

Commercial Insights

Selling your medical practice

Aim for a pain free goodbye

Meridian Lawyers acts for doctors in the sale and purchase of their medical practices. Here is a brief overview of the legal process, together with tips on how to make the process as pain free as possible.

Step 1 – Gather information about your practice

The doctor selling the business or part of it (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 doctor's solicitor will need important information and documents concerning the practice.

For example, the vendor's solicitor will need to see a copy of the lease of the premises. 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).

Your solicitor will need to understand the structure of the business, and whether you are selling the business and assets, or whether you are selling shares in a corporate trustee and units in a unit trust which owns the practice.

If you are in business with other health practitioners, your solicitor may also do some investigation work as to whether any ownership agreements such as shareholder, partnership or practice agreements have implications for the sale, and whether a practice exit deed might be advisable to ensure you are released from all liability under such agreements.

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

Step 2 – Prepare the contract

While preparing the contract, the vendor's solicitor should advise on any special conditions the vendor may wish to include.

For example, your solicitor may include terms which:

- 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;
- include a condition for all parties to obtain the vendor doctor's release from any personal guarantees which have been given – typically to a lessor of the premises;
- require the purchaser to provide a personal guarantor where the purchasing entity is a company;
- requires the purchaser to pay interest on the purchase price if completion is delayed; and
- indemnifies the vendor against breach of any continuing agreements (including the lease) after completion.

With medical practice sales there are often 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 doctor and the purchaser.

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

The contract will need to state what employee entitlements are to be paid out by the vendor on completion, and what entitlements 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 that you can comply with them, and if you cannot comply with any promise you should seek legal advice about whether to disclose this to the purchaser.

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, usually to the vendor's agent or solicitor to be held on a trust account pending completion.

From this point on, there is a legally binding agreement to sell and buy, subject to the conditions precedent being satisfied.

Dependent upon 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;
- obtaining a release and discharge for the vendor doctor from any personal guarantees which have been given in respect of the medical practice or its premises;
- securing a new lease for the purchaser if the vendor's lease has expired; and

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- negotiating and agreeing the terms of any employment or contractor's agreement for the vendor doctor.

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, and 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:

- Gather all relevant information and documents together and send them to your solicitor in one go
- Be aware of the promises contained in the contract of sale and the restrictions placed on vendors once contracts are exchanged
- Be aware of, and tell your solicitor about any personal guarantees you have given
- Be prepared to commit time to fulfilling the conditions precedent and preparing for completion - there is much to do
- Ensure that your financier has sufficient warning of the impending sale and discharge of loans and security interests

For advice or assistance in relation to the sale or purchase of a medical practice or your interest in it please contact [Georgina Odell](mailto:godell@meridianlawyers.com.au) (Sydney) on godell@meridianlawyers.com.au or (02) 9018 9975, or [Mark Fitzgerald](mailto:mfitzgerald@meridianlawyers.com.au) (Melbourne) on mfitzgerald@meridianlawyers.com.au or (03) 9810 6767.



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