

## **LEGAL CHECKLIST TO PURCHASE A DENTAL PRACTICE**

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When purchasing a dental practice, there are many legal issues to consider. Ideally these matters should be dealt with early in the purchase process. This will enable you to make informed decisions about the nature of the purchase transaction and help avoid costly problems later. Outlined below is a checklist of some of the legal matters to consider when purchasing a dental practice.

1. Carefully review the appraisal of the vendor's practice with your own professional advisors
2. Conduct your own due diligence including a detailed patient chart audit. This is critical. When a dental practice is valued, typically the tangible hard assets comprise only about 20 per cent of the total practice value while the goodwill is valued at approximately 80 per cent of the total practice value. Goodwill includes the patient lists, custody and control of all patient records and files (including patient billing records and treatment plans), patient charts, x-rays and models, and use of any dental practice names  
Given such value of goodwill it is imperative the purchaser completes a detailed patient chart audit and satisfies himself or herself of the number and quality of the active patient charts and lists.
3. Determine what you are buying – shares or assets
4. Understand the allocation of purchase price to different asset classes if purchasing assets and the tax effect of such allocation to the purchaser
5. Determine the taxes payable by purchaser on various asset classes if purchasing assets
6. Use a dentistry professional corporation as purchaser
7. Add family members as non-voting shareholders of the purchaser corporation
8. Review the vendor's cost share agreement or partnership agreement, if applicable, and determine if any changes are required as a condition to the purchase
9. Review the vendor's existing arrangements with the current associates working at the practice, including:
  - a. Understand why the existing associate is not purchasing the dental practice
  - b. Do proper written agreements exist with the associates
  - c. Are associates bound by non-solicitation and non-competition covenants
  - d. Can the associate agreements be transferred and assigned to the purchaser
  - e. Are changes required to associate agreements as a condition to purchase
10. Carefully review the vendor's premises lease to determine:
  - a. The term of lease is at least 10 years, including renewal options

- b. For renewal options is rent to be fair market rent to be agreed, or failing agreement by arbitration
  - c. Whether 'danger' clauses exist, including:
    - i. relocation - landlord right to relocate the practice within the building or plaza
    - ii. demolition - landlord right to terminate the lease early if building to be demolished or substantially renovated
    - iii. termination – landlord right to terminate lease when vendor sells the practice and requests landlord consent to transfer lease to purchaser
  - d. Whether changes are required to the premises lease as a condition to purchase
11. Review the vendor equipment leases and other material agreements that the purchaser may be required to take over on purchase
12. Carefully review all staff arrangements the vendor has, including:
- a. Do proper written agreement exist for all staff, whether dental hygienists, chairside assistants and others working at the practice
  - b. Is notice to terminate an employee limited to Employment Standards Act (Ontario) minimums or does common law extended notice periods apply
13. Determine if the purchaser will retain all staff after closing and on what terms:
- a. Understand purchaser legal obligations regarding staff going forward
  - b. Require the vendor to pay all or a portion of any termination costs of staff for several months after the closing date; the typical arrangement is a 50/50 sharing of staff terminations by the vendor and purchaser for the first three months from the purchase
  - c. Implement new proper written agreements with all staff immediately after closing if the vendor only had verbal arrangements with the staff
14. Ensure the vendor agrees not to solicit patients after closing and not to compete with the purchaser within a reasonable geographic distance and for a reasonable amount of time after closing
15. To assist in transition of patients to the purchaser, retain the vendor as an associate after closing with a proper written associate agreement
16. Understand your rights and obligations (and the vendor rights and obligations) in the definitive legal purchase and sale agreement
17. Hire industry recognized professional advisors who focus on advising dentists in purchasing dental practices