Chapter II. Estate Planning for Farm Transfer

Part 1: Farm Estate Planning Basics

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The materials that follow were prepared for the Farm Succession Advisor's Training held in May of 2017 by Land for Good. This material was presented at an early bird session aimed at attorneys in practice for fewer than five years. An important objective of the training was to encourage young lawyers to make farm transfer a part of their new practices and to assist them in providing competent representation. As such, this section is quite basic. The outline presented in Chapter II: Part 2 goes beyond the basics and will cover trust and estate, gift tax and Medicaid planning.

A. Introduction

Farm succession – the transfer of a farming enterprise from one generation to the next – is most often a gradual process. The traditional progression begins with a transfer of labor and farm income, then a gradual transfer of management and control, and eventually the transfer of farm assets – first an interest in the farming operation entity and then farmland. In practice, the progression is rarely a neat and orderly process. Each family follows its own course, and some never take the next or final step of the transfer of farm land.

The pace and progression of farm succession is necessarily dictated by the arc of the farm business, the size of the estate, the mix of farm and non-farm assets, the retirement needs of the senior generation, and the personal goals and objectives of each generation as they mature. Equity for non-farming heirs is also a consideration. Because all of these factors change over time, an estate plan or a farm succession plan is never "done." At best, it is a current snapshot of a plan to transfer the business given the current circumstances.

Farm succession inside or outside the family can be a difficult topic for families. It raises issues of changing roles, money, and death. These issues are intensely personal – even painful. It's easy to feel overwhelmed.

Along with the personal issues, farm succession can involve a complex set of business, tax, and legal issues. It's a rare attorney, accountant, or cash flow analyst who can address all of these needs. Successful farm succession requires a team of professionals, although the overall process must be family and farmer-driven. When it comes time to put all the pieces of the puzzle together, the farmer is the only expert.

It is the estate planning aspect of farm succession planning that most often addresses the ultimate disposition of the farmland. This has a great deal to do with the IRS rules with respect to tax basis. Land that transfers at death receives a step up in basis equal to its fair market value on the date of death. Land that is gifted inter vivos on the other hand, takes a carryover basis – meaning the Donee takes the basis of the Donor. There are non-tax reasons for transferring farmland at death, as well. The land may be needed to fund the senior generations' retirement and the

successor may be expected to buy out the senior generation. Families also find it difficult to make an inter vivos gift of farmland if there are non-farming heirs with emotional ties to the farm.

B. The Basics

The information presented in this section is intended as an aid for new practitioners. It covers ethical issues, general client intake procedures, basic estate planning documents and other topics in the context of farm transfer. Also included in the appendix is a sample estate planning questionnaire (Appendix 1) and a sample simple will (Appendix 2).

Who is your client?

Attorneys and other service providers who counsel farm families about farm succession and family estate planning matters must clearly identify their client when they begin providing services. Can you represent both husband and wife or unmarried partners? Can you represent the second spouse? Can you effectively represent the family? Parents, farming heirs and non-farm heirs?

Rule 1.7 of the Rules of Professional Conduct in all six New England states generally prohibit joint representation that presents a concurrent conflict of interest. A concurrent conflict of interest exists where the representation of one client will be directly adverse to another client or where the lawyer's representation would be materially limited by the lawyer's responsibilities to the other client.

Notwithstanding the existence of a concurrent conflict, a lawyer, may undertake joint representation when:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
(2) the representation is not prohibited by law;
(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
(4) each affected client gives informed consent, confirmed in writing.

The inherent adverse interests of parents and farming heirs may prohibit joint representation. Representation of a second spouse may also raise inherent conflicts. Spouses with substantially unequal amounts of wealth may also present conflicts. Even if the parties want to consent to joint representation, the lawyer must still decide whether the conflict is "consentable."

You need to explore these issues and discuss them fully with your clients. Attorneys and service providers also need to discuss the scope of information that may be shared among family members as well as with other service providers. Include consent to speak freely with other family members and with other service providers in the engagement letter or fee agreement.

C. Three Basic Estate Planning Documents

There are three basic estate planning documents: A will, a durable power of attorney and an advance directive for health care. A will and durable power of attorney are especially important in the farm transfer context as a means of planning for the disability or death of a member of the senior generation.

The Will

The purpose of a will is to direct the distribution of assets at death. Without a will, assets pass under a set of rules of descent devised by each state.

A will, will direct the payment of last expenses, direct the transfer of specific assets to specific beneficiaries, and designate who shall receive the remainder (residuary) of the estate. A will, will also designate a guardian and create trusts for any minor children.

A will also designates an executor or a personal representative who will carry out the wishes of the testator under the supervision of the probate court. A will may also include instructions with respect to burial or funeral arrangements.

There is a sample and simple will in the thumb drive. It is a simple will suitable for an estate that is well below the state level estate tax threshold and thus does not require a bypass trust. It is also suitable for a client who is comfortable with estate administration in probate court. Some states provide a mechanism for self proving wills. Check your jurisdiction for the appropriate format.

There are several elements of a will that are especially important in the farm estate planning context.

Mortgages and Liens

Where a farming heir is receiving business property or real estate that is subject to debt at the death of the testator, it is important the will specify whether this property is to pass subject to the debt or if instead the debt is to be paid from the residuary estate. If the testator wishes that non-farming heirs receive a greater or equal share of the residuary estate the later treatment would defeat this intent.

ARTICLE I.

I authorize my executor to pay first all my legally enforceable debts and claims, the expenses of my last illness and funeral, and the cost of administration and ancillary administration of my estate, including all costs of safeguarding, insuring and storing tangible personal property.

I further direct that any real or tangible personal property passing under this Will which is encumbered by a mortgage or lien shall pass subject to such encumbrance, and such secured obligations shall not be paid by my estate. (emphasis supplied)

Tax Apportionment

The standard apportionment clause provides that taxes should be paid from the residuary estate and "shall not be apportioned." However, in the case of a taxable estate where the farming heirs are receiving a greater share of the estate, it may make more sense to apportion taxes. That is each heir is responsible for a portion of the taxes attributable to his or her share of the estate. If the testator desires that non-farm heirs receive a greater or an equal share of the residuary estate, apportionment of taxes will better fulfill this desire. An apportionment provisions should also address whether apportionment is to apply to assets both inside or outside of the probate estate.

Specific Bequests

Farm operating assets and in some cases specific parcels of farmland or land suitable for development will pass by specific bequest. For example:

ARTICLE IV.

I bequeath all my interest in Family Farm, LLC to my spouse. If my spouse does not survive me by 30 days, I bequeath said property in equal shares to each of farm heir #1 and farm heir #2 then living, per capita.

Note this bequest is "per capita" rather than "per stirpes." Per capita means that if one named heir predeceases, that heir's share goes to his or her siblings rather than the deceased heir's children. Per stirpes, on the other hand would transfer the asset to the deceased heir's children. It's rarely appropriate to leave business interests to child or to a family member not involved in the day to day operation of the farm.

Farm families often leave house lots or land suitable for development to non-farming heirs as a means of equalizing bequests. These parcels should also be handled as a specific bequest. Complete legal descriptions for these parcels are also important.

The Durable Power of Attorney

A durable power of attorney allows a "principal" to designate an agent to act on their behalf should they become disabled or legally incompetent. A durable power of attorney can ease the continuation of the farm business in the event of disability of one of the business principals. The agent's power to act on the principal's behalf may be effective on the day they both sign the power of attorney, or the agent's powers may "spring" into being only when and if the principal becomes disabled or legally incompetent. This type of DPA is known as a springing power. A

lawyer should draft a Durable Power of Attorney. Most DPAs grant the agent some very broad powers in a laundry list format. (See Sample DPA, Appendix 3)

In the event of disability, a durable power of attorney will spare the principal's family the trouble of going to court for a legal guardianship in order to manage his or her affairs. Where there is a durable power of attorney in place, the farm business can continue with minimal disruption. While a guardianship is court-supervised, the exercise of a power of attorney is not. A principal should only choose someone whom they trust absolutely to be their agent. If the principal doesn't have someone like this, it may be best to have a court-supervised guardianship. A power of attorney can only be terminated by the principal's death or by written notice.

Be sure to take note of your state's requirements for a duly executed durable power of attorney. Both statute and case law will provide guidance on witness and acknowledgment requirements as well as competency of the principal to designate an agent.

DPA for the Farm Business

In the farm context, a durable power of attorney should include the power to deal with those farm agencies, farm suppliers, and farm programs most likely to interact with the farm business. A farm DPA should include, for example, the authority to make decisions regarding real estate tax abatement programs, farm creditors, the state Agency of Agriculture, NRCS, and any other USDA programs. It should also include the authority to conduct an appeal on the principal's behalf in the event of a denial of USDA program benefits.

The Advance Directive for Health Care

An advance directive for health care is a document that gives to another the authority to make any and all health care decisions when the principal is not capable of making these decisions for themselves. The agent will have the authority to consent to life sustaining treatment, to withhold consent, or to withdraw life-sustaining treatment.

The Vermont Ethics network has developed an advance directive form available here:
http://www.vtethicsnetwork.org/

New Hampshire:
http://www.caringinfo.org/files/public/ad/NewHampshire.pdf

Connecticut:
http://ct.gov/ag/lib/ag/health/advdirectivescombinedform2006alt.pdf

Maine:
http://www.themha.org/policy-advocacy/Issues/End-of-Life-Care/advdirectivesform.aspx

Massachusetts:
http://www.caringinfo.org/files/public/ad/Massachusetts.pdf

Rhode Island:
http://www.health.ri.gov/forms/legal/DurablePowerOfAttorneyForHealthCare.pdf

Sample language to limit treatment:

If I am unable to speak or act for myself, I trust my agent to make healthcare decisions on my behalf. If I suffer a condition from which it appears I may recover, I want a feeding tube, breathing machine support if necessary and other treatment recommended by my Doctor for a short time to see if I will get better. However, If I suffer a condition from which there is no reasonable prospect of regaining my ability to think and act for myself, I want only care directed to my comfort and dignity, and authorize my agent to decline all treatment including artificial nutrition and hydration, CPR and antibiotics, the primary purpose of which is to prolong my life. I further authorize my agent to withdraw artificial nutrition and hydration and breathing support if initiated and it later becomes clear that there is no reasonable prospect that I may regain my ability to think and act for myself.

D. General intake

A completed estate planning questionnaire informs both the initial client conference as well as the drafting of the will, durable powers of attorney and advance directives. The questionnaire (Appendix 1) is designed to help you:

- Determine the Gross Estate
- Determine how property of the estate is titled and how it will pass.
- Determine what is in the "probate estate."
- Identify Heirs
- Determine previous planning / gifting.

The Gross Estate

The gross estate includes the value of all farm and non-farm real estate, the personal residence, bank and brokerage accounts, interests in a farm business, debts owed to the decedent, retirement accounts, personal belongings including vehicles and taxable gifts made during the life of the decedent. The gross estate also includes life insurance owned by the decedent or transferred to an irrevocable life insurance trust within three years of the date of death. If the gross estate exceeds the federal unified credit or is within striking distance of an amount that would be subject to a state estate tax, tax planning strategies will be essential. These issues are fully addressed in the Dakin outline, Chapter II: Part 2, which follows.

For the purposes of the initial client conference the assessed value of real estate and the farmer's own estimation of the value of assets in the farm business in determining the gross estate are adequate.

What is in the probate estate?

Certain kinds of property will pass to an heir automatically upon death without having to go through probate. These include real estate titled in Joint Tenancy or as Tenants by the Entireties.

Tenants by the Entirety

Generally, married couples may hold title to real or personal property as "tenants by the entireties." Each tenant is considered to own the whole; without the consent of the other, neither has the power to convey the property to a third person or pledge it as security for a personal debt. The principal difference between tenancy by the entirety and joint tenancy is the inability to encumber the property without the consent of the other tenant. Creditors of only one spouse are unable to attach the property unless the debt was incurred for the necessary upkeep of the property. In this way, a tenancy by the entirety provides a kind of liability shield. Unless the deed or other title document indicates otherwise, at the death of one spouse, the surviving tenant by the entirety automatically becomes the full owner of the property. If the couple is divorced, the tenancy by the entirety is terminated and ownership becomes a tenancy in common.

Joint tenancy

A joint tenancy is created by using words such as "with rights of survivorship," or "WROS," or "as joint tenants and not tenants in common" in the title document. Upon the death of a joint tenant, the property passes to the survivor. If the farm is titled in the name of two farm partners "as joint tenants with rights of survivorship," the whole title to the farm passes to the other partner upon the death of one partner. Title passes automatically without going through probate or passing under the joint tenant's will.

Tenancy in Common

Land held as tenants in common will have to be probated. Any transfer of land to two or more people is presumed to create a "tenancy in common." In a tenancy in common, each owner owns an undivided interest in the whole. If there are two tenants in common, each is said to own a "one-half undivided interest" in the property. Tenants in common may own equal or unequal "undivided" interests. Upon the death of one tenant in common, his or her interest passes to his heirs under the terms of his will or under the laws of intestacy, if he has no will. He may leave his interest to any heir or heirs he wishes. If the will provides that his heirs are to take equal shares of the estate, they will take their respective fractional share of the property. For example, if a one-half undivided interest passes to four heirs in equal share, they will each take a one eighth undivided interest in the whole.

Brokerage accounts are typically "transfer on death" accounts, where a beneficiary is named by the owner of the account. These accounts also do not need to go through probate.

Retirement accounts similarly will have a named beneficiary and will not pass through probate.

Life insurance owned by the testator may name an individual as a beneficiary or name the owners estate. In the case of the later, these proceeds will be part of the probate estate.

E. Non Farming Heirs

While it is important to develop an estate plan that ensures the continuation of the farm, the most important legacy is the family. Most farm families struggle with trying to develop an estate plan that is fair to all of their children. What is or is not fair will be unique to each family and will be a deeply personal decision. The most successful farm transfer plans will involve the non-farm heirs in the discussion. What follows are a number of strategies to suggest to your clients as they navigate this issue.

- Land not needed for the farming operation can be left to the non-farming heirs. This can be non-farm real estate or a parcel of the farm real estate suitable for development.
- Cash gifts to the non-farm heirs concurrent with the gifting of the business interest in the farm to the farming heirs. The value of the business interest gifts and the cash gifts do not need to be equal.
- Leaving the non-farming heirs a greater share of the residuary estate.
- Naming non-farming heirs as a beneficiary of a retirement or transfer on death account.
- Conserving the farm and giving an equal share to each heir.
- Help with student debt / tuition.

F.. Competence

Once you have reviewed the intake questionnaire you need to decide if you can competently handle the case. Probably the biggest red flag in the context of farm transfer is an estate in excess of the federal or state estate taxes. Or the entire farm estate is in a C Corp, the client wants to begin gifting but your forte is really the limited liability company. There will likely be other situations that require specialized skills. The rules below will provide some guidance.

Connecticut, Maine, Massachusetts, Rhode Island and Vermont

Rule 1.1. COMPETENCE
CLIENT-LAWYER RELATIONSHIP
A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. —Amended June 17, 2009, eff. Sept. 1, 2009.

Comment
Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the

matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.
Thoroughness and Preparation
[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).
Maintaining Competence
[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

New Hampshire

Rule 1.1. Competence

(a) A lawyer shall provide competent representation to a client.

(b) Legal competence requires at a minimum:

(1) specific knowledge about the fields of law in which the lawyer practices;

(2) performance of the techniques of practice with skill;

(3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;

(4) proper preparation; and

(5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.

(c) In the performance of client service, a lawyer shall at a minimum:

(1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;

(2) formulate the material issues raised, determine applicable law and identify alternative legal responses;

(3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and

(4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.

Ethics Committee Comment

The New Hampshire Rule continues the prior New Hampshire Rule, expanding on the Model Rule to serve both as a guide and objective standard. The Model Rule standards of legal knowledge, skill, thoroughness, and preparation reasonably necessary are rejected as being too general.

ABA comment [8] (formerly Comment [6]) requires that a lawyer should keep abreast of . . . the benefits and risks associated with relevant technology." This broad requirement may be read to assume more time and resources than will typically be available to many lawyers. Realistically, a lawyer should keep reasonably abreast of readily determinable benefits and risks associated with applications of technology used by the lawyer, and benefits and risks of technology lawyers similarly situated are using.

G. Engagement Letters, Fee Agreements, and Closing Letters

Engagement Letters & Fee Agreements

You may choose to have separate documents for the engagement letter and fee agreement, or to use the engagement letter as an opportunity to articulate the fee agreement. This should not be the first conversation about money between attorney and prospective client. The more explicit and transparent you are about costs, deliverables, and financial expectations, the fewer problems that are likely to arise. Underlying many soured attorney-client relationships are disagreements about fees. You and your client may wish to negotiate either a project-based representation or a retainer based on an hourly rate.

Important points to explicitly identify in an engagement letter:

1. This engagement letter marks the beginning of the attorney-client relationship
2. Party or parties represented
3. Scope of the representation in as much detail as possible
4. “The representation is limited to the above. Any expansion to the scope of these services must be agreed upon by both parties in writing.”
5. Timing of consultations and deliverables

6. Fees: project based estimate or hourly with timing estimates
7. You may wish to include a clause stating that if the representation reaches a certain amount you will contact the client before proceeding.
8. Timing of payment (i.e. within x days of issuance of invoice)
9. Signature line for both attorney and client
10. "I have read this letter and consent to it. Furthermore, I grant and give my informed consent to the representation as described above."
11. Affirmative written consent in as much detail as possible.

Invoices enumerate the work the attorney performed, exactly how long it took, and the rate. Notify the client immediately if you go over the fee agreement estimate. Balance being respectful of your own time and value, as well as setting up appropriate expectations with the client. As a beginning attorney, you'll need to be aware of how much time spent is due to inexperience, and how much is time you need to charge for. Fees should be reasonable, see Model Rules 1.5 dealing with fees.

MODEL RULE 1.5: FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be

deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:
(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:
(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
(3) the total fee is reasonable.
ABA Model Rules of Professional Conduct Rule 1.5: Fees, current as of April 19, 2017

Fees in New England: State by State Variations

New Hampshire
"The language used in Rule 1.5(a) is substantially the same as proposed ABA Model Rule 1.5(a) and changes the prior rule in two respects. First, it replaces the prior rule's standard prohibiting a "clearly excessive fees" with the ABA Model Rule standard of an "unreasonable fee." This change reflects the fact that a "reasonableness" standard defines a lawyer's obligation to the client with respect to other aspects of their relationship governed by the Rules of Professional Conduct…

The second change to Rule 1.5(a) is that it has been revised to make explicit that a lawyer may not charge an unreasonable amount for expenses for which the client is responsible. This change in the text of the rule, which is consistent with the opinions of state ethics committees, is not intended to change the substance of the prior rule. See ABA Formal Opinion 93-379.

The New Hampshire rule differs markedly from the ABA Model Rule because it allows so-called "naked" referral fees. The ABA Model Rule allows a division of a fee between lawyers not in the same law firm only where each lawyer actively participates in a matter or assumes joint responsibility and risk for the representation of the client. The New Hampshire rule changes this requirement and allows a division of fee with a forwarding lawyer, regardless of the work performed or responsibility assumed, provided that the client consents in writing to the division of fees and the total fee is not increased because of the fee division and is reasonable. This change from the ABA Model Rule and from the previous New Hampshire rule is intended to

facilitate the association of alternate counsel in order to best serve the client and is often but not exclusively used when the division is between a referring lawyer and a trial lawyer."
https://www.courts.state.nh.us/rules/pcon/pcon-1_5.htm

Maine
http://mebaroverseers.org/regulation/bar_rules.html?id=87829

Vermont
Similar, with significant changes to section (d)(1); and
(e)(1-3) governing division of fees between lawyers of different firms changes to:
(1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;
(2) the client is advised of and does not object to the participation of all the lawyers involved; and
(3) the total fee is reasonable.

Rhode Island
Same except (b) adds "Where the fee is not fixed or contingent, billings regarding the fees, costs, and expenses shall be provided to the client on a quarterly basis or as otherwise provided in the agreement."
https://www.courts.ri.gov/PublicResources/disciplinaryboard/PDF/Article5.pdf

Massachusetts
Substantial changes to all sections except (a).
http://www.mass.gov/courts/case-legal-res/rules-of-court/sjc/sjc307-rule1-5.html

Connecticut
Changes to subsections (b) and (e)
(b) making a written fee agreement mandatory, written communication must occur before billing, and creates exceptions for public defenders and when lawyer will be paid by a court or state agency.
(e)(1-3) changed to:
(1) The client is advised in writing of the compensation sharing agreement and of the participation of all the lawyers involved, and does not object; and
(2) The total fee is reasonable.
https://www.law.cornell.edu/ethics/ct/code/CT_CODE.HTM

Closing Letters

The closing letter is an opportunity to state or restate the scope of the representation, to maintain a cordial relationship which will leave the client happy and thinking of you the next time legal matters arise, and to clarify the ongoing responsibilities and obligations of the parties, such as maintenance of documents or papers in connection with the representation. However, the single

most important function of this document is to clarify in no uncertain terms that the representation has concluded.

Although it is tempting and may seem polite to imply an ongoing relationship with language like "call me if you have any questions" or "contact me at your convenience", the now former client must be crystal clear that they are no longer represented by you. If they hold a reasonable belief that they continue to be represented by you, you may create ongoing obligations due to an unintended ongoing attorney-client relationship. Even if unintended, the attorney-client relationships can continue for years without any communication.[1] Courts have found ongoing relationships when communications resembling a closing letter contained the language "do not hesitate to contact me if you have any questions regarding the enclosed."[2] Be polite but firm and unambiguous. "This concludes our representation" and "I am closing my file" should sufficiently dampen expectations of ongoing monitoring by you or your firm, and create the essential closure.

Sample language: On behalf of the firm, I am glad to have represented you in this matter. This concludes our representation. I am closing my file and will retain these records for ___ years. After [5] years, these may be confidentially destroyed. The firm retains no original documents.

Be conscientious if you are maintaining signed copies, correspondence, client conference notes during the representation. Best practice is to retain a copy of the original executed document for a period of years. You may choose to maintain, for example an 'LLC Notebook' with a copy of the Operating Agreement minutes, leases, articles of organization from the state.

Note that there may be statutory requirements for retaining records, depending on the type of representation. Estate planning documents, real estate documents and financial documents may require ongoing record maintenance. These should typically be stored in a fireproof file cabinet.[3] You may also agree with the client to return all records to them. Having a system in place prevents the common predicament of having to store large volumes of physical or digital data which can be a target for data breaches.

H. Professional Liability Insurance

Professional liability insurance is essential to protect both you and your clients. Insurance premiums vary based on area of practice, with higher risk areas (as determined by the underwriters) resulting in higher costs. Insurance for a real estate practice, for example, can be quite expensive in relation to a solely transactional or estate planning practice. You must decide whether to confine your practice to an area with lower rates weighing your clients' needs accordingly. Each provider will assess the risk based on your intake questionnaire. Risk management techniques like a conflicts checking system and using the client engagement letters

[1] Jones v. Rabanco, Ltd., 2006 WL 2237708 (W.D.Wash. 2006)

[2] SWS Financial Fund A v. Salomon Bros., Inc., 790 F.Supp. 1392, 1398 (N.D.Ill.1992).

[3] Model Ethical Rules 1.15 & 1.16 (adopted in all New England States) file maintenance requirements

discussed above should result in a lower premium assessment. They will also expect you to regularly earn ethics credits from an accredited CLE provider.

Some insurance providers offer discounts specific to beginning lawyer establishing a solo practice, and some Bar Associations' member benefits include insurance discounts. While waiting to enroll until you have landed a client may sound like an appealing option from a cost perspective, the enrollment process can take weeks, and a farming client may have a need arise on a tight timeline. Be sure your practice area is covered by the policy you select, insurers may choose to exempt certain areas from coverage, examples include the RICO racketeering act and securities regulation.

The average malpractice insurance premium for solo attorneys is $2,800 to $3,200 per year.

The ABA has a Standing Committee on Lawyers' Professional Liability
http://www.americanbar.org/groups/lawyers_professional_liability.html

The Standing Committee provides a site with advice on selecting an insurance partner:
http://www.americanbar.org/groups/lawyers_professional_liability/resources/materials_for_purchasers_of_professional_liability_insurance.html

The "First Flight" program at ALPS provides a significant discount for beginning solo attorneys.

Insurance Providers:
Insurance for Lawyers
www.iflforlawyers.com/
USI (offers ABA member discounts)
www.usi.com/affinity-programs/law-firms-associations/
ALPS First Flight
http://www.alpsnet.com/products/first-flight/

Appendices

1. Sample Estate Planning Questionnaire

2. Sample Simple Will

3. Sample Durable Power of Attorney for the Farm Client