

De-Mystifying the Complex World of Dental Practice Purchases and Sales: New Strategies to Accomplish Your Goals

This is part two of a three-part series. For part one, please refer to page 16 of the January 2010 issue of the *ODA Journal*.

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The process by which you find a buyer, and the steps you take to acquire a dental practice can be challenging, complex and time-consuming. Finding the perfect practice to purchase, or the right buyer (when you're selling) demands an understanding of the significant economic, tax, and liability consequences you will face in the following years.

Dental practice purchases and sales are fraught with complex issues in the form of:

- > Undisclosed equipment liens
- > Office leases with limited rights
- > Deciding if uncompleted/failed dentistry will be performed/redone by the seller or buyer
- > Deciding if the account receivables should remain owned by the seller or be collected by the buyer
- > Restrictions on the seller's right to practice dentistry, solicit staff, or treat patients subsequent to any transfer of the practice to a buyer.

Dental non-disclosure and confidentiality agreements.

Make sure all of the information provided to the purchasing dentist, and their advisors, is kept confidential irrespective of the sale/purchase negotiation outcome.

As the seller, you do not want collection and production reports being discussed among

colleagues. And, as a buyer, you don't want your personal financial information discussed among peers.

As the seller, the best way to assure a goal of confidentiality is to have the potential buyer sign an agreement stating that 1) all information provided to the buyer is confidential, 2) all such information shall be returned at your request regardless of whether negotiations have terminated

or are in progress, 3) the buyer's obligation to maintain the confidential nature of the information shall continue even if the purchase and sale is not consummated, and 4) the buyer shall instruct his/her advisor(s) that they are also bound by the terms of said agreement.

As the buyer, the best way to assure you do not break confidentiality is to have the agreement emphasize two key areas:

1) have the seller differentiate between information claimed to be confidential, and that which is already public information, and 2) have the seller define what is inappropriate use of the financial information by your dental lender.

Most confidentiality agreements fail to carve out an exception to the seller's broad definition of "confidential information", such as any data which exists in the public domain (e.g., patients' phone numbers/addresses, or marketing/promotional material). Also, nearly all confidentiality agreements omit specifying your lender's obligation not to divulge your personal financial information. This is especially important if your seller's willingness to negotiate financial terms (purchase price) will be substantially determined by your perceived financial condition.

Letters of intent; deposit receipt agreements.

Most transactions involving a dental practice broker start with a letter of intent signed by both parties. Its purpose is to state the major terms agreed upon between the parties such as purchase price, date of transfer, inclusion (or exclusion) of the seller's account receivables and time frame for approving financial information.

The *letter of intent* is normally non-binding; therefore, any deposit provided by the buyer is refundable unless a specific time period has passed, or certain events (as stated in the letter) have already occurred. A *deposit receipt agreement*, on the other hand, usually states that the agreement terms are binding on each party. Liability will result if a party does not perform according to the contract's provisions, and the buyer's deposit made at the time of signing the agreement is subject to forfeiture.

Other significant business issues: dental incorporation, office lease analysis, employee policy and procedure manual.

Your dental practice purchase is the first step in a long and fulfilling career in dentistry. However, your personal and financial satisfaction can be enhanced by taking charge of other areas of your practice in the same way you have been pro-active in negotiating or obtaining a fair and properly-drafted purchase agreement.

Dental Corporations, LLCs: Professional dental corporations continue to be viable entities by which dentists practice their profession. Unlike practicing as a sole proprietor or partner, your professional dental corporation protects your personal assets from any practice or business liabilities (such as breach of contract matters or wrongful termination litigation) with the exception of dental malpractice claims. Also, you are able to pay for fringe benefit programs such as disability income insurance, and health insurance with pre-tax corporate



dollars, as opposed to paying for such benefits with personal, after-tax dollars. Lastly, the likelihood of being audited by the Internal Revenue Service is substantially less when you practice as a dental corporation unlike your practicing as a high-income earning sole proprietor. Nearly all states permit dentists to practice dentistry as a professional limited liability company (LLC); however, California is an exception. It prohibits dentists, physicians, and almost all other health care providers from practicing as an LLC.

Office Leases: If you are assuming a seller's existing office lease make sure to analyze the terms prior to agreeing to lease. Do not make the mistake of believing that your seller's signing of a lease means the document is fair or lacks onerous terms/provisions. For example, most office leases do not permit the buyer of a dental practice to exercise the seller's option to renew the office lease. Most leases also permit the landlord to recapture the premises if you ask for the landlord's consent to assign the lease to another dentist. Many landlords also discreetly include the right to relocate any tenant at the landlord's discretion, or not to release the dentist from his/her agreement if the building or premises have been destroyed by a natural disaster. Do not let any lack of legal acumen, on the seller's part, impact your practice's profitably by not fully reading and understanding the agreement.

As the seller, you want to limit any future liability you may have to the landlord after your sale of the practice. Therefore, include a release of liability provision in an office lease assignment. The document should be signed by you, the

buyer and the landlord. Also, if the buyer is entering into a new lease with your landlord, obtain a termination of lease agreement signed by you and the landlord. Such document will set forth the cessation of all liabilities (present and future) between you and your former landlord.

Employee Policy and Procedure Manual: Employees, patients and other individuals are not reluctant to threaten litigation or actually file lawsuits. Employers must post certain notices within their workplace (i.e., their policy against sexual harassment). One way to reduce the likelihood of employee litigation and increase office morale is to have your own custom-drafted office policy and procedure manual. By addressing, in writing, your office policy regarding important issues (i.e., vacation, paid holidays, paid sick leave) or sensitive issues (i.e., termination of employment, sexual harassment, alternative work week schedules or pregnancy disability leave), you are making unambiguous your office policies. This then translates into reduced risk of litigation by current staff or terminated employees. It makes the sale or purchase of the dental practice easier and more efficient.

Next issue: The third and final part of this article will examine critically important items to be negotiated and drafted in your purchase and sale document.

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