

Red Flag Update

Important updates for GP practices

SUCCESSION AND RETIREMENT PLANNING; WHAT TO DO WITH YOUR PREMISES?

Have you ever considered whether a sale and leaseback transaction would resolve your succession planning issues or whether putting a lease in place between the retired GPs and the existing partnership would be a better option. Here, we will explore the main options to consider when beginning GP practice succession and retirement planning. When you consider a significant proportion of the GP workforce is within five years of the average retirement age of 58, putting a succession plan in place has never been so important.

Finding new partners

The first option for most partnerships starting to think about retirement and succession planning is looking for incoming partners to 'buy-out' any retiring or exiting partners. However, there seems to be a national shortage of GPs willing to become partners. The 2019 NHS Premises Policy Review noted that property risk, and the perception of risk, was one of the major factors discouraging GPs from becoming partners.

If you have exhausted your search for a new GP Partner, you could consider bringing in or promoting a Nurse, Pharmacist, Practice Manager, or Paramedic as a partner to purchase the retiring partners share in the premises.

Sale and leaseback

In a surgery's sale and leaseback transaction, the freehold or leasehold of the practices premises is sold to an investor and a lease is granted back to the GP partners for them to continue occupying the building and providing medical services.

The sale and leaseback mechanism is a legally binding process with significant ongoing responsibilities and does not suit all scenarios and circumstances. It is therefore important for GP Practices to carefully consider the following aspects when considering whether this is the best option for them:

- Retirement and succession planning – S&LB can help when the property-owning GPs are looking to retire, and the non-property-owning GPs are not interested in buying the building.
- Secure equity release – S&LB allows the owning GP Partners to release the equity (value) they have in the building.
- Signatories to the leaseback – there should usually be at least 2 GPs on the lease as tenants. If there is only one, then the investment is viewed as being unsecure, and many investors will not be interested in buying the property.
- Repairing & maintenance obligations – the lease will put repairing obligations in trust of the parties. Usually the GP Practice (Tenant) will be responsible for repairing the whole building i.e. internally and externally, known as “full repairing” though sometimes the GP Practice will only be responsible for the internal repairs known as “internal repairing”.
- Control & flexibility – the leases are generally set up so that GPs can leave the practice and lease as long as other GPs are added to the lease. Usually, the lease would be set up on the basis that there are at least 2 GPs on the lease any one time. This gives some flexibility for the GPs to come and go from the practice. Against this, once a S&LB has completed the GPs no longer own the building and must pay rent to the landlord. This means they have more obligations and there are potential additional costs for the GPs e.g. when the landlord triggers a rent review.

Putting a lease in place

An alternative option to sale and leaseback might be to put a lease in place between the retired GP partners and existing GP partners – for those GP partners who want to retain ownership of the premises and their investment, this option is ideal.

When putting a lease in place there are a few warnings for both tenants and landlords to consider.

NHS approvals – If you seek Notional Rent reimbursement, then the Lease requires full approval from NHS before being signed by the parties. This is absolutely key.

Rent review process – It is very important to seek professional advice when a landlord is actioning a rent review so that the Practice can be protected from potentially agreeing a rent that may not be reimbursed by NHS.

Repairing obligations – It is important to understand the full extent of your repairing obligations under the lease – whether that also includes the external parts of the building and mechanical elements such as boilers and any lifts.

Service charge – A lease may impose additional charges on a Tenant for cleaning, decorating, repairing, and maintaining ‘common’ areas, for example, where the surgery is located in a multi-occupied building. These service charges can be very expensive for a Practice and not a recoverable cost from the NHS. It is vital that a Tenant understands the scope and estimated costs associated with a service charge.

Alterations – It is essential that you fully understand what you can and cannot do under the terms of the Lease before undertaking any alterations to the Property, as the Landlord can potentially require you as Tenant to remove such alterations, if not undertaken in accordance with the lease.

Landlord & Tenant Act 1954 – The Tenant has the right, unless specifically excluded from the Lease, on expiry of the Lease to automatically renew on materially the same terms as the existing Lease.

Transferring the contract to another entity

This is a great option for failing/struggling surgeries or those who might be facing closure due to retirement of their GPs. It is also a consideration for practices going through a sale and leaseback or contemplating putting a lease in place between the exiting partners and the practice, as it can reduce/remove the liabilities and risks of signing a long-term lease.

There are several options when it comes to transferring your contract to another entity, such as PCN's, GP Federations, a local practice (through a practice merger), 3rd party organisations or even the NHS themselves.

How to maximise the value of your premises

Get your notional rent checked by an independent surveyor to ensure it is in line with the current market and you aren't getting underfunded.

Ensure any lease agreements and rental amounts are up to date with third-party occupiers such as co-located pharmacies.

Look to find alternative tenants to occupy any spare space or non-reimbursed areas of the practice – such as a pharmacy or dentist. Or seek approval from the NHS to have the space included in your notional rent reimbursement.

Upgrade and improve your surgery – things such as improving accessibility and infection control should have a positive effect on the value of the premises.

Explore the possibility of building an extension – increasing your rental income can significantly increase the potential sale price.

Summary

Whatever you decide to do next it is imperative you receive the correct advice from specialist primary care surveyors, accountants and solicitors to ensure you make the right decision for you, the partnership, the practice and the patients.



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