

## Commercial Insights

### Selling your dental practice – tips for making it a pain-free process

Meridian Lawyers acts for dental practitioners in the sale and purchase of dental practices. This Insight provides a brief overview of the legal process, together with practical tips on how to make the process as pain-free as possible.

#### Step 1: Gather information about your practice

The dental practitioner selling the business (vendor) will be expected to produce the contract of sale for the purchaser to consider. The contract is a technical legal document, and it will be necessary for a vendor to instruct a lawyer to prepare this on his or her behalf.

The vendor's solicitor will need important information and documents about the practice. For example, the vendor's solicitor will need to see a copy of the premises lease.

The vendor may need to produce:

- a copy of the development approval for the premises, and other documents such as a list of equipment being sold
- a copy of the certificate of registration of the business name (if any)
- details of the vendor's employees (as a minimum their names, start dates, positions, employment status and current entitlements)
- a copy of the certificate of registration of any trade mark
- evidence of ownership of any domain name, and
- a copy of any current contracts (such as security contracts, software agreements, fit out agreements etc).

Vendors save time, and also potentially legal costs when they have information about the practice and copies of all key documents ready to instruct their solicitor.

#### Step 2: Prepare the contract

While preparing the contract, the vendor's solicitor should advise of any special conditions the vendor may wish to include. For example, your solicitor may include terms that:

- exclude warranties about the condition of equipment
- exclude warranties about the takings of the business and require the purchaser to rely on their own enquiries

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- require the purchaser to provide a personal guarantor where the purchasing entity is a company
- require the purchaser to pay interest on the purchase price if completion is delayed, and
- indemnify the vendor against breach of any continuing agreements (including the lease) after completion.

Sometimes there are conditions precedent in the contract which require the offer of a loan to the purchaser, or variations to the lease, or the entering into of an employment or contractor's agreement between the vendor and the purchaser.

The vendor will also need to stipulate the position of employees on the transfer. Is the purchaser going to be free to offer employment at its discretion or does the vendor wish for the purchaser to offer employment to all current employees on their current terms and conditions?

The contract will need to state the employee entitlements that are to be paid out by the vendor on completion, and the entitlements that will be the subject of an adjustment to the purchase price where the liability is being taken over by the purchaser. If your solicitor does not advise you about this, be sure to ask before you sign the contract or make any payments.

The contract will generally contain a set of promises or warranties by the vendor. You should familiarise yourself with those promises before exchanging contracts to ensure you can comply with them. If you cannot comply with any promise, you should seek legal advice on whether it is appropriate to disclose this point. Once prepared, the vendor's solicitor will send the draft contract to the purchaser's solicitor.

### Step 3 – Exchange contracts

When each party's solicitor is happy with the terms and conditions, the contract will be legally exchanged and the purchaser will pay the deposit. This is usually to the vendor's agent or solicitor and will be held on a trust account pending completion. From this point, there is a legally binding agreement to sell and buy, subject to the conditions precedent being satisfied.

Depending on the circumstances of the individual practice, there can be considerable work to be done by the solicitors after exchange and in the run up to completion which may include:

- obtaining consent to assignment of the lease and any variations from the lessor
- securing a new lease for the purchaser if the vendor's lease has expired, and
- negotiating and agreeing the terms of any employment or contractor's agreement
- for the vendor dentist.

Generally, the contract of sale will oblige the vendor to maintain the goodwill of the practice and carry on business in a proper and business-like way after exchange and up to completion, and ensure that the practice is run as a going concern. Vendors will often also be under obligations to maintain the equipment and comply with the lease. Vendors should seek advice from their solicitor before granting or varying any employee entitlements after contracts are exchanged. The contract of sale may contain prohibitions on such changes.

#### Step 4 – Completion

The parties' solicitors will liaise with each other to agree the time and date for completion, and make sure that all documents required to be handed over are ready in time.

The vendor must make any employee entitlement payments required under the contract. Where the vendor has bank borrowings secured over the business being sold, the vendor's solicitor will arrange for the vendor's bank to attend settlement and hand over releases of security interests in return for settlement cheques repaying the borrowing.

#### Tips:

- Compile all the relevant information and documents and send them to your solicitor in their entirety, rather than in a piecemeal way.
- Be aware of the promises contained in the contract of sale and the restrictions which are placed on vendors once contracts are exchanged.
- Be prepared to commit time to fulfilling the conditions precedent and preparing for completion – there is much to do.
- Ensure your financier has sufficient warning of the impending sale and discharge of loans and security interests.

This Insight was written by Principal, [Georgina Odell](#).

For advice or assistance with the sale or purchase of a dental practice, please contact [Georgina \(NSW, QLD\)](#) or [Principal Mark Fitzgerald \(VIC\)](#).



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#### Further information

Georgina will be presenting a session at the Australian Dental Association (ADA) NSW seminar, 'Exiting Your Practice and Maximising Your Outcome' in St Leonards, Sydney on Saturday 2 September 2023. [Click here](#) to learn more.

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