

## The Top 8 Mistakes Estate Planning Attorneys Make When Buying or Selling a Practice

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If you're an estate planning attorney, like it or not, you will exit the practice of law someday. And I'm sure if you've already built a good practice, you would like to see a smooth, professional transition of your clients when the time comes, as well as maximize the financial return for all of your many years of hard work.

If you're an estate planning attorney who is still building your practice, you are probably looking for the cheapest and most effective way to market to and secure a lot of new clients.

Selling - - or purchasing - - a practice can be the answer to both attorneys' prayers. But the problem is, most attorneys haven't got a clue how to go about doing this the *right* way.

Over the years, I have purchased three estate planning practices and successfully folded the newly acquired clients into my firm. In so doing, I've paid off the sellers quickly and generated a significant return on my investment, a return that continues to come in to this day. I've also sold a professional practice. So I've personally experienced how a purchase or sale works, including the key necessary details, from "both sides of the fence".

I've also weeded through and discarded many potential purchases and wasted hundreds of hours on deals that wound up collapsing (thankfully, before they were completed!). And the one sale I made, though good at first, later turned out to be a bit of a disaster! So I'm also intimately familiar with the numerous things that can go *wrong* (which is why I'm writing this article).

Here are the top 8 mistakes I've seen myself (as well as other estate planning attorneys) make when buying or selling a practice.



### **Mistake #1: Failing to Properly Position Your Practice Before Even Beginning the Purchase or Sale Process**

When the opportunity for a good deal arises, you must be ready to go, so the transaction may proceed as quickly and smoothly as possible.

If you're a seller, you need to make your practice the most attractive "target", so potential buyers won't look elsewhere, and so you'll maximize the selling price. For example, you need to have a client database (or client management system) with up-to-date information such as when clients last came in, type of plan they have, basic contact and financial information, etc. You also need organized hard or electronic files containing similar items, plus copies of clients' estate planning documents. Regular contact or other relationship maintenance with your clients, such as through periodic newsletters or seminars, is also important.

If you're a buyer, you need to already have in place the "infrastructure" necessary to quickly and professionally service as many of the newly acquired clients as possible. For example, you need ample staffing (including possibly one or more associates), an effective calendaring system, proper work production processes, and good database management and marketing systems (newsletters, seminars). And, of

course, you should have sufficient capital or standby financing ready (at least for a down payment).

## **Mistake #2: Not Marketing to the Right Prospects**

“Shotgun” marketing (to practically everyone or anyone) is a lot less effective than “targeted” marketing that’s geared toward just the best potential buyers or sellers.

I’ve found that using a business broker can be a terrible mistake unless the broker specializes in estate planning law practices and has already culminated many successful sales (hint: you won’t find many brokers like that!). “Word of mouth” may work if you’re already in the right circle of professionals but it can be a very slow process and can even backfire if you’re a seller and your competition uses that against you to start stripping your clients or you’re a buyer and other potential buyers hear about it and swoop in first.

There are two better ways to find the right prospective buyer or seller. One is using classified advertisements (in estate planning trade newspapers and magazines or electronic list serves or bulletin boards). The other (and best and most stealthy) way is doing direct mail (or e-mail) targeted to the exact demographic you want to hit (after taking off the people you don’t want to hear about it). The key to either approach is to keep your content simple, emphasize confidentiality, and elicit a response - - and when you get responses, you then need to be sure to avoid...

## **Mistake #3: Not Understanding How to Weed Out the Best Candidates**

Once you’ve reviewed a response or inquiry, you need to ask the right questions and obtain the right information about the other party - - before you meet or speak with him or her in detail. Some of the items you should be sure to request to be sent to you by a seller include a client breakdown (number, estate sizes, location, etc.), level and type of work performed (basic Living Trust, advanced estate tax/asset protection planning, Medicaid, post-death administrative, etc.), fee schedule (to see the prices clients have paid, relative to yours), and how often they’ve been in contact with clients and how (newsletter, seminars, review meetings, etc.). A seller should request that the potential buyer send similar, though not as detailed information. It may be necessary to explain why you’re requesting all this information and you may need to offer a Confidentiality Agreement in order for the other party to feel comfortable about sharing this kind of information before even meeting with you.

This step just gives you a “sneak peek” of the total picture you’ll need to see because next you must be sure to avoid...

## **Mistake #4: Not Performing the Required Due Diligence Before You Start Discussing Deal Terms**

I have learned this mistake (and how to avoid it) through exhausting, harrowing, countless hours of trial and error!

Once the potential buyer or seller has gone through the above initial vetting process, you should arrange a meeting (preferably face-to-face, without any other advisors present). But you must be sure if the other party is the seller, he or she will have ready for your review or “spot check” such items as tax returns (for several years, plus current profit/loss statements), client database, client files, model estate plan documents, etc. If the other party is the buyer, you’ll want him or her to bring a detailed bio/CV/firm brochure (indicating what sets him or her apart and why he or she qualifies as the right buyer), information on staffing and systems in place, and written testimonials from fellow attorneys (or other professionals). The other party must understand that you will review this information in front of them, without taking copies, at the beginning of the meeting before any potential deal terms are discussed.

If you’re the buyer, then before the meeting you better also have prepared and bring with you a detailed checklist of the key items you’ll need to review in detail when you speak with the seller at the initial meeting (that list is way beyond the limited space and scope of this article). And you better find out at the meeting what role the seller intends to continue (or not) once the deal closes.

Please, no matter how good the other candidate looks like at the meeting, and no matter how much you may want to close the deal on the spot, don’t get too excited and make this mistake...

## **Mistake #5: Talking About Price Too Soon!**

This may be the biggest mistake of all!

This would seem to run contrary to popular thinking - - to not at least discuss a “ballpark” price at this point - - and it may well be advantageous for the buyer to learn the seller’s asking price or range. But talking about a definite, fixed price or making an offer (or discussing other details of “the deal”) when at the initial meeting can, if you’re the seller, needlessly blow off the potential buyer. If you’re the buyer, you may blurt out an “off the top of your head” number or terms you’ll later regret when you take the solitary time to fully assess the seller’s practice.

The little understood fact is, the purchase price is really a function of structuring and negotiating the overall deal terms.

For example, more non-refundable cash up front may result in a lower price while more paid over time may warrant a higher price. Which now takes us to...

### **Mistake #6: Failing to Structure and Negotiate the Right Deal**

Once you've done your due diligence at the initial face-to-face meeting, and you further examine the profile of the other party (and practice for sale), then you're in a position to consult any advisors you may have and intelligently structure the *right* deal - - one that makes the most sense for *both* parties.

Most attorneys, not having put together a deal like this before, often automatically apply so-called "rules" that value the practice at a fixed number that's 1 to 1 ½ times annual gross revenue, and dictate that the price be paid 30% down and the rest in installments over 5-7 years. In reality, that may be the *worst* deal for both parties!

There are at least three other, more successful ways I've found to structure the deal - - and many hybrid variations thereof. For example, believe it or not I actually structured one deal where there was no fixed price, no money down and the payout was only for one year! When you do set a fixed purchase price, there are over seven factors to consider. Creating the best structure and corresponding price are like custom-fitting an estate plan to all parties involved - - to not only the goals, objectives and needs of your client but the needs, abilities and circumstances of the client's beneficiaries. (Regrettably, further discussion of the details of deal structuring and drafting the contract itself are way beyond the constraints of this article.)

Let's assume you do fashion the appropriate deal terms and close the deal. You then have to be sure to avoid this next mistake...

### **Mistake #7: Failing to Take Certain Immediate Actions After the Sale Closes**

If you're the buyer, you want, as quickly as possible, to transition as many clients as you can and generate enough revenue to pay off the seller.

If you're the seller, you want, as quickly as possible, to make sure your clients are properly transitioned and serviced, and you actually get paid in full.

The best way to accomplish both parties' objectives is through immediate marketing to the seller's clients! But how?

I've time-tested and proven to work a step-by-step approach that includes not only a seller's "announcement letter" to his or her clients (with a special insert that weds the clients to the buyer right away), but also a "client party" (with a short sales pitch worked in) as well as follow up contacts and meetings. (Again, I don't have enough space and time to cover all the details now because it's time to get to the last...)

### **Mistake #8: Not Doing It At All!**

As I mentioned at the outset, selling a practice can be a great exit strategy and buying one a great business building strategy. Unfortunately, when most attorneys first think about (or begin to experience) the seemingly overwhelming complexities and risks involved in buying or selling a practice, they often shy away (or worse yet, get cold feet when walking down the aisle and bow out of the "marriage" at the last minute!). But it doesn't have to be that way. I've put together a unique, information-packed 90-minute teleconference training on how to successfully purchase or sell a practice, while managing the complexities and minimizing the risks. This program even comes complete with my personal, detailed, 22 point due diligence checklist! For more information, [click here](#).

### **ABOUT THE AUTHOR:**

**Attorney Philip J. Kavesh** is the principal of one of the largest estate planning firms in California - - Kavesh, Minor and Otis - - now in its 34th year of business. He is also the President of The Ultimate Estate Planner, Inc., which provides a variety of training, marketing and practice-building products and services for estate planning professionals. If you would like more information or have a question for him, he can be reached at [phil@ultimateestateplanner.com](mailto:phil@ultimateestateplanner.com).



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