

Dental Practice Purchase FAQ

by Peter A. Cusimano, B.Sc., LL.B.

[Law Office of Peter Cusimano](#) • Toronto, Ontario, Canada

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At some time in your career you may decide that you would like to own your own dental practice rather than work as an associate. Owning your own practice can be accomplished by starting your own practice or purchasing an existing practice. This article will focus on frequently asked questions by dentists with respect to purchasing an existing practice. Many of the points discussed will also apply to starting a practice from scratch.

Owning your own dental practice can be a very rewarding experience if you do it right. A dental practice is a complicated business and the purchase of a practice involves many complicated legal issues that require careful analysis and advice from a lawyer. We strongly encourage you to speak to a lawyer as early as possible. Often the biggest and most expensive mistake that purchasers make is that they believe that they only need to speak to a lawyer after they have a signed and offer to purchase. The key to purchasing an existing practice is to ensure that it is properly done from the very beginning and this involves consulting with us as your lawyer to obtain professional legal advice from the very beginning prior to signing an offer to purchase.

Why Do I need to speak to a Lawyer ?

Obtaining professional legal advice will greatly assist you to effectively address the many complicated legal issues involved in the purchase of a dental practice. These issues arise from many sources including:

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- (i) the selling dentist;
- (ii) an agent or broker;
- (iii) bank or finance company;
- (iv) accountant;
- (v) landlord; and
- (vi) existing associates if any and staff.

As such it is important to involve us as your lawyer in the process as early as possible.

What Does a Lawyer do in the Purchase of a Dental Practice ?

In general, as your professional legal advisors, we will act in your best interests and provide professional legal advice and legal service to you including:

- a. meet with you for an initial consultation to obtain from you the particular facts of your particular situation;
- b. discuss with you various legal issues that will need to be addressed that relate to dental practices;
- c. introduce you, if required, to qualified professionals who have experience with purchases of dental practices including: (i) agents/brokers to assist you to find a potential practice to purchase; (ii) representatives of banks or finance companies; (iii) accountants;
- d. consult with your accountant with respect to your tax situation and the tax situation of the practice including purchase price and other tax related issues such as price allocation and estate planning.

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- e. analyze, explain, and advise you with respect to any existing associate or partnership agreement between you and the current practice where you are currently practising.
- f. analyze, explain, and advise you with respect to any legal representations made by the selling dentist or the agent if an information package is provided to you by the agent;
- g. prepare a comprehensive and effective legal strategy for the purchase of the practice that is tailored to your particular situation;
- h. conduct preliminary legal searches in government records against the sellers to determine if there are any serious problems that require immediate attention such as court judgments against the sellers;
- i. prepare a detailed introductory letter to the seller (or his/her lawyer) requesting extensive preliminary information from the seller such as information concerning (i) the ownership of the equipment; (ii) liens; (iii) lease; (iv) employment contracts; (v) creditors; (vi) other relevant information;
- j. prepare a letter of intent to the seller which can be a binding offer to purchase or a non-binding letter depending on your particular situation;
- k. prepare a comprehensive Agreement of Purchase and Sale in accordance with your instructions setting out the exact terms and conditions of the purchase;
- l. negotiate the terms and conditions of the purchase with the lawyer for the seller;

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- m. analyze, explain, and advise you with respect to the terms and conditions of financing documents including the loan agreement, grid promissory note, personal guarantees.
- n. analyze, explain, and advise you with respect to the existing lease of the premises;
- o. negotiate with the landlord with respect to an assignment of the existing lease or the creation of a new lease;
- p. address various legal issues including but not limited to those relating to creditors, lien holders, business taxes, patient lists, assignment of telephone number.
- q. incorporate a holding company for you if necessary or advisable after consultation with your accountant;
- r. prepare the many legal documents (approximately 30 documents) necessary to complete the transaction including but not limited to: closing agenda, statutory declarations, warranties, assignments, agreements, bill of sale;
- s. prepare and file a business name registration if required; advise you with respect to the use of business names; consult with the Royal College of Dental Surgeons with respect to approval of the proposed name;
- t. prepare an associate agreement dealing with various issues including: general employment terms and representations, confidentiality, non-competition, and non-solicitation;

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- u. meet with the lawyer for the seller on the scheduled closing date to exchange legal documents and complete the purchase;
- v. provide a written report to you and a reporting book after the transaction is completed summarizing the transaction;
- w. provide any other legal advice necessary to complete the transaction;

In addition to usual issues common to the purchase and sale of any business, there are particular legal issues relating to a dental practice including but not limited to:

- (i) the handling of patient lists, records, x-rays, and charts,
- (ii) handling of associates who will not remain with the practice;
- (iii) completion of unfinished dental work;
- (iv) appointments that are scheduled by staff before the completion date of the transaction for an appointment on a date after the completion date;
- (v) procedure for handling of patients requesting the previous dentist.

Who Else Should I Speak To ?

Through our experience we have established contacts with an extensive network of suppliers and professional advisors that can assist you with your purchase. If required we will refer you to these suppliers and/or professional advisors that can be of assistance to you. Together we will actively involve you and consult if required with the following suppliers and/or professional advisors:

- a. suppliers of dental equipment and dental supplies
- b. representatives of banks or finance companies catering to dentists

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- c. architects and designers
- d. makers of neon dental signs
- e. insurance brokers
- f. financial planners
- g. printers for business cards, letterhead, newsletters, brochures
- h. accountants
- i. business evaluators
- j. Internet marketing consultants

What are the Costs Involved in Purchasing and Operating a Dental Practice ?

In budgeting for the purchase and operation of your practice you should ensure that you take into account many expenses including but not limited to:

- i. purchase price
- ii. applicable taxes including GST and PST
- iii. professional fees for lawyers, accountants, business evaluator, marketing consultant
- iv. security deposit for rent, telephone
- v. announcement cards
- vi. bank or finance company processing fee
- vii. cost for new sign
- viii. letterhead, brochures, business cards
- ix. office and disability insurance
- x. leasing cost of telephone, fax machine, photocopier, specialized equipment
- xi. purchase of additional equipment, furniture
- xii. new dental equipment
- xiii. new computer
- xiv. new dental office management software

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- xv. salary for dental assistant, receptionist, hygienist
- xvi. continuing education courses
- xvii. dental supplies, instruments, sundries.

In consultation with your accountant, you should examine your cash flow projections taking into account the billing cycle and time delay in processing claims from insurance companies. From the cash flow projections, you should be able to determine how large of a line of credit you will require.

How Much Should I Pay for a Dental Practice ?

Often a dentist selling a practice will indicate an asking price that is greater than the current market value of the practice. It is strongly recommended that, before determining a purchase price, a valuation be conducted by an independent third party qualified to do business evaluations. The expense to obtain an evaluation will often be well worth it especially if the valuation is far less than the price you had anticipated on offering prior to obtaining the evaluation.

The value of a dental practice is based on numerous factors. A bank or finance company will want to know the value of the practice when determining how much financing to provide to you to finance the purchase.

Should I use an Agent or Broker Company ?

Many companies deal with the purchase and sale of dental practices and offer a variety of useful services. These companies often employ real estate agents, business evaluators, and other consultants. The use of these companies can be very useful in finding a practice for sale. Typically these companies are also able to provide you with a detailed information package about the practice you are considering purchasing. This information package will provide us with valuable

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information and may alert us to potential legal issues that need to be addressed or that require further investigation.

In addition, although representatives of these companies will meet with you and assist you, the representatives typically act on behalf of and in the best interests of the seller and not you. Therefore, you must be very careful as to the information you disclose to these companies.

It is not recommended that purchasers utilize these companies to negotiate or prepare the terms of a letter or intent, offer to purchase, or purchase and sale agreement without seeking advice from a lawyer to consider the critical legal issues. Unless the professionals of these companies are lawyers they may not be qualified to deal with legal issues that need to be addressed in the foregoing legal documents. It is likely that these companies do not conduct any legal searches and may utilize a fill-in-the-blank “standard” agreement which fails to address legal issues critical to your particular practice and which favours the seller. Although this approach will likely result in easy acceptance by the seller, it will also likely result in legal complications for you that will be very expensive and time consuming to resolve.

Can I Bring to My New Practice the Patients I Previously Treated ?

Often when you purchase a practice the handling of patients is often a complicated and difficult issue that requires your careful attention. A dentist purchasing a practice usually wants to bring along those patients that he/she previously treated, often to the objection of the owners of the practice where the dentist was previously located. Similarly, the selling dentist may try to take with him/her as many patients as possible, to the objection of the purchasing dentist. As such, unless this issue is carefully handled, it will result in great frustration and

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stress for you and possible expensive court action against you if you are not careful.

Several issues have to be carefully examined by a lawyer including the precise wording of any written agreement with the owners of your current practice. If your written agreement contains clauses dealing with non-competition and non-solicitation you may be prevented from competing with your former employer and/or prevented from soliciting any patients previously treated by you. In addition, the Royal College of Dental Surgeons and Ontario Dental Association have developed guidelines with respect to the handling of patients when dentists leave their existing practice to either work elsewhere or to start their own practice.

Based on the foregoing, it is important to discuss this issue with a lawyer as soon as possible.

How Long Does it Take to Complete the Purchase of a Dental Practice ?

Many dentists considering purchasing a practice are currently practising at an existing clinic. As such the purchasing dentist would like to complete a purchase as soon as possible to avoid as much down time between their current practice and new practice. Although both the purchasing dentist and the selling dentist are usually anxious to complete the transaction, it is important that sufficient time be allocated to properly do the work necessary to successfully complete the transaction. In order to do a proper and complete job the minimum amount of time required to complete the legal work for a straightforward transaction is approximately eight to twelve weeks. Complicated transactions may require more time. The entire process from the time you consider to purchase a practice to the time you are practising in your purchased practice may require up to six months or longer.

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Often the most time consuming aspect of the completing the legal work is dealing with and negotiating with various third parties such as landlords, lien holders, and financiers. Often these parties have different agendas than the buyer or the seller and they are often known to use various negotiating tactics to take advantage of the anxious purchaser or seller. Purchasers and sellers usually fail to anticipate the use of these negotiating tactics which often leads to increased costs, time delays, and great frustration for both the purchaser and seller.

Based on the foregoing it is imperative to speak and meet with us as soon as possible so that negotiations can be commenced as soon as possible with third parties including landlords, lien holders, and financiers. It has been our experience that purchasers who avoid contacting a lawyer until just before the anticipated completion date will ask the lawyer to rush the completion of the purchase of a practice. In such a case, the purchaser often finds third parties such as landlords, lien holders, and financiers using their negotiating position to take advantage of the situation.

What Can I Expect From the Seller ?

Sellers are generally not as concerned as a purchaser with respect to the well-being of a practice after the completion of a transaction. As a result, a seller sometimes puts pressure on a purchaser to complete a transaction as soon as possible and to ignore any potential problems that have been raised by us as lawyer for the purchaser. Therefore, as a purchaser it is important to be aware of undue influence from the seller and to carefully consider the advice from your professional advisors. It is important to remember that the legal obligation of the lawyer for the seller is to consider only the best interests of the seller. Similarly, the legal obligation of the lawyer for the purchaser is to consider only the best interests of the purchaser. This effect of this obligation is that a lawyer for one

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party does not consider the interests of the other side unless it is beneficial to his/her own client.

What Non-Legal Issues Should I Consider ?

In addition to legal issues, you must address other matters including:

- (i) financing;
- (ii) marketing;
- (iii) staff and/or associates.

In addition, the acquisition of additional equipment may be desired. We should be consulted when dealing with these other matters because in each case legal issues will arise.

Conclusion

[Peter Cusimano](#) is a business lawyer in Toronto, Ontario, Canada who is experienced in the purchase of dental practices. If you are located in the Greater Toronto Area, Peter would be pleased to meet with you and represent you as your professional legal advisor.

Contact Peter Cusimano at:

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