

Buying/selling a dental practice

Special issues to consider

Many of the legal and transactional issues covered in a purchase/sale contract for a dental practice are those commonly covered in most small business transactions. For example, the parties will need to address (i) how the transaction should be structured (asset sale versus equity interest sale), (ii) how the purchase price should be allocated among the assets, (iii) what representations and warranties the seller will be making to the buyer about the dental practice, (iv) whether the seller should enter into noncompete agreements, etc. In addition, the parties will need to agree upon certain post-closing issues.

One of the post-closing issues that is particular to a dental practice sale (and is occasionally overlooked) is the issue of “corrective treatment” or “retreatment.”



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Retreatment refers to the situation in which a patient returns to the dental practice with failed or defective dental work expecting the dentist to repair the dental work at a reduced cost or for free. Issues can arise if such patient returns for retreatment following the sale of the dental practice.

To deal with this issue, the parties should ensure that their purchase/sale contract includes a retreatment clause. A retreatment clause should address the procedure for handling retreatment issues and should answer the following questions:

“As with any contract, it is always advisable to address possible areas of conflict before they arise.”

- How many months/years should the selling dentist remain responsible for any deficiencies and problems which might arise from the selling dentist’s work?
- How should the buying dentist notify the seller of retreatment requirements?
- Should the selling dentist have a period of time in which to respond to the retreatment requirement?
 - What happens if the parties disagree on the need for retreatment?
 - How will the buying dentist be compensated for the retreatment?

To avoid future disputes, the parties may agree that in the event the seller and buyer disagree on the need for retreatment, an independent and possibly even an identified third dentist should be brought in to make

the final determination. In addition, the buyer may escrow a portion of the purchase price for a limited period to provide assurance that funds to pay for any buyer retreatment are readily available.

Finally, even in a situation in which the parties have negotiated a sound procedure for handling retreatments, the contract should cover the situation in which retreatment occurs in an emergency situation where the negotiated retreatment procedure is unavailable.

As with any contract, it is always advisable to address possible areas of conflict before they arise. Dealing with potential areas of conflict regarding retreatment at the outset allows the parties to deal with retreatment when the pressures of an actual confrontation have not yet developed.

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