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Essential Transition Closing Checklist

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The purchase and sale of an orthodontic practice is a very involved process, with numerous issues to be considered by both the buyer and the seller. Most doctors consider the significant deal points that need to be documented and negotiated, such as the employment terms before and after the transaction, the transition timeline, and the practice's value and purchase price. All of these items are obviously extremely important items to consider. However, we have noticed that many buyers and sellers are unaware of the many "little things" that have to be accomplished prior to or immediately after the purchase and sale of a practice.

These often overlooked items can take a significant amount of time for both the buyer and seller to finalize during the transition process. We have seen closings delayed due to one party's neglect or oversight in not having everything in order to complete the transaction, such as licensure or insurance requirements. The purpose of this article is to outline many of these basic yet frequently overlooked tasks that should be addressed by buyers and sellers to ensure a smooth transition.

Seller's Considerations:

1. Various schedules will most likely be included in the purchase and sale agreement, and should be considered and prepared in advance of the closing date. These most often include the following:

- A schedule of fixed assets. Most lenders will want to see such a listing for collateral/ security purposes. We generally tell our clients to have a staff person go through the office room by room and list the furniture and equipment in each room, excluding minor assets or basic supplies.
- A listing of excluded assets. These are assets that you want to ensure are not included in the sale – such as personal artwork in the office, a personal computer or printer, and antique furniture in the office that is not actually used in the operation of the practice.
- Patient listings and remaining contract balances. In addition to common business purposes, the buyer will want these updated lists as of the closing date to provide assurance that the number of patients and contract balances have not materially changed since the terms of the transaction were negotiated. These listings may be provided electronically or through the practice's practice management system.

2. All service and maintenance agreements that need to be assigned to/ assumed by the buyer should be identified for the buyer. Some of these agreements may require that the buyer enter into new service agreements. For example:

- If the buyer wants to enter into a computer hardware and/or software service agreement with the practice management company, the parties will need to communicate with the software company to make them aware of the pending sale and to inquire about transfer fees. They typically require that the buyer enter into a new service agreement.
- Utilities and telephone services will need to be switched into the buyer's name soon after the closing.

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- Certain service agreements or monthly payment obligations will not technically have to be switched into the buyer's name, but they can be outlined in the purchase and sale agreement so it is clear that the buyer will assume payment on them. These include items such as Yellow Pages ads and other advertising marketing fees, copier leases, and postage machine leases. Rather than switching these into the buyer's name, he/she will agree to assume payment on them, which may be easier than going through the hassle of assigning the contract.

3. Any expenses that need to be pro rated and paid by the appropriate party should be identified and calculated so that they can either be paid by the appropriate party at closing or shortly after closing. These primarily include utilities, rent, and other service agreements.

4. Sellers will need to speak with their personal CPA about when to terminate their professional corporation (if incorporated). The seller will most likely want to keep it open for a period of time after the closing to accomplish any final accounting issues. Also, there are other reasons to continue to operate the corporation for a period of time after the sale. For example, if the seller works for the buyer after the closing or any other practice outside of the non-compete area, the corporation can be the independent contractor, with the doctor providing services through the corporation. This will allow the corporation to collect per diem fees, while the doctor can run all business expenses through the corporation and maintain health insurance policies, etc. in the corporation's name for a longer period of time.

"The purchase and sale of an orthodontic practice is a very involved process..."

5. Sellers will need to speak with their CPA and financial planner to determine which, if any, employee benefit plans and retirement plans should be terminated. If the doctor plans to maintain any such benefit or retirement plans (if possible), it should be determined how the sale of the practice will affect them.

6. The practice's employees should be terminated and the payment of any accrued benefits should be handled by the seller. Buyers will establish their own benefits and most likely will not agree to assume the seller's obligations related to employee benefits.

7. The seller will need to continue to carry the appropriate malpractice insurance while working for the buyer after the closing. If required by the buyer (which is very likely), such insurance policy will need to be updated to name the buyer and his/her corporation as an additional insured.

8. When the seller ultimately retires, he/she will need to determine whether or not to obtain tail coverage. Your insurance agent should help you make this choice.

9. The seller should decide how to receive the proceeds – whether via a certified check or a wire transfer. In either case, the bank will need to direct the correct amounts to the appropriate party (the seller individually or his/her corporation). Most often, the doctor is selling his/her personal goodwill, and the corporation is selling other practice assets, creating two separate and distinct sellers. The amounts payable to each party should be outlined in the purchase agreement.

"Buyers must research and consider all licensure issues."

10. The buyer and seller will mutually prepare announcement letters to be sent to current active and recall patients and referral sources. The letter should tell why and when the seller is leaving, introduce the buyer, explain why the seller chose him/her to take over the seller's patient care, and give any other logistical details the parties feel are necessary.

11. The lease situation with the landlord will need to be addressed so that the buyer can either be assigned the seller's current lease or enter into a new lease with the landlord. The seller often is very helpful in facilitating the conversation with the landlord. If the seller owns the facility, the parties must negotiate the terms of the lease.

Buyer's Considerations:

1. Buyers must research and consider all licensure issues prior to the closing date to ensure that they are licensed to practice dentistry and the specialty of orthodontics in that state.

2. If the buyer plans to create a corporation, he/she will need to have the corporation created in advance of the closing date and provide the exact corporate name to the attorney preparing the documents. The buyer's local attorney and CPA should assist in creating this corporation and filing all necessary paperwork with the Secretary of State, obtaining EINs, getting the appropriate approval from the state dental board, etc. The buyer can create the professional corporation without the assistance of an attorney, but, due to the minimal cost involved, it is recommended that the buyer hire an attorney to ensure this is done properly.

3. Buyers should begin communicating with lenders early in the negotiation stage to ensure they can obtain financing as requested by the seller. If the buyer cannot obtain financing, seller financing must be negotiated.

4. Buyers must ensure they have all necessary insurances in place. It is advised that buyers speak with

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insurance agents to ensure they are obtaining all necessary policies with adequate coverage. Examples of common insurances include:

- Malpractice insurance. Buyers will need to add the seller as an additional insured if required by the purchase agreement (related to the buyer using the seller's name for a period of time after the closing).
- General liability insurance for the business and any other insurances that are required under the office lease (since the lease will require certain insurance coverage).
- Any life or disability insurances that the lender requires to satisfy the loan requirements.

5. Create a business banking account. Buyers do not simply take over the seller's bank accounts, but must establish their own.

6. Formally hire the seller's employees and establish all payroll functions for the new company. It is generally advised to hire a third party payroll processing company to manage payroll.

7. Consider creating appropriate employee handbooks or business policy manuals soon after purchasing the practice.

8. Buyers should communicate with the company that provides the practice management system and computer/software support to the practice to see what steps are necessary for any service agreements to be placed into the buyer's name. (There may be transfer fees related to this that the buyer is generally responsible to pay.)

9. Any other service agreements or utilities that need to be switched to the buyer's name will need to be switched soon after the closing.

10. Buyers should ensure all closing contingencies and/or documents required by the lender are provided as quickly as possible.

11. Buyers should be involved as soon as possible in negotiating any real estate leases and rights of first refusals or options to purchase the real estate, particularly if the real estate is owned by someone other than the seller.

These listings are by no means exhaustive, and both parties should consult with their personal transition advisor, attorney, and accountant to ensure no additional details are overlooked. Both parties' objective should be to make the transition proceed as smoothly as possible, and this can be accomplished if both parties are aware of the numerous issues that have to be addressed when purchasing or selling an orthodontic practice. No matter how large or small the practice, the doctors have to roll up their sleeves and address all of the details involved with any practice transition.

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