



Practice Transitions Made Perfect™

Newsletter Article Reprint

Confidentially Speaking

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A commonality of business transactions is the execution of a "Confidentiality Agreement" or "Non-Disclosure Agreement" (NDA). The purpose of the agreement is to ensure that confidential information about the business for sale is kept only to the purchaser and the purchaser's advisors for the purpose of evaluating the purchase itself. The agreement is between the broker participating in the transaction and the purchaser and, in the case of a dental practice sale, will cover information such as the name and address of the selling doctor and practice, financial reports, data from the practice management system, staffing details, purpose of the sale and a myriad of other pertinent pieces of information.

Recently, we have seen that some brokers have attempted to expand the authority of their confidentiality agreements. In one such instance, the broker stipulates that the client is not to contact the owner, employees, suppliers or other brokers to review and evaluate a potential practice opportunity. It is certainly reasonable that the employees and suppliers of a subject practice are not to be contacted and the broker should be the primary contact for all questions regarding the practice instead of the selling doctor. However, attempting to forbid a purchaser from contacting another broker or steering that purchaser to a particular broker is nothing more than an attempt to limit the ability of the purchaser to solicit counsel, representation or advice on a major step in his or her career. There is simply no ethical rationale for this action.

A reputable and experienced transition specialist and appraiser is most often the best evaluator of the opportunity as a business. While an accountant (preferably with dental experience) can be a strong contributory voice on a purchaser's advisory team, a local broker with appraisal and evaluation experience usually can provide vital insight and knowledge that may be missed by others. A local broker can also be invaluable for the evaluation of the purchaser's individual situation. The full-time transition specialist is the only one on the team that works with transitions day-in and day-out.

In many states, including Florida, the sale of businesses, including dental practices, is regulated by the state's real estate law and require brokers or specialists to be licensed as agents or brokers to receive a commission for their services. In Florida, Florida Statute (FS)475.01 governs real estate brokers and, by law, a broker is any person who brings together two or more parties for the purpose of affecting a sale of a business or real property. This relationship implies that there is an expectation that the broker be compensated for his or her efforts and services.

Brokers have a duty to treat the public with honesty, integrity and fairness. The public has the right to rely on representations of the Broker being accurate to the best knowledge of the Broker. Further, a Broker may only represent the seller or purchaser of a property, or the transaction as a whole (whereby no representation is established). The Broker may only represent a transaction if both parties are notified, in writing, at the outset. Dual-representation, or the representation of both parties in a transaction, is explicitly illegal in the state of Florida.

Whether you use it or not, as a buyer or seller, you have the right to representation. As a seller, this generally is stated in a listing agreement but may also be initiated once two parties have found each other. As a purchaser, a similar agreement for representation could be entered into between you and the broker or agent. If the execution of an agreement is required to acquire information about an opportunity and that agreement states that you may not enlist an advisor or representative, attorney, accountant, broker or other, you should consider whether the party requesting your signature is acting fairly in limiting your counsel. Additionally, any specialist who suggests that you should not retain legal or financial counsel should be questioned as to their motives and interest in presenting a fair deal.

The purchase or sale of your practice may be the biggest step to that point in your career. Ethical professionals will operate in an up-front, open and fair manner, with the utmost respect. Take advantage of the opportunity to work with those professionals as they are the ones that are most interested in your continued growth and success.

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