

Dental Practice Purchase Legal Considerations

Dentists wishing to buy dental practices have to consider a range of legalities before they actually own the practice.

Typically the first stage is **identification of the practice** and **negotiation of price**.

Identification of practice can be done a number of ways, including personal approaches or by seeing an advertisement for a practice. However, at some time, the vendor that is (the person selling the practice) may require a **Non-Disclosure Agreement**. This is perfectly normal, particularly in larger practices in competitive areas where they seek to ensure that the information from that practice is not passed onto any other parties.

Once the parties have agreed that they wish to proceed towards purchase of a practice, the next important document is a **Heads of Agreement**. A Heads of Agreement documents simply sets out some agreed terms to a contract, prior to a Final Agreement. They have key terms, such as a purchase date, a statement perhaps of equipment and most importantly, a purchase price. The parties themselves sometimes form up a Heads of Agreement document. Although, in practice, the Heads of Agreement document is more frequently drawn up by a lawyer, where both parties execute the documents to ensure that the key terms of the agreement - such as timing, purchase and the details of the practice they are buying - are included. Often the details of a **lease of premises** are identified.

From the Heads of Agreement document, a **Contract of Sale** is formed which incorporates the terms of the Heads of Agreement, but further includes a lot detail and usually follows the form in Queensland of a Contract of Sale of a business, which is an REIQ document. This again is prepared by a lawyer and includes more important terms in relation to expectations of the parties about staffing and also about deposit and identifying solicitors, accountants and all the other intellectual property and other considerations.

At this time also the **Lease for the premises** has to be finalised whether by way of an agreement to lease or other document

In addition and at the same time of the execution of the Contract of Sale is the **Service Level Agreement** between the buyer and any dentists that are in the practice and who will continue to work for the purchaser. These agreements reflect the intention of the parties about the terms of engagement of the dentist and it also reflects the terms in relation to the performance of the dentist when he works for the purchasing dentist.

Over and above the Service Level Agreement is the **Employment Agreement** for any clinicians within the practice, such as dentists and hygienists. These need to be determined fairly early on because they do have an impact on the sale process and liability and adjustments. The contracts for

the employment for other clinicians need to define whether it is an employment arrangement, an independent contractor arrangement and whether it is casual, permanent, part-time or full-time employment. Care needs to be given to determining how remuneration is paid and that superannuation is taken into consideration as well as the leave loadings.

The new **NES (National Employment Standards)** need to be contemplated in any Employment Agreement with any clinicians or indeed any staff.

Things that are sometimes missed in Dental Practice sales and contracts manifold, but can include matters such as stock valuation; because stock is usually not included in the purchase price of a dental practice, as it is an additional cost.

This is a very brief outline of considerations in buying a dental practice and the legalities. It is always best to seek commercially experienced practitioners who are aware of the subtleties and nuances of dental practices as opposed to other businesses.

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