CoffinMew

A guide to buying and selling a care home

Enhancing the value of a business: practical tips for sellers

There are several stages to buying and selling a care home that involve a number of different parties. This guide helps to set out each stage of the transaction process and offers some top tips for protecting your investment.

Our five part guide is aimed at the participants in a care home sale or purchase to give them the heads up on what to expect. The transactions often have many factors to consider from commercial, regulatory, legal and due diligence perspectives. This guide helps to give you a clear idea from the outset of the care home sale process, giving you the peace of mind that your business will be protected from any unexpected issues.

Explore the various elements of the transaction from different perspectives, including the following:

- Who will be involved and what their roles are
- The stages of a transaction
- Enhancing the value of your business – tips for sellers
- Protecting your investments – a buyers guide
- Care homes in financial distress and safeguarding your business

We hope that this guide is useful and always welcome questions and enquiries from existing and future clients. This is an evolving guide and much of the content is derived from working on transactions, and we are open to suggestions to further enhance its usefulness.

If you would like any further advice on buying or selling care homes please get in touch with Dominic Travers or Alexander Wood directly.

Dominic Travers
Partner
Corporate
01273 034761
dominictravers@coffinmew.co.uk

Alexander Wood
Partner
Restructuring and Insolvency
020 3002 2892
alexanderwood@coffinmew.co.uk

coffinmew.co.uk

Enhancing the value of a business: practical tips for sellers

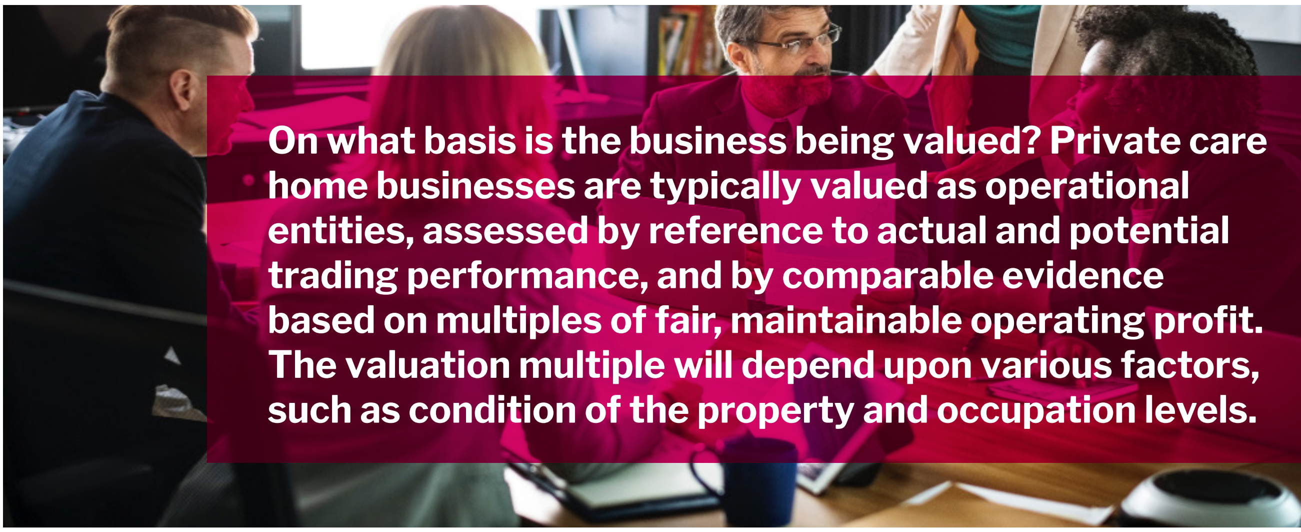
Set out below are some practical suggestions as to how sellers can seek to maximise the price they obtain for the sale of their business or otherwise smooth through the process. Ideally a seller will have done its planning and be on the "front foot" ready to welcome buyers to conduct due diligence on the business, rather than being taken unaware by the work involved while trying to run a business. Many of the examples have cropped up on transactions in which we have been involved.

Planning

Talk to advisers some time before you decide to sell. To obtain the most benefit from tax planning, certain measures need to be in place one or two years before the sale.

Agents and valuations

Choose one with a good reputation who will negotiate the best price on your behalf. The first offer will not necessarily be the best, and agents with a large number of comparable local valuations will be better able to give a steer.



On what basis is the business being valued? Private care home businesses are typically valued as operational entities, assessed by reference to actual and potential trading performance, and by comparable evidence based on multiples of fair, maintainable operating profit. The valuation multiple will depend upon various factors, such as condition of the property and occupation levels.

Confidentiality

Require prospective buyers to sign a confidentiality agreement by which they agree not to use or divulge business information, nor poach employees during or after the due diligence process. Remember that not all potential acquisitions proceed to completion, and the seller would not want a prospective buyer using commercially sensitive information or contacting key staff, residents or their families. If staff and residents discover that the business might be sold, they may become unsettled, whether the deal happens or not.

Exclusivity

Buyers will often ask for a period of exclusivity in order to conduct due diligence on the business and arrange finance. Sellers should, however, not agree to exclusivity until the buyer has proof of funding. They should also resist overly long periods of exclusivity, in order to keep the buyer focused on completing the deal within the prescribed time and thereby limiting potential disruption to the business.

Marketing

First impressions count; like selling a house, kerb appeal is important. Having the property painted and repairing the gutters, for example, may well lead to a quicker sale at a fuller price.

Whenever you are showing around a prospective buyer or an agent, actively market the plus points of the business in a positive manner, while not forgetting to mention potential improvement upsides for a buyer. A well run and maintained care home, and positive presentation should help reassure prospective buyers that they are buying a well managed business.

Put yourselves in to the shoes of a potential buyer. What issues might put you off the business, or potentially decrease the offer price? Consider rectifying those issues pre-sale.

Prior to sale, arrange all the material relating to the business into well organised folders (physical or online), with examples being CQC inspection reports, user contracts, employment contracts, training records, asbestos inspections, fire inspections, H&S records, planning permissions, and accounts. This will give the buyer confidence that the business has been well managed and should speed up the sales process.

Missing records and other information is likely to raise doubts in the buyer's mind about corners having been cut, and possibly lead to the request for a retention from the sales price for possible claims.

Transaction documents

Where assets are being sold, the main transaction document will be a business transfer agreement and a property transfer or lease. Under that arrangement, employees will automatically transfer with the business. Where shares are being sold in a company, the main agreement will be a share sale and purchase agreement.

From a seller's perspective the following should be covered off:

The buyer will (or should) seek warranties covering all areas of the business and tailored for a care home business. These should include additional warranties on regulatory matters, employees and contracts.

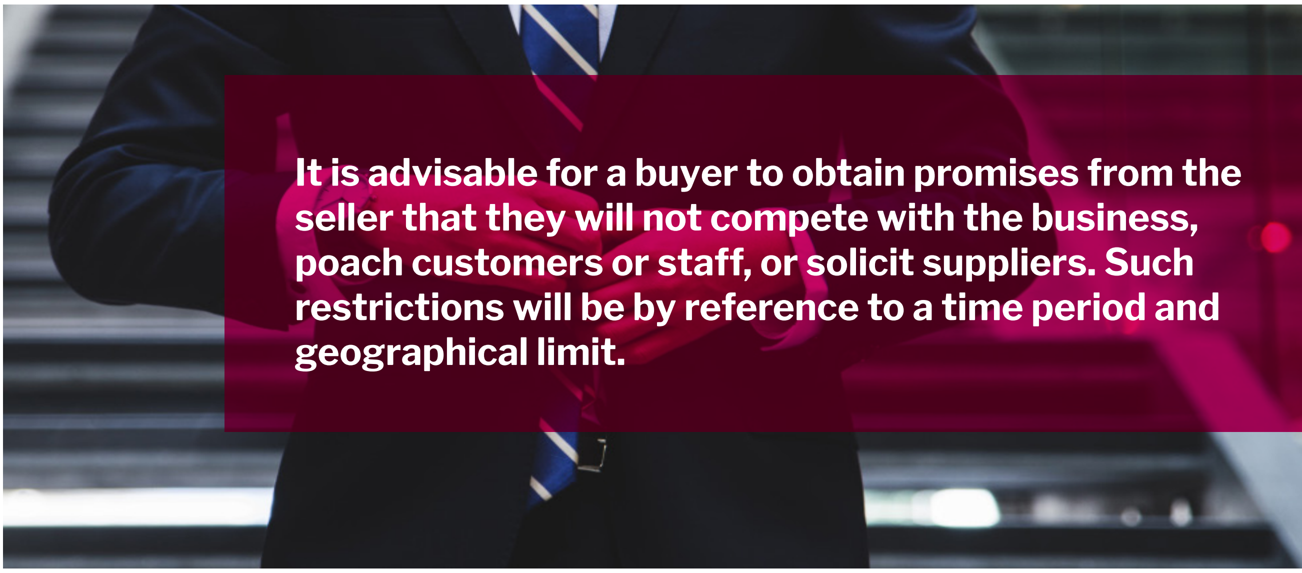
Remember that a buyer will be unwilling to complete a transaction without sufficient warranty protection and its lenders will check that the investment is suitably covered from a risk perspective. An experienced adviser will be able to guide the seller through which warranties are and are not reasonable, which will avoid delays and escalating advisory costs in protracted negotiation.

All properties, employees and other assets of the company will be transferred with the company to the buyer.

As mentioned above, the seller will be expected to produce a disclosure letter by which they provide information to the buyer and qualify the warranties. For example, if there is a warranty that the list of residents is set out in a schedule, and some leave prior to completion (and are not replaced), that fact would be disclosed.

The buyer, having knowledge of that fact, would not be able to bring a warranty claim against the seller. It is well worth the seller going through each warranty and producing a comprehensive disclosure letter as a means of protection. Solicitors can advise on the several ways in which a seller can protect its position in respect of warranty claims.

If the business is being sold on a cash-free/debt-free basis, include adequate completion accounts. Sometimes, to mitigate tax, a seller will retain cash in the business, rather than make a pre-completion dividend. There needs to be a clear mechanism by which the additional cash will be paid out.



If a buyer requests an indemnity for any matters of concern that have arisen during due diligence, ensure that the drafting is tight enough for that specific matter. So as to retain the goodwill in the business it is advisable for a buyer to obtain promises from the seller that they will not compete with the business, poach customers or staff, or solicit suppliers. Such restrictions will be by reference to a time period and geographical limit.

The seller will ideally want to receive all the consideration on completion. It is not uncommon, however, for a buyer to retain part of the purchase consideration for a period post-completion from which it can take payment in the event of a successful claim. A seller would want to have any funds put into an account, over which its adviser has some control, and have a time limit for the notification of claims. In addition, in the absence of such notification, a clear mechanism for the release and payment of the funds would usually be put in place.

There are a number of different stages involved in the process of selling or purchasing a care home, and each stage links to the next one.
For more information on buying and selling a care home, you can download our full guide to care home sales and purchases on our website: coffinmew.co.uk/carehomeguide