



## CHECKLIST FOR OPENING A SOLE PRACTICE

### Firm Name

When choosing a name for your firm, it is important to comply with [Texas Rule of Civil Procedure 7.01](#) governing communications concerning a lawyer's services, including using trade names.

### Entity Formation

Decide if you want to form an entity through the Secretary of State's office. Visit [Opening a Small or Solo Law Firm in Texas: Choosing an Entity Structure and Other Requirements](#) for basic information on the pros and cons of different entity types and some frequently asked questions on starting a practice. If you decide to form an entity, you will need an Employer Identification Number (EIN). Visit the IRS website for information on [how to obtain an EIN](#). If you do not choose to form an entity, you can still get an EIN for tax purposes or use your Social Security number.

### Office Information

Office Location – A physical office space is not required to practice law in Texas, making it financially easier when first starting out. Many attorneys work completely remotely these days, depending on their practice area and ability to appear in court remotely.

Contact Information – Once you have a phone number and email address established, visit your MyBarPage on the State Bar of Texas website to update your contact information. The information you choose to make visible to the public will appear on the popular [Find a Lawyer](#) page of the Bar's website.

### Financial Planning

#### Banking

IOLTA Account – If you plan to accept money from clients before performing legal work, you must open an Interest on Lawyers' Trust Accounts (IOLTA) account. Visit the Texas Access to Justice Foundation's (TAJF) [website](#) to learn more about IOLTA requirements by clicking on the Attorney tab at the top of their page. The IOLTA account must be opened at a TAJF-approved bank. After opening the account, remember to complete the [New Account/Notice form](#) on their website. Some banks will complete this form for you; others won't.



## CHECKLIST FOR OPENING A SOLE PRACTICE

- Operating Account – If you form a legal entity, you need to open a business operating account. Otherwise, you can use a personal bank account.
- Fees – Determine how you will charge your clients. Historically, lawyers have charged clients on an hourly rate or contingency fee basis, but many lawyers now offer alternative fee arrangements, such as a flat fee. See the [Alternative Fee Arrangement Chart](#) on the State Bar's Law Practice Management website for a table of alternative fee arrangements, including the pros/cons and ethical considerations of each.
- Nonrefundable Retainers – [Ethics opinion 611](#) discusses the use of nonrefundable retainers. The opinion makes clear that any time you receive money from a client as an advance payment for legal services you will perform in the future, that money is fully refundable, regardless of whether the retainer agreement says it is nonrefundable or the client asks an attorney to make the advance nonrefundable. The only permissible use of a nonrefundable retainer is when a client is purely paying a fee for an attorney to be *available* to the client. If the client pays a retainer for the attorney to be available to the client *and* to perform legal services at that time, the portion of the retainer paid in anticipation of the performance of legal services must be deposited in an IOLTA account until earned and is always fully refundable. See [Nonrefundable Retainers: Proceed with Caution](#) for more information.
- Flat Fees – Per ethics opinion 611, lawyers should list benchmarks in their retainer agreement when charging a flat rate so that the client knows when they will be charging against their retainer. See [Nonrefundable Retainers: Proceed with Caution](#) for more information.
- Billing and Trust Accounting – Consider how you will bill your clients and ensure accurate trust accounting. Smokeball offers [billing and trust accounting](#) at no cost through an arrangement with the State Bar. For more information, visit the [Member Benefits](#) page of the State Bar's website.

### Insurance

The [State Bar of Texas Member Benefits](#) page is a helpful resource for many issues, including insurance.

- Malpractice – Malpractice insurance is not required in Texas, but many lawyers feel it is important to carry for a variety of reasons. Learn whether malpractice insurance is right for you and, if so, how much to carry, by reading [Legal Malpractice Insurance](#) by the Texas Lawyers Insurance Exchange.



## CHECKLIST FOR OPENING A SOLE PRACTICE

- Health Insurance – Visit the [Texas Bar Private Insurance Exchange](#) to explore individual health insurance, group health and employee benefits, dental insurance, term life insurance, disability, and long-term care.
- Other Insurance – Many firms have additional coverage, such as:
  - Business Liability Insurance to cover general liability risks, such as property damage and other claims related to your business operations. A Business Owner's Policy (BOP) can combine general liability, commercial property, and business interruption coverage in a comprehensive package.
  - Cyber Liability Insurance in the event of a cyberattack or breach.
  - Keyman Insurance provides immediate cash to a business upon the death or disability of a key individual of the law firm. It can be used to hire a replacement, cover revenue gaps, or manage the business during the transition period. It covers the firm, not the individual.

### **Marketing**

- Branding – Branding is more than developing a logo. It is a strategic process that creates a unique identity for your firm, differentiating it from other firms. It involves a combination of your firm name, logo, values, voice, consistent user and colleague experience, and the like that leads to name recognition, trust, and loyalty. What is your vision for your firm? How do you want to position yourself among your competitors? How do you want to be perceived? Thinking through these things before you invest in creating your visual and media presence helps create consistent messaging from Day 1.
- Advertising and Solicitation – As required by Part VII of the Texas Disciplinary Rules of Professional Conduct, attorneys must submit firm advertisements and solicitation communications to the Advertising Review Department. Visit the State Bar of Texas [Advertising Review page](#) for more information. If you plan to have a website, it needs to be reviewed.
- Digital and Social Media Presence – Create a free business profile on [Google Business](#) and focus on getting as many good reviews as quickly as possible to boost local search engine optimization (SEO) results. Many firms have also developed a social media presence to inform people about what they do and how they can help and to increase brand recognition. Firms also provide educational videos to inform potential clients of the law, provide answers to frequently asked questions, etc. It is essential not to disclose any client or case information that could



## CHECKLIST FOR OPENING A SOLE PRACTICE

identify the client or their case. Watch a short video on [How to Edit Videos for Social Media](#) for a quick tutorial on creating video content for social media use.

- Marketing Budget – It is important to track the success of your marketing efforts. For example, track how people find you. If you hire someone to ensure your firm is high in the list of online search results for a specific combination of words, track how many people click through to your website and ultimately walk through the door. Watch a short video on [Call and Form Tracking for Small Firms](#) to learn more about tracking your marketing spend. It is common to spend 6% of your firm's gross income on marketing, but studies find successful firms spend closer to 10-12%. The exact amount can vary based on firm size, practice area, geographic location, market competition, and overall marketing goals. Consumer-facing areas, such as family law, estate planning, or personal injury may require higher budgets than business-to-business firms. Similarly, firms that wish to grow rapidly or dominate the market may require higher budgets.
- Networking – Join your local bar association and any sections relevant to your practice areas, including the solo/small firm section. Join the relevant sections of the State Bar of Texas, too. Develop one 30-50 minute talk you can give to local lawyers/sections/committees/entities and to nonlawyer entities is a great way to establish word-of-mouth referrals. Networking with other lawyers in similar-sized firms who do the same type of work as you is the best way to find a mentor and a great source of referrals.

### Client Communication

- Retainer Agreement/Engagement Letter – A good engagement letter or retainer agreement sets forth the agreement between you and the client on the services you will perform for them and how much those services will cost. It should be clear and easy to understand without legalese. The engagement letter is a fundamental document that will be referred to if there is a dispute between you and the client. Prepare a good retainer fee/engagement letter before you get your first client. Seek advice and sample retainer agreements from other attorneys and mentors. Several CLEs address drafting engagement letters.

Your retainer agreement should include how much your services cost, how the client will be charged for your time (increments of time, benchmarks if using a flat rate, etc.), how frequently you will send an invoice, and how you accept payment. It should also include a statement about the firm's privacy policy regarding the use of client information, digital and paper file maintenance, disposition and destruction of client files, a disclaimer of liability for use of cloud storage or other technology that may expose client information to hacking, the use of digital signatures, when and why artificial intelligence is used in the firm, a designated custodian



## CHECKLIST FOR OPENING A SOLE PRACTICE

clause in the event you are temporarily or permanently unable to practice law, and a succession planning clause.

For more information and sample forms, visit [Texas Bar CLE](#) for various CLEs on retainer agreements and see [Attorney Fee Agreements and Miscellaneous Forms](#) by Claude Ducloux. In addition to sample fee agreements and language for the issues mentioned above, Mr. Ducloux includes sample contingent fee clauses, a virtual law office engagement letter, a short form estate planning agreement, an estate planning agreement for joint representation, a freelance work agreement, a limited scope representation retainer agreement, a family law retainer agreement for a large firm, sample arbitration clauses, a client file return addendum, and a closing letter. Sample language regarding a designated custodian and succession planning can be found in the State Bar's [Succession Planning Toolkit](#).

[Closing Letter](#) – It is important to send a closing letter to all clients upon termination of representation. It ensures that there is no misunderstanding of the status of the case and that you are no longer representing the client in that matter. Some clients assume that if you represent them in a particular matter, you represent them on other matters. A closing letter helps clarify that your relationship has ended and will be useful if there is a later dispute.

### **Process Management**

[File Management](#) – While no one wants to think about mundane issues like file management when starting a law firm, client files can quickly get unwieldy. Establishing a file management policy at the outset will help keep files organized. Implementing routine file review and destruction protocols will prevent you from paying for unnecessary digital or physical storage space. It is a best practice to maintain a digital copy of the file and return the original file to the client when representation ends. It is imperative to return all original documents to the client at the end of representation, especially wills and estate planning documents that may not be needed for years to come after you have retired. Remember, the client owns the file, not the attorney. Visit the [File Management and Ensuring Password Access](#) chapter of the State Bar's [Succession Planning Toolkit](#) for applicable rules and ethics opinions on file management and a sample file retention and destruction policy.

[Process Management Software](#) – Consider the various processes your firm will routinely encounter, such as file management, billing, or HR processes like onboarding new staff. Many of these processes can be automated with process management software once you have established the protocols you or your staff will use to conduct these tasks. Watch a short video on [Process Management Software](#) for more information.



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### Practice Management

- Practice Management Software – Practice management software helps automate your practice. Watch a short video on [Practice Management](#) for more information.
- Case Management Systems – A case management system is a type of process management software that helps track your cases and keeps you from missing important deadlines. Some vendors provide additional services, including billing, intake, and reporting. As your practice grows, consider using a case management system to keep you organized and free up time. Visit the State Bar's Member Benefits [Office Resources page](#) for a list of preferred vendors.

### Custodian Designation

All sole practitioners should designate a custodian attorney to close their practice if they are suddenly unable to practice law. It is easy to do through the State Bar's [Advance Designation of a Custodian-Attorney portal](#). If a lawyer has not designated a custodian, closing the office falls to friends and family members who may not be able to perform needed tasks like notifying clients, invoicing clients/returning retainer fees, or assessing client files for destruction.

A custodian attorney does not take over your practice or represent your clients. The custodian's role is confined to closing the practice as indicated in [rule 13.04 of the Texas Rules of Disciplinary Procedure](#). Learn more about designating a custodian in the [Designating a Custodian chapter](#) of the State Bar's Succession Planning Toolkit, including sample language to include in your retainer fee/engagement letter and in your estate planning documents.

**Additional resources for attorneys who want to start a firm or open an office in Texas can be found on the Law Practice Management Program's Starting a Practice page.**