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# SUCCEEDING PRACTICE

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## Definition

The definition of succeeding practice as set out in the 2022/2023 minimum terms and conditions is as follows:

*“Succeeding Practice” means a Practice that satisfies any one (1) or more of the following conditions in relation to another Practice (such other practice being a Preceding Practice for these purposes):-*

- (a) it is held out as being a successor to the practice or part thereof of the Preceding Practice by whatever means such holding out occurs; or*
- (b) it is conducted by a Partnership where two or more of the Principals are identical to those persons who were Principals of any Partnership that conducted the Preceding Practice; or*
- (c) it is conducted by a sole practitioner who was the sole practitioner conducting the Preceding Practice; or*
- (d) it is conducted by a sole practitioner who was one of the Principals conducting the Preceding Practice; or*
- (e) it is conducted by a Partnership in which the sole practitioner conducting the Preceding Practice is a partner and where no other person has been held out as a successor to the Preceding Practice; or*
- (f) the Partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the Preceding Practice;*

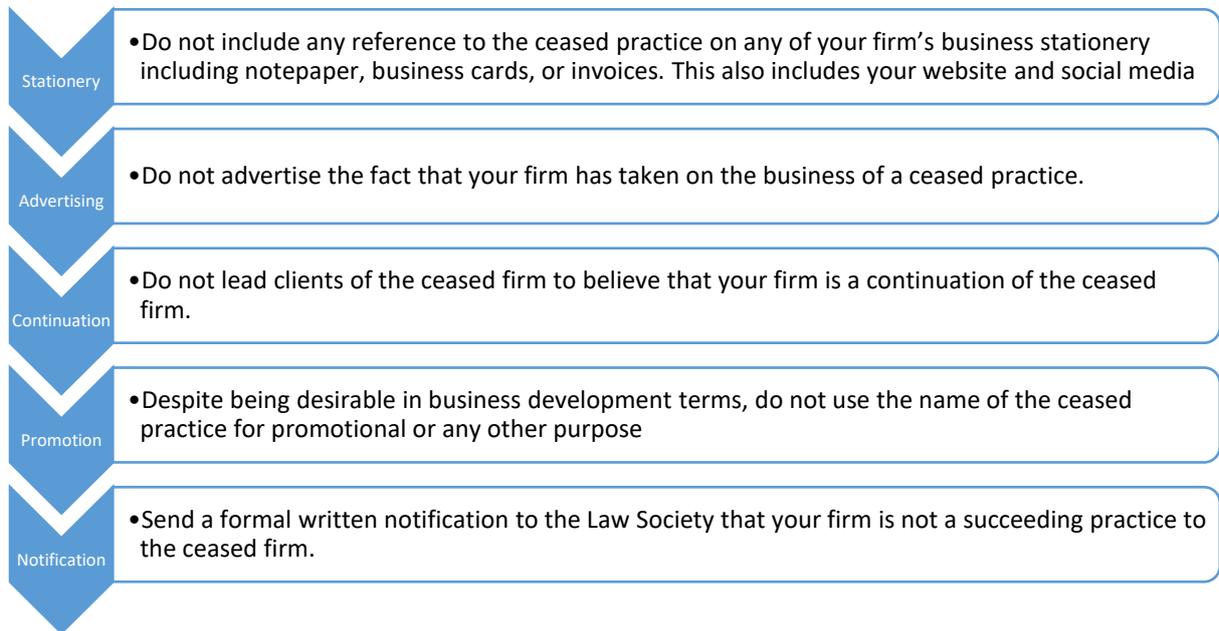
*but, notwithstanding the foregoing, a practice shall not be treated as a Succeeding Practice for the purposes of the Minimum Terms and Conditions pursuant to paragraphs (b), (c), (d), (e) or (f) of this definition if another practice is or was held out by that other practice as the Succeeding Practice;*

## NOT a succeeding practice

A firm is **NOT** a succeeding practice if any of the following apply

1. None of the conditions in the definition of succeeding practice apply
2. Another practice is or was held out as the sole succeeding practice
3. A sole principal retires and passes their files to another firm that does not hold itself out as a succeeding practice

## How to avoid holding your firm out as a succeeding practice



## What to say to clients of the ceased firm if you are not the succeeding practice

1. Make a clear distinction between your firm and the ceased firm
2. Make it clear that your firm is a separate practice – it is not a continuation of the ceased firm
3. Inform the clients that your firm has reached an agreement to take on the files of the ceased firm in order to offer a continuity of services to its clients to ensure that there is no disruption in the handling of their legal affairs
4. Remember that the files belong to the client – give them the option to nominate your firm as their new solicitor, to have the file sent on to another nominated solicitor, or to have the file returned to the client

## Phoenix firms

Phoenix firm is defined under the regulations as:

*“phoenix firm” means, in relation to any firm (a “predecessor firm”), a firm that is carrying on a practice that, in the absolute discretion of the PII Committee, is largely similar to or is a succeeding practice to the practice formerly carried on by a predecessor firm or any part thereof, and two (2) or more firms may be treated as each being phoenix firms to a single predecessor firm for the purpose of these Regulations;*

7 July 2023

It should be noted that the phoenix firm provisions apply regardless of how much time has passed since the ceased firm enters the Run-Off Fund.

The anti-abuse provisions for phoenix firms are as follows:

- The ceasing firm entering the ROF is required to sign a declaration stating that the principal(s) have no intention in forming a succeeding practice at any time in the future, and confirming that all claims and circumstances have been notified to their existing insurers up to the expiry of the firm's insurance
- A "phoenix capture" system is run by the Society to identify any phoenix firm that attempts to open in practice and such firms will be designated as phoenix firms by the PII Committee
- Phoenix firms are required to declare and cover the new firm as a succeeding practice to the ceased firm in order to be permitted to commence in practice. Such insurance should cover all claims against the ceased firm since the date of cessation.
- Insurers will have a right of reimbursement for claims already paid by the ROF for the ceased firm
- Phoenix firms that do not obtain the required succeeding practice insurance will not be allowed to practice