A guide to buying and selling a care home

Buying or selling a care home: What stages are there in the transaction process?

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.

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For those who have not bought or sold a business before, the process can be surprisingly stressful and time consuming. Every aspect of the business will be subject to the buyer's and the lender's regulatory, commercial, financial and legal due diligence. Part of the role of advisers is to make the process as smooth as possible, relieving the burden from the parties where possible.

Preparation stage

In this first stage of a care home sale, the seller considers selling the business and takes advice from accountants on tax planning. It is advisable to take advice at an early stage to enable any restructuring to take place; some tax breaks, such as entrepreneurs' relief, are only available after a minimum period of time. The tax advice will partly determine whether a sale is of business assets or of the shares in a company.

Marketing stage

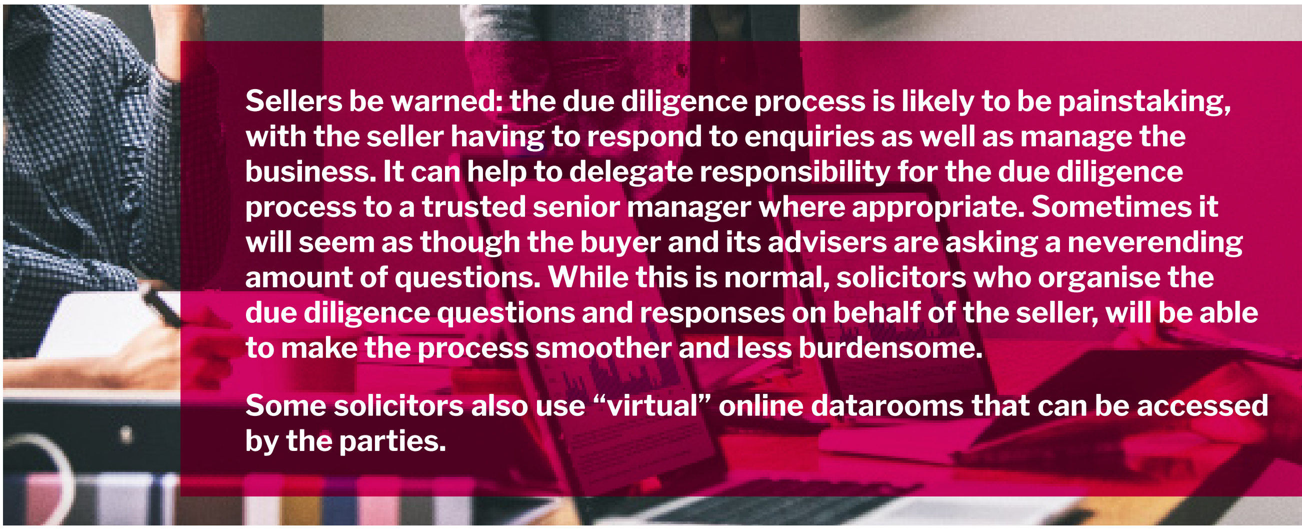
A seller may contact one or more agents to discuss putting the business on the market in the short to medium term. A good agent will advise the seller of local market conditions, conduct its own due diligence on the saleability of the business, give an idea of current valuations, and suggest steps that can be taken by the seller to increase the value.

If the seller instructs the agent to market the business, the agent would then begin marketing to prospective buyers on its database or push it out to the market more generally. The agent will send prospective buyers a term sheet setting out the indicative price or the fact that offers are invited. They will also send an overview of the business to enable buyers to check that lending facilities will be available in principle on the information available. Agents and brokers will vet prospective buyers to ensure that they are serious about the transaction and have the funding facilities available. It is usual for prospective buyers to sign a confidentiality undertaking in relation to information they receive.

Good agents will negotiate on behalf of the seller to maximise the price for the business. It is usual for the favoured prospective buyer to ask for a period of exclusivity in which to complete the transaction.

Due diligence

At this stage, the buyer would conduct due diligence in earnest on the business to satisfy itself (and also the lender if it is borrowing), to fund the acquisition. The buyer or lender will instruct a specialist to conduct a survey and valuation of the business and its property. It is important to instruct the right professionals who have knowledge of the sector and have access to comparable market prices. The buyer's accountants would review the accounts and management accounts of the business, while the buyer's solicitors would send out a legal due diligence questionnaire requesting information about all legal aspects of the business.



Sellers be warned: the due diligence process is likely to be painstaking, with the seller having to respond to enquiries as well as manage the business. It can help to delegate responsibility for the due diligence process to a trusted senior manager where appropriate. Sometimes it will seem as though the buyer and its advisers are asking a neverending amount of questions. While this is normal, solicitors who organise the due diligence questions and responses on behalf of the seller, will be able to make the process smoother and less burdensome.

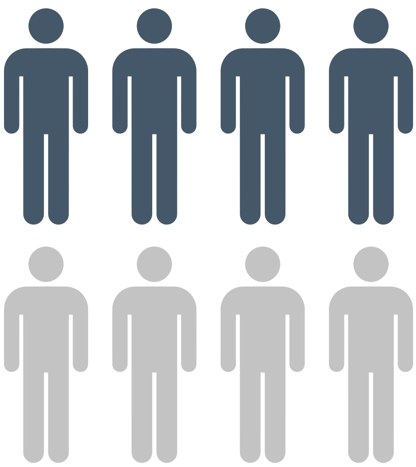
Some solicitors also use "virtual" online datarooms that can be accessed by the parties.

Regulatory compliance

Would-be owners of a care home have to be registered with the CQC (Care Quality Commission) as a 'care provider'. The CQC will need to see evidence that the care home owner has the necessary experience, aptitude and business skills necessary to run a care home.

Where a care home is to be owned by a company or partnership, an individual needs to be nominated to the role of care provider. Additionally, every care home must also have a registered care manager. Such a person must have at least two years' experience in senior care management plus an NVQ Level 4 in Care and Management.

As well as the personnel aspects, care home premises are also subject to strict regulations, such as minimum floor space requirements for communal areas and resident's rooms, ceiling heights, hand and grab rails, en-suite facilities, storage and catering, and laundry.



At least 50% of the staff in your care home must be trained to NVQ Level 2.

Transaction documents and funding

Subject to the previous stages being satisfactory (or running alongside the legal due diligence process), the parties would then instruct their solicitors to prepare the transaction documentation. The care sector is subject to stringent rules and regulations, and matters such as planning and employment are important. It is therefore vital that the parties appoint solicitors who know what they are doing and ask the right questions.

The buyer's solicitors will usually draft a business purchase agreement (where assets are being sold) or a share sale and purchase agreement (where the shares in the company that owns the assets are sold by the seller). Under English law there is a doctrine caveat emptor meaning "let the buyer beware". It is therefore important for the buyer to require the seller to give warranties (or statements of fact) about all aspects of the business being acquired. Warranties serve the purpose of eliciting information about the business in that the seller, through its solicitors, will draft a disclosure letter by which it gives information about the business and makes disclosures against any warranties that are untrue as written. If a warranty is untrue (and there is not a disclosure) the buyer may have a right of action against the seller and obtain damages.

The buyer may seek indemnities for any disclosures that are of concern (an example being the costs of repairs to a lift or actions required under an CQC report) and will require indemnities for any taxation that should have been paid by the seller up to completion.

As well as preparing and negotiating the transaction documents, the buyer's solicitors will deal with the loan facilities agreement and bank security, such as debentures over assets and cross-guarantees among members of a group.

The lender is likely to instruct (at the buyer's expense) its own solicitors who will prepare or review the banking documentation and review the transaction documentation to check that the lender's security is protected.

The transaction documentation is likely to be the subject of negotiation over several weeks. When the CQC registrations have been approved, the funding is ready and the transaction documentation is finalised, then the transaction can complete.

The buyer may be required by the lender to give guarantees and charges over other assets such as houses or other companies.

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