

Business

Selling your practice from a property angle

Liam Faulkner advises on some of the often overlooked issues to consider when selling a dental practice

So, you've finally come to the decision that you want to sell your practice, but you're feeling somewhat left in the dark as to what to expect from the process.

At times, selling your practice can feel like pulling teeth, especially when you're having to answer a list of questions on specialist areas. The last thing you want to read on a weekend when you've had a long week is an email from your solicitor requesting an extensive list of documents that you may have never even heard of.

Whilst there are always a significant number of queries in respect of your business and clinical activities, we do find that one of the most problematic areas for sellers is in respect of the property. The following points will need to be addressed, whether you are selling the freehold or leasehold; however, if you are selling the leasehold, some points may be addressed with the landlord, depending on your lease obligations.

EPC

An Energy Performance Certificate, commonly known as an EPC, is one of the documents that often practice owners do not have in place. When selling a commercial premises, it is a legal requirement to have an EPC and the buyer's solicitor will insist on seeing a copy.

Not only is it a legal requirement, but it also offers benefits to the practice owner, by providing recommendations on how you can make your property more energy efficient. If you are considering selling your practice but haven't quite taken the leap, it is worthwhile obtaining an EPC, as if you implement the recommendations, you could save money on energy costs in the long run. An EPC is valid for 10 years.

A highly important change in the law is coming into force in April 2018 affecting landlords' (freehold owners) obligations, as they will be required to achieve a minimum rating of E on the EPC scale (the scale runs from A-G). If you don't meet this requirement as a landlord, you could face a penalty of up to £4,000, so it is not an issue to be easily dismissed.

An EPC can be obtained fairly quickly from an accredited assessor and details of local assessors are readily available on the internet.

Asbestos management plan/survey

Under the Control of Asbestos Regulations 2012, any person who manages non-domestic premises (ie, a dental practice) has a duty to manage asbestos and to protect others who work in such premises, or use them in other ways, from the risks to ill health that exposure to asbestos causes.

Not only is this for the safety of everyone who enters your practice, but you won't be able to sell your practice without an asbestos management plan in place, or having obtained a survey. An asbestos management plan can be prepared by yourself; however, we would recommend instructing a specialist surveyor to prepare an asbestos survey. This will highlight any asbestos present and provide you with ways to manage any asbestos.

Remember, depending on the results that this is not always a duty to remove asbestos, it is aimed at identifying it, correctly labelling it and taking the necessary precautions in respect of it. Either way a potential buyer will likely insist on seeing either a management plan or survey before purchasing your practice.

Fire risk assessment

Whilst this may seem an obvious procedure or document to have in place, many practice owners' fire risk assessments are not up to date or they have not followed the recommendations made. You can actually prepare a fire risk assessment yourself, but if you don't have the expertise or time to do so, then you need to appoint a 'competent person' to help, for example a professional risk assessor.

It is always important to keep an up-to-date fire safety file, evidencing ways that you have complied with fire safety laws. Primarily, the reason being to keep you and your staff safe, but also to satisfy the buyer's requirements when you are coming to selling your practice.

Keep a file with all records of checks and inspections of any fire extinguishers, smoke alarms, etc, in order and make sure you have procedures in place in the event of a fire. You must keep a written record of your fire risk assessment if your business has five or more staff.

Planning permission

Do you have planning permission for the property to be used as a dental practice? Planning permissions are split into separate classes, in which dental practices fall under use class D1. You should make sure you have the appropriate planning permission in place, as potential buyers will always raise this point.

However, depending on the age of the building or how long you have occupied it, you might not have record of any planning permission. Or the property has been used as a dental practice for 30 years, you have never had a problem before, so why should this become an issue now?

This is what is known as 'continuous or long use' and therefore your practice should be exempt from any enforcement action (ie, by the local authority) if it has been continuously used as a dental practice for at least 10 years. However, when a buyer is obtaining bank funding they often insist on an indemnity insurance being put in place in case any potential future enforcement actions arise.

Rest assured, if this is the case, the cost of putting indemnity insurance in place is not great and therefore it is an obstacle that usually can be easily overcome.

Third party landlords

You may occupy the property under a lease with a third-party landlord. This itself can flag up potential issues when you come to selling your practice. For example, has your lease expired or is there only a short amount of time remaining on your lease? If a potential buyer is obtaining

bank lending it will be a condition that there is a lease in place with at least 10-15 years remaining.

In this situation, there are a number of solutions. The first solution would be to approach your landlord in advance and ask whether they would be willing to extend the lease, and this would then be assigned to the buyer.

Secondly, you could approach your landlord to ascertain whether they would be willing to grant a 'reversionary lease' to start when the current lease expires, then both leases would be assigned to the buyer. A reversionary lease is usually on similar terms to your current lease and is entered into in advance of the start date.

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Lastly, your current lease could be surrendered and a new lease is granted directly to the buyer on completion. All of the above options will depend on the relationship you have with your landlord, but nine times out of 10 the landlord's consent will be required when you are looking to either assign or surrender your lease, and it is likely the landlord will have their own requirements to approve a tenant and additional solicitors costs.

Ensuring your lease is attractive to a potential buyer should not be overlooked, as this is a fundamental factor in selling your practice. Your lease may not have a long enough term left discussed above, may not allow assignment to another party, or may not allow a charge (ie, a mortgage) to be taken over the lease.

We would advise you to instruct a solicitor to check for any of these clauses, as they could be potential stumbling blocks that would need to be resolved to prevent any delays during the sale of your practice.

The points discussed throughout this article are just a few property issues that will need to be addressed when selling your practice. For a deeper understanding of all aspects of the sale of a dental practice, speak to one of our specialist dental solicitors at FTA Law. **D**



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