

Quarterly Supplement To
**Business, Legal,
And Tax Planning
for the Dental Practice**

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The purpose of the Quarterly Supplement is to continually update the material contained in **Business, Legal, And Tax Planning for the Dental Practice**, Second Edition, as "free-standing" articles relative to current business, legal, tax and pending legislative matters that affect your practice. These Quarterly Supplements also reflect my ongoing experiences as an attorney representing dental and dental specialty practices. At times, articles will be written by friends who consist of tax attorneys, accountants, actuaries and dentists. The articles contained in the Quarterly Supplements are consistent with the chapters contained in my book, which you may download at www.wickenslaw.com at no charge.



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In This Supplement**

Catastrophe Plan!

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CATASTROPHE PLAN!

Most dentists do not have a current appraisal of the practice, unless it is being sold or an associate is being admitted as an owner. While no one is eager to think about some catastrophe, having an up to date appraisal is much like having an insurance policy. Once the appraisal is completed, it can be easily updated every year.

In a catastrophe, instructions to family members are crucial relative to who will "quarterback" the sale of the practice and get it sold. While all life's important documents should be in one place, periodically updated and discussed with the spouse, this is not often done. Those documents should include detailed instructions to sell the practice, including the identity of the advisor(s) that will handle the sale, as well as a current appraisal.

In the event that the practice is not sold within 90 days of death, the only remaining value will be de minimis value of equipment and all goodwill will dissipate. This becomes important in dealing with non-dentist family members who think the value is much higher than an appraised value. Another reason to have a current appraisal is so that non-dentist family members are realistic when it comes to value. If there is an argument over value or if the practice has not been appraised, which takes time, the value will drop sharply and soon.

Solo practitioners should consider coverage arrangements with study groups or other dentists in the area. Often times those coverage arrangements will provide for the purchase and sale of one dentist or the other or life insurance coverage.

Consider transferring the stock of your professional corporation into a trust so that in the event of death, probate is avoided. Another way to avoid probate is to place a "TOD" designation to transfer to the non-doctor spouse upon death of the practice owner. While your Will can provide for instructions of the disposition of the practice and a sale upon your death, it does not avoid probate, which can be time consuming prior to the sale of your practice.

With multiple owners, buy-sell agreements and life insurance are necessary. With regard to life insurance, the insurance will either be "cross" insurance if one dentist has the obligation to buy the ownership interest of the deceased owner or "key man" insurance in the event that the practice has the obligation to purchase the interest. In the event that one of the professionals in a "partnership" or group cannot obtain life insurance, the buy-sell agreement provisions would provide for the buy-out either be made in cash by the surviving owner or practice securing a loan and paying out the deceased owner's estate or by payments over time. The buy-sell agreement should be drafted to provide that the purchase price, either agreed upon or by formula, would be paid from the proceeds of insurance not to exceed the purchase price. Any remaining insurance proceeds would be payable to the estate. The buy-sell agreement would also contain an insurance exhibit or schedule that would provide the name of the insured, the policy number, the beneficiary, the insurance company and the amount of the benefit. Often, there will be more than one policy. The life insurance ownership by the individuals and/or practice would track the business and tax structure of the buy-out. Therefore, it is important for the insurance advisor to understand how the buy-sell agreements are drafted so that insurance policies are properly owned.

In a solo group or office sharing arrangement, where two or more practices operate in the same facility, but are separate, life insurance should still be placed with the obligation of the surviving solo group member to purchase the practice of the deceased owner.

One of the most difficult situations is where the practice employs an associate and the appraisal hasn't been completed or agreed upon. Unfortunately, many practice owners do not have the appraisal completed prior to the associate joining the practice. Even if it is completed, there should be an agreement in place, whereby the associate will purchase the practice upon pre-agreed terms and conditions, hopefully for cash. Usually, this type of planning does not take place. Probably the worst situation is for a practice owner to die with an associate in the practice without a restrictive covenant in place. This means that while the associate may purchase the practice in the event of the practice owner's death, it also gives the associate extremely strong bargaining power to walk away and dilute the purchase price.

Some of the detailed instructions to the non-doctor spouse should include the continued employment and payment of staff and continuation of practice operations until the sale. In this situation, multiple advisors will be involved. Those advisors include the broker, accountant, administrator or the trustee of the estate, estate planning attorney, business attorney and retirement plan administrator who all need to coordinate efforts through the individual who "quarterbacks" the purchase and sale.

With regard to the lease where the deceased practice owner does not own the building, consider updating or amending the practice lease to provide assignment without the consent of the landlord upon death. Additionally, for any dentist or specialist to buy a practice, there has to be a sufficient amount of time under the lease term, plus possible renewal options. These items can be discussed and, hopefully, negotiated with the landlord. Additionally, it may be appropriate to include a provision in the lease for the premises, whereby such lease will terminate at the option of the lessee's estate in the event that the practice is not sold. In such case, the non-doctor spouse or the estate would not be obligated to continue paying the rent beyond a certain time period.

In the event that the practice owner owns the building, there should be buy-sell agreement provisions in place for the building to be transferred to the non-doctor spouse upon death or to the partner, solo group member or possibly the associate who will purchase the practice. A current appraisal or appraisal formula should be completed or contained in the buy-sell agreement, which provisions are delineated in a limited liability company operating agreement; either single or multiple member.

In the event that there is an outstanding mortgage upon the real estate, the advisors need to review the loan documents to ensure that the lender will permit the sale of the real estate to a third party. I recently encountered a dentist with a health condition who spent a significant sum on a new building and its improvements. Unfortunately, the lender has sole discretion on whether the ownership interest can be transferred to a third-party under any circumstances, including death.

Once the practice is sold, any retirement plan would be formally terminated and the practice entity would be dissolved. Both of these items are technical matters that should not be forgotten.

The practice is clearly a valuable asset as is the practice real estate. Consider obtaining and continually updating the appraisal of your practice and any real estate and have a written "game plan" for the sale of the practice in the event of death.