

Managing landlords if you lease your premises

There can be additional obstacles to overcome during a practice sale

When specialist dental brokers like us write about selling your dental practice, it is easy to think we are simply referring to selling the business portion of a practice. In all transactions there is a property piece. It is rare that we sell just a patient list. In this article, I want to focus on how you can prepare for the sale or transfer of the business premises, in which a new owner is going to carry out the business of dentistry.

When buying a dental practice, buyers can purchase the freehold of the practice they are buying from the outgoing principal. They can lease the premises from the outgoing principal, or they can take on the existing lease if the premises are rented.

When third party landlords are a feature of a deal, they can add an additional level of complexity. If you are a principal operating from leasehold premises, then this is the advice we give to our clients to help them get the property piece of their transaction prepared for sale.

Identify who the landlord is and who the decision maker is within their group. Check to find out if there are multiple decision makers; the landlord could be an investment company representing multiple investors. Or, the landlord could be represented by an agent.

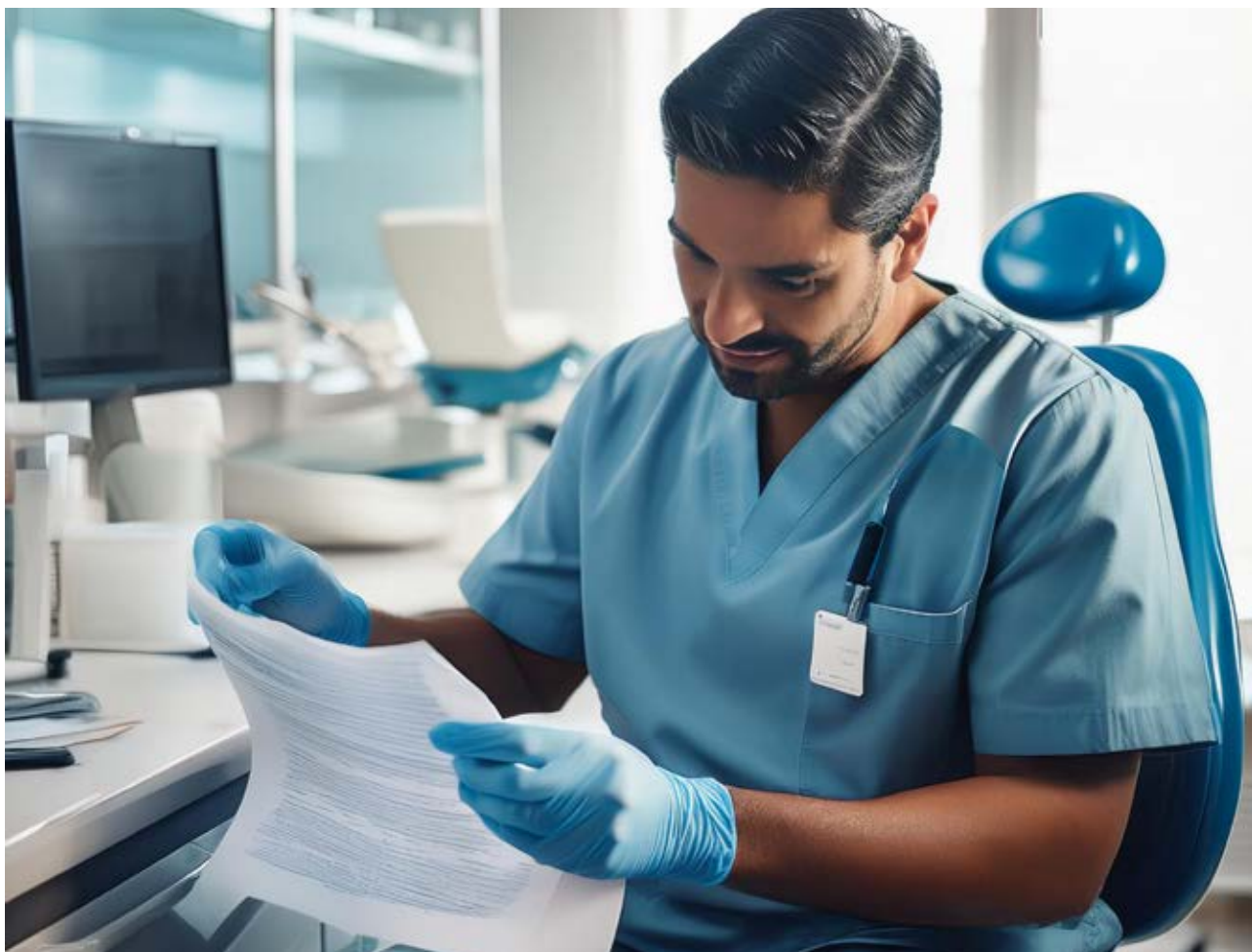
Determine if the lease on your dental practice is assignable. If it is, then it can be transferred to a new owner easily.

If it is not an assignable, then the lease must be surrendered and the process started afresh. This makes the process of transferring it to a new owner more onerous and therefore more expensive. If you have a non-assignable lease, it can limit your options, delaying the transaction. In extreme circumstances, it could force the new owner to relocate the practice.

If you hold a sub lease, you have to identify the leaseholder and then the landlord.

The third party landlord will let you know who their appointed solicitors are. You will need this information to share with all parties once you get into the sale process. In my experience, third party landlords are not vested in an efficient transaction between a willing buyer and a willing seller. Their representatives can become an obstruction to progress. Our team works hard to ensure they do not become a distraction or even an obstacle to a transaction.

There can be hidden problems to resolve. I recently had a transaction where the landlord had passed away and probate had not been granted on their estate. You may find that the



landlord actually wants to sell the premises. Early notice of things like this is always preferred.

Landlords have used the general activity around a transaction as an opportunity to increase rents and leverage more favourable terms in the lease as part of a negotiating position.

There are a number of clauses to consider in a lease. For instance, the schedule of condition. This details the condition in which the leaseholder must leave the premises. As the leaseholder, you want to leave the building in the same condition as when you arrived. Landlords would rather have you on the hook for everything that has happened to the building. At least with a schedule of condition, everyone knows where they stand. Without one everything can be up for negotiation and agreement.

Landlords also must accept the incoming buyer as their new leaseholder. First-time buyers are often required to make personal guarantees, and it is important your broker discusses this with prospective buyers so they understand what is required. Personal guarantees can be a barrier for some first-time buyers.

Third party landlords usually want to pass on their legal costs

associated with agreeing a new lease and taking on board a new leaseholder. The costs can be split between the parties, although landlords will often stipulate that they expect the vendor to pay their legal costs because it is them that's asked to move the lease on.

I find that landlords' solicitors do not expedite new leases. You must identify and engage with them early in the process and develop a good working relationship with them.

What does good look like?

When it comes to agreeing a new lease, there are certain things the buyer and their lenders will want to see:

- A 15-year lease with security of tenure.
- A rent review at a maximum of every three and a half years.
- A strong relationship with the landlord.

Next steps

To achieve a good outcome for all parties then, you must appoint a property solicitor early on. I can advise on the solicitors on our panel, which have a property law section to help with this.

Locate and understand your own lease agreement. Identify with your

solicitor any areas which a reasonable buyer might have an issue with.

Create a new, assignable, 15-year lease for the new buyer. It will really help the process if you can get this to your prospective purchaser early in the process.

Talk to your landlord and sell the benefits of the new tenant.

Review the schedule of condition in your lease. Complete any repairs in line with the schedule. This may include work to the roof, pointing, guttering, roof joists, decorating, flooring and window frames. Check for Japanese knotweed around the premises. A Japanese knotweed infestation of any kind will kill a deal stone dead.

My advice is to do what a reasonable landlord would expect as well as what a reasonable buyer would expect.

If you have any concerns about the terms of your lease, please talk to me. ■

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