before me (here insert the name and quality of the officer), personally appeared _____, known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or she) executed the same.

NOTARY PUBLIC FOR IDAHO
My commission expires: _____

[Assisting Attorney]

[Date]

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of _____, before me (here insert the name and quality of the officer), personally appeared _____, known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or she) executed the same.

NOTARY PUBLIC FOR IDAHO
My commission expires: _____

[Assisting Attorney's Alternate]

[Date]

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of _____, before me (here insert the name and quality of the officer), personally appeared _____, known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or she) executed the same.

NOTARY PUBLIC FOR IDAHO
My commission expires: _____

[Authorized Signer]

[Date]

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of _____, before me (here insert the name and quality of the officer), personally appeared _____, known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or she) executed the same.

NOTARY PUBLIC FOR IDAHO
My commission expires: _____

[Authorized Signer's Alternate]

[Date]

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of _____, before me (here insert the name and quality of the officer), personally appeared _____, known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or she) executed the same.

NOTARY PUBLIC FOR IDAHO

My commission expires: _____