



Dramas & Pitfalls

Avoiding Dramas & Common Pitfalls

Whilst previous guides have focused on growing the value of your business prior to sale and negotiating a better sale price, this one will aim to review a number of the common pitfalls that have occurred in dental transactions and they can be avoided in our experience. Often these problems can lead to a deal being aborted, a situation that could have been easily avoided if the 'bump in the path' had been spotted some months earlier and workaround had been negotiated before all the stakeholders in a transaction gave everyone an excuse to get really nervous and really angry!

The Property

Freehold Defects

The Bricks and Mortar of a building are a frequent culprit in de-railing a sale. If a buyer is purchasing the Freehold they will most probably want structural and drainage surveys before they commit to an exchange so if you are aware there is a potential issue with a property there is no point in hoping it won't be brought up because there is every chance that it will and by that point it may end up costing you more money. At this point if using our Standard Heads of Terms a property such as a subsidence with a building would give rise for the buyer to abort the deal and request the return of the deposit unless you can reach agreement on the cost of works to be done. The costs presented by a Structural Survey will almost certainly be inordinate in comparison to if you got a local builder to quote up the works and presented this in the Sales Particulars at offer stage.

Freehold Valuation

We always recommend that Vendors start the transaction with an idea as to the value of their building before the sale begins. All too often Vendors have either no idea or un-realistic expectations as to the value of the building as there is a large differential between residential valuations and commercial valuations. Imagine, if you'd agreed a sale for an overall value of £1,000,000 only to find the property value was less and the deal dropped to £900,000. It might change how you viewed offers coming in or even how long you wanted to stay on! However, the important point is that a buyer's bank will instruct a valuer to 'confirm' the value of the property but they frequently appoint a valuer who isn't based in the area and their opinion on valuation has been as much as 20% different to a local RICS valuer's opinion in my experience. Therefore, to just rely on the purchaser's bank's opinion which will always be that of a pessimistic opinion, could cost you a small fortune. We recommend you seek the opinion of a local RICS registered valuer to ensure you have an accurate opinion of the property's true value.

The Lease

There are many pitfalls in the drafting of leases but we will cover the main three here;

- Lease Length – Your purchaser will require a lease with a minimum duration of at least ten years at the point of completion, fifteen is more favourable. If your lease is coming to an end you will need to assist with procuring a longer lease but how this is achieved will need to be balanced off with how you think your Landlord will behave. If you know your landlord to be easy-going and fair then you would be in a stronger position to find your purchaser first then with them, negotiate a new lease for a period suitable to them and their lender. Hopefully, this would follow the path of a Deed of Surrender and Lease re-grant in the name of the purchaser so you do not remain as a guarantor to the lease until the lease is re-assigned. However, if your landlord is likely to ask for a lease premium knowing that you are in for a windfall when you sell the business, you may be better to secure a longer lease prior to marketing the business for sale.
- Landlord & Tenants Act 1954 – This is very important for purchasers as they will want to ensure that the Landlord will not ask them to leave at the end of the lease term and this Act gives them some protection against this. Where possible you should always ensure that the lease is within the Act!

- Dilapidations – A lease will provide that the lessee is responsible to restoring the property to at least the condition in which they found it at the point they leave. The purchaser’s solicitors will normally advise that a Schedule of Condition protects their position from the point of completion so a vendor should, when entering a new lease also always ensure that there is a log of what condition the property must be returned to. If not, a purchaser’s solicitor could request a Purchase Price reduction to cover returning the property to an immaculate condition. On a recent deal we acted on an initial dilapidations purchase price reduction of £180,000 which was eventually agreed at £26,500.

The NHS Contract Transfer

Never ever tell anyone at NHS England you are intending to sell your practice. As nice as they may be and as good a relationship you may have with them you will be running the risk of reducing the value of your NHS goodwill to nothing.

NHS Contract Performance

NHS England are now issuing breach notices as a matter of course for underperformance and this makes purchasers and banks very nervous. In turn this reduces the value of your practice. Therefore, even when a deal is agreed it is imperative that the NHS contract performance is maintained at the pro-rata performance target. Although a lot of vendors are comfortable that they can catch up in the final quarter, even the most experienced purchasers rarely have this level of confidence when they buy a practice and start requesting retentions which can be so easily avoided if performance is maintained.

Telling the Staff too Early

Whilst we appreciate that a lot of vendors find the sale process uneasy because they feel they are being disingenuous with their team we strongly recommend that you do not inform your staff of the intended sale until after the exchange of contracts or in the cases where exchange and completion are to be simultaneous, a maximum of a few weeks before sale. Believe it or not this is as much for them as it is for protecting the value of your practice; change makes even the most brazen uncomfortable at times so if they are following the will it, won’t it sale process for three to four months you run the risk of them considering other opportunities in other businesses. It can also become chairside gossip between the patients and the dental team which could ultimately damage your goodwill.

Similarly, lots of staff develop a fear of retaining their own job in these situations through a belief that a purchaser will bring their own team in. Do you really want to recruit and train new team members in your final months of practice ownership?

The Cash Buyers & the Proofs of Finance

Firstly, we write this guide with an element of cynicism in that there are in our experience No Cash Buyers. We find that when someone describes themselves as a cash buyer what they often mean is that they have the cash to buy the practice if they wanted to from their own resources but they will use a bank to finance most of the transaction. So it is with some trepidation that you should choose a cash buyer over another if the deal isn’t on as a good commercial terms.

The other common misconception is that if a buyer is walking around with a proof of finance at a value over and above the purchase price, they will definitely get the funding agreed for the practice. This is far from the case, banks consider each candidate and each proposal on individual merit. For instance if a good candidate approaches the bank with a £200,000 deposit they may lend them £800,000 to finance a £1,000,000 acquisition but this is only on the basis that the target practice meets the Debt Service Cover criteria for their lending profile, EBITDA leverage and perhaps more importantly that they agree the value of the practice they are buying is £1,000,000. If the bank valuation comes in at £900,000 then they will likely only lend them £720,000 which means they can only afford to offer £920,000 even though their certificate said £1,000,000.

We provide the bank valuers with comparable data to try and ensure that they agree with our opinion but can only do this up to the value of the marketing price. If your buyer offers you £50,000 over the marketing price we must make sure they have this in addition to the deposit the bank will require of them.

Hopefully this gives you an idea of what to expect and how to combat the dramas and pitfalls. The next Guide in the series is the final guide of the series which is a practice owners sale journey through the process and their conclusion . If you have any questions in the interim or would like us to value you practice on a free and non-committal basis please contact us on 01788 545900. Once we have completed a practice visit we can provide you with a Healthcheck Report which demonstrate exactly how we have calculated your practice's value and perhaps more importantly how we feel it could be improved.