



PRACTICE CONTINUATION AGREEMENTS: A Practice Survival Kit

SECOND EDITION

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*To Joanna, my loving wife for forty years with grateful
appreciation and undying love for her support,*

*To the profession I enjoy that has provided me the means to a fruitful life and
given so much back to me in various ways for forty-one years,*

*and, with respect to all of the CPAs in many places;
hopefully you will benefit from this book in some way
as it was written with you in mind*

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Preface

Ask yourself the following question: What will my spouse or immediate heirs do with my practice if I die or become disabled? Stop and think a minute.

What would they do? Would your spouse or children be able to take over the management of your practice? Odds are that they would not. What, then, would become of all your hard work and effort with your practice and clients? How can you preserve the value of your professional accounting practice, which may be the largest asset in your estate?

This book explains how you can ensure the continuity of your practice with a practice continuation agreement. In the event of death or temporary or permanent disability, a practice continuation agreement helps protect your practice and hence the business interests of your clients and the financial interests of you and your family. It can also be used as a vehicle for retirement.

A practice continuation agreement is a contract that provides for the assumption of your practice by another CPA firm or individual under a predetermined plan for payment based on its value. In the event of death or permanent disability, your practice will be transferred to another firm or individual. In the event of a short-term disability, your clients will be temporarily serviced by the same CPA firm or individual at a predetermined fee structure.

Preparing a practice continuation agreement requires time and effort, but it is well worth the investment. Because of the significant impact it can have on his or her estate, a practice continuation agreement should be part of every sole practitioner's personal financial plan. Moreover, it can provide important benefits to a two-practitioner partnership by providing relief in the event of a mutual disaster. Ideally, a practice continuation agreement should be drawn up when you establish your practice. An unexpected event can occur at any time, and you may not have an opportunity to put your affairs in order. In other words, do it now!

A practice continuation agreement is a practice's survival kit.

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Chapter 1

Why Every Sole Practitioner and Small Firm Needs a Practice Continuation Agreement

A Tale of Two Practitioners

Last year, Tom Credit, CPA, died suddenly. He was 42 years old. Within days, Tom's practice started disintegrating. Clients began to seek out other CPAs, and his staff quickly found employment elsewhere.

Tom had life insurance and some savings set aside for his widow and two young children. But he also had a large outstanding balance on the mortgage on their home, and the family's future—including the children's education—was by no means assured. Tom's practice, built up over years of hard work and much sacrifice, could no longer generate an adequate income; indeed, before long it would become practically worthless.

A few days after Tom's death, another CPA, named Jan Debit, also died. Jan had had the foresight early in her practice to enter into an agreement with another sole practitioner in her community. The agreement provided for the orderly transfer of Jan's clients to the other practitioner and for the disposition of the practice's assets for a prearranged amount. As a result, Jan's clients suffered no significant break in their accounting and tax services, and her staff was provided with some assurance of immediate future employment. Equally important, her family was comforted by vital financial support and peace of mind when they needed them most.

Foresight and Planning

The difference between Tom and Jan was a matter of foresight and planning. Jan realized the importance of planning for her death or possible disability. This foresight led her to arrange for the disposition of her assets, especially the valuable client base she had built over many years. As a result, when Jan died, her practice continuation agreement went into effect immediately, to the benefit of her clients, employees, and family. She knew that only such a quick transfer would prevent the value of her practice from being dissipated.

Failure to plan is too often the case. When you start your own practice, death, disability, and estate taxes are usually the furthest things from your mind. Yet, this is in many ways the time when your long-term personal obligations and responsibilities are greatest. An accident or sickness could annihilate your practice overnight, leaving your family at risk. Most practitioners fail to recognize that their family will not be able to continue the practice or even understand the intricacies of disposing of it.

You also have a professional responsibility to your clients, whose business interests and personal tax matters could be seriously disrupted if you suddenly became unavailable. In addition, your staff deserves consideration. Only through a practice continuation agreement can you guarantee uninterrupted service to your clients and the likelihood of continued employment to your employees while preserving the value of your practice.

Preparing a practice continuation agreement takes time and care. First, you must assess the value of your practice and identify a successor; then you must enter into negotiations, which can be time consuming and demanding. But without such an agreement, you stand to lose virtually everything that you worked so hard to build. Aside from owing it to yourself to be your own best client, you owe it to your family to leave them some financial benefits from what is possibly one of the largest assets in your estate—your professional CPA practice.

Chapter 2

Types of Practice Continuation Agreements

There are different types of practice continuation agreements, and individual plans can vary considerably. The three basic types are one-on-one agreements, group agreements, and state society plans. As will be discussed in chapter 5, the success of any one of these plans rests with your choice of successor.

One-on-One Agreements

Many practitioners enter into one-on-one practice continuation agreements with other sole practitioners, partnerships, or professional corporations in their communities. You may find it advantageous to enter into an agreement with a larger firm, especially if you already have a joint engagement relationship with such a firm.

A one-on-one agreement is usually a buy/sell agreement written to cover death or disability. A variation, commonly used by two sole practitioners, is the cross-purchase agreement, under which each party agrees to purchase the other's practice. A one-on-one agreement also allows for other benefits, such as the mutual carrying of term insurance policies, payable to the deceased's estate; this money is used to satisfy cash requirements in payment for the deceased practitioner's practice (such an arrangement assumes the insurability of both parties). See appendix C for an example.

Group Agreements

Under group agreements, several CPAs act as successors to each other's firms. When death or disability strikes a member of the group, his or her clients are asked to select a new CPA from among the surviving members. Group agreements typically deal only with the transfer of clients. Payment terms are agreed upon at the outset. It is advisable for the group to appoint a chairperson on a rotating basis; this individual serves as the key client contact in the event of a member's death.

There are some inherent risks with group agreements. For example, there is no one specific buyer identified for all your clients, so your client base may be "cherry picked" by the members of the group, and some of your clients may not be purchased. There is also the risk that not everyone in the group will have the requisite background, training, and expertise to be able to handle some of the client base. Then, there are potentially increased administrative issues associated with more than one buyer. However, having mentioned all of this, this type of an agreement is better than not having one at all. See appendix C for an example of a group agreement.

State Society Plans

The third alternative is the plan offered as a service by some state CPA societies to assist the spouse and heirs in the event that a member CPA failed to make his or her own arrangements ahead of time. The state society plan—also called an emergency assistance plan—helps provide for the disposition of the practice. Several states have a formal plan with rules, regulations, procedures, and a governing board. Other states' plans are more informal.

Like other plans, state society plans deal with the transfer of clients and usually take one of two approaches. In the first approach, once the state is notified of a death or disability and receives authorization to act on behalf of the CPA practice, it contacts each client, proposes several other CPA members as possible successors, and asks each client to select one. In the second approach, the state contacts the surviving spouse and provides a list of CPAs interested in buying the practice.

These plans vary from state to state. Some may arrange for the transfer of files or help determine a practice's value. The advantage of most state society plans is that they provide a structured approach for preserving the value of a practice.

The plan is typically administered by a committee of the state society. The committee may act as an arbitrator of any disputes between the parties and help identify possible successors and provide advice to participants, surviving spouses, and heirs.

State society plans may help match buyers and sellers. In most cases, they provide an approximate value of the practice. Although state plans may not always be able to furnish the surviving spouse with specific candidates, they can suggest methods of choosing potential successors.

It is important to check with your state society to be sure that an active program exists and that the society will exercise its authority promptly. Your spouse, attorney, and successor must also be prepared to act promptly. It can be difficult for a state society to provide effective assistance if it is called on too late.

For further research, a list of state society Web sites is available at www.aicpa.org/yellow/ypascpa.htm.

Chapter 3

Basic Preparations

Often, the first hurdle in preparing a practice continuation agreement is procrastination. An action plan, such as the one provided in appendix A, can help you get started. Begin by reviewing this step-by-step plan, modifying it as necessary to suit your circumstances and personal goals. Be realistic about the time needed for each step and be determined to complete each one.

There are two primary tasks: placing a value on your practice and finding a suitable successor. Before you can realistically address these tasks, you have to review the goals, procedures, and characteristics of your practice.

Practice Analysis

An analysis of your firm may influence the type of practice continuation agreement you choose. A careful review prepares you to sit down with prospective successors and compare your respective practice philosophies, clients, marketing techniques, and personnel policies. You must be ready to bare your soul regarding your practice and promote its virtues.

The following questions can help you evaluate your practice. Consider each one carefully to determine how it could affect your assessment of your firm and your negotiations with a successor. Be as objective as you can. Remember, the most effective agreement is one that complements your overall business objectives.

- *Reputation.* How good is your practice's reputation for service and technical expertise? How visible is it in the community? How is your practice distinguished from the competition? Are you known to offer innovative solutions to clients' tax problems? What has been the major cause of any client dissatisfaction or client losses?
- *Specialties.* What are your specialties? Have you been expanding your range of services? Do you specialize in growing fields? Will your successor need to have the same specialties to survive?
- *Rates.* What are your hourly or per diem rates? Are they far above or below the market rate? How do they compare with the rates of your successor? Do you use value billing? Are you honest and realistic with your rates and write-downs? What is your realization per charge hour of fees net of write-downs or write-ups based on your billings?
- *Efficiency.* How do your chargeable and nonchargeable hours compare with those of other firms? What accounts for the nonchargeable hours? What accounts for extra chargeable hours on certain engagements? How well do you control your engagements? What is your staff charge hour utilization percentage based on 2,080 hours each year? Do you exceed 1,600 hours?
- *Profitability.* What have your gross fees, net income, and salary been on an accrual basis over the past five years? How do your write-ups and write-downs compare with those of your competition? What has your cash collection experience been over the past five years compared to your gross fees billed?
- *Location.* Where is your practice located? Is the local economy sound? Is your practice area highly competitive? What are the lease terms of your office space? Is your rent above or below the market rate?
- *Staff.* How high is the morale of your staff? How well does your staff relate to clients? How many employees are certified? Is the staff likely to remain at the practice or to leave? Have staff members signed noncompetition agreements? Are salaries and benefits competitive?

In addition to the overall evaluation, there are some significant control statistics that indicate the financial health of a practice. Make them available at the time of the negotiations to facilitate comparison of practices and their operations. Significant control statistics include:

1. Gross fees per total personnel, including partners
2. Number of partners and gross fees per partner
3. Number of professional staff and gross fees per professional staff
4. Number of support staff and gross fees per support staff
5. Gross fees net of write-ups and write-downs per total personnel
6. Gross fees net of write-ups and write-downs per partner
7. Gross fees net of write-ups and write-downs per chargeable hour
8. Average chargeable hours per total personnel compared to total hours
9. Average chargeable hours per partner compared to total hours
10. Average chargeable hours per professional staff compared to total hours
11. Average chargeable hours per support staff compared to total hours
12. Average billing rate per chargeable hour per total personnel
13. Average billing rate per chargeable hour per partner
14. Average billing rate per chargeable hour per professional staff
15. Average billing rate per chargeable hour per support staff
16. Salary and net income per partner
17. Salary and net income per partner as percentage of gross revenue
18. Salaries for professional staff per chargeable hour
19. Salaries for total personnel per chargeable hour
20. Direct expenses per chargeable hour
21. Indirect expenses per chargeable hour
22. Ratio of capital to net income
23. Average collection period
24. Receivables and WIP as a percentage of gross revenue
25. Percentage write-up (write-down) from standard billing rate
26. Dollar value of write-downs, net of write-ups from standard billing rate
27. Percent growth over previous year

Review your firm's accrual- and cash-basis financial statements for the past five years before beginning negotiations with the successor firm. Trends must be documented and analyses made that support your claims. Remember that you are selling your firm's attributes and that financial statements offer empirical evidence regarding the success of its operations.

In addition to understanding your own firm, it is important to understand your potential successor's practice as well. The evaluation questions and control statistics that you used to evaluate your own practice also apply to your successor's. Do not underestimate the ill effects that different practice philosophies and policies may have on your clients. For example, some CPAs are more flexible than others. Some demand retainers while others bill only for services rendered. Such differences may seem irrelevant in the initial discussions, but they can be a major stumbling block and should be resolved as early as possible. The more you and your successor think alike on how to run a practice, the more likely it is that you will reach an agreement on what the practice is worth. The point is to try to see your firm through your potential successor's eyes.

Client Information

You may have a good sense of what your practice is worth, but you cannot negotiate on that basis. It is essential that you keep good records to provide facts regarding the value of your practice and fine-tune your operations to enhance its value. Therefore, a most critical step in preparing for practice continuation discussions is to summarize basic data about each client. The importance of good client data cannot be overemphasized. It is crucial in the negotiations that follow.

Time and billing software programs can summarize, cumulatively or for defined periods of time, such information as collections for each client, each client's type of business and years with your firm, and billings by type of services rendered (for example, audit, tax, or management advisory services) as a percentage of gross fees. This information can provide an overall picture of chargeable hours, amount of work done by due date, collection delays, cash-flow fluctuations, the size and number of paying clients, and the seasonality of the practice.

This information, in turn, can be used to project the practice's operations and cash flow for several years. Such a projection is of critical interest to the potential successor and may facilitate negotiations.

Client profiles may also include an assessment of client personalities, business philosophies, and goals. You may want to segregate financial and nonfinancial information, with one-page summaries for each client. This information may already be available in your client history files.

Client profiles should provide, in columnar schedule form, the following data:

1. Name and legal form of the individual or company and the name and legal status of any affiliated company
2. Public or private status of the company
3. Client's business
4. Client's location
5. Names and ages of principals and their equity percentages
6. Company structure and vulnerability to loss of a key executive
7. Period of time as a client
8. How client was obtained
9. Type and frequency of services rendered
10. Function and number of employees needed to handle the account
11. Extent of client's computer and software capability

12. Average fees paid in the past three to five years for regular and special services
13. Number of company and personal tax returns prepared for principals and others
14. Potential for a fee increase
15. Direct costs of servicing the client
16. Adequacy of client working papers and records
17. Method of setting fees
18. Unusual service problems
19. Problems with integration of staff and client
20. Any other desirable data in the individual case

With this information, it should be comparatively easy to develop statistics on your practice by industry, fee size, engagement type, profitability range, manpower requirements, specialized services, and other factors.¹

It is also important to analyze client groupings. Is any one group more likely to switch to another CPA? Is there a concentration of clients in one particular industry? Are one or two clients responsible for most of your gross fees? Have any of the clients been serviced by a potential successor? The answers to these questions could affect the assessment of your practice's value.

The importance of client information cannot be emphasized enough. The situation is even more critical if the CPA dies without a practice continuation agreement in force. Remember, even if staff is available to assist the surviving spouse in constructing client profiles, selling the practice in fewer than 30 days is critical to obtaining any significant benefit.

¹ Michael H. Gold, "Considerations in Purchase and Sale of Accounting Practice," *Michigan CPA* (September/October 1972): 4–5, 7–9.

Chapter 4

Placing a Value on Your Practice

Valuation Overview

You should place a value on your practice before you begin discussions with a potential successor. This will ensure that you know the worth of your firm and of your individual clients. You need this information to conduct meaningful negotiations on various aspects of the practice continuation agreement. This valuation should not be confused with the process of valuing a practice at the time it is sold. Your goal now is to establish a value to use as a basis for negotiations with a potential successor.

The valuation method agreed on by both parties is included in the practice continuation agreement. In a normal buy/sell situation, the seller actively participates in the negotiations at the time of the sale. However, when death or some types of permanent disability have occurred, this is not possible. Negotiations on the sale value of a practice for a practice continuation agreement are based on the premise that the seller may die or become disabled before the ink is dry on the contract. Buyer and seller must proceed as though a sale of the practice were imminent and then update this section of the agreement as often as necessary.

Cash flow, client retention, and profitability all affect the valuation of your practice. In the typical sale of a practice, the two basic financial statements that need to be considered are the balance sheet and the income statement from operations. The balance sheet contains the historical costs of tangible assets and any related encumbrances. Items that may be of interest to a purchaser include client accounts receivable, client work in process, office furniture, equipment, computers and software, and land and buildings.

The income statement represents the income stream generated by performing client services. The historical and projected cash income stream is the most important factor in determining the value of the practice or the value of the client list. There must be sufficient cash flow to cover your successor's draw or salary and payments on the purchase price. The value of your practice is enhanced if the cash flow is evenly distributed over the course of the year. Seasonal or specialty practices may command a lower purchase price than a full-service practice. However, a buyer who believes that clients are underserved or that the fee structure is below market levels may be willing to offer more for a practice. Also consider the firm's location and reputation, the maturity of the practice, its client and service mix, and the quality of its staff. Keep in mind that some of these factors may mean little to potential buyers. Location and staff, for example, would count for nothing if your best offer came from a practitioner interested only in your client list.

The more profitable the firm, the higher the assessment of its value will be. Future profitability depends on the stability and growth potential of the client base, and on the prospects for reducing overhead and increasing the billing rate.

The following sections consider each of the factors involved in assessing the value of a practice when making a sale or purchase.

Valuation of Tangible Assets

Fixed Assets

Equipment and other tangible assets can either be negotiated as part of the practice continuation agreement or valued separately. A separate valuation may be appropriate in group agreements or state society plans, but agreement to a flat offer for all hard assets such as computers, furniture, practice software and related licenses, and supplies can facilitate negotiations and simplify the valuation process. You may want to offer these assets in exchange for the down payment on the practice. The objective is to keep the valuation as simple as possible. Haggling over minor assets that may hold no value for your successor could sabotage an agreement. When land and buildings are involved, a formal real estate appraisal can be obtained to determine an equitable value.

Be aware that with group agreements it is unlikely any group member will want to relocate to your office or purchase any of your tangible assets. Hence, these assets can pass from the estate to your heirs. If a group agreement does not provide for their specific sale, the tangible assets should be sold for the best available price based on current fair-market values.

Accounts Receivable

When the practice remains intact after it is sold, accounts receivable are often purchased to maintain the appearance of continuity for clients. In this case, you need to guarantee the value of accounts receivable or use a discount factor based on past collection experience. Current clients may be discounted 10 to 15 percent for the cost of collection. The discount should be greater for doubtful accounts. In the event of death, the discount factor may be further increased as much as 60 percent. A separate accounts receivable subsidiary ledger is maintained to facilitate an audit of the accounts purchased if a repurchase is required.

When the estate retains and collects the accounts receivable, it employs the successor firm as a collection vehicle and pays that firm for its efforts. This is common in the event of death. In such cases, collection costs are usually set at 10 to 15 percent of the amount collected, and the successor is not responsible for uncollected items. To protect your estate, you may want to state in the agreement that no bill will be collected for less than its full value without prior approval by the estate. Again, a separate accounts receivable ledger is maintained for separate administration.

Work in Process

Work in process should be completed and billed by the successor, but placing a value on it can be difficult. Amounts charged for prior engagements should be compared to the expected charge for current engagements of a similar kind. The value of services and client collection records should be carefully assessed. If the successor purchases any work in process, you may be asked to guarantee its value. Of course, billing all current accounts is the best way to minimize this problem. The best policy is to keep work in process to a minimum by rendering progress billings and billing for services upon completion.

The practice continuation agreement should address the division of fees between your successor and your estate. However, payments for the practice and payments for work in process should be kept separate. To avoid the appearance of bad faith, the agreement can state that, if there is a great deal of work in process or if it is unusually complex, allocation of fees shall be subject to the approval of the probate court or a third party.

In most sales of CPA practices, work in process does not receive a value because it cannot be determined or identified. Even if the status of a work in process is identified, the successor who has purchased it usually must either restart the client service project or finish what was begun. Successors are therefore reluctant to purchase work in process.

Valuation of Intangible Assets

The most critical and elusive element in the valuation of a practice is the value of each client. It is basically the client list that provides for the future income stream, but clients are an intangible asset. In many cases, client value is the only factor that needs to be considered, for example, when the fixed assets of a practice are of little or no value to the buyer.

Remember, you have a better chance of getting the price you desire (especially if the price is based on retained fees) if the prospects for client retention are high. If your client base is not secure, the value of your firm diminishes in the buyer's eyes.

Nevertheless, client attrition is inevitable. It is unrealistic to expect all clients to be retained when a practice is transferred from one CPA to another. Upon learning of the death or disability of their CPA, many clients may feel that they have been released from any business or personal obligation to the practitioner and will take their business elsewhere. But many others are inclined to remain with the successor rather than shop around for a new firm. It is therefore essential to inform your clients of an agreement with a hand-picked successor firm as soon as it is signed.

Valuation Methods

There is no single, prescribed method or formula for assessing the value of a practice. Each firm is different and must be evaluated individually. The four methods described below should be modified to fit your needs. Above all, avoid elaborate formulas or benchmark figures, and be prepared to be flexible when determining the value of your practice.

When preparing for the negotiations, it may be helpful to employ several methods to establish the range within which you plan to negotiate. The examples that follow are based on the sample firm described in appendix B. In examples involving projected income, a discount rate of 15 percent was used to determine present value. The actual discount rates used in negotiations will vary with risk factors, such as the cost of available financing and the tax treatment of the purchase. The table below summarizes the sample valuation calculations. It shows negotiation values for the sample firm ranging from a low of \$327,780 to a high of \$959,220.

| <i>Method</i> | <i>Value</i> |
|------------------------|--------------|
| Multiple of gross fees | |
| Low multiple | \$409,186 |
| High multiple | 529,535 |
| Earning power | 327,780 |
| Future net income | 959,220 |

Multiple of Gross Fees. Historically, the value of an accounting practice has been determined as a multiple of gross fees. Some consider this a "pie in the sky" valuation because it does not take into account the firm's expenses and its ability to generate profits; the multiple can be quite arbitrary, and the gross fees generated in one year may be unusual and therefore not reliable. Nonetheless, almost all practitioners are familiar with this method, and it should therefore find some acceptance in any negotiation.

The negotiator should select the multiple carefully, using a description of the firm and its operating environment to justify the selection. For example, metropolitan practices may command a higher multiple than rural practices. Multiples usually range from one-half to more than twice the gross fees.

Practice Continuation Agreements

| | <u>Rural Practice</u> | <u>Metropolitan Practice</u> |
|--------------------|-----------------------|------------------------------|
| Gross fees | \$481,395 | \$481,395 |
| Valuation multiple | <u>85%</u> | <u>110%</u> |
| Value of practice | <u>\$409,186</u> | <u>\$529,535</u> |

Earning Power. Another method assumes that the most important asset in the practice is goodwill. Goodwill means that the buyer will generate earnings faster and at a higher level by buying a practice than by starting one from scratch. The method compares the buyer's potential earnings from the purchased practice with the potential earnings from a new practice. The seller is paid for the effort and risk associated with the startup period. This is often called the earning power inherent in the firm.

The advantage of this method is that it forces the buyer to realistically determine the costs and risks of a start-up business versus the benefits of buying an existing practice. The buyer can use this method to persuade the seller to describe the permanent and reliable components of the practice. The method considers the net profitability of the firm.

The disadvantages of the earning power method arise from the difficulty a buyer may have in assessing the projected net income. Moreover, the parties can easily disagree over the selection of the discount factor to be used in calculating the present or future value of the firm.

| <i>Year</i> | <i>Projected Net Income Purchased</i> | <i>Projected Net Income New Firm</i> | <i>Difference</i> | <i>Present Value @ 15%</i> |
|-------------|---|--|-------------------|--------------------------------|
| Current | \$215,708 | — | — | — |
| 1 | 240,000 | \$ 85,000 | \$155,000 | \$134,780 |
| 2 | 265,000 | 145,000 | 120,000 | 90,740 |
| 3 | 290,000 | 205,000 | 85,000 | 55,890 |
| 4 | 320,000 | 265,000 | 55,000 | 31,450 |
| 5 | 355,000 | 325,000 | 30,000 | 14,920 |
| 6 | 390,000 | 390,000 | | |
| | | Value of practice | | <u>\$327,780</u> |

Present Value of Future Net Income. This method attempts to assess the value of the net earnings that will be generated in the future by existing clients. The exchange value of the practice is determined by the clients who will remain and by the services they will require. The method can be very objective and may include agreements with specific clients on services to be rendered, long-term contract periods, and fee levels. It affords the negotiators the ability to agree on the costs of future services and, therefore, on their profitability.

The principal disadvantage of the method is the difficulty of reaching agreement on the selection of a discount factor for calculating the value of the practice.

| <u>Year</u> | <u>Projected Net Income</u> | <u>Present Value @ 15%</u> |
|-------------|-----------------------------|----------------------------|
| 1 | \$240,000 | \$208,700 |
| 2 | 265,000 | 200,380 |
| 3 | 290,000 | 190,680 |
| 4 | 320,000 | 182,960 |
| 5 | 355,000 | <u>176,500</u> |
| | Value of practice | <u>\$959,220</u> |

Previous 12 Months' Cash Flow. In situations involving the death of a practitioner, the previous 12 months' cash flow from the practice can be used as a benchmark to determine the value for negotiating the transfer to a successor practitioner. Because the practitioner has died, it is extremely important to move the practice to another practitioner within fewer than 30 days of death to be able to retain as much of the client base as possible. This value can be empirically calculated from bank and accounts receivable records and can be identified by client. Because most of the goodwill of the practice would be associated with the deceased practitioner, it would not be included in the valuation.

Other Considerations. It is recommended that the following factors be considered as justifications for raising or lowering the suggested starting point for negotiations:

1. The geographical location of the firm is/is not in an area in which the buyer wants to practice.
2. The seller is/is not a CPA.
3. The buyer has/has not had prior experience in managing an accounting practice.
4. The seller's reputation is/is not high.
5. The seller's and buyer's ages are/are not similar.
6. The seller's philosophy of practice does/does not allow for integration of different work habits.
7. The seller's and buyer's employees are/are not compatible.
8. Personnel have/have not received proper training.
9. Growth potential is/is not present.
10. The seller's major clients have/have not been clients for more than three years.
11. Types of services offered are/are not compatible.
12. Types of industries served are/are not compatible.
13. Fee volumes are/are not similar.
14. Future fee increases are/are not likely.
15. The seller's gross fees for the past five years have/have not been increasing.
16. Billing rates are/are not compatible.
17. Total hours and chargeable time are/are not similar.
18. Net incomes as a percentage of gross revenue are/are not similar.
19. The buyer can/cannot obtain outside financing.
20. The seller will/will not finance part of the purchase price.

Tax treatment of the purchase price should be considered. Goodwill is capital gain to the seller and is deductible over 15 years by the buyer, whereas a covenant not to compete is ordinary income to the seller and is deductible over 15 years by the buyer.

It is also suggested that consideration be given to any selling-price adjustments that may be required when the net profit percentage differs from the previously established norm.

Finally, it seems appropriate that adjustments be made to remove certain nonrecurring expenses from consideration when determining the net income of the practice. Similarly, consideration should be given to certain costs associated with ownership, such as extra salary bonuses, vehicles used, and other fringe benefits.

Valuation Allocation

Once the value of the practice has been established and agreed upon, it must be allocated among all the clients. This allocation is based on the client profiles described in chapter 3; when these are completed, each client must have a specific assigned value. The client list, assigned values, and negotiated allocation method become part of the practice continuation agreement. If the agreement takes effect, this information is used to establish payment ceilings for each client.

Individual client ceilings not only define the maximum amount the successor will pay, they also help prevent payment problems caused by client attrition and fee increases. Remember, when your practice continuation agreement goes into effect, you may not be present to assist your successor with ensuring client retention and expanding services. Therefore, your successor should not be expected to pay your estate for lost clients or for marketing successes. The assigned client values protect your successor and help make your practice buyer friendly. See the “Client List Method” section in chapter 7, “Payment Methods.”

Chapter 5

Identifying a Potential Successor

The number one priority of any practice continuation agreement is the choice of a successor, and one of the principal criteria for a successor is a sound reputation as a competent, ethical, and professional CPA. Equally important is the successor's ability to buy your practice without becoming financially overburdened. The search for a suitable successor may not be easy. It can take time to find a practitioner or firm whose operating philosophy and general management style are compatible with your own. You should remember that the key to benefiting from your practice in the event of disability or death is the successor you choose.

Where to Look

The best source of candidates is your own circle of well-respected practitioners, people you see regularly at seminars and other professional meetings or who may have been a part of your own informal support group or expressed an interest in your practice. If you can find no candidates from this source, referrals from attorneys or bankers may help. Your state society executive director, chapter president, or other key members of the profession may also be able to provide assistance.

Whom to Choose

Just as the candidate seeks to learn as much as possible about your clients, you should be prepared to learn as much as you can about the candidate. If you choose a poorly qualified CPA or firm, there is a high risk of client dissatisfaction and client loss. A well-qualified successor may not be able to retain all your clients, but he or she should be able to retain most of them for a significant period.

A word of caution: be careful to not choose someone of your own age or near your age as your successor. When the time comes to purchase your practice, someone your own age may not be as active a practitioner or may be facing similarly declining health and decide they do not want to purchase your practice.

The ideal successor is a practitioner or firm you have known for a number of years and with which you have discussed a wide range of practice issues, including personnel-related and engagement-related matters. Personality, professional qualifications, experience, and reputation should all be considered. Your successor's efforts will in large part determine the amount of money that will be realized from your practice. If payment depends on a percentage of future fees, your assessment is especially critical because payments will probably cease if your clients become unhappy and leave for another firm.

An Experienced Practitioner

There are obvious advantages to entering into an agreement with an established practitioner. Someone who already knows the ropes is more likely to be able to retain your clients and make the combined practice a success than someone who is just starting out in the field. Does he or she have the resources and ability to provide proper service to additional clients? Would it make more sense to enter into an agreement with a larger firm with the resources to absorb a surge in client services and operating expenses? Do not hesitate to explore these questions with potential successors.

Your Professional Staff

There may be someone on your professional staff who helped build the practice and has sufficient experience to assume ownership. Entering into an agreement with such an individual has two advantages. Because a professional staff member already knows the practice and its clients and is familiar with its working papers and operating procedures, he or she can be expected to continue the practice with the least disruption; as a result, client retention will be high. Second, he or she may want to continue the practice at the same office and will therefore be willing to purchase your tangible assets.

A possible disadvantage is inexperience. Your professional staff may not have the breadth of experience or financial resources needed to carry on the firm. When this is the case, you might consider entering into a practice continuation agreement with two or more professional staff members who will become co-owners of the practice when the agreement is activated.

Former Employers

Like most CPAs, before beginning your own practice you probably worked for a public accounting firm to gain technical proficiency and familiarity with a typical accounting practice. There are probably no potential purchasers who know you as well as your former employers. Moreover, because they are already familiar with your technical abilities, management skills, and personality traits, former employers may be more likely to bypass these considerations and concentrate immediately on your client base.

Special Problems

In some parts of the country, there may simply be no market for a practice such as yours. In rural areas, for example, there may be a lack of candidates, or your niche may be so specialized that other CPAs may not have the skills to service your client base. The solution in such a case may be a group practice continuation agreement with area practitioners.

If a practice continuation agreement seems altogether untenable in your situation, you might consider merging with a neighboring practitioner. You could continue to control your established client relationships and, over time, your clients would become accustomed to the merger. In the event of one partner's death, clients would be more likely to stay with the surviving partner. In this arrangement, payments to your beneficiaries would be covered in the partnership agreement. An alternative would be an agreement with a larger firm that wishes to expand into your market.

What to Look For

The following are some major considerations in the choice of a successor:

1. Professional qualifications
 - a. Recent peer review
 - b. Organizational and planning abilities
 - c. Proper monitoring and control of engagements
 - d. Technical proficiency
 - e. Client satisfaction
 - f. Ability to train and develop staff
 - g. Ability to generate fees and knowledge of the value of the services performed
 - h. Ability to bill and collect promptly
 - i. Sense of professional responsibility

2. Personal qualifications
 - a. The appearance and presentation of the firm and its personnel
 - b. Leadership within the firm
 - c. Evidence of oral and written communications skills
 - d. Good relations with colleagues and clients
 - e. Gradations of expertise within the firm
 - f. Useful mixture of personalities within the firm
 - g. Growth potential
3. Community and professional standing
 - a. The firm's image
 - b. Community leadership of firm principals and staff
 - c. New clients brought in through individual contacts
 - d. Professional participation and leadership accomplishments

A successful practice continuation agreement requires a great deal of careful planning and consideration of all factors involving the individual or firm successor. You must feel confident that trust exists between your firm and your successor.

Chapter 6

Constructing the Agreement

Once you place a value on your practice and identify your successor, you are ready to begin negotiating and constructing the agreement. You should consider consulting with an attorney before the negotiation process begins. Set forth at the beginning of the negotiations the essential terms that must be a part of any agreement, for example, warranties of other parties. If you cannot agree on these terms, do not be afraid to walk away. Remember that the level of confidence and satisfaction your agreement provides depends on your negotiating skills and strategy. As you prepare to negotiate, keep in mind that successful negotiations result in a win-win situation for both parties.

There are many elements to constructing a practice continuation agreement. Outlined below are the basic terms and conditions addressed by such a contract.

Definitions

The provisions of a practice continuation agreement are tied to the basic definitions of temporary disability, permanent disability, and death or retirement. Temporary disability is a disability caused by physical or mental ill health that does not last more than approximately six months (a leave of absence for military personnel could also be addressed in the provision for assumption of the practice on a temporary basis). Permanent disability is a total disability caused by physical or mental ill health. Retirement is the termination of practice on an immediate or phased basis. These definitions must be included in the contract and must be addressed with care to allow an element of flexibility.

Assumption of a Practice on a Temporary Basis

In the event of a temporary disability, the practice continuation agreement obliges the successor firm to provide employees to assist in the daily business of your practice. The agreement should address the temporary successor's responsibilities, including maintenance of billing and collection records; coverage of malpractice insurance; responsibility for books, records, and files; and supervision of staff. Additional protection can be achieved by purchasing disability overhead-expense coverage insurance to cover your overhead expenses if you become totally or partially disabled.

Assignment of Staff and Other Employees

The employees provided are generally at the supervisory level and have the experience and background necessary to make management decisions and to provide on-site reviews of work produced by your staff. They remain under your supervision because you are expected to return to normal practice in a short time.

Compensation Arrangement with the Successor

The compensation arrangement should specify the going rate for the management-level individual who assumes responsibility for your firm or the standard fee charged to clients by the successor firm. The fee paid to temporary successors depends on the quality and nature of the services provided and the season in which they are rendered. Fees for CPAs and non-CPAs can differ. Several state plans call for payment to a temporary successor of 75 percent of the normal hourly rate charged to clients. Other plans suggest 80 percent. However,

the successor may not want to provide personnel at less than the full rate. While you are temporarily disabled, your staff should receive quality supervision and assistance. Payment of fees at a rate other than the going rate may not provide you with the results you need. On the other hand, your client fee structure may not warrant payment of your successor's full rate. However, the successor firm may be able to compensate a management-level CPA at a lower rate and still provide the quality and expertise required. This issue requires careful negotiation. When fee structures are compatible, fewer problems arise.

Conclusion Arrangement

The contractual agreement should provide for a systematic conclusion to the arrangement for temporary services. As a rule, advance notice of returning to work is not required by the agreement, but as a courtesy, the temporarily disabled practitioner should inform the successor of his or her return as far in advance as possible.

Assumption of a Practice on a Permanent Basis

The provisions called for in the event of permanent disability, retirement from practice, or death are much more detailed. You have to assume your inability to deal with any element of the practice and provide for the orderly transfer of your clients to the successor firm. Payments for your practice are then made on a predetermined basis.

List of Clients

A list (as discussed in chapter 3) that provides such information as the type of industry or service with which the client is associated, comparative fees per type of service for at least three years, accounts receivable collection history, types of services provided, and contact persons at the client's office is vital not only to the valuation of the CPA practice and its ultimate sale or disposition but also to the contractual agreement itself. The form of the client matrix may vary, but at a minimum it contains a list of clients, the value that is placed on the business of each one, and the method used to determine and assign these values (as discussed in chapter 4). The list is included as an exhibit to which reference is made in the body of the contract. It is a key contract element that should be updated at least annually.

Working Papers

The firm's working papers must be available to its successor. These papers indicate the tax and accounting standards that have been applied to each client. They can also assist in determining the status of work in process and can enhance the value of the practice. Arrangements for the transfer of these records must be made.

Files

Billing, personnel, and all other files (both paper and electronic) must also be transferred to the successor firm. One of the most difficult problems can be locating the files and identifying the information they contain.

Books and Financial Statements

Because the entire practice is being transferred, the successor must have access to all of the predecessor firm's books. This includes subsidiary ledgers such as payroll and accounts receivable. It is also advisable that the firm's financial statements on an accrual and cash basis for at least the past three years be available. Tax returns should also be available. Note that the same information regarding the successor firm should be available to the predecessor during negotiations and later during reviews of the agreements.

Work in Process and Accounts Receivable

One of the most difficult areas to define in a CPA practice is the work in process. Usually, it is valued separately. Payment therefore depends on the ability to identify and determine the status of the work in process. Accounts receivable records are also vital in the transfer of a firm's clients. The parties to the agreement must decide who will be responsible for collecting the accounts receivable and whether the accounts will be valued and sold to the successor firm. If the successor agrees to buy them, they must remain separate and apart from the successor firm's accounts receivable records. Provisions should be made for any service fees that may arise in the collection process.

Equipment and Supplies

CPAs sometimes do not follow the advice they give their clients and fail to employ an identification system for their office furniture and equipment. Generally, all they have available is their depreciation schedules. Unless a good identification system is in place, the surviving spouse, executor, or successor firm will find it extremely difficult to identify these items. A fixed-asset subsidiary ledger, if it contains a record of dates of purchase, costs, serial and model numbers, and peripheral attachments, can also assist in assessing this element of the balance sheet. If supplies are to be sold to the successor firm, they need to be organized to allow an inventory to be taken.

Existing Leases

Current leases of a CPA firm can be negotiated for settlement with the lessor, usually by the surviving spouse or executor's paying approximately six months' rent in advance. Sometimes even the permanently disabled practitioner or the successor firm can negotiate release from a lease. Generally, however, the successor does not need a second office in the same city and does not want to have to negotiate the settlement of the lease. To ensure client retention, a transitional lease may be advisable. Landlords will generally agree, for a price, to the reassignment of a lease. Advanced lease planning could allow the lease to automatically terminate within 30 days of your death. CPA firms also lease equipment (such as copying machines and scanners) and have secondary leases for storage facilities. Assumption of payments and lease terms for these must also be addressed by the agreement.

Employee Records

Good employee records are vital to a CPA firm's operations, but some firms neglect them. Records should be available containing, at a minimum, employee contracts, salary scales, personnel policies, equal-opportunity practices, and performance and salary reviews. Most agreements contain a provision for the firm's personnel to be hired by the successor and to be retained unless they prove incompatible with the new firm. It is extremely important that your staff understand that the agreement provides for their transfer to the successor firm.

Liabilities and Malpractice Insurance

Existing and contingent liabilities must be identified, including any current professional liability lawsuits. Most agreements address this issue specifically. Successor firms do not want to be associated in any way with professional liability lawsuits brought by clients or with some contingent liabilities.

When a practice is to be continued by another practitioner, decisions have to be made concerning policy limits, deductibles, types of risks covered, and settlement provisions. Of particular importance to you will be the purchase of tail coverage to protect against claims made after the expiration of the former malpractice policy. Because you are no longer practicing, premiums for tail coverage are usually reasonably priced. Work closely with your insurance broker and attorney so that you can obtain the full protection of your malpractice insurance policy.

Any debts, such as notes payable or current liabilities, should also be identified in detail. Before negotiations can be completed, these debts may have to be negotiated with the creditor. Some debts cannot be assumed, and new ones may have to be created or substituted.

Property and Casualty Insurance

This element of the agreement is of special interest to the successor firm. Proper coverage must be in force and expiration dates must be known to ensure protection of assets before and during transfer from one office to another. The surviving spouse or heirs also need coverage to be in force until they have disposed of any assets not transferred. A well-organized insurance file containing records of all current policies is recommended.

Fees and Billing Information

The standard fees of your firm and your successor need to be known during negotiations. Compatibility between these fees in the marketplace is required to ensure client acceptance. The fee structure of billings and the billing procedures themselves are also vital to client retention. Finally, utilization of personnel is determined principally by the fee structure.

Payment for the Practice

When considering the sale of your practice, you must be reasonable in your assessment of its value and realistic in the payment structure you demand. You must keep in mind that the object of your negotiations is a practice continuation agreement that protects your assets and provides something to your surviving spouse or heirs. To this end, you may need to sell your practice at a buyer-friendly price. (There is a detailed discussion of this issue in chapter 7.) You must also remember that the value of your practice will dissipate in fewer than 30 days after your death and that it will not last much longer than that if you become permanently disabled and are unable to tend to its affairs. It is essential in your negotiations and in the drafting of the agreement that payment steps are clearly outlined. Consideration of tax issues and responsibilities is also critical.

General Provisions

Noncompetition Clause

It is extremely important to have this element addressed in your contractual agreement. A noncompetition clause penalizes your successor for taking away any clients in the course of the temporary disability engagement. The penalty is usually expressed in terms of dollars to be paid for each client taken. This is generally no less than 150 percent of the cash fees collected from those clients during the previous year. You should seek the advice of an attorney as to the enforceability of any restrictions you are thinking of including in the agreement because rules vary from state to state.

Termination of the Agreement

Most agreements allow for termination by either party within 30 days of sending written notice to the other's last known business address. However, you can select any termination period. You need this provision to allow you to void the contract in the event of the discovery that your successor has been involved in controversial issues that might jeopardize retention of your clients. A significant change in financial conditions at either firm could also warrant termination of the contract. There may be other instances in which you wish to draw up a new agreement, for example, in order to transfer the practice to a particular staff person who has gained the respect of clients. The successor may also want to cancel, for example, if his or her health deteriorates.

Arbitration

The parties can agree that any dispute or claim concerning the contract will be settled by arbitration. These proceedings would be accomplished by other CPAs not party to the contract, with the costs to be borne equally by each firm.

Notification

This element of the contract ensures that your clients are notified of the agreement. It should be stressed to them that the services they have been receiving will not be interrupted in the event of your untimely departure from the practice. Notification should be performed by your firm and should make the point that much thought has gone into finding a successor firm that will provide comparable services at comparable rates. It is even advisable that both you and your successor visit key clients before the agreement is consummated and inform them of the possibility of a transfer and what they can expect. Even if it is not a stipulation in the contract, it is extremely important that your surviving spouse or heirs be notified that you have executed a practice continuation agreement. The attorney for your estate should also be notified if he or she did not review your practice continuation agreement before execution. This is, however, a situation that should be avoided. (These specific notifications are discussed in chapter 8.)

If possible, the permanently disabled practitioner should assist in the orderly transfer of clients, advising the successor on the nature and status of the engagements. This encourages a smooth client transition and strengthens the relationship between the successor firm and the clients. It also increases the chance that your clients will remain with the successor firm, resulting in payments for your practice.

Negotiation Considerations

The following issues may arise during the negotiations.

Carryover Expenses

Generally, your staff is paid by your estate through the date of transfer and by your successor thereafter. Employee benefits such as accrued sick pay and vacations are important for morale and should be addressed carefully.

Firm Name

Check with your state board of accountancy about your successor's use of your firm's name on letterhead, business cards, and similar documents.

Financial Protection

You may want your successor to purchase decreasing-term life insurance in an amount equal to his or her debt to your estate when the transfer takes place. This protects your heirs in the event that your successor dies before completion of the payment terms. Your estate should be the beneficiary. The successor should also have disability and general-practice insurance. The cost of the insurance must be considered in relation to the derived benefits.

Telephone, Box Numbers, and E-Mail

To help maintain continuity, transfer your firm's telephone number and post office box number to your successor upon implementation of the agreement. Consideration should also be given to setting office e-mail to forward to your successor.

Other

Consider circumstances peculiar to your own or your successor's practice during the negotiations. For example, some specialized work may not be transferable. If you practice out of your home, the disposition of assets and the use of the premises by your successor probably need to be dealt with differently than if you operated out of a separate office. Whatever the special circumstances, they should be considered and included in the agreement.

Incorporate the practice continuation agreement into your will and estate and consult a competent attorney to draft your agreement and review all related documents at the conclusion of negotiations. A sample agreement is shown in appendix C.

Chapter 7

Payment Methods

The most common method of paying for an accounting practice is to spread the payments over a period of five to seven years. Some agreements have called for payments in as few as 3 years, and others in as many as 10. Outright cash payments for an accounting practice are uncommon unless severely discounted. There is no guarantee that the clients transferred will be retained by the successor. Down payments are between 10 percent and 20 percent. Generally, you must be willing to agree to installments to get a good price because the successor may have minimal available funds or be unwilling to make a full commitment to the terms of the agreement until retention of the majority of your clients is ensured. Make it as easy and financially undemanding as possible for the successor to pay for the practice. Remember, the successor must pay your staff immediately, long before receiving fees from the clients transferred. The timing of all payments, and penalties for failure to pay, should be specified in the agreement.

Group Payment Method

Several state society emergency assistance plans, used in the event that no practice continuation agreement exists, provide for a payment over time of 100 percent of gross fees. For example, some plans require the buyer to pay 25 percent of fees earned in each of 4 years; others ask for 20 percent in each of 5 years. To protect the buyer, a ceiling is placed on the gross fees received from each client. To expedite the process, the ceiling established is either the annual fee from the 12 months prior to the time of transfer or the average annual fees collected by the buyer during the payout period, whichever is lower.

If your successor is successful in expanding the practice, the first ceiling method is used because he or she, rather than your estate, has the right to the additional fees generated. However, if one or more of your clients are lost, the second ceiling method is used because your successor cannot be expected to pay you for fees that were never earned.

This payment method is ideal for group plans. Although the thought of group negotiations may cause some concern, it is relatively easy with this type of formula. No one is likely to assume an uncompromising position because each group member realizes that his or her estate may be the first to require help.

Client List Method

The payment method that protects both you and your successor is one that is directly related to the client list and the values assigned to each individual client. These predetermined client values (as discussed in chapter 4) are used to create a payment ceiling that reflects the maximum to be paid not only for the entire practice but also for individual clients. Such a method is buyer friendly and averts future confrontations over client fee collections or terminations. It requires a separate accounts-receivable subsidiary ledger to handle the administration of collections for each account. An illustration follows.

*Illustration of Collections/Payments on Clients
Subsequent to Purchase*

| <i>Clients</i> | <i>Assigned Dollar Value</i> | <i>Dollar Gross Collections From Client Billings</i> | | | | | <i>Dollars Paid on 5-Year Contract to Seller</i> | | | | | <i>Total Paid</i> |
|----------------|--------------------------------------|--|----------|----------|----------|----------|--|----------|----------|----------|----------|-----------------------|
| | | <i>Year</i> | | | | | <i>Year</i> | | | | | |
| | | <i>1</i> | <i>2</i> | <i>3</i> | <i>4</i> | <i>5</i> | <i>1</i> | <i>2</i> | <i>3</i> | <i>4</i> | <i>5</i> | |
| A | 1,000 | 750 | 500 | — | — | — | 150 | 100 | — | — | — | 250 |
| B | 5,000 | 5,000 | 5,000 | 5,000 | 5,000 | 5,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 5,000 |
| C | 15,000 | 25,000 | 25,000 | 30,000 | 30,000 | 35,000 | 5,000 | 5,000 | 5,000 | — | — | 15,000 |
| D | 4,000 | 4,000 | 4,000 | 3,000 | 3,000 | 3,000 | 800 | 800 | 600 | 600 | 600 | 3,400 |
| All | 25,000 | 34,750 | 34,750 | 38,000 | 43,000 | 6,950 | 6,900 | 6,600 | 1,600 | 1,600 | 1,600 | 23,650 |

The hypothetical purchase is based on a 5-year payout, with 20 percent of cash collections paid to your estate from billings for services rendered subsequent to the purchase of the practice. The maximum price to be paid for the practice is \$25,000.

Client A (value \$1,000) terminates after the second year. Because no future collections will be received, only \$250—the amount collected during the 2-year period—is paid on this client. No further payments are required.

Client B (value \$5,000) pays out completely over the 5-year period, and collections are received by your estate at 20 percent per year.

Client C (value \$15,000) pays off its assigned dollar value in 3 years. Your successor does not owe any of the increase in fees generated from this client subsequent to the purchase. However, the increase in fees causes the account to be paid early because the agreement specifies payments of 20 percent of fees collected.

Client D (value \$4,000) is not paid off in full at the end of 5 years. Another payment is due when the collections are made by your successor in the 6th year.

Most practice continuation agreements should provide for the percentage of collections due to be paid by the 20th day of the month following the previous month's collection period. The separate accounts-receivable subsidiary ledger set up for administrative purposes should facilitate an audit, if required. This issue must be covered in the agreement. It is also recommended that a separate interest-bearing bank account be maintained to segregate these transactions from others in the successor's practice that need to be kept confidential.

Chapter 8

Once the Plan Is Complete

Notifications

Once the agreement is completed and signed, inform your attorney, staff, and spouse of the details to ensure the smooth transfer of the practice. All the parties have duties to perform to ensure that your clients are efficiently serviced, that your practice continues without interruption, and that your client base remains intact if your practice is transferred. To prevent surprises, your clients should also be informed at the time you enter into a practice continuation agreement.

Keep copies of the agreement in several locations. Place one copy in your safe-deposit box or wherever your personal files and valuable documents are stored. Other copies should be given to your attorney and possibly to the executor of your will. Appendix D contains some sample communications, to be delivered in the event of your death, that you should consider making when the agreement is drawn up. You may want to revise these samples and consider adding others.

Clients should be notified by your attorney when a transfer is imminent (see exhibit 1 in appendix D). Instructions should be communicated to your spouse through a testamentary letter (see exhibit 2 in appendix D). This letter instructs him or her to call your attorney and successor or, if applicable, the chairperson of the group agreement. It should direct your attorney to notify your clients immediately (see exhibit 3 in appendix D) and advise your spouse to contact your state society if any unforeseen problem arises with the practice continuation plan. The testamentary letter should be drafted by your attorney to ensure proper wording, completeness, and integration with your will and estate plan. Do not keep the testamentary letter a secret. Once it is drafted, discuss it with your spouse.

Make your staff aware of your plans. Advise them of their roles and let them know what your attorney and spouse will do. Introduce key staff members to your successor and review with them the instructions they will receive (see exhibit 4 in appendix D). The transition will be smoother if the parties involved know each other and their responsibilities.

Circumstances change over time. You should meet at least annually with your successors, or with the members of your group plan, to discuss any changes that could affect the agreement. Anything that affects the value of your practice—significant client gains or losses, the loss of key staff, or a new office lease—should be reflected in a revised agreement. Having invested substantial time in drawing up an agreement that may not be activated for many years, it surely makes sense to review its provisions once a year.

The Transfer of the Practice

In the event of permanent disability, death, or retirement, your spouse, attorney, and staff will play key roles in the transfer of your practice to your successor. As the steward of all your personal documents, your attorney will notify your clients of the transfer within 24 hours. Your staff can help your attorney by updating the client list for recent activity and changes. They can also meet with your spouse and successor to help them take the necessary actions. Your successor should already have been instructed in the procedure to follow in the event of your death.

A major consideration is the proper disposition of working papers. The courts have ruled that working papers are a CPA's personal and private property; however, the AICPA's Code of Professional Conduct requires that a client's consent be obtained before working papers are transferred to a successor. Therefore, clients are asked to consent to the transfer when they are notified about the successor. This helps gauge client retention (and, in the case of group plans, successor selection).

If a client chooses not to continue with your successor, copies of his or her files may be stored until the statute of limitations expires, at which time they may be destroyed (please consult your attorney first). Any files stored off the premises should be brought to the successor's attention. For your own protection, keep a copy of each client's files.

Chapter 9

The Surviving Spouse

What to Do First

Despite the trauma created by death or disability, a concrete understanding between the practitioner and the surviving spouse must exist with respect to the practice. It is vitally important to begin the process of notification and transfer immediately. The surviving spouse must understand that the practice's value and the cash flow resulting from the transfer are at stake. Time is of the essence.

Clients will begin to move to another CPA firm in a very short period of time. Even clients who have a long-term relationship with the practitioner will move their accounts. The key to preventing this is the communication of the practice continuation agreement to clients when it is completed and signed. Clients' primary concern is that someone will be available to take care of their needs as you have done over the years.

Your spouse must also understand that he or she is not qualified to practice as a CPA without certification and license. By cooperating with the successor, assisting in the transfer of clients, and dealing with the staff, the surviving spouse ensures the success of the practice continuation agreement. Most successor firms do not want the spouse as a partner or shareholder. The practice continuation agreement is the vehicle that prevents this potential conflict from arising.

Your spouse should also understand that divorce proceedings generally will not affect the execution of a practice continuation agreement, with the exception of his or her part in the plan. In other words, the agreement should survive a divorce decree.

Whom to Contact

The first to be notified is your attorney. Next, the surviving spouse instructs the successor to put the practice continuation agreement into effect. Last, but not least, key staff at the firm are notified. This allows them to put into effect the instructions you have provided. In the event of death, all of this should be done before the final funeral arrangements and announcements are made. As soon as your incapacity or death becomes public, the detrimental effects that you are trying to prevent will begin to take place. Clients will begin to leave your practice.

It is also advisable that the surviving spouse contact the State Board of Public Accountancy and the state society and its respective chapters to inform them of the situation. You should prepare a list of persons to contact at these organizations.

What is Important

Your surviving spouse needs a mini-education about the operations of your practice. He or she needs to know the locations of all relevant documents, including current financial statements and tax returns. Spouses must be able to identify sources of ready funds. They should have the ability to sign checks allowing them to handle the practice until the transfer is completed. They need to understand how the practice continuation agreement operates once it takes effect and how the value of the practice was determined. Your spouse should understand that the firm's staff can be of great assistance to your successor in information gathering and dealing with office problems.

Smart practitioners also provide their spouses with information about the estate process that begins at the practitioner's death. This includes the gathering of estate asset and liability information for use in probating the will, the notifications required to receive or transfer assets, and preparation of individual, business, estate, and state inheritance tax returns. Another issue is the appraisal of various assets as determined on the date of your death.

The key to dealing with the surviving spouse is communication. Without it, the first few months after your death or incapacitation will be a nightmare for your spouse. Do yourself a favor. Let your spouse in on what is going on so that he or she knows what to expect. This is crucial to the successful transfer of your practice.

In the event of your death without a practice continuation agreement in place, your spouse or heirs have the burden of selling your practice. Although the agreements are different, the same principles and procedures used in formulating a practice continuation agreement can also be used to formulate a buy/sell agreement (see appendix E).

Conclusion

An accounting practice is more than a business. It is a professional and personal investment in people—yourself, your family, your staff, and your clients. Protecting that investment with a practice continuation agreement is a step that every practitioner should take.

You have worked hard to build the value of your practice. Your family deserves to enjoy the economic benefits of the sacrifices you have made together to succeed. Your clients deserve to be treated professionally and with consideration. If it is properly drafted and executed, a practice continuation agreement helps protect the value of your practice and ensures that your heirs will enjoy the security it provides.

A practice continuation agreement is a survival kit for the future of your practice.

Appendix A

Sample Action Plan

This action plan can be modified to suit your purposes.

1. Review the Different Kinds of Practice Continuation Agreements
 - Summarize the pros and cons of one-on-one and group plans and decide what's best for you.
 - If your state society has an emergency assistance program, review it to determine its benefits.
2. Make Basic Preparations
 - Determine what effect your business and personal objectives will have on your choice of successor, the valuation of your firm, and your preparations for negotiation.
 - Conduct an assessment of your firm's reputation, specialties, rates, efficiency, profitability, location, and staff.
 - Get your practice into shape. Update your client files and prepare client information for review by your successor.
3. Assess the Value of Your Practice
 - Choose a valuation method (and consider using more than one to establish a range of values for negotiations).
 - Prepare a valuation of your fixed assets, accounts receivable, and work in process.
4. Search for a Successor
 - Consider the options: your staff, other sole practitioners, previous employers, or a larger firm.
 - Draw up a list of possible candidates and then reduce the list to the most likely prospects.
 - Approach the candidates and hold preliminary talks. (Avoid any rush decisions.)
5. Begin Formal Negotiations
 - Determine the subjects of negotiation.
 - Set limits on how much you are willing to compromise.
6. Implement the Plan Once Negotiations Are Completed
 - Contact your attorney to prepare a draft agreement.
 - Discuss your plans with your spouse and attorney.
 - Finalize letters of instruction to spouse, clients, attorney, and staff to be delivered in the event of your death.
 - Communicate in writing to all parties what their roles in the transfer will be.
 - Ensure that all copies of the agreement and relevant documents are secure.
 - Set up a meeting with your successor.
 - Set up a date for the first annual review of the agreement.

Appendix B

Sample Firm

| Financial Characteristics | Amount | Percent |
|-----------------------------------|---------------|----------------|
| Gross Fees, Annual | \$481,395 | 104.8% |
| Less: Net Write-Downs | \$22,048 | 4.8% |
| Total Net Fees | \$459,347 | 100.0% |
| Firm Net Income | \$215,708 | 47.0% |
| Total Assets | \$178,910 | |
| Total Liabilities | \$44,150 | |
| Owners' Equity | \$134,760 | |
| Firm Characteristics | | |
| Number of Personnel | 7.25 | |
| Total Charged Hours | 9,365 | |
| Charged Hours per Person | 1,290 | |
| Percent of Standard Fees Realized | 91.85% | |
| Net Fees Realized per | | |
| —charged hour | \$48 | |
| —total hours | \$30 | |

Appendix C

Sample Practice Continuation Agreements

The illustrative material in this appendix has been included for informational purposes only. Practitioners who feel that any of this material would be useful in their own agreements are advised to consult legal counsel for specific advice on the appropriateness and effect of such use.

Exhibit 1: Practice Continuation Agreement

THIS AGREEMENT, made and entered into this ____ day of _____, 20XX, between XYZ & COMPANY, a _____ [general partnership] [professional corporation] (hereinafter referred to as XYZ) and JOHN DOE (d/b/a John Doe, CPA, in _____, _____) (hereinafter referred to as Doe).

W I T N E S S E T H :

WHEREAS, XYZ and Doe are each engaged in the practice of public accounting with their principal offices of business both being located in _____; and

WHEREAS, the parties hereto each desire to establish an agreement so that in the event of the total temporary disability of Doe, XYZ shall furnish a competent staff person to handle work with the assistance of an individual of broader experience, or if necessary to furnish an individual who is capable of tax matters, reviews, collections, or supervision of a staff capable of handling their own routine matters, or in the event of the death or total disability of Doe or his retirement from the practice of public accounting, XYZ shall acquire the accounting practice of Doe and Doe shall transfer the same to XYZ.

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings herein contained, and for other good and valuable consideration, the full receipt and sufficiency of which is hereby expressly acknowledged by each party hereto, it is agreed as follows.

Section 1. Definitions

The terms defined in this section 1 (unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings specified in this section 1.

1.01. “Total Temporary Disability” of Doe shall mean when he is totally disabled because of ill health, physical or mental disability, or for having failed to perform his duties for his accounting clients for more than _____ (____) days but fewer than _____ (____) days, unless such condition shall be certified by Doe's physician to be a condition that in medical probability will be totally disabling for more than _____ (____) days from the outset.

1.02. “Total Disability of Doe” shall mean when he is permanently disabled because of ill health, physical or mental disability, or having failed to perform his duties for his accounting clients for more than _____ (____) days.

1.03. "Retirement of Doe" shall mean a date specified in his written notice to XYZ of his retirement from the practice of public accounting; such retirement date shall not be more than _____ (____) days nor fewer than _____ (____) days from the receipt of such notice by XYZ.

1.04. "Effective Date" shall mean the earliest of the following: (1) the date of Doe's death, (2) the date of total temporary disability, (3) the date of total disability, or (4) the date of retirement.

1.05. "Return Date" shall mean the date when Doe is no longer totally temporarily disabled, except that such term shall not include the period when Doe's total temporary disability exceeds _____ (____) days.

1.06. "Doe" shall mean John Doe, d/b/a John Doe, CPA, except that in the event of the death, total temporary disability, or total disability of Doe, the term shall be deemed to mean the heirs, administrators, or legal representatives of Doe as legal circumstances require.

Section 2. Transfer of Accounting Practice

2.01. Accounting Services to Be Provided. XYZ will commence within _____ (____) working days after receipt of written notice of the Effective Date to provide all public accounting services of any nature whatsoever requested by Doe or the clients whom Doe served on the Effective Date, provided, however, that XYZ shall not be obligated to undertake any request or to serve any client of Doe if such action would violate the professional code of ethics of the State Board of Public Accounting, Society of Certified Public Accountants, or American Institute of Certified Public Accountants or adversely affect the professional reputation of XYZ. In the event any client of Doe refuses to accept the services of XYZ, XYZ will reasonably attempt to see that such client is served by other public accountants.

2.02. Charge for Services. Doe shall guarantee to XYZ the receipt of the normal hourly or per diem charge of the staff person or individual furnished by XYZ during the total temporary disability of Doe. XYZ shall charge Doe's clients the regular and usual fees of Doe that are in effect at the time such services are performed. Any differences shall be adjusted accordingly.

XYZ shall charge Doe's clients the regular and usual fees of XYZ for services performed after the acquisition by XYZ of Doe's accounting practice.

2.03. Delivery of Records and Files. Within a reasonable time after the Effective Date, Doe shall transfer and deliver to XYZ all of his files and other records pertaining to his clients who accept the services of XYZ.

2.04. Payment to Doe. In the event of Doe's death, total disability, or retirement, for the period ending _____ (____) years after the Effective Date, XYZ shall pay Doe _____ percent (____%) of all fees (excluding amounts reimbursed by clients for expenses paid on their behalf by XYZ) collected by it during such period from those clients whom Doe served on the Effective Date, but in no event less than an amount equivalent to the total gross fees collected by Doe during the one (1) year preceding his death, total disability, or retirement. Such payment to Doe shall be made within _____ (____) days from the end of the month during which such fees are received by XYZ. The accounting records of XYZ pertaining to Doe's clients may be inspected during normal business hours at the principal offices of XYZ by Doe or his authorized representative at any time during the _____ (____) year period described above.

2.05. Work in Process. In the event XYZ completes any project that was in process at the Effective Date and the work done prior to the Effective Date is billed to the client by XYZ, XYZ shall pay to Doe his proportionate share of the fee collected from the client for such work as determined by the ratio of the work

done on the project at the Effective Date to the total work involved, less ____ percent (____%) to be retained by XYZ for collection services.

2.06. Accounts Receivable. Doe shall retain all of the accounts receivable of his practice that are outstanding on the Effective Date. XYZ will, when requested by Doe, render effective assistance in the collection of such accounts. XYZ shall be entitled to retain ____ percent (____%) of all accounts receivable collected by XYZ for collection services.

2.07. Departing Clients. In the event that a client discontinues business for any reason, that client shall be excluded from any further payments, but if any of the principal owners of the client shall use the services of XYZ either personally or in a new business venture, that client shall be included for the remainder of the agreement. Any other client terminations shall be included to a maximum of the gross fee collected by Doe during the _____ (____) year prior to his death, total disability, or retirement.

2.08. Notification. Doe agrees to notify all of his clients of this agreement within _____ (____) days of the date of its execution.

2.09. Return of Accounting Practice. Within _____ (____) working days after Doe notifies XYZ in writing of his Return Date, XYZ shall make available for transfer and return to Doe all of the files and other records pertaining to Doe's clients who accepted the services of XYZ during Doe's total temporary disability.

2.10. Work in Progress. In the event Doe completes any project that was in process at the Return Date and the work done prior to the Return Date is billed to the client by Doe, Doe shall pay to XYZ its proportionate share of the fee collected from the client for such work as determined by the ratio of the work done on the project at the Return Date to the total work involved, less _____ percent (____%) to be retained by Doe for collection services.

Section 3. Assumption of Lease Obligation

3.01. Assumption of Leases. Immediately (within _____ [____] days) after the Effective Date (except in the event of Doe's total temporary disability), XYZ shall assume Doe's rental obligations under any and all equipment and office space leases in existence on the Effective Date, provided, however, that

i. XYZ shall not be obligated to assume any lease that has a remaining term of more than _____ (____) months from the Effective Date;

ii. XYZ does not hereby agree to assume or become obligated for any liability that Doe may have incurred under any lease except for the periodic rental charges after the Effective Date;

iii. XYZ shall not be obligated to assume any lease of Doe unless the lessor gives its written consent within _____ (____) days after XYZ's request; and

iv. If Doe has more than one lease, XYZ shall be obligated to assume only such leases that have a combined rental obligation for the _____ (____) month period from the Effective Date of less than \$_____.

3.02. Assignment. If XYZ requests, Doe shall execute an appropriate assignment of lease assumed by XYZ pursuant to this agreement.

3.03. Removal From Premises. Within a reasonable time after XYZ's assumption of any office lease, Doe will remove all his personal belongings from such leased premises.

Section 4. Purchase of Furniture and Equipment

Within _____ (____) days after Effective Date, XYZ shall offer to purchase from Doe the supplies, accounting systems, furniture, and equipment owned by Doe as of the Effective Date and utilized in his business office. The purchase price for such assets shall be their cost less depreciation to the Effective Date. If Doe accepts such offer, XYZ shall pay the amount within _____ (____) days after such acceptance against delivery of the assets and an appropriate bill of sale executed by Doe.

Section 5. Noncompetition by Doe

Except upon return to work following total temporary disability, Doe agrees that he will not provide public accounting service of any nature as employer, employee, principal, agent, shareholder, or otherwise, directly or indirectly, for any of his clients who accept the services of XYZ (except during total temporary disability of Doe), at any time during the period beginning with the Effective Date and ending on the date _____ (____) years after the Effective Date. If Doe does provide public accounting services in violation hereof to Doe's clients who accept XYZ's services, XYZ shall be entitled to recover damages and to obtain an injunction by any competent court of equity enjoining and restraining him and each and every other person concerned thereby from continuance of providing public accounting services to such clients or other act in aid of a rival concern providing such public accounting services to such clients in violation hereof.

Section 6. Noncompetition by XYZ

XYZ agrees that for a period of _____ (____) years following XYZ's furnishing services to Doe hereunder, it will not accept employment or perform public accounting services for any client of Doe's who accepts XYZ's services during Doe's temporary total disability unless XYZ purchases Doe's practice from Doe.

Section 7. Indemnification

Doe covenants and agrees that at all times hereafter he will indemnify and hold harmless XYZ against any and all liabilities, losses, damages, costs, or expenses of whatever kind or nature, including attorney's fees, that XYZ may sustain or incur by reason of services rendered by Doe prior to or after the Effective Date or by reason of any act or omission, regardless of whether such action or omission arises out of negligence or malfeasance, whatsoever by Doe prior to or after the Effective Date.

Section 8. Disclaimer

It is agreed that this Agreement does not constitute Doe as the agent, employee, or legal representative of XYZ for any purpose whatsoever. Doe is not granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of XYZ. Nothing in this Agreement is intended so as to give to Doe any rights as a partner in the business of XYZ or to entitle him to control in any manner the conduct of such business.

Section 9. Arbitration

The parties agree that any dispute or claim concerning this Agreement, including whether such dispute or claim is arbitratable, will be settled by arbitration. The arbitration proceeding shall be conducted by certified public accountants, one of whom shall be selected by each party, under the State General Arbitration Act or other applicable statute of the state of _____ in effect at the time a demand for arbitration is made. In case of the inability of the arbitrators to reach a decision, a third certified public accountant shall be selected by the arbitrators to serve as a third arbitrator. The decision of the arbitrators, including determination of amount of any damages suffered, shall be inclusive, final, and binding on both parties, their heirs, executors, administrators, successors, and assigns. Each party shall bear its own expenses in the arbitration for arbitrators' fees and attorneys' fees, for its witnesses and other expenses of presenting its case. Other arbitration costs, including administrative fees and fees for records or transcripts, shall be borne equally by the parties.

Section 10. Miscellaneous

10.01. Governing Law. This Agreement shall be governed and construed and enforced in accordance with the laws of the state of _____.

10.02. Benefit. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their respective heirs, legal representatives, and successors. This Agreement shall not be assignable by either party hereto without the written consent of each party.

10.03. Termination. This Agreement may be terminated by either party upon a _____ (____) day written notice delivered to the other party at its last known business address. All rights and obligations of the parties that have accrued prior to such termination shall survive the termination of this Agreement.

10.04. Captions. The captions contained in this Agreement are for convenience of reference only and do not form a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

XYZ & COMPANY

BY: _____

JOHN DOE, Individually and d/b/a
JOHN DOE, CPA

Exhibit 2: Group Practice Continuation Agreement

THIS AGREEMENT, made and entered into this ____ day of ____, 20XX, between JOHN DOE, JANE CITIZEN, RICHARD ROE, JOHN STILES, and RICHARD MILES as individual certified public accountants and directors of XYZ, PLLC (a professional limited liability company), all of which jointly and/or severely hereinafter are referred to as **Purchaser** and JOHN DOE, JANE CITIZEN, RICHARD ROE, JOHN STILES, and RICHARD MILES as individual certified public accountants and representing the licensed entities in which they practice public accounting in ____ as members of XYZ, PLLC, all of which severely hereinafter are referred to as **Seller(s)**.

WITNESSETH:

WHEREAS, Purchaser and Seller are engaged in the practice of public accounting with their principal offices of business both being located in _____, _____; and

WHEREAS, the parties hereto each desire to establish an agreement so that in the event of the temporary disability of Seller, Purchaser shall furnish a competent staff person to handle work with the assistance of an individual of broader experience, or, if necessary, to furnish an individual who is capable of tax matters, reviews, collections, or supervision of a staff capable of handling their own routine matters, or, in the event of the death or total disability of Seller or his retirement from the practice of public accounting, Purchaser shall acquire the accounting practice of Seller and Seller shall transfer the same to Purchaser.

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings herein contained, and for other good and valuable consideration, the full receipt and sufficiency of which is hereby expressly acknowledged by each party hereto, it is agreed as follows.

Section 1. Definitions

The terms defined in this section 1 (unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings specified in this section 1.

1.01. Temporary Disability of Seller shall mean when he or she is temporarily disabled and unable to perform his or her duties for his or her clients as determined by a unanimous vote of purchasers to be for a period of time presumed not to exceed ____ (____) days.

1.02. Total Disability of Seller shall mean when he or she is permanently disabled because of ill health, physical or mental disability, or having failed to perform his or her duties for his or her accounting clients for more than _____ (____) days.

1.03. Retirement of Seller shall mean a date specified in his or her written notice to Purchaser of his or her retirement from the practice of public accounting; such retirement date shall not be more than _____ (____) days nor fewer than ____ (____) days from the receipt of such notice by Purchaser.

1.04. Effective Date shall mean the earliest of the following: (1) the date of Seller's death, (2) the date of temporary disability, (3) the date of total disability, or (4) the date of retirement.

1.05. Return Date shall mean the date when Seller is no longer temporarily disabled, except that such term shall not include the period when Seller's temporary disability exceeds _____ (____) days.

1.06. Seller shall mean the name of the specific individual seller (seller's name), d/b/a (seller's name), CPA, except that in the event of the death or total disability of Seller, the term shall be deemed to mean the heirs, administrators, or legal representatives of Seller as legal circumstances require.

Section 2. Transfer of Accounting Practice

2.01. Accounting Services to Be Provided. Purchaser will commence within _____ (___) working days of the Effective Date to provide all public accounting services of any nature whatsoever requested by Seller or the clients whom Seller served on the Effective Date, provided, however, that Purchaser shall not be obligated to undertake any request or to serve any client of Seller if such action would violate the professional code of ethics of the State Board of Public Accounting, Society of Certified Public Accountants, or American Institute of Certified Public Accountants or adversely affect the professional reputation of Purchaser. In the event any client of Seller refuses to accept the services of Purchaser, Purchaser will reasonably attempt to see that such client is served by other certified public accountants.

2.02. Charges for Services. Seller shall guarantee to Purchaser the receipt of the normal hourly or per diem charge of the staff person or individual furnished by Purchaser during the temporary disability of Seller. Purchaser shall charge Seller's clients the regular and usual fees of Seller, which are in effect at the time such services are performed. Any differences shall be adjusted accordingly.

Purchaser shall charge Seller's clients the regular and usual fees of Purchaser for services performed after the acquisition by Purchaser of Seller's accounting practice.

2.03. Delivery of Records and Files. Delivery should be within a reasonable time after the effective date, except for temporary disability.

2.04. Payment to Seller. In the event of Seller's death, total disability, or retirement, for the period ending _____ (___) years after the Effective Date, Purchaser shall pay Seller _____ percent (___%) of all fees (excluding amounts reimbursed by clients for expenses paid on their behalf by Purchaser) collected by it for services provided during such period from each client whom Seller served on the Effective Date, but in no event more than an amount equivalent to the total gross fees collected by Seller during the one (1) year preceding his or her death, total disability, or retirement on each client. (See Exhibit A, "List of Clients" attached). This ceiling amount shall be allocated among all clients of Seller based on their specific assigned value of the collected gross fees for the previous twelve (12) months. This client list with assigned values shall be the basis for payment to Seller by Purchaser. Any payment made shall be client specific, and such payment shall not apply to any other clients on the client list. If the client subsequently terminates the relationship with Purchaser prior to the end of the _____ (___) years, then no further payment is due on that client. If the client stays beyond the _____ (___) years and is not paid off in full, then the remaining amount of the client value to reach 100% of the allocated value to that specific client will be due to Seller by Purchaser as collections are made on that client beyond year five (5). Such payment to Seller shall be made within _____ (___) days from the end of the month during which such fees are received by Purchaser. The accounting records of Purchaser pertaining to Seller's clients may be inspected during normal business hours at the principal offices of Purchaser by Seller or his or her authorized representative at any time during the _____ (___) year period described above.

2.05. Work in Process. In the event Purchaser completes any project that was in process at the effective date and the work done prior to the effective date is billed to the client by Purchaser, Purchaser shall pay to Seller his or her proportionate share of the fee collected from the client for such work as determined by the ratio of

the work done on the project at the Effective Date to the total work involved, less _____ percent (___%) to be retained by Purchaser for collection services.

2.06. Accounts Receivable. Seller shall retain all of the accounts receivable of his or her practice that are outstanding on the Effective Date. Purchaser will, when requested by Seller, render effective assistance in the collection of such accounts. Purchaser shall be entitled to retain _____ percent (___%) of all accounts receivable collected by Purchaser for collection services.

2.07. Departing Clients. In the event that a client discontinues business for any reason, that client shall be excluded from any further payments, but if any of the principal owners of the client shall use the services of Purchaser personally or in a new business venture, that client shall be included for the remainder of the agreement. Any other client terminations shall be included to a maximum of the gross fee collected by Seller during the one (1) year prior to his or her death, total disability, or retirement.

2.08. Notification. Seller, at his or her discretion, may notify all of his or her clients of this agreement.

2.09. Return of Accounting Practice. Within _____ (___) working days after Seller notifies Purchaser in writing of his or her return date, Purchaser shall make available for transfer and return to Seller all of the files and other records pertaining to Seller's clients who accepted the services of Purchaser during Seller's temporary disability. This section does not apply to permanent disability, death, or retirement.

2.10. Work in Progress. In the event Seller completes any project that was in process at the Return Date and the work done prior to the Return Date is billed to the client by Seller, Seller shall pay to Purchaser its proportionate share of the fee collected from the client for such work as determined by the ratio of the work done on the project at the Return Date to the total work involved, less _____ percent (___%) to be retained by Seller for collection services.

Section 3. Assumption of Lease Obligation

3.01. Assumption of Leases. Within _____ (___) days after the Effective Date (except in the event of Seller's temporary disability), Purchaser shall assume Seller's rental obligations under any office space leases for the practice of public accounting in existence on the Effective Date.

3.02. Assignment. If Purchaser requests it, Seller shall execute an appropriate assignment of lease assumed by Purchaser pursuant to this Agreement.

3.03. Removal From Premises. Concurrent with Purchaser's assumption of any office lease, Seller will remove all his or her personal belongings from such leased premises.

Section 4. Purchase of Furniture and Equipment

Within _____ (___) days after Effective Date, Purchaser shall offer to purchase from Seller the supplies, accounting systems, furniture, and equipment owned by Seller as of the Effective Date and utilized in his or her business office. If Seller accepts such offer, Purchaser shall pay the amount within _____ (___) days after such acceptance against delivery of the assets and an appropriate bill of sale executed by Seller.

Section 5. Noncompetition by Seller

Except upon return to work following temporary disability, Seller agrees that he or she will not provide public accounting services of any nature as employer, employee, principal, agent, shareholder, or otherwise, directly or indirectly, for any of his or her clients who accept the services of Purchaser (except during temporary disability of Seller), at any time during the period beginning with the Effective Date and ending on the date _____ (___) years after the Effective Date. If Seller does provide public accounting services in violation hereof to Seller's clients who accept Purchaser's services, Purchaser shall be entitled to recover damages and to obtain an injunction by any competent court of equity enjoining and restraining him or her and each and every other person concerned thereby from continuance of providing public accounting services to such clients or other act in aid of a rival concern providing such public accounting services to such clients in violation hereof.

Section 6. Noncompetition by Purchaser

Purchaser agrees that for a period of _____ (___) years following Purchaser's furnishing services to Seller hereunder, it will not accept employment or perform public accounting services for any client of Seller's who accepts Purchaser's services during Seller's temporary disability unless Purchaser purchases Seller's practice from Seller.

Section 7. Indemnification

Seller covenants and agrees that at all times hereafter he or she will indemnify and hold harmless Purchaser against any and all liabilities, losses, damages, costs, or expenses of whatever kind or nature, including attorney's fees, that Purchaser may sustain or incur by reason of services rendered by Seller prior to or after the Effective Date or by reason of any act or omission, regardless of whether such action or omission arises out of negligence or malfeasance, whatsoever by Seller prior to or after the Effective Date.

Purchaser covenants and agrees that at all times hereafter he or she will indemnify and hold harmless Seller against any and all liabilities, losses, damages, costs, or expenses of whatever kind or nature, including attorney's fees, that Seller may sustain or incur by reason of services rendered by Purchaser after the Effective Date or by reason of any act or omission, regardless of whether such action or omission arises out of negligence or malfeasance, whatsoever by Purchaser after the Effective Date.

Section 8. Disclaimer

It is agreed that this Agreement does not constitute Seller as being the agent, employee, or legal representative of Purchaser for any purpose whatsoever. Seller is not granted any right or authority to assume or to create any obligation or responsibility, express or implied, in behalf of or in the name of Purchaser. Nothing in this Agreement is intended so as to give to Seller any rights as a partner in the business of Purchaser or to entitle him or her to control in any manner the conduct of such business.

Section 9. Arbitration

The parties agree that any dispute or claim concerning this Agreement, including whether such dispute or claim is arbitrable, will be settled by arbitration. The arbitration proceeding shall be conducted by certified public accountants, one of whom shall be selected by each party, under the State General Arbitration Act or other applicable statute of the state of _____ in effect at the time a demand for arbitration is made. In case of

the inability of the arbitrators to reach a decision, a third certified public accountant shall be selected by the arbitrators to serve as a third arbitrator. The decision of the arbitrators, including determination of amount of any damages suffered, shall be inclusive, final, and binding on both parties, their heirs, executors, administrators, successors, and assigns. Each party shall bear his or her own expenses in the arbitration for arbitrators' fees and attorneys' fees, for his or her witnesses and other expenses of presenting his or her case. Other arbitration costs, including administrative fees and fees for records or transcripts, shall be borne equally by the parties.

Section 10. Miscellaneous

10.01. Governing Law. This Agreement shall be governed and construed and enforced in accordance with the laws of the state of _____.

10.02. Benefit. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their respective heirs, legal representatives, and successors. This Agreement shall not be assignable by either party hereto without the written consent of each party.

10.03. Termination. This Agreement may be terminated by either Purchaser or Seller prior to the Effective Date upon a _____ (____) day written notice delivered to the other party at his or her last known business address. All rights and obligations of the parties that have accrued prior to such termination shall survive the termination of this agreement.

10.04. Captions. The captions contained in this Agreement are for convenience of reference only and do not form a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

Executed in the capacity as Purchaser and Seller:

BY: _____
JOHN DOE

BY: _____
JANE CITIZEN

BY: _____
RICHARD ROE

BY: _____
JOHN STILES

BY: _____
RICHARD MILES

EXHIBIT A—CLIENT LIST

| Client Number | Name | Cash Collected |
|------------------|-------|-------------------|
| _____ | _____ | _____ |

Appendix D

Sample Communications

Exhibit 1: Letter from Attorney to Clients

Dear _____:

You are undoubtedly aware of the death of [the deceased].

[The deceased]'s obligation to you and appreciation for your continuing loyalty prompted (him, her) to make provisions to assure you of competent professional services in the event of (his, her) incapacity or death.

These arrangements have been made solely as a service to you but are by no means binding upon you. In the event of such a contingency, selection of a successor accountant is entirely at your discretion.

By agreement, _____, CPA, and (his, her) staff stand ready to complete any work that might be in process and to prepare for timely filing of tax returns or other reports. With your approval, _____, CPA, has also consented to serve your needs on a continuing basis. [The deceased] went to great lengths to handpick this successor on the basis of (his, her) professional capabilities and personality.

Detailed instructions have been provided both to me and to the key person on [the deceased]'s staff to ensure confidential safeguarding of any books and records of yours that are in our possession. They have also been given instructions for the prompt transfer, upon your written instructions, of any such material to a successor accountant.

Please contact me at your earliest convenience.

Sincerely,

Exhibit 2: Letter of Instructions to Spouse (or Survivor)

Dear _____:

This letter will guide you on action to be taken in the event of my death or incapacitating disability. Prompt action on your part and on the part of Attorney _____ will ensure the continuity of my accounting practice and assure you maximum economic benefit.

The following persons should be notified immediately:

1. Attorney _____, who has instructions to prepare for your signature a letter to my clients, which should be mailed within 24 hours to minimize panic attrition.

In the event that Attorney _____ is unable or unwilling to act in this matter, you should immediately contact an attorney of your choice and provide him or her with a copy of the letter to my attorney, which is included with this letter.

2. _____ is the CPA whom I have arranged to purchase my practice or provide interim emergency service. If _____, CPA, is unable or unwilling to act under our agreement, the state society of CPAs should be notified so that it may proceed with alternative procedures. The _____ committee can be reached through _____.

For your information, my files contain accountants' worksheets and related papers that are to remain in the possession of my personal representative as defined in _____ state law. Attorney _____ can advise you further on this. These files also contain material that belongs to my clients, such as copies of various government reports, tax returns, and so forth. _____, CPA, will decide which items in these files may or should be turned over to clients.

It would not be unusual if clients express concern over the status of pending or imminent matters. It is important that you assure them that arrangements have been made for the continuation of competent, prompt attention to their needs. After giving such assurance, refer them to _____, CPA [or the state-society committee].

The attorney's instructions include the recommendation to use the services of a key person on staff. This person, by virtue of close involvement with all office matters, can render invaluable services. Compensation should be commensurate with the value of such services and should not necessarily be limited to that person's most recent salary. Consideration should be given to the delegation of responsibility and exercise of judgment expected.

Sincerely,

Encl: Instructions to Attorney
Agreement with _____, CPA
Instructions to Key Staff Member
Letter to Clients

Exhibit 3: Letter to Attorney

Dear _____:

This letter and its enclosures provide instructions to be followed in the event of my death or incapacitating disability.

An accountant's practice can have a definite and significant sale value, but that value can diminish appreciably upon the accountant's death. It is commonplace for a CPA's clients to seek a replacement immediately after receiving knowledge of the accountant's death. To minimize attrition from this cause, it is essential that my clients be immediately advised of prior arrangements to provide for competent continuation of professional services.

Following is a list of items enclosed to assist you in an orderly, timely manner:

1. Copy of letter of instructions to my spouse
2. Suggested copy of letter to my clients
3. Copy of successor agreement entered into on [date] between myself and _____, CPA
4. Copy of application for registration in emergency assistance plan submitted to [state society] of CPAs on [date], providing for aid in the event that _____, CPA, is unable or unwilling to act as my successor
5. Copy of letter of instructions to key person on my staff

In the event of my death:

1. Contact _____, CPA, with whom I have entered into an agreement for purchase of my practice and then take necessary action under the terms of this agreement.

If _____, CPA, is unable or unwilling to act under our agreement, the Emergency Assistance Committee can be reached through the [state society] of CPAs at the _____ office.

2. Upon notification, immediately prepare a letter to clients. It is imperative that this letter be sent to my clients as promptly as possible, preferably within 24 hours.
3. Contact whoever currently holds or has most recently held the key position on my staff and arrange for the retention of that person's services to assist in any way you deem appropriate in the orderly transfer of my practice to a successor. A set of instructions has been provided for this person's guidance. If a staff member is not able to assist you, contact the Emergency Assistance Committee of the [state society] of CPAs (if appropriate).
4. Take or recommend such action as is necessary to best protect the interests of my estate.

Copies of all the enclosed material have been provided to all parties. In addition, a complete set is in my business safe deposit box at _____ Bank.

In closing, I emphasize that time is of the essence, and I urge you to contact my clients promptly in this matter.

Sincerely,

Exhibit 4: Instructions for Key Staff Member

This will serve as a guideline and checklist for you of the services for which you have been retained by Attorney _____. It is intended as a supplement to the knowledge of administrative and office procedures that you have gained as a member of my staff.

Attorney _____ has prepared a letter to my clients and has instructions to mail this letter within 24 hours of my death. A copy of this letter is enclosed.

Once this letter to my clients is mailed, please do the following:

1. Prepare or update a client service analysis.
2. Prepare an analysis of client trust account funds to aid in prompt disbursement.
3. Prepare or update a list of fixed assets.
4. Prepare or update an inventory of significant office supplies.
5. Provide the attorney with information concerning my current lease.
6. Provide the attorney with an analysis of all outstanding accounts and notes payable.
7. Provide the attorney with an analysis of open accounts receivable.
8. Prepare an analysis of work in process for possible billing.
9. Bring books of accounts up to date.
10. Render such additional service as deemed necessary by Attorney _____ to aid in the orderly disposition of the practice.

I appreciate your assistance in this matter.

Sincerely,

Exhibit 5: Letter to Clients in the Event of Disability

Dear _____:

I regret to inform you that due to serious illness (or other reason), I shall be unable, at least temporarily, to continue my practice.

In order that there may be no interruption of services to my clients, I have requested that _____, CPA, whom I have handpicked, assist me in this emergency by making appropriate arrangements. I have full confidence in (his, her) ability to carry on during this interim period to your entire satisfaction. If you so authorize, I shall immediately place my working papers and other files at (his, her) disposal in order that (he, she) may be able to commence serving you in a prompt and efficient manner.

If you are in accord, please sign the authorization form at the bottom of this letter and return it to me. A copy is enclosed for your files.

I trust that my period of disability will be short and that I shall be able to resume my practice and continue our relationship as soon as possible. Thank you for your cooperation in this matter.

Sincerely,

AUTHORIZATION

I hereby authorize _____, CPA, to release working papers and files pertaining to services rendered for me to _____, CPA, for the purpose stated above.

Signed _____

Date _____

Appendix E

Sample Agreements to Buy and Sell

The illustrative material in this appendix has been included for informational purposes only. Practitioners who feel that any of this material would be useful in their own agreements are advised to consult legal counsel for specific advice on the appropriateness and effect of such use.

Exhibit 1: Agreement to Buy and Sell

This agreement is made in _____, as of _____, _____, 20XX, by and between JANE DOE, individually in her capacity as survivor of the marriage of John Doe, Deceased, and JANE DOE, and in her capacity as independent executrix of the estate of John Doe, deceased, hereinafter referred to as ***Seller***, and XYZ & COMPANY, a _____ [general partnership] [professional corporation], hereinafter referred to as ***Buyer***.

The parties hereby agree as follows.

I. RECITALS

Buyer hereby agrees to purchase from Seller and Seller hereby agrees to sell to Buyer the following assets of the business known as John Doe, CPA, a sole proprietorship:

- A. All furniture, fixtures, and filing cabinets used in the business of John Doe, CPA, more particularly described in Exhibit A attached hereto and incorporated by reference herein for all purposes;
- B. All client lists of the audit clients of John Doe, CPA, more particularly described in Exhibit B attached hereto and incorporated by reference herein for all purposes;
- C. All client lists of the general tax clients of John Doe, CPA, more particularly described in Exhibit C attached hereto and incorporated by reference herein for all purposes.

II. WARRANTY OF OWNERSHIP

Seller represents and warrants to Buyer that on the date hereof, Seller is the owner and holder of all assets described herein.

III. DATE OF SALE AND CLOSING

The closing date of the sale shall be within _____ (____) working days after the execution of this contract by all parties hereto.

IV. PAYMENT OF PAYABLES BY SELLER

Seller agrees to pay promptly after closing all accounts payable of Seller currently due and unpaid.

V. HOLD HARMLESS

Seller shall hold Buyer harmless from any and all obligations, contracts, causes of action and any and all other obligations that might accrue to or against Buyer for any actions taken by Seller or by John Doe, CPA, occurring before the date of closing hereunder. This indemnification and hold harmless agreement shall include the reasonable cost of representation of Buyer, or on Buyer's behalf, in any and all court actions that may occur or accrue relating to any actions of Seller or actions of John Doe, CPA, occurring before the date of closing hereunder. Buyer shall assist and lend its best efforts to and make available to Seller or her agent, or both, any records relating to the business of John Doe, CPA, that are sold to Buyer.

VI. FREE OF LIENS

Seller agrees, contracts, and covenants to deliver any and all assets the subject of this contract of sale free and clear of any and all liens, except those expressly assumed by Buyer.

VII. ASSIGNMENT AND SURVIVABILITY OF CONTRACT

It is expressly agreed by the parties hereto that Buyer may assign, transfer, and otherwise convey any and all interests that it has in and to its rights under this contract to a party mutually agreeable to the parties, providing that the assignee is a duly licensed certified public accountant authorized to practice in the state of _____. It is further agreed that this contract shall bind the successors, assigns, and heirs of both parties hereto.

VIII. PURCHASE PRICE

Buyer agrees to pay to Seller as the purchase price for the furniture, fixtures, and client lists purchased hereunder a total sum calculated as follows:

- A. _____ dollars (\$ _____) payable in cash at closing for the furniture and fixtures described in Exhibit A hereof; plus
- B. A dollar sum equal to _____ percent (_____%) of the gross fees collected by John Doe, CPA, during the calendar year 20XX from all audit clients of John Doe, CPA, enumerated in Exhibit B attached hereto and incorporated by reference herein for all purposes, payable within one hundred and twenty (120) months after date of closing hereunder; plus
- C. A dollar sum equal to _____ percent (_____%) of the gross fees collected by John Doe, CPA, during the calendar year 20XX from all general tax clients of John Doe, CPA, enumerated in Exhibit C attached hereto and incorporated by reference herein for all purposes, payable within _____ months after the date of closing hereunder.

IX. PAYMENT OF PURCHASE PRICE

Buyer agrees to pay to Seller, at date of closing, the cash sum of \$_____ representing the portion of the purchase price allocated to the furniture and fixtures described above.

The portions of the total purchase price calculated pursuant to the foregoing Paragraphs VIII B and C shall be allocated as to each enumerated client such that Buyer and Seller are able to determine the exact amount of the purchase price allocated to each client of John Doe, CPA, based on 20XX receipts from each client and the proper multiplication factor. Buyer agrees to pay to Seller in _____ County, _____, a sum equal to _____ percent (_____%) of all fees collected from all of the clients of John Doe, CPA, enumerated in Exhibits B and

C hereof until such time as Buyer has paid to Seller an amount equal to the respective _____ percent (_____%) or _____ percent (_____%) of gross billings charged to and collected from each respective client of John Doe, CPA, in calendar year 20XX . Buyer agrees that all payments contemplated by the foregoing paragraph shall be fully paid to Seller in cash within _____ (____) months after the date of closing hereunder.

In the event that Buyer has made all contemplated monthly installment payments to Seller during the contract period, and a balance remains due and owing to Seller representing a portion of the purchase price allocated to any client, in exhibits B and C, then at the end of _____ (____) months after the date of closing hereunder, the balance due and owing to Seller with respect to such client will be paid by Buyer to Seller in cash.

Buyer agrees to pay to Seller on or before the 15th day of each month during the contract period _____ percent (_____%) of all monthly billings to the clients of John Doe, CPA, referenced in Exhibits B and C hereof, that were collected during the preceding calendar month. The monthly payments contemplated hereunder shall begin on , 20XX, for any billings by buyer to the respective clients of John Doe, CPA, that were collected during the month of _____, 20XX. All monthly payments thereafter must be made on or before the 15th day of each respective month of the contract period. Buyer is obligated to make the _____ percent (_____%) monthly payments herein above contemplated only in reference to the accounts receivable from the clients listed in exhibits B and C hereof that are actually collected during each respective month of the contract period. Buyer's payments made hereunder with respect to each listed client of John Doe, CPA, shall further be limited to the specific dollars amount of the purchase price allocated to each respective client in Exhibits B and C hereof.

X. ACCOUNTS RECEIVABLE

Seller specifically retains all accounts receivable of John Doe, CPA, and none of said accounts receivable are being sold to Buyer pursuant to the terms of this contract.

XI. RECORDS

Seller hereby agrees to convey to Buyer title to all records, documents, and papers of John Doe, CPA, relating to any other business of John Doe, CPA. In any case, the party receiving or retaining such records shall make them available to the other during the period of _____ (____) years following the closing date hereof in the event said documents are necessary for any legitimate business purpose of the other party. Buyer shall promptly forward to Seller all correspondence, mail, payments, and documents received by Buyer after the date of closing that relate to the operation of the business sold hereunder occurring prior to date of closing, except that Buyer may retain any letters and documents relating to the enumerated clients in Exhibits B and C hereof or relating to transactions with such clients occurring after the date of closing hereunder. Each party shall promptly forward to the other party all mail received of the type that the respective party is entitled to receive and retain hereunder.

XII. EXPENSES OF THIS AGREEMENT

Buyer and Seller each agree that each shall pay their own expenses incident to the preparation and carrying out of this agreement, whether or not the transactions contemplated hereby are consummated.

XIII. BROKERS FEES AND COMMISSIONS

Seller agrees to pay to _____, CPA, all fees incurred in connection with this sale and agrees to hold Buyer harmless from said expenses.

XIV. ATTRITION

The parties hereby contemplate that the payments required from Buyer hereunder are to be paid entirely from fees generated from the customers enumerated in Exhibits B and C hereof after _____, 20XX. In the event that any client enumerated in Exhibits B and C hereof ceases to do business with Buyer, for any reason, after the date of closing hereunder, Buyer's obligations to pay to Seller the balance of the purchase price attributable to such client shall be extinguished as of that time, and Buyer shall only be obligated to remit to Seller the _____ percent (___%) of gross payments received from such client up to the time said client ceases to do business with Buyer.

Buyer covenants and agrees that it will use its best efforts to retain the clients of John Doe, CPA, enumerated in Exhibits B and C hereof and will not intentionally cease to do business with any of the enumerated clients in Exhibits B and C solely for the purpose of decreasing the amount payable to Seller pursuant to the terms of this contract.

XV. RECORDS TO BE KEPT BY BUYER

Buyer agrees to set up and maintain separate client ledgers on each of the clients of John Doe, CPA, enumerated in Exhibits B and C hereof, separate and apart from any other client records of Buyer, and Buyer agrees to make such ledgers, billing records, and receipt records available to Seller or Seller's agents upon reasonable notice, during normal business hours, for the purpose of allowing Seller to document that Buyer is paying to Seller, on a monthly basis, _____ percent (___%) of all billings actually received from each of the clients enumerated in Exhibits B and C hereof during the term of this agreement.

XVI. NOTICES

Any notices to be given hereunder shall be given in writing and delivered personally or sent by registered or certified mail, postage prepaid, as follows:

If to Buyer, addressed to XYZ & COMPANY, Certified Public Accountants, Suite _____, ABC Building, _____, _____.

If to Seller, addressed to Jane Doe, 1234 Any Street, _____, _____, with a copy to _____, Attorney at Law, ABC Building, _____, _____.

XVII. GOVERNING LAW AND ENTIRE AGREEMENT

This agreement contains the entire agreement between the parties hereto with respect to the transaction contemplated herein. This agreement shall be governed by and construed in accordance with the laws of the state of _____, and is performable in _____ County, _____.

XVIII. WARRANT

Buyer warrants to Seller that XYZ & COMPANY and its [partners] [shareholders] are duly licensed to practice in the state of _____.

XIX. ENFORCEMENT OF CONTRACT

XYZ & COMPANY hereby agrees to be liable to Seller for performance of all obligations of Buyer pursuant to this buy/sell agreement.

IN WITNESS WHEREOF, the parties hereto have signed this agreement in _____, on this _____ day of _____, 20XX.

SELLER:

JANE DOE, as community survivor of the marriage of John Doe, Deceased, and JANE DOE, as Independent Executrix of the Estate of John Doe, Deceased

BUYER:
XYZ & COMPANY

Exhibit 2: Agreement to Buy and Sell Client List Only

This agreement is made in _____ County, _____, by and between JANE DOE and RICHARD ROE, Independent Co-Executors of the Estate of JOHN DOE, Deceased (the *Estate*), hereinafter referred to as *Seller*, and XYZ, PLLC, a professional limited liability company, hereinafter referred to as *Buyer*. Seller and Buyer are sometimes hereinafter referred to individually as a *Party* and collectively as the *Parties*.

The Parties hereby agree as follows.

I. RECITALS

Buyer hereby agrees to purchase from Seller and Seller hereby agrees to sell to Buyer the Estate's interest in and to the following assets of the business known as JOHN DOE, CPA and JOHN DOE, P.C. (all hereinafter referred to as the *Businesses*) to wit: all client lists of the general tax and business clients of the Businesses, more particularly described in Exhibit A attached hereto and incorporated by reference herein for all purposes (the *Purchased Assets*).

II. WARRANTY OF OWNER

Seller represents and warrants to Buyer that on the date hereof Seller is the owner and holder of the Purchased Assets.

III. DATE OF SALE AND CLOSING

The consummation of the purchase and sale contemplated hereby (the *Closing*) shall be on _____, 20XX.

IV. LIABILITIES OF SELLER

Unless otherwise assumed by Buyer, Seller agrees to pay all obligations of Seller due and unpaid as of Closing. Notwithstanding the foregoing, Buyer shall assume the rental obligations for the month of _____, 20XX, an amount not to exceed _____ dollars (\$_____), under that certain lease by and between _____ for the premises commonly known as _____ (the *Assumed Rental*).

V. HOLD HARMLESS

Seller agrees to indemnify and hold the Buyer harmless of and from any and all losses, damages, claims, costs or expenses (including all court costs and attorneys' fees reasonably and actually incurred by Buyer) arising from or in connection with any act occurring prior to the Closing relating to the Purchased Assets. Buyer agrees to indemnify and hold the Seller harmless of and from any and all losses, damages, claims, costs or expenses (including all court costs and attorneys' fees reasonably and actually incurred by Buyer) arising from or in connection with any act occurring subsequent to the Closing relating to the Purchased Assets. The obligations imposed by this section shall survive for a period of _____ (____) years after Closing.

VI. FREE OF LIENS

Seller warrants that, as of Closing, the Purchased Assets shall be free and clear of any and all liens, except those expressly assumed by Buyer.

VII. ASSIGNMENT AND SURVIVABILITY OF AGREEMENT

Buyer shall not assign, transfer, or otherwise convey any and all interests under this Agreement without Seller's prior written consent. Any such permitted transferee must expressly assume Buyer's duties and obligations hereunder. Seller may assign Seller's rights and obligations under this Agreement to the devisees named in JOHN DOE's will.

VIII. PURCHASE PRICE

Buyer agrees to pay to Seller as the purchase price for the Purchased Assets a sum equal to _____ percent (___%) of gross fees collected by Buyer attributable to the Purchased Assets for each of the _____ (___) years after Closing (the **Purchase Price**), which shall be paid to Seller as hereinafter provided.

IX. PAYMENT OF PURCHASE PRICE

Buyer shall advance the amount of _____ dollars (\$ _____) toward the Purchase Price at the Closing (the **Down Payment**). The Down Payment shall be applied toward the initial _____ dollars (\$ _____) due Seller under the provisions of Article VIII. Thereafter, Buyer shall pay Seller the remaining sums due under Article VIII, as follows: On the twentieth (20th) day of each month, commencing on the twentieth (20th) day of the first month following Closing and continuing thereafter on the twentieth (20th) day of each successive month for a period of _____ (___) years after Closing, Buyer shall pay Seller _____ percent (___%) of gross fees collected by Buyer that are attributable to the Purchased Assets for the immediately preceding month.

X. ASSETS OF SELLER

Except for the Purchased Assets, Seller specifically retains all assets of the Businesses, including, but not limited to, cash, fixed assets (including software, computers, equipment, and furniture), and accounts receivable, and none of said assets are being sold to Buyer pursuant to the terms of this Agreement.

XI. RECORDS

At Closing, Seller shall deliver to Buyer all records, documents, and papers in Seller's possession related to the Purchased Assets. The Party receiving or retaining such records shall make them reasonably available to the other Party during the _____ (___) year period following Closing in the event said documents are necessary or desirable for any legitimate business purpose of the other Party. Buyer shall promptly forward to Seller all correspondence, mail, payments, and documents received by Buyer after Closing relating to or concerning the Businesses or the Purchased Assets prior to Closing provided, however, that Buyer may retain copies of any letters and documents relating to the Purchased Assets.

XII. EXPENSES OF THIS AGREEMENT

Buyer and Seller agree that each shall pay their own expenses incurred with respect to the preparation and execution of this Agreement.

XIII. ATTRITION

The parties hereby contemplate that the payments required from Buyer hereunder are to be paid entirely from fees attributable to and collected from the clients listed in Exhibit A. In the event that any client listed in

Exhibit A ceases to do business with Buyer, for any reason after Closing, Buyer's obligations with respect to such client shall be only to remit to Seller _____ percent (____%) of gross payments received from such client until the date said client ceased to do business with Buyer provided, however, that, in the event any principal owner(s) of any client listed in Exhibit A uses the services of Buyer either personally or with regard to a new business venture, such substituted client shall be included for the remainder of the term of the Agreement for all purposes and shall be automatically added to Exhibit A without further action of the Parties.

Buyer covenants and agrees that Buyer shall use its best efforts to retain the clients listed in Exhibit A and shall not intentionally cease to do business with any of such clients for the purpose of decreasing the amount payable to Seller pursuant to the terms of this Agreement.

XIV. RECORDS TO BE KEPT BY BUYER

Buyer agrees to set up and maintain separate client ledger on each of the clients enumerated in Exhibit A and shall keep such ledgers separate and apart from any other client records of Buyer. Buyer agrees to make such ledgers (which shall include billing records and receipt records) available to Seller or Seller's agents upon reasonable notice (such notice shall be deemed to be reasonable if given at least three days prior to the date of any proposed inspection), during Buyer's normal business hours, for the purpose of allowing Seller to verify that Buyer is paying to Seller, on a monthly basis, _____ percent (____%) of all gross fees actually received by Buyer attributable to the Purchased Assets.

XV. NOTICES

Any notice to be given hereunder shall be given in writing and delivered personally or sent by registered or certified mail, postage prepaid, as follows:

If to Buyer, addressed to the attention of _____, CPA, XYZ, PLLC, Certified Public Accountants, [address].

If to Seller, addressed to JANE DOE, [address], with a copy to RICHARD ROE, [address].

XVI. GOVERNING LAW AND ENTIRE AGREEMENT

This Agreement contains the entire agreement between the Parties with respect to the transaction contemplated herein. This Agreement shall be governed by and construed in accordance with the laws of the state of _____ and is performable in _____ County, _____.

XVII. WARRANTY

Buyer warrants to Seller that XYZ, PLLC, and its CPA members are duly licensed by the _____ State Board of Public Accountancy to practice in the state of _____. Buyer further warrants that Buyer has all requisite power and authority to enter into this Agreement. The execution, delivery, and performance of this Agreement has been duly authorized by all necessary action by the Buyer, and this Agreement has been duly executed and delivered and is the legal, valid, and binding agreement of the Buyer, enforceable in accordance with its terms. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated

hereby will result in the breach or violation of any term or provision of, or constitute a default under, any agreement, mortgage, deed of trust, note, bond, license, lease, indenture, instrument, order, writ, injunction, decree, statute, law, rule, or regulation to which Buyer is a party or that is otherwise applicable to Buyer. There is currently no pending, and Buyer is not aware of any threatened, lawsuits or administrative proceedings against Buyer that would enjoin the consummation of the transactions contemplated hereby. Buyer has conducted and completed Buyer's own due diligence review and is relying solely on such review, investigations, or judgments in determining to purchase the Purchased Assets. The purchase price contemplated by this Agreement is fair and reasonable. Buyer (1) has information regarding the Purchased Assets and the transactions contemplated hereby sufficient to enable Buyer to make a fully informed decision regarding such transaction; (2) is aware of the accounting industry in ____; (3) is aware of the competition; (4) is aware of the historical financial results of the Businesses; and (5) is aware of the cash flow required to make the Businesses operate.

XVIII. ENFORCEMENT OF CONTRACT

XYZ, PLLC, hereby agrees to be liable to Seller for performance of all obligations to Buyer pursuant to this buy/sell Agreement.

XIX. MISCELLANEOUS

1. This Agreement shall not be strictly construed for or against any Party.
2. This Agreement shall be construed in accordance with the laws of the state of _____. Venue for any action thereon shall lie in _____ County.
3. The Parties agree that this Agreement contains the entire agreement between the Parties and supersedes any and all prior written or oral agreements, contracts, arrangements, or other understandings between the Parties relating to the subject matter hereof, and that any such prior agreements, contracts, arrangements, or other understandings are null, void, and of no further force and effect. No oral understanding, statements, or promises contrary to the terms of this Agreement exist or have been made. This Agreement can be amended only by written instrument signed by all Parties hereto.
4. If, as a result of a finding by a court of competent jurisdiction of a Party's breaching this Agreement, another Party employs an attorney or attorneys to enforce such Party's rights under this Agreement, then the breaching party shall pay the other Party the reasonable attorneys fees and costs incurred to enforce this Agreement.
5. If any provision of this Agreement is held to be illegal, invalid, void, or unenforceable under present and future laws effective during the terms of this Agreement, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected thereby.
6. The undersigned represent and warrant each to the other that they have read and hereby execute this Agreement voluntarily and upon their own judgment and solely for the consideration herein. The undersigned further acknowledge and agree that they have not relied upon the representations of any other party except as set forth herein, upon entering into this Agreement.

Practice Continuation Agreements

7. This agreement may be executed in multiple counterparts, all of which shall constitute one and the same document, and facsimile signatures shall have the same force and effect just as if an original of this Agreement had been executed and delivered.

Executed by the Parties this ____ day of _____, 20XX, to be effective as of the ____ day of _____, 20XX.

SELLER:

JANE DOE, as Co-Independent
Executor of the Estate of JOHN DOE, Deceased

RICHARD ROE, as Co-Independent
Executor of the Estate of JOHN DOE, Deceased

BUYER:

XYZ, PLLC

BY: _____
_____, CPA, Director

About the Author

John A. Eads, CPA, is one of nine directors in the firm of Smith, Jackson, Boyer & Bovard, PLLC, a large local CPA firm in Dallas, Texas (www.dallascpas.com). He began his public accounting career in 1966 after graduating from the University of Texas with a BBA degree and being honorably discharged from six years service in the United States Air Force. Mr. Eads started his own individual public accounting firm in 1974. In 1982, Mr. Eads began his public accounting practice consultation business, concentrating in practice consultation, which included long-range planning; compensation; buy/sell agreements; profitability analyses; succession planning; partnership agreements; firm culture and improving the bottom line; buying and selling medical, dental, veterinarian, and CPA practices; and practice valuation and related litigation support services.

Mr. Eads has extensive experience and service in the management of accounting practice area, principally within his public accounting practice and with the Texas Society of Certified Public Accountants (TSCPA) and the Dallas CPA Society, 1 of 20 chapters of the TSCPA in Texas. He served on the MAP Committee of the Dallas CPA Society between 1972 and 1978, serving as chairman from 1980–1981. Mr. Eads also served on the TSCPA MAP Council and Steering Committee in addition to numerous other committees involved in practice management.

As chairman of the TSCPA MAP Curriculum Committee for three years, Mr. Eads was responsible for continuing professional education (CPE) course development. He authored and presented numerous MAP-related courses, including Starting An Accounting Practice; Practice Development; Selecting, Retaining and Communication with Partners; A Guide to Partner Compensation; Managing a Profitable CPA Firm; Improving CPA Firm Profitability Through Management Controls; Marketing Services in Tough Times; Partners Retreats; Increasing Firm Profits; Managing for Profit; Firm Succession Planning and Practice Continuation; and Survival of the Local Firm. The TSCPA awarded him its First Year Outstanding Discussion Leader Award in 1982–1983, and he received the AICPA Continuing Professional Education Outstanding Instructor Awards for AICPA Courses in 1989–1990. His articles on practice continuation agreements have appeared in the *Journal of Accountancy*, *CPA Managing Partner Report*, *Practicing CPA*, *Today's CPA*, *The California Accountant*, *Practical Accountant*, *AICPA MAP Handbook*, and *The CPA Report*. Mr. Eads also is a qualified instructor for CPA CPE courses and has presented numerous courses in the management of an accounting practice and tax areas for the AICPA, TSCPA, Dallas CPA Society, and the Professional Development Institute for over 20 years. He was the author of pro-bono weekly tax articles for two weekly local newspapers, *Oak Cliff Tribune* and *Today Newspapers*, that serve the Best Southwest area of Dallas County.

For the TSCPA, Mr. Eads served as President and Chairman of the Board of Directors from 1996–1997 and Treasurer from 1995–1996. He is currently a Life Director of the TSCPA. He was President and Chairman of the Board of Directors of the Dallas CPA Society from 1989–1990. He served six years on the AICPA Council from 1995–2001. Mr. Eads is a recipient of the 51st Meritorious Service to the Accounting Profession in Texas award, the highest honor that can be bestowed by the TSCPA to a member. He received the Outstanding Chapter President Award from the TSCPA for his service to the Dallas CPA Society in 1989–1990. He is a recipient of the 1988 and 2005 CPA of the Year Award from the Dallas CPA Society for outstanding leadership and meritorious contributions to the accounting profession. In 1987, he received the 1987 Public Service Award presented by the TSCPA and was publicly honored for this award by the AICPA at the

Centennial Annual Meeting in New York City, and he was honored on behalf of President Ronald Reagan by the White House Office of Private Sector Initiatives and United States Senators Phil Gramm and Lloyd Bentsen. He received the Public Service Award again in 1995 from the AICPA. Mr. Eads is recognized in *Who's Who in Finance and Industry*, *Who's Who in the South and Southwest*, *Who's Who in America*, and *Who's Who in the World*.