

An essential guide to property succession planning for GP practices

Your property plays an essential role in the day-to-day activities of your practice. Planning ahead makes it much easier to deal with the paperwork when your partnership changes. Any new partner will undertake property due diligence, whether they take a freehold or leasehold interest in your practice's property.

If you keep your arrangements in order, changes in succession (such as the recruitment of a new partner or a refinance) can be handled smoothly, without delay, additional costs or difficulty.

Manage your property interest successfully with our top tips:

Understand your property and your main documents

Is the legal title to your property in the correct names? Are you confident that your title is good and marketable? It is important to **update** any changes at the relevant time. It may become difficult to track a retired partner later down the line and this may put a new recruit off and increase your stamp duty liability.

Do you hold any of the required third party consents? For example:

- Integrated Care Board (ICB) consents for your lease
- Landlord's consent for lease matters; or
- Care Quality Commission (CQC) consent to your General Medical Services (GMS) / Personal Medical Services (PMS) contract.

To ensure your rental reimbursements are protected, your property will need to comply with minimum physical standards under the Premises Costs Directions.

Make sure you hold valid compliance documentation, for example, asbestos reports, a valid energy performance certificate, a health and safety file and so forth.

Plan ahead and consider what consents may be required to facilitate any changes

Does your lease allow intra-partner transfers without the landlord's consent? If landlord's consent is not required, do the changes meet the minimum requirements set out in the lease? Most standard GP leases require a minimum of two GPs to remain as named tenants at any time.

If a former partner is named on the freehold title, arrange the grant of a new lease to your partnership

This could be a retired partner wanting to remain a sole or co-owner of the freehold property.

Where the practice is taking a new lease, plan ahead and allow at least

12 months for the ICB lease approval process.

Document any third-party occupations

Check that the correct legal documentation is in place for all third-party occupations, in other words those sharing your premises, such as pharmacies and other healthcare providers.

Most will be documented by lease, licence or sessional arrangements but it is important to use the correct documentation, which detail the landlord and tenant obligations. This will help avoid any disputes and not inadvertently grant protected tenancies – for example, allowing anyone sharing the premises to continue using the space even when a practice requires the property back at the end of the term.

Ensure that your rental income is aligned with any rental abatement so you're not out of pocket and notify the relevant ICB of any changes to avoid retrospective adjustments. The ICB will not allow any practice to recover rent from a third party and obtain ICB reimbursement for the same space.

Get a partnership agreement with the essential provisions, then always keep it up to date

Not having a partnership agreement in place can leave a partnership exposed to uncertainty and disputes. You'll need the following provisions covering:

- What happens when a partner retires? Who controls the changes – remaining or leaving partners?
- Who has the power to enforce the sale?
- How will their share be bought out and how will the property be valued?
- A dispute resolution process covering steps to resolve any disputes.
- What would be the relevant timings and triggers for the above?

Failure to update a partnership agreement when a new partner joins would mean that the existing partnership agreement would fall away and a Partnership at Will would arise converting the partners' interests in a property to equal shares.

Make a declaration of trust

The declaration of trust sets out the equity shares of the partners' interests in the property. It is beneficial for this to sit alongside the partnership agreement. This can help protect any equity shares from being converted to equal shares in the event of a Partnership at Will, which inadvertently arises (e.g. when a new partner joins before a new partnership agreement is completed).

Make a declaration of trust

As part of effective practice planning, you should obtain specialist GP lending advice on refinancing. Consider timings and take early financial advice to properly consider the available options.

The affordability of buying out a partner and/or enabling a new partner to buy in should be considered well in advance, including whether refinance is required.

The bank will need to be notified of any changes to an existing charge and consulted to see if:

- the existing charge is to be redeemed and a new charge entered into; or
- a deed of variation to the existing charge is required (possibly with reduced due diligence).

Early redemption penalties should be carefully considered in relation to any refinance decision.

Make a declaration of trust

Selling your freehold interest to an investor and simultaneously having a lease granted to your practice may be attractive and can make succession planning easier. New recruits can avoid the need to make a capital investment in property. It may allow existing partners to:

- release equity
- align property interests across the partnership; and
- have more flexibility.

It's important though, to weigh up any flexibility with the loss of control and investment opportunities that come with freehold ownership.

If this option is being considered, take expert advice early with investors, NHS England/ICB surveyors, lawyers and accountants. Start your negotiations early, bearing in mind the ICB lease approval process.

Contact



Lisa Geary

Partner

0113 322 5561

lisa.geary@capsticks.com



Deema Sodha

Principal Associate

0113 487 6461

deema.sodha@capsticks.com



Sam Hopkins

Partner

020 8780 4776

sam.hopkins@capsticks.com

Capsticks

www.capsticks.com



@capstickslp

Birmingham

35 Newhall Street,
Birmingham B3 3PU
T +44 (0)121 230 1500
F +44 (0)121 230 1515
DX 13003 - Birmingham

Chorley

Ordnance House,
6 East Terrace Business Park,
Exton Lane,
Chorley PR7 6TB
T +44 (0)125 726 6008

Leeds

Toronto Square, Toronto Street,
Leeds LS1 2HU
T +44 (0)113 322 5560
F +44 (0)113 242 2722
DX 713112 - Leeds Park Square

London

1 St George's Road,
London SW19 4DR
T +44 (0)20 8780 2211
F +44 (0)20 8780 1141
DX 300118 - Wimbledon Central

Winchester

Staple House, Staple Gardens,
Winchester, SO23 8SR
T +44 (0)1962 678 300
F +44 (0)1962 678 311
DX 2532 - Winchester