



Published in the Manitoba Bulletin

Good Contracts

Sep 2017

In my last article about “What You Need To Ask Your Accountant BEFORE You Sell Your Practice”, we focused on the role that accountants play in planning a smooth transition out of practice.

This article will focus on the very important role that another profession, lawyers, can play in the planning for a smooth practice sale.

Needless to say, lawyers are essential in the actual drawing up of the contracts for the sale itself but well before then they should be part of the preparations that you make for a smooth transition.

Staff Contracts

Good, loyal, long serving staff are a major, valuable asset of any enterprise and dental practices are no exception to that maxim.

Conversely, from a legal and risk management perspective those same good, loyal, and long serving staff can also represent a major potential liability because the dismissal of this type of staff member can be very expensive. A rough rule of thumb is that any staff member without an employment contract and has been with you for more than 6-8 years, upon dismissal, could claim up to one month's pay for each year of service to a maximum of 24 months. Remember that this is a very general guideline and there are several factors that can change that amount.

The point is however, that good staff contracts can mitigate this risk factor and they should be a part of good transition planning.

If you have been prudent in your planning and you have already done contracts for your staff and those contracts were written more than 3-4 years ago, they should

be checked to make sure that they reflect any changes that have occurred in the evolving area of labour law.

Labour law is a specialized area and advising you on how to implement these contracts in a dental office takes skill and experience so it is very important to seek out a lawyer who has the right qualifications.

Associate Contracts

I never cease to be amazed by the number of dental offices that have no or inadequate associate contracts. This can have a major impact on the value of your practice's good will. The reason why this is so becomes apparent if you ask yourself the question: "would I buy a dental practice that has an associate dentist who has been seeing the patients on a regular basis and can open a practice across the street from me and solicit those patients?"

A good, well-written associate contract offers several protections for the practice owner but, from a practice value perspective, certainly the most important parts are good non-solicitation/non compete clauses.

Again it is best to find a lawyer who has the right experience in this area.

Leases

A premises lease is a contract between the dentist or the dentist's professional corporation and the landlord. "Toxic clauses" in a lease damage value of a practice and can even make the practice unsellable.

A demolition clause gives the landlord the right to terminate the lease, usually with out compensation, if the building is going to be demolished and replaced with another structure. The presence of this type of provision can drastically affect practice values and will often cause the bank financing the transaction to deny funds.

A relocation clause allows the landlord to move the practice elsewhere in the building or mall and there are good ones and bad ones. A good relocation clause will compensate the dentist for the move and the replacement of the facility. A bad one will give inadequate or no compensation for the move.

The assignment clauses in a lease address what will occur when you sell the practice to a new owner and if it is not well written it has the potential to cause major problems when the practice is sold.

The term of the lease is also an important transition factor. Most bank loans for dental practice sales have ten-year repayment arrangements and the lenders want to assure that there is secure tenure of the premises for at least that long. That doesn't necessarily mean that you need a ten-year lease but rather that the remaining years in the lease plus any options to renew add up to ten years.

To sum up, a buyer of any business, including a dental practice, will consider the risks that they are assuming by making the purchase. Those risks will influence how eager a person may be to buy your practice as well as how much they are willing to pay.

Some of those risks can be mitigated if the seller has planned well, taken the time to work with a knowledgeable, experienced lawyer. and has put in place good contracts that address the areas of staff risks, associate risks and lease risks. This will certainly enhance a practice's value and will also assist with a smoother sale and transition process.

Authors: Dr. Tom Breneman, Practice Sales & Transition Specialist, Tier Three



Dr. Tom Breneman