

## Pharmacy Insights

### Pharmacy Sale and Purchase Update

The most common question we are asked by pharmacists looking to sell or buy a pharmacy is, *'at what stage should we involve our lawyer?'*

Our answer is very often, *'seek legal advice before you sign documents related to the transaction'*, such as heads of terms or sales notices.

The wording contained in heads of terms or sales notices may have significant implications for sellers and buyers, particularly if they are expressed to be legally binding. Our view is that these documents, which are often produced at a very early stage of a transaction, should be expressed to be non-legally binding and subject to the negotiation and exchange of a legally binding contract for sale and purchase. This is especially important for purchasers.

The reason for this is that at the heads of terms stage, a purchaser is unlikely to have undertaken their financial or legal due diligence. More often than not, the due diligence exercise will disclose information about a pharmacy which needs to be dealt with in some way in the contract, and therefore certain terms of the transaction may need to change in the light of this.

Examples of issues which we have identified during the legal due diligence process (for both sales and purchases) include pharmacies:

- whose details (such as address, name or size) have changed but this has not been notified to the Pharmacy Council of New South Wales – these issues often require the contract to stipulate that the seller will seek the necessary approvals from the Pharmacy Council as conditions of the purchase and enable a purchaser to rescind the contract if the regulatory approvals are not given
- whose right to occupy the premises has expired – this requires conditions in the contract for the grant of a new lease and negotiation of the terms which would be acceptable to a purchaser
- which utilise unapproved professional services rooms
- who have sublet part of their premises either to another retailer or to medical practitioners without the necessary approvals being given, and
- conditions on a purchaser's offer of finance which need to be reflected in the contract – such as a requirement for a lease to be varied to offer a longer term with options to renew.

The legal due diligence process should also identify any security interests which are registered over the pharmacy and its equipment.

The contract for sale and purchase of a pharmacy is a complex and important document which should record and agree the intentions of the seller and the buyer in matters such as the price and any adjustments to it on completion, the property which is being sold, restraints on the outgoing pharmacist, employees and their

March 2023

entitlements, how the lease of the premises is to be assigned and if the lease has expired, the content and process for applying for a new lease, how stock is to be valued and whether the value is included in the purchase price, how and when any registered security interests are to be discharged and released, and any warranties or indemnities to be provided by the seller to the buyer.

It is important that both sellers and buyers understand the content of the contract and are comfortable with it before contracts are exchanged and become legally binding.

During the past twelve months we have experienced a trend of transactions facing additional challenges due to a number of factors including expired leases, disputes with landlords over the size of pharmacy premises, and challenges in obtaining some regulatory approvals.

It has been a year of change, including in the documentation required to be supplied by regulators, and the compulsory use of the online property settlement platform known as PEXA, through which leases must now be registered or transferred.

With many years' experience of acting for pharmacists in both the sale and purchase of pharmacies, Meridian Lawyers is ideally placed to advise and represent pharmacists throughout this process, and to foreshadow some of the challenges which may be faced, because we have successfully worked through them before.

We offer a free, no obligation telephone or video consultation with one of our experienced pharmacy lawyers, for pharmacists who are preparing to sell or buy their pharmacy.

Meridian Lawyers will be attending APP 2023 and we are happy to meet with pharmacists at the conference to discuss impending transactions on a no obligation basis.

In addition to providing specialist advice about buying or selling a pharmacy, our national team of pharmacy lawyers regularly advise clients about their obligations in employing and managing staff, franchising, privacy, obtaining finance, partnership arrangements, dispute resolution, retail leases and Pharmacy Location Rule issues.

**This article was written by Principal [Georgina Odell](#). To register your interest in a free, no obligation telephone or video consultation with a member of our team, or for further information about the services we offer, please contact:**

**NSW, QLD & TAS**



**Georgina Odell**

**Principal**

+61 2 9018 9975

[godell@meridianlawyers.com.au](mailto:godell@meridianlawyers.com.au)

**VIC & SA**



**Mark Fitzgerald**

**Principal**

+61 3 9810 6767

[mfitzgerald@meridianlawyers.com.au](mailto:mfitzgerald@meridianlawyers.com.au)

Disclaimer: This information is current as of March 2023. This article does not constitute legal advice and does not give rise to any solicitor/client relationship between Meridian Lawyers and the reader. Professional legal advice should be sought before acting or relying upon the content of this article.