A smooth transaction

Due diligence is a time-consuming subject, says Hewi Ma of Cohen Cramer solicitors, who explains what it actually means and how it affects you when you’re buying or selling a practice

Due diligence is invariably the most time-consuming stage of a dental practice sale or purchase and one of the most crucial. “Due diligence” means the raising by the buyer’s solicitors of enquiries about the practice and the premises. The buyer’s solicitors send out enquiries at the initial stages of a transaction. The enquiries not only ask for written replies, but also the provision of substantial amounts of documentation from a seller. The replies and documents are scrutinised by the buyer’s solicitors, which then lead to the raising of further enquiries and requests for further documentation.

I have acted for many a Seller who tackles these enquiries with great gusto and fervour providing prompt replies and a well-compiled bundle of due diligence documents, which expedite the transaction to exchange and completion.

At the opposite end of the scale is the Seller who sends through replies and supporting documents in dribs and drabs and whose replies are incomplete and inadequate. This can mean delay, more work and more expense for a Seller.

Don’t be fooled

The Credit Crunch has affected everyone including solicitors. When the bottom fell out of the property market, some commercial property solicitors attempted to move into dental work, but do not be fooled! A low quote for selling their practice may seem like a bargain, but if it sounds too good to be true – it usually is. A solicitor with no experience in dealing with dental practices may quickly find themselves out of their depth, with fees spiralling out of control and a deeply unsatisfied client.

A solicitor with a well-established background in dental practice sales and acquisitions should be familiar with how a practice works and will know the right questions to ask. They should ask you if you are NHS, private or a member of a capitation scheme. They will ask if you have any associates, what type of NHS contract you hold – GDS or PDS. If they are asking you the right questions, they should also ask the right questions of a seller (if instructed by a buyer) and will be able to understand and deal with questions raised by a buyer (if acting for a seller).

Enquiries for the seller

When you receive the enquiries from your solicitor, my top tip is to hand it to your practice manager. There will, in most cases, be two parts to the enquiries: property and business.

Commercial Property Standard Enquiries (or CPSEs) ask for information about the property. The vast majority of solicitors for any commercial-property transaction use them. Replies should be sent to you in draft for you to approve and add to if you have any further comments before being sent to a buyer’s solicitors.

Business enquiries are a completely different kettle of fish! At present, there are standard enquiries relating to a Dental Practice’s business. Our firm and a handful of others (all members of the Association of Specialist Providers to Dentists) have an agreed form of enquiries. This is useful as we know what to expect of one another and the enquiries can be sent to you as soon as a transaction commences although “standard” enquiries are often supplemented by bespoke enquiries relevant to that particular transaction.

Most business enquiries are relatively straightforward although in many cases they are numerous and do take time to deal with properly.

Providing an inventory

One thing you are guaranteed to be asked for is an inventory of all items included and excluded from the practice. The aim is to be thorough but not pedantic. Generally, the main items of equipment are detailed, for example, name, model and serial number, then furniture, computers and fixtures and fittings, a process similar to when you are selling a house. You will not be expected to list things classified as stock or such sundry items like a mop and bucket as in one case I dealt with.

The inventory you prepare will be appended to the Business Transfer Agreement, so it is important that you are happy with it. In addition, be sure to detail the items at the practice, which are not included in the sale, as you wouldn’t want to surrender that rather expensive intraoral camera you have just purchased.

If your practice works under an NHS contract, you will also be expected to provide up to date UDA figures and a whole copy of the NHS contract itself – not just the signature pages and schedules. NHS contracts do vary and it is important that your solicitor has sight of this. If your Practice runs a capitation scheme you may be asked to provide at least six months’ written reports.

Enquiries relating to staffing form a large part of any due diligence enquiries. Under TUPE regulations, the transfer of the staff goes hand in hand with the transfer of the business. You may be required to provide copies of the signed contracts of employment, GDC registration certificates and vaccination records for clinical staff and attendance records.

An inability to provide full and accurate replies to these enquiries may at most endanger a sale and at the least, it will cause a significant delay.

Enquiries for a buyer

Your part is easy. Instruct “dentally aware” solicitors and sit back, let them do the hard work. Your solicitor should report back to you upon the seller’s documentation.

You will be provided with an inventory and you must ensure that it gives a true representation of what you believe is included in the purchase. If you noted a nice, new autoclave when you visited and this doesn’t appear to be on the inventory you must advise your solicitor. Replacement of missing equipment will be a painfully costly lesson.

Asking a seller to disclose their accounts for the last three financial years is crucial and you should always seek the advice of your accountant. Due care should also be taken when inspecting the number of UDAs achieved as you wouldn’t want the PCT demanding a clawback as a result of the seller underperforming prior to completion.

Conclusion

Due diligence is one of the most crucial and fundamental parts of any sale or purchase of a dental practice. For the seller, a speedy and satisfactory response to the enquiries goes a long way to expediting a sale. As for the buyer – you should always instruct a solicitor who knows the right questions to ask and who will persevere until appropriate replies and supporting documentation have been provided.

Hewi Ma joined Cohen Cramer in 1999 and is a key member of the dental team working on dental practice sales and acquisitions transactions. Her particular area of expertise lies in dealing with enquiries before the exchange of contracts, producing practice acquisition reports on purchases and disclosure bundles for sales. To contact Cohen Cramer Solicitors, call 0113 2440597, email dental.team@cohencramer.co.uk or visit www.cohencramer.co.uk.