

Checklist of Legal Issues when Buying or Selling a Practice

There are a variety of issues which should be discussed in relation to either the purchase or sale of a doctor's practice. Listed below are several of the major legal issues which are important to this transaction:

1. Whether selling the business with or without the real estate.

There are widely accepted offer to purchase documents which differ based upon whether the business is being sold alone or with real estate.

2. Nature of parties to the actual purchase.

It should be determined whether parties are acting as agents, in their individual capacities, or on behalf of existing entities, such as partnerships, corporations, or limited liability companies.

3. Purchase price

4. Amount of any earnest money and when it will be paid in connection with the transaction.

5. How the total purchase price will be allocated for tax purposes.

Generally, the overall purchase price will be allocated between the items listed below. The manner of allocating that purchase price will have an effect on accounting and tax arrangements.

- a. Personal property and equipment
- b. Good will
- c. Accounts receivable
- d. Lease or other form of buy-out
- e. Patient list purchase
- f. Value of any non-compete or employment agreement

6. Items included in purchase price.

It is recommended that the specific items be described in written form and made part of the contract. Items for negotiation as part of the purchase include:

- a. Tangible assets (office equipment, furniture, etc.)
- b. Files/patient names
- c. Accounts receivable

d. Intangible items, such as the purchase by the seller as an existing entity, other than an individual.

7. Buyout of lease or other existing contract of seller.

8. Closing date and time.

Occasionally, seller needs to occupy after the closing date. If so, arrangements need to be made for a per diem charge for any extended occupancy.

9. Need for property condition report or occupancy permits.

If real estate is sold, the statutes require the exchange of a property condition report. The contents of that report raises a number of legal issues which should be examined by an experienced individual. Many municipalities also require a new buyer to obtain occupancy permits for the continuation of a business. In addition, any existing lease needs to be carefully reviewed and revised to allow for the new purchaser-tenant.

10. Need to notify third parties of potential occupancy.

Not only to the local municipality, but other third parties may need to be notified of the change of occupancy. These third parties include the current landlord, insurance providers, and others who may have equipment on the property which is subject to lease.

11. What parties will do with the current tenant-seller's security deposit.

12. Will buyer require any contingencies to the purchase?

Most buyers will have conditions which must be met before they are required to proceed with the closing. These contingencies include inspections, financing, permits, etc.

13. Determine whether any equipment which seller is selling may be subject to liens.

Often, a uniform commercial code search is required to evaluate the manner of transferring patient lists or files.

14. Notification of transfer to existing patients. An agreed upon form of notifying patients should be discussed by the parties.

Parties should also agree on the manner of phone messages and signage at the location. Parties should also agree on a manner by which patient's authorize the transfer of their file to buyer or another third party.

15. Determine which accounts receivable will be allocated between the parties.

It is suggested that detailed account receivable list be prepared and made part of the transaction.

16. Determine which regular monthly services or charges will be paid by each party and the date through which existing services may be maintained.

17. Consider requesting profit-loss statements and other financial records of the business.

18. Consider entering into a noncompete or independent contractor type agreement in relation to the transaction.

In many transactions, the seller is asked to either sign a noncompete agreement or perform some services in connection with the new business for a designated period of time after the closing. The terms of these separate agreements should be discussed by the parties.

19. Review any sales tax and permits.

Parties should discuss a mechanism for surrendering any sales tax numbers or otherwise escrowing funds to confirm that all sales tax which may be owed has been appropriately paid by the seller. Most closings involve an escrow of a certain percentage of the seller's normal sales tax in order to insure that the buyer ultimately receives appropriate notification from the department of revenue that no sales tax remains outstanding.

20. Determine whether any inspections or testings are required.

Buyers will often request pre-closing inspections relating to real estate or the quality and nature of any equipment sold in connection with the transaction.

21. Determine whether any corporate or other third party entity agreement must be preapproved in order to permit the transaction to proceed.

If either party to the agreement is purchasing in an capacity other than his/her individual capacity, it may take some time to draft appropriate "consents" or other forms of agreement by other business entities permitting the transaction to proceed.

22. Determine what liabilities will become each party's responsibility following closing.

The parties should discuss any accounts payable and a date when the new buyer assumes responsibility for any such debts. Accounts payable can include items such as professional liability insurance, employee benefits, payroll taxes, retirement account benefits, and outstanding taxes (local, state, federal, workers compensation, and unemployment compensation). In addition, parties need to determine how any pending or perspective litigation will be addressed; as well as other third party obligations such as leases for equipment at the business.

23. The parties may wish to consider signing an agreement prohibiting “disparaging” comments by the previous owner about the new buyers business operations.

Parties often include clauses in the offer which describe how to address and promote future referral of patients between the seller and buyer if the seller intends to continue operations in the same or immediate area.

24. Consider all financing arrangements.

There may be a number of financing considerations associated with the purchase, including:

- a. Direct cash purchase, land contract purchase, or third party financing.
- b. Terms and rate of any third party financing, including any necessary balloon payments.
- c. Determine whether prequalification letter is required and date when the letter is to be provided to the seller.
- d. Determine whether there should be some type of personal guarantee or other form of security for the payments due from the buyer.

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