



# ADS Florida Insider

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SEPTEMBER 2007

Practice Transitions Made Perfect™

ADSflorida.com



From Hy's Desk



To Lease Or Not To Lease



Entity Selection (Part 1)



Practice Purchase Opportunities

ADS Florida *Congratulates*

Reynaldo Gonzalez, DMD to Julio Sanchez, DDS & Jessica Fernandez, DDS Ocala, FL

John Craig, DMD to Charlotte Gerry, DMD Lake City, FL

## From Hy's Desk:

For many years dentists have asked my opinion as to whether they should buy/build a building or condo for their office. It is a decision that has long been debated in the business community and that can only be answered after evaluating the reasons for considering the options of owning versus leasing.

If a dentist leases a premises, 100% of the lease payments are written off on taxes each year and if there have been leasehold improvements, the cost is amortized (written off) over 39 1/2 years. If buying an existing structure, the interest paid can be deducted, and again, the leasehold improvements are amortized over 39 1/2 years.

Ownership can provide predictability in the facility costs to the practice, where leasing exposes the dentist to escalating lease and maintenance payments.

Ownership also provides, in most cases, some investment advantage as the property appreciates in value.

I have always suggested that each option has its advantages and disadvantages, until now!

It has come to our attention that there is a trend in the leasing marketplace for landlords to try to take advantage of tenants by including language that allows the landlord to participate in the proceeds of the sale of the practice. That's right - they get a piece of your goodwill! I encourage you to read the following article about the increasing issues with landlords and leases.

Hy Smith, MBA | President, ADS Florida

## To Lease or Not to Lease

A very important but usually overlooked item affecting the acquisition of a practice is the office lease. Without acceptable lease terms, a lender will not lend and a buyer will not buy – who would purchase a business without a secured location?

With a history of increasing dental practice values, some landlords are attempting to leverage the lease as a bargaining position to capture a portion of the purchase price from the seller. There is even a trend by corporate landlords to extract additional monies from their tenants.

Here's how it works. Most tenants or prospective tenants focus on the price of the rent. However, there may be additional hidden costs, usually in the form of common area maintenance fees (CAM) and pass-through expenses like insurance or real estate tax increases. Not only are these costs generally missed, there are other clauses that we have seen inserted, some of which can be extremely costly to the seller.

Specifically, we have become aware of lease assignment language that can prevent the sale of the practice or require a significant financial buy-out negotiation. In addition, we have read recapture clauses that can completely nullify a lease, prevent a sale and possibly cause your business to be homeless. If that's not enough,

there have been instances where while you and your counsel have been diligent in negotiating and reviewing your lease, even requesting lease options, but that personal options may not be transferable to a prospective tenant.

How much could all of this cost? Lease clauses, when triggered with the right (or wrong) language could require anywhere between 25% – 75% of the earnings of the sale. While it may not come to the point where that much

is paid as you may offer a settlement, keep in mind that it's entirely up to the landlord whether he accepts your proposition. The bottom line is that the landlord knows that he is in control, and the lease terms put him there.

Have you read over your lease again, yet? Well,

that's not all. There are many instances where a seller may not be released from liability on the lease after the sale, or the landlord may be permitted to adjust the rent to the new tenant. Above all, don't forget that the landlord may not be required to consent to the assignment.

The lease is an integral part of the sale of a professional practice – without it, there will be no sale. If you haven't re-read your lease yet, now's the time. If it's time to renegotiate or if you are in the process now, be sure you have representatives looking out for your long term interests.



## Entity Selection: Part One

By William P. Prescott, M.B.A., J.D.



Are you forming or purchasing a practice? Are you planning to practice with another doctor? What entity form is appropriate and what do you need to know to select the right one?

There are basically five entities for practice operation. They are a sole proprietorship, C corporation, S corporation, limited liability company ("PLLC" or "LLC") or general partnership. This choice should be driven by two factors; liability protection and tax benefits.

### Liability Protection

While a sole proprietorship is the simplest form of entity, it provides no liability protection in and of itself. So the decision to practice as a sole proprietorship versus a C or S corporation or a PLLC should be based upon two criteria. First, the greater number of employees that you have, the greater the need to consider an entity that provides liability protection and all entities with liability protection provide it at the same level, with minor exceptions. Second, if there is more than one doctor in the practice, it is essential to consider operating in an entity that provides liability protection. However, you are always liable for your own acts. An entity that provides liability protection protects you from the acts of other doctor(s) and often, but not always, for the acts of your employees against others or your employees' claim(s) against you.

How can operating as a sole proprietorship or any other entity assist to insulate you against liability? Simple, carry insurance that really insures and consider an umbrella policy. And most of all, adopt and fund a tax-qualified retirement plan, e.g., a safe harbor 401(k) profit-sharing plan for younger doctors or a defined benefit plan for older doctors to contribute substantially more. Unlike simple plans and IRA's, the tax-qualified plans are absolutely creditor proof, except for child support orders and Federal tax liens. This assumes that the owner is not the only participant in the plan.

As to solo groups, whereby two or more practices operate separately in the same facility, the need is less pressing to operate in an entity formed with liability protection, as compared to co-ownership. Nevertheless, such practices often hold themselves out to patients and the public as "partners", which creates additional liability to one doctor for the acts of another doctor within the solo group.

Two or more doctors practicing together are a partnership by default, unless another entity is formed. And partners are jointly and severally liable for the acts of the other partners. Sometimes, partnerships consist of S or C corporations as partners in an effort to limit liability, particularly in California or Hawaii, whereby professional practices are not permitted to operate as PLLC's. In the other 48 states, sometimes the PLLC's members consist of C or S corporations, although I believe that such an arrangement creates unneeded complexity and requires additional tax returns to be filed. In addition, I believe that a C or S corporation provides better liability protection than does a partnership of PLLC's.

It is not enough just to form a C or S corporation. The entity must "look and act" as a corporation to ensure liability protection through the preparation of shareholder's and director's minutes that authorize significant corporate activity. These minutes are typically prepared on an annual basis and are contained in the corporation's record book.

While it has been said that PLLC's are not required to comply with the formalities that corporations follow, our Firm has lately been preparing minutes for PLLC's in the same manner as we do for corporations in an attempt to ensure liability protection.

*What are the tax ramifications of your choice? Be sure to see our next issue.*



### Meet William P. Prescott

William P. Prescott M.B.A., J.D. is a Practice Transition Attorney from Cleveland, OH where he is a shareholder/partner with the law firm Wickens, Herzer, Panza, Cook

& Batista Co. Bill represents dentists and specialty practitioners in practice sales and acquisitions, succession planning, solo and group practice valuations, associate buy-ins, owner buy-outs and group practice operations.

Bill was a former dental equipment and supply salesman for over 16 years who worked primarily with Saslow and Meer Dental Companies and as general manager for Saslow Dental C Northern Ohio.

He has authored the books: *Business, Legal and Tax Planning for the Dental Practice*; *The Practice Acquisition Handbook*; *The Limited Liability Company*; *Other Entities for Dentistry* and, due for release later this year, *Joining and Leaving the Dental Practice*. Bill also writes a quarterly supplement - *Business, Legal and Tax Planning for the Dental Practice*.

Bill is a member of the American Bar Association, Section of Taxation, Closely Held Businesses Committee; Ohio State Bar Association; Cleveland Bar Association; Small Business Council of America, Director and Officer.

He has served as Chair, Subcommittee for Doctors, Lawyers and Other Professionals, 2003-2005; Vice-Chair, Professional Services, 2003-2005; Chair, Closely Held Businesses Committee, American Bar Association, Section of Taxation, 2007-2009.

*Reach Bill at 440.930.8067 or [wprescott@wickenslaw.com](mailto:wprescott@wickenslaw.com).*

# Practice Transitions Made Perfect

## General and Specialty Practice Purchase Opportunities

### NORTH FLORIDA

Contact: Paul Rang, DMD, JD

		Gross	Buyer Net
Lake City	7 ops FFS Pano 2 days/week		SOLD
Live Oak	7 ops FFS Pano 2 days/week		SOLD
Pasco Co. - NPR			SOLD

### Specialty Practices

NE Florida	Pedo	\$1.2M	\$450K
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### WEST FLORIDA

Contact: Greg Auerbach, MBA or Paul Rang, DMD, JD

		Gross	Buyer Net
Citrus County	5 ops FFS Pano	\$705K	\$213K
Crystal River	8 ops FFS Pano RE Available	\$1.1M	\$315K
Englewood	4 ops FFS/PPO RE Available		PENDING
New Port Richey	5 ops FFS		PENDING
Tampa	2 + 2 ops Downtown Tampa		
Tampa	3 ops FFS/PPO RE Available	\$550K	\$150K
Venice	4 + 1 ops FFS/PPO RE Available	\$625K	\$125K
Venice	3 ops FFS/PPO	\$650K	\$152K

### Specialty Practices

Tampa	Ortho - Associate/Buy-In		
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### CENTRAL FLORIDA

Contact: Paul Rang, DMD, JD

		Gross	Buyer Net
Citrus County	5 ops FFS Pano	\$705K	\$213K
Clermont	4 ops FFS/PPO Pano RE Available	\$675K	\$188K
Cocoa	6 ops FFS Pano RE Available	\$1.1M	\$378K
Crystal River	8 ops FFS Pano RE Available	\$1.1M	\$315K
Gainesville	4 ops FFS/PPO Pano	\$949M	\$333K
Levy County	7 ops 3 days/week	\$292K	\$58K
Ocala	5 ops FFS	\$1.3M	\$671K
Ocala	5 ops FFS		SOLD
Orlando	6 ops FFS/PPO Pano	\$642K	
Orlando	4 ops FFS/PPO Pano	\$798K	\$214K
Pasco Co. - NPR	5 ops FFS		PENDING

### Specialty Practices

Orlando	Orthodontics 2 days/week	\$350K	
Treasure Coast	Prosthodontics		PENDING

### SOUTHEAST FLORIDA

Contact: Stuart M. Auerbach, DDS

		Gross	Buyer Net
Aventura	5 ops FFS C&B	\$962K	\$306K
Hialeah	4 ops FFS/PPO Computer & Pan		Ask \$225K
Homestead	2 + 1 ops FFS	\$360K	\$112K
Lower Keys	5 ops FFS C&B w/Real Estate	\$1M	\$200K
Miami	2 ops FFS/PPO	\$233K	\$135K
N. Palm Beach	4 ops FFS/PPO Rest Cosmetic w/RE	\$1.5M	\$321K
Plantation	5 ops FFS Computers & Digital X-Ray		PENDING
Weston	3 + 3 ops FFS w/Condo	\$541K	\$135K

### Specialty Practices

Broward Cnty	PERIO 6 ops FFS w/RE		PENDING
Palm Beach Cnty	Surgery 5 ops FFS	\$700K	\$232K

### Practices Ready Facilities

Davie	4 ops w/Mogo Publix Ctr		Ask \$65K
Vero Beach	3 ops *CONDO* w/equipment		Ask \$460K

### SOUTHWEST FLORIDA

Contact: Greg Auerbach, MBA or Hy Smith, MBA

		Gross	Buyer Net
Ft. Myers Area	5 ops FFS Pan, RE Available	\$650K	\$203K
Marco Island	5 ops FFS	\$660K	\$190K
Pasco Co. - NPR			SOLD

### Associate Opportunities

General Associate Positions: Miramar, Stuart, Tamarac  
Orthodontic Associate Positions: Tampa

**Buyer Projected Net Income  
Assumes 100% Financing**

**For the most recently updated listings visit  
[ADSflorida.com](http://ADSflorida.com)**

We currently have buyers looking for the following opportunities:

#### GENERAL DENTISTRY

Broward, Collier, Dade, Hillsborough, Manatee, Orange, Sarasota

#### PEDODONTIST

Broward, Dade, Palm Beach

#### ORTHODONTIST

Broward, Dade

#### PERIODONTIST

Broward, Palm Beach



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## Speakers Available For Your Meetings

Learn the latest in transition and exit strategies.

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## Inside This Issue Of ADS Florida Insider

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Practice Transitions Made Perfect™

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STANDARD  
U.S. POSTAGE  
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# TRANSITION STRATEGIES 07

Associates, Partnerships & Appraisals, by Hy Smith, M.B.A.

**Memphis, TN** September 21 - 22  
**Tampa, FL** November 30 - December 1  
**Nationwide 2008 Dates Coming Soon**

The Quality of Advice You Get is Critical. This is Your Life. Hy Smith has helped hundreds of doctors with his experience in practice valuation, association buy-in arrangements, practice sales, mergers and multi-doctor group arrangements. These information-packed two-day sessions are a must for doctors approaching a Practice Transition.

Visit [ADSflorida.com](http://ADSflorida.com) or call 1.800.262.4119 x13 for reservations.



Contact us today for a **FREE** copy of Hy Smith's Book: *Buying & Selling A Professional Practice*

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