

Pharmacy Insights

Buying and selling a pharmacy | Why it makes good business sense to partner with a lawyer

Due to the complexities likely to arise, it makes good business sense to partner early with a trusted legal advisor to help guide and advise you through the critical stages of your pharmacy ownership journey.

By partnering early with a lawyer with relevant pharmacy sector experience, you will avoid common pitfalls, manage risks and potentially save yourself a lot of time and money.

What follows are some frequently asked questions that require, and benefit, from legal advice.

1. What are the key legal factors I need to consider when buying a pharmacy?

Investing in a pharmacy business is a lengthy and complex process. To minimise legal and financial risks, these five important steps must be followed:

- **Step One: Correctly review your 'Heads of Terms'**

The first step to consider in the buying process is the content of important documents including 'Heads of Terms', 'Term Sheet' or 'Offer' documents. Pharmacists should seek legal advice before signing any documents in connection with the purchase of a pharmacy, as it is important to know whether the document is legally binding at this early stage, and if it is, that the necessary conditions are included.

- **Step Two: Financial and legal due diligence**

The next step is for your accountant and lawyer to undertake financial and legal due diligence to check and verify that the information you have been given about the business is correct and not misleading. Your accountant will likely review financial statements from the previous three years, and your lawyer will undertake checks to verify the legal owner of the pharmacy, its registration with the regulator, the terms of the lease, and security interests registered over the business, among other matters.

- **Step Three: Negotiate the terms of sale contract**

Your lawyer will negotiate and advise you on the terms of the sale contract which should contain important warranties and indemnities in your favour, to help protect your interests should information or representations provided to you about the business prove not to be accurate.

The sale contract should also include conditions precedent to completion. For example, for an offer of finance, for the approval to the change of ownership from the state regulator (in NSW, the Pharmacy

Council of NSW), for the grant of a new PBS approval number to the purchaser, and either the lessor’s consent to assignment of the lease or the grant of a new lease (if the owner’s lease has expired).

The contract should provide that if one of these key conditions precedent cannot be satisfied by a certain date, then the purchaser has the right to rescind the contract and reclaim the deposit paid.

- **Step Four: Satisfaction of conditions precedent and exchange of contract**

Once all parties are happy with the content of the contract, it can be signed and exchanged. This is when the contract becomes legally binding, subject to satisfaction of the conditions precedent. The deposit is normally paid by the purchaser at this stage – typically 10% of the purchase price.

Your lawyer will assist in the satisfaction of the conditions precedent. The lessor may ask for information about the purchaser, his or her financial standing and assets, and if the lessor consents to assignment of the lease, there will be a Deed of Consent to Assignment for the parties to consider, negotiate and sign.

There are important steps which must be taken under the applicable Retail Leases Act for your state, including for purchasers to be provided with a Disclosure Statement from the lessor.

- **Step Five: Completion**

Once the conditions precedent to completion are satisfied, the lawyers will arrange completion when the balance of the purchase price will be paid, and any security interests over the business and mortgages over the lease will be discharged. Key documents will also be handed to the purchaser’s lawyer, such as the ASIC transfer key for the registered business name of the pharmacy.

The transfer of the lease, or the new lease, will then need to be registered.

Tip! Before entering into the process of buying a pharmacy business, engage a lawyer with specific pharmacy sector experience to assist you in the due diligence phase. This ensures you have the expert support to identify any issues that may impact a transaction and ensures that the contract includes covenants to protect you regarding any issues that have been identified during the due diligence process.

What do I need to include in a partnership agreement?

Commercial relationships don’t always work out, and every partnership comes to an end one day. It is critical for the intended business partners to discuss and document what they would like to happen during the life of the business and particularly what happens if one partner wishes to retire or there is a dispute.

Questions that should be answered include:

What are the parties’ expectations for carrying on the business?	<input type="checkbox"/>
What are the voting rights of each partner and how will key decisions be made?	<input type="checkbox"/>
How and when will we be remunerated and how and when will profits be paid out?	<input type="checkbox"/>
What is considered to be a default by a partner?	<input type="checkbox"/>

Can I sell some of my interest/shares? How do we introduce new partners?	<input type="checkbox"/>
Can we own other businesses with other people?	<input type="checkbox"/>
What happens if a partner wishes to retire, or becomes totally and permanently disabled, or dies? Does an ongoing partner wish to have the right to buy out the exiting pharmacist's interest in the business? What valuation methodology is to be used where an exiting partner's interest is to be purchased by an ongoing partner?	<input type="checkbox"/>

Tip! Seek advice from your lawyer before negotiating and entering into a binding partnership or shareholder agreement.

What do I need to consider in the premises lease?

The lease of pharmacy premises is a valuable asset - the pharmacy and PBS approval is contingent on the right to occupy the premises. It is important for purchasers to consider:

What are the lease terms?	<input type="checkbox"/>
Has the option been exercised?	<input type="checkbox"/>
Is there a redevelopment or relocation clause in the lease?	<input type="checkbox"/>

Tip! Ensure you receive comprehensive advice on the lease terms and discuss with your lawyer any sub-letting arrangements, such as sub-leases to medical practitioners within the pharmacy, to ensure that the lessor's consent and any necessary regulatory approvals have been obtained.

These FAQs were written by Principals Georgina Odell and Douglas Raftesath. For further assistance in buying and selling a pharmacy please contact Georgina or Douglas.



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Further information

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

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