Sale and lease back

What you need to know

Sale and lease back arrangements are becoming a popular means to deal with situations where property owners, whether due to retirement or otherwise, wish to sell their premises but their fellow partners or the ultimate practice owners are unwilling or unable to buy them out.

As the name suggests, such arrangements see property owners selling their surgery premises to a third party on the condition that they then lease them back.

If you are in the process of considering the sale and leaseback option, or have been asked to consider it, it is important that you carefully weigh up the pros and cons.

Here are some of the core pros and cons that should be at the forefront of your mind. Read on for our top tips.

Pros

+ It facilitates a sale of the property in circumstances where no other purchased can be found
+ It relieves the continuing partners/practice owners from the obligation of having to find the necessary money and/or borrowing to acquire the property
+ A heightened value is usually paid where a lease back is in place

Cons

– The lease is usually for a long term (20+ years)
– There is usually no ability to break the lease if the practice operating from the premises ceases to hold a core contract
– The repairing obligations within the lease are usually quite onerous, with responsibility and liability resting with the tenant
– The assignment provisions within the lease can be too rigid, and prohibit the assignment of the lase as between partners and/or new contractors
– The rent review provisions within the lease can create situations where the rents you are required to pay exceed your level of rent reimbursement

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Top tips

Clearly there is a very real potential for these arrangements to create friction between property and non-property owners as the pros outlined above generally benefit the property owners, and the cons generally impact on the non-property owners.

With this in mind, consider our four top tips for a successful sale and lease back arrangement:

1. **Commissioner approval**
   The transaction – particularly the ultimate lease you enter into – needs the prior approval of your commissioner before it completes

2. **Negotiation**
   Negotiate the terms to the fullest extent possible. While you may receive a premium for selling, please don't lose sight of the fact that this could be at the cost of onerous lease terms. It is in all parties' interests to agree sensible terms.

   - ✓ **From the property owner's perspective**, it will encourage the non-property owners to sign the lease required by the third party purchaser before the complete the deal
   - ✓ **For the non-property owners**, it will ensure that they enter into a lease that does not expose them to undue risk and destabilise the price
   - ✓ **From the purchaser's perspective**, it will ensure that they complete the transaction and have a stable tenant

3. **Consider alternatives**
   If the terms of a sale and lease back simply do not prove acceptable, consider alternatives. These could include the sale of the property to non-property owners in tranches, selling the property with a delayed repayment plan, or keeping the premises and leasing it back yourself

4. **Professional advice.**
   Take professional advice early

Expert legal advice

For details of the sorts of provisions that we recommend including in a lease, read the guidance we prepared for the BMA.

If you need support or advice around premises issues – including sale and lease back – then we can help. Contact us on:

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