

Buying and selling care homes

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Being involved in the sale or purchase of a care home business can be a difficult and stressful time, but you can reduce the burden on yourself if you choose a good team of professionals who will guide you through the transaction maze.

If you are considering selling or buying, then typically, you will be involved in all of the stages outlined in this article.

Usually, the transaction starts with a document called the Heads of Terms and this will be drawn up by your lawyer (or possibly an agent).

This key document sets out the main points that will have been agreed in relation to the sale or purchase. The next stage is termed Due Diligence.

The buyer's solicitor will send a list of enquiries about the care home business to the seller's solicitor.

Due diligence

Most of the seller's time will be engaged in gathering together information and documentation to provide full replies to the buyer's due diligence enquiries.

If the seller can consult key members of staff at this point, their assistance will be vital in collating information for the due diligence pack.

However, often at this stage the transaction will be kept confidential and it will not be appropriate to consult members of staff and the seller must then prepare replies to the buyer's enquiries.

The buyer should pay particular attention to matters such as registration and inspection issues, claims against the home (whether by residents, their families or by employees), residents' contracts, contracts with local authorities

and matters relating to the property from which the business operates.

One particularly acute factor at the present time is a home's star rating. If a home only has a one star rating, a buyer should be aware of the strict steps that will need to be undertaken to increase the star rating and of the availability of funding for a one star home.

If a full and complete picture can be put together to form the due diligence pack, it will help. If and when gaps appear, they will usually be picked up by the buyer's solicitors and may cause apprehension and further enquiries, ultimately leading to delay.

If an area of concern is discovered with the business then the buyer can seek protection in the form of an indemnity from the seller which will be documented in the acquisition agreement.

If the buyer is acquiring the business and assets of a care home, then the employment contracts of the employees are automatically transferred to the buyer's company.

If the buyer is acquiring the shares in a company, which is operating the care home, the employees will continue to be employed by the same company.

The Acquisition Agreement documents the key points which have been agreed in the Heads of Terms and will include the price payable and when this will be payable.

The buyer will naturally be concerned to ensure that after the acquisition, the seller does not set up a competing care home within the same catchment area.

It is therefore usual to find a clause preventing the seller from setting up a competing business within a defined geographical area and a clause preventing the seller from enticing staff away to work for any new business that the seller might be involved with.

An important part of the acquisition agreement are the



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warranties negotiated between the buyer and seller.

Warranties are a series of statements that the seller makes about the business.

If it transpires that any of the statements are untrue and as a result the buyer or the business suffers a loss, then the buyer may be able to bring a warranty claim against the seller.

The warranties will cover various matters relating to the business, from its property and environmental issues to the business's employees, contracts, litigation claims and tax matters.

Carefully drafted and comprehensive warranties will give you (and your lawyer!) peace of mind.

Once the transaction documentation has been negotiated and agreed the buyer

and the seller will finalise the transaction by signing the documentation and the buyer will pay the purchase price in accordance with the agreement.

If you are a first time buyer or considering selling your care home it is essential to hand pick your professional advisers and in that team, a key player is your lawyer.

Choose a lawyer who has care home experience and can provide tailored advice to your needs and conclude a successful deal.

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