



NATIONAL DENTAL LAW GROUP AT  
MANDELBAUM BARRETT<sup>PC</sup>



# Essential Considerations in a Private Dental Practice Sale

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Selling a dental practice can be an intimidating and complicated venture for those unfamiliar with the transactional process. As an entrepreneurial dentist that spent years establishing and growing your practice, you should know what to expect when it comes time to sell the business you worked so hard to build. Below we have set forth essential considerations for every dental practice owner exploring a private dental practice sale.

## 1. Understand Your Role Post-Sale

One preliminary, yet crucial factor you must consider prior to selling your dental practice is what you intend to do after the sale. Many practice owners decide to sell because they believe the transaction market is ripe for profits. Others become motivated to sell because they are ready for retirement. Your post-sale intentions often affect the market for your practice (i.e., who is willing to purchase your practice and how much are they are willing to pay), as well as what obligations you will be expected to fulfill post-sale. This is because a substantial amount of the goodwill of your practice attaches to you, personally. As a result, some prospective buyers will seek out

practices where the seller is willing to remain as an employee of the practice following the sale. In that case you will be expected to negotiate and enter into an employment agreement in connection with your sale. In other cases, the prospective buyer may have little to no interest in your plans following the sale but may still request that you perform some short-term administrative services on behalf of the practice to help ease the ownership transition. In either case, you will want to have an idea of the obligations you are willing to accept post-sale so that you can properly identify a buyer and a deal that is right for you.

## 2. Enter into a Letter of Intent

The Letter of Intent (“LOI”) serves many important purposes in a dental practice sale. Not only does the LOI set forth material transaction terms, but it also aids attorneys in drafting and negotiating the purchase agreement, which can save you from incurring additional and sometimes unnecessary expenses. An LOI is a document that outlines the preliminary agreements and understandings of the buying and selling parties; however, it is not a legally binding contract. Rather, the LOI typically symbolizes a good-faith commitment of the parties to finalize the transaction in accordance with the fundamental deal terms they have agreed to in writing. In addition, because the parties have agreed in advance to certain key points, less is open for negotiation, and the chances of the deal failing are reduced. Note that LOIs are not present in every

practice sale. However, for the reasons noted above, you may want to consider entering into an LOI in the initial stages of your transaction. Deal terms commonly encompassed by an LOI include (but are not limited to): purchase price of the practice (often in accordance with a fair market independent practice appraisal), terms of the restrictive covenant, the intended closing date, the buyer’s due diligence period, and more. Another notable provision you will find in the LOI relates to transactional exclusivity. This provision states that, for a specified time, you will not seek out or entertain other prospective buyers for your practice and will instead negotiate exclusively with the buying party contemplated by the LOI. As previously stated, the LOI is non-binding, meaning the parties are not legally obligated to complete the proposed transaction after signing

the LOI. However, it is worthwhile to consult with an attorney during the negotiation of the LOI to ensure all key provisions of the transaction are adequately considered, and that the potential buyer has signed a Non-

Disclosure Agreement to prohibit them from disclosing your business-related information to third parties in the event the transaction does not move forward.

### 3. Engage in the Due Diligence Process

During the due diligence period, the buyer, as well as their accountant, attorney, and lender, will have the opportunity to carefully assess all relevant aspects of the past, present and future of your dental practice. This process typically involves detailed investigation into the legal, financial, and economic fitness of the business. In short, this is the buyer's opportunity to "kick the tires" on the practice and get a true understanding of what they intend on purchasing. During this time, it will be your duty to provide the buyer with any documents or information reasonably necessary for the buyer to comprehensively assess the viability of the practice. Thus, you will always want to ensure that the buyer has agreed to conduct their

due diligence in full confidentiality. Additionally, you will want to ensure that the due diligence process is conducted within prespecified boundaries, as typically set forth in the LOI. By way of example, you do not want the buyer entering your practice without your prior consent or contacting your employees prior to receiving authorization to do so. Notably, throughout the due diligence period, the buyer will generally have the opportunity to walk away from the transaction for any reason and without consequence. The due diligence period typically begins after an LOI is signed and may be limited in duration to an agreed upon period or may continue through the closing date.

### 4. Negotiate the Purchase Agreement

The purchase agreement is the legally binding contract that will affirmatively establish the terms and conditions of your dental practice sale. Throughout the drafting and negotiation of the purchase agreement, your attorney will utilize the terms previously agreed upon in the LOI to move the deal forward at an efficient pace. However, the purchase agreement will be more comprehensive than the LOI and will contain many material terms not previously contemplated by the parties. During the drafting process, you should expect to be

regularly communicating with your attorney about any disputed terms and issues so that your attorney can effectively negotiate and advocate on your behalf. In addition to the fundamental terms contained in the LOI, you should expect the purchase agreement to contain provisions setting forth specific representations and warranties that you will be required to make relating to the general fitness of your practice. The purchase agreement will also address issues like when and to what extent each party will indemnify the other

from liability, and more. You may also be asked to assemble certain ancillary transactional documents, namely “disclosure schedules,” which set forth detailed information pertaining to various information requests contained within the purchase

agreement. At closing, the buyer will expect to acquire the practice assets free and clear of all outstanding liens. This means that you should plan to pay off all practice loans, or other debts at closing.

## 5. Consider the Underlying Real Estate Transaction

An additional component to every dental practice sale relates to the practice real estate. In addition to purchasing the assets of the practice, a buyer is purchasing the right to utilize the real estate upon which the practice is located. As a result, an ancillary and separate agreement pertaining specifically to the real estate will attach to every dental practice sale. The function of this separate real estate agreement will typically depend on how you and the real estate are situated prior to the closing of the transaction. If you are the owner of the property upon which your practice is located, you may need to consider selling the real estate along with the practice, which would involve the drafting and negotiation of a separate agreement of sale, title considerations, and more. Alternatively, if you are currently the owner of the practice property and you do not wish to sell the real estate along

with the practice, you should expect to negotiate and enter into a lease agreement with the buyer, whereby you would act as landlord and the buyer would act as tenant post-sale. If, instead, you lease the practice space from a third-party landlord as opposed to owning it yourself, the buyer will either negotiate and enter into an entirely new lease with the landlord, or the buyer will “step into your shoes” as tenant and assume your existing lease agreement (and accompanying obligations and liabilities) following the sale. Note, however, that the landlord will have to approve the terms of a lease assignment and will thus be active in related negotiations. If the buyer intends on assuming your existing lease agreement with the landlord, you will want to ensure that you are released from any obligations or guaranties under that lease agreement following the close of the transaction.

## 6. Agree to Restrictive Covenants

Most dentists are no stranger to the infamous “restrictive covenant,” which is a provision commonly utilized within the industry and usually contained in employment agreements and partnership agreements. As a practice owner, you may have requested an associate dentist to agree to a restrictive covenant as a

condition of their employment with your practice. Now, in your role as a seller, you will be required to agree to some form of restrictive covenant as a condition of your practice sale. In this context, the restrictive covenant will typically limit, within a specified geographic radius of the practice, your ability to treat patients and provide

clinical services, your right to solicit certain clientele, your right to employ your soon-to-be former employees, and your right to disclose certain confidential information relating to practice operations. The scope and duration of the geographical limitation attaching to the restrictive covenant will vary depending on the location of your practice. Note that dentists tend to subscribe to the false assumption that restrictive covenants are always unenforceable. However, unlike an employment relationship where courts commonly disfavor the restriction of a person's right to work, restrictive covenants are

treated differently in the context of the sale of a business, where it is considered a more reasonable term of agreement. This is because it would make little sense for a buyer to pay substantial monetary consideration to purchase a business if the seller could simply open or work for a competing business in the same neighborhood shortly after the sale. Thus, when selling your practice, you should be prepared to remove yourself from the dental marketplace for a period of time following your sale, subject, of course, to your choice to remain with the practice as an employee.

# Assemble *your team*

It takes an entire team of dental industry professionals to ensure the success and growth of a dental practice no matter where you are in your professional journey. Each advisor serves a unique role in providing proper guidance to dental professionals as they navigate the successes and challenges of practice ownership.

There are six essential roles every dentist and dental specialist should consider when building an advisory team:

- **Accountant** – Understands dental practice economics and ensures accurate financials, tax planning, and practice valuations.
- **Practice Consultant** – Offers operational insight to reduce costs, improve efficiency and growth, and strengthen overall business operations.
- **Attorney** – Protects your interests by providing advocacy and legal guidance on contracts, compliance, risk management, and transition planning.
- **Financial Advisor** – Helps structure personal and practice finances for long-term stability by offering guidance on investments, retirement planning, taxes, etc.
- **Specialty Lender** – Evaluates practice cash flow and growth potential and can often offer one hundred percent financing and working capital in a dental acquisition.
- **Broker** – Assists in valuing and marketing a practice, finding opportunities to acquire and grow, and serves as a resource in helping parties reach a fair deal.

It is crucial that each of these professionals have experience working specifically with dental and dental specialty practices. Often, one trusted advisor will recommend other qualified professionals to help you complete your team.

**Taking the time to build this team will provide you with the advice and perspective needed to make informed decisions throughout your career.**

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focused on *results*.



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