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Preparing to sell your care home

Specialist legal advice for a quick and smooth sale

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Preparing to
sell your care home

The decision to sell any business that you have spent time building is significant and there are many aspects to consider. With a care home, there will also be concerns about the welfare of your residents.

We can help you determine your **best case scenario**

Initial considerations

Preparing a route map and having a clear understanding of the options, process and steps you can take will put you in a better position.

Our healthcare solicitors can help you determine your best case scenario and provide guidance on current market conditions. The first questions to ask yourself are:

- What do you want to sell? Shares or assets? A whole care group or some of its homes?
- Do you want to step away from the business completely or have a role after the sale?
- Do you have a minimum value that you need to achieve?
- What types of payment would you be willing to receive? All of the sale price paid in cash on completion or an element paid at a later date, perhaps subject to the future performance of the business?

Speak to **an expert**

Working with expert healthcare solicitors makes a difference to the speed and cost of the process.

Clarke Willmott is a national law firm with seven offices across England and Wales. We have a focus on the healthcare sector, including care homes. Our solicitors can work with large care home groups and owners of single homes.

We invest time in developing relationships with our clients and are known for our high level of service, straightforward manner and transparent fee solutions. We advise on almost every aspect of the law.

Your key contacts

Rich Eldridge, Partner
t: 0345 209 1143
e: rich.eldridge@clarkewillmott.com

Kirill Bingham, Partner
t: 0345 209 1239
e: kirill.bingham@clarkewillmott.com

"They're very good at **protecting our interests."**
Client

Sale of
assets or shares?

The ownership structure of your business will determine the type of sale transaction.

For an incorporated company, a sale of shares is usually the most tax efficient option for the seller. All shareholders must be consulted about the sale, although it may be possible to compel any minority shareholders to sell if necessary. This will depend upon the contents of any shareholders' agreement and the company's articles of association, which should be reviewed at an early stage.

If a buyer wishes to only acquire certain assets, leaving other assets and liabilities with the seller, an asset sale will be appropriate. An asset sale will also be appropriate if a seller has several homes and wishes to sell some of them.

There may be other factors that point towards a sale of shares in preference to a sale of certain assets of the business (or vice versa). This should be considered at the start of the process.

If you are a sole trader or an unlimited partnership an asset sale will be the only option, unless the business is incorporated before the sale.

A sale of shares is usually **the most tax efficient for the seller**

Points to **consider**

- Are the details of the registration displayed on the Care Quality Commission's website up to date, such as the service provider, registered manager, nominated individual and maximum number of service users?
- Is the ownership of the business/company clear?
- Are the statutory books readily available and up to date? These include the registers of shareholders and directors.
- Are there any unexercised options over the shares in the company that need to be dealt with?
- Are any key assets owned by the sellers personally or by third parties/other group companies?
- Are any key assets to be retained by the sellers (e.g. properties) that need to be extracted prior to the sale?
- Who are the likely purchasers?
- Is there a management group that would like to buy the business? If so, has finance for the purchase been obtained?
- Is a likely buyer another care group, possibly a competitor? This may be important if you will be retaining some homes.

Who are **the likely buyers?**

The

Care Quality Commission

The healthcare sector is highly regulated. Actions by the Care Quality Commission (CQC) and conditions of registration can affect the sale price.

Points to consider include:

- Do any aspects of an inspection report need to be carefully explained to a buyer?
- Are any requirement notices, warning notices or notices of proposal outstanding?
- Are any appeals against notices of decision ongoing?
- Are any investigations by the CQC ongoing or expected?
- Have all necessary notifications to the CQC been made?
- Is it possible to vary conditions of registration to achieve a higher sale price, such as increasing the maximum number of service users?

The CQC can **affect the sale price**

The
employees

A sale can be unsettling and disruptive for employees. The uncertainty can have a negative effect on the business at a time when its performance is key.

A decision needs to be made as to when to tell staff. Key employees, such as your registered manager and nominated individual, may need to be involved in the sale process. You may need them to help with the often labour intensive due diligence process that a buyer will want to carry out. If the sale is to be carried out by way of a business and assets sale, the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply.

Points to consider include:

- Is evidence of the qualifications of key employees readily available?
- Are contracts of employment and other documents relating to employees readily available and complete?
- Has pensions auto enrolment been complied with?
- Have key employees who need to be kept onside been identified?
- Are there any material disciplinary or grievance matters which are unresolved?
- Are your policies up to date?

Key employees may need to be **involved in the sale process**

The **properties**

Care home properties can be key to the value of the deal. They often have significant value and can be important to the value of goodwill.

Are the properties to be **included in the deal?**

Points to consider include:

- If the properties are owned by the business, are they to be included in the sale or extracted and let to the buyer? If so, a valuation is likely to be required for the purpose of the transfer out of the properties.
- If the properties are leasehold, are there any rent deposits or guarantees that need to be dealt with?
- Are there dilapidations issues, the cost of which will need to be apportioned with the buyer?
- Are there any break clauses held by third parties that might be important to the buyer? If there are, will the third party agree not to exercise the break?
- Are there land contamination issues that can be addressed in advance of the sale or can insurance be put in place?

What about
intellectual property?

Intellectual property (IP) or information technology (IT) may be of significant value. For instance, you may have a valuable brand.

Before the sale, you should be clear about the extent to which IP and IT are owned or used by your business. Ownership and the extent to which it is protected may be a key focus for the buyer.

Points to consider include:

- Who owns the IP? Does it belong to the business? Is it owned by the sellers personally or by third parties?
- Who owns the domain name used by the business? Who created the website?
- Do you have valid licences for any IP used by the business?
- Is your IP capable of being registered and if so are the registrations up to date?
- Are your IT systems working effectively? Do you have support and maintenance contracts in place? Do you have a recovery plan?

Is your
IP capable of being registered?

Ongoing and potential **disputes**

Potential buyers may be put off by ongoing or potential disputes. They are likely to take a pessimistic view of the possible outcomes. If the dispute is with an important trading partner, such as a local authority, it may affect the value of the business.

Buyers may take a **pessimistic view**

Points to consider include:

- Are there any ongoing or potential disputes to consider? Can they be resolved or the possible impact mitigated in advance of the sale?
- If there are claims against the business, are they covered by valid insurance policies?
- Generally on insurance matters, do you have records showing the claims history of the business? Can you show continuity of cover for matters such as occupier's and employer's liability?

The importance of **tax planning**

Tax planning in advance of a sale can be fundamental to maximising the value of the transaction for the sellers. Opportunities for planning tend to diminish the closer we get to completion. You should consider engaging with a tax adviser well in advance of a sale.

Points to consider include:

- In terms of the tax position, are all records up to date and has tax been properly accounted for?
- Potential pitfalls exist around any shares issued to employees and whether consultants described as self-employed are actually employees. Have these issues been properly dealt with?
- Are any tax investigations or audits ongoing or expected?
- Have any tax planning schemes been implemented that may be subject to challenge by HMRC?
- Have you thought about the effect of the sale on your inheritance tax position and considered estate planning?

Engage with a tax adviser **in advance of a sale** *clarke willmott

Get in touch:

t: 0345 209 1143

e: rich.eldridge@clarkewillmott.com

Offices

Birmingham Bristol Cardiff London Manchester Southampton Taunton

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