

# SELLER'S GUIDE

Written by Tony Townsend, Sales Director at Orridge Business Sales Ltd.

Unlike pharmaceutical matters, valuation is not a precise science. It is an exercise in analysis based upon trading history, forecasting future trends in sustainable turnover and profitability, our past experiences and even more importantly in today's market, evidence obtained from actual completed sales transactions. The more examples we have at our disposal, the better the result of the exercise.

By skilful interpretation of the results of actual sales achieved in today's marketplace and by successfully negotiating the sale of more pharmacies every year than any of our competitors, Orridge Business Sales Limited remains the UK's leading pharmacy agent.

**SELLING** any business can be a daunting prospect for many. The transaction can be a complex if not tortuous affair for the unwary. Guidance and protection for both parties will be required throughout the procedure and the services of a solicitor and accountant experienced in the sale and purchase of pharmacy businesses is essential. A business transfer agent brings added expertise to this specialist field, linking these professionals together and advising the most appropriate route forward or around an obstacle. Well chosen advisers will prove to be a very cost effective investment, avoiding many pitfalls and possibly most important of all, helping to avoid the trauma often associated with a costly abortive exercise.

All sellers have different reasons for wanting to sell their business. It can be retirement or just simply wanting a change of lifestyle. Whatever your reasons we strongly advise that before you commit yourself you are absolutely sure this is what you want to do. Selling your business, especially if you've been there for a long time and have an emotional attachment to it, can be a very stressful procedure. As your agents we will try to minimise this stress but there is plenty that you, as the owner, can do before coming to the market. Be prepared.

**CAVEAT EMPTOR** is probably the most recognisable phrase associated with the transfer sale of any business. Indeed, *let the buyer beware*.

But what about the vendor? Too often we hear of vendors who have undersold their business to an old acquaintance, manager or supplier, never once believing that this buyer would fail to pay less than "open market value" for the going concern. How could they if the business had not been exposed, even with the utmost discretion, to active buyers in the wider market?

It is inevitable that a buyer will always attempt to acquire a business at the lowest possible price. Competition through expert negotiation will ensure that the price paid for the business equates to full market value under prevailing market conditions.

**MARKETS** change continuously and the pharmacy market is no different to any other. It does not fluctuate with quite the same erratic behaviour of say the stock market but nevertheless, it does rise and fall in line with changes to supply and demand (often dictated by the supply of money or in line with changes to reimbursement practice) and moves along with the economy in general. The advice of a professional and competent business valuer is a solid and cost effective investment in the potential value of the business. Indeed, the very best agent will add to the goodwill value by his recent knowledge of activity within the local geographical area.

**LOCATION** Yes, you have heard it all before but nothing is quite as important as location and the security that location might offer to the future earning power of the business. Demand will be higher for pharmacies deemed secure, dare we use the expression "fire proof" against likely failure or future attack by predators. A good location will pay dividends, whether it is reward today to the vendor or future security for a purchaser.

**PRICE** is determined, principally, by demand. For the most highly prized pharmacies, there is sometimes frenzied negotiation where a large number of potential purchasers compete with those boasting the largest market share within any given catchment area. It is important for the vendor to be confident in the agent's awareness of the market. Will all potential buyers be given equal opportunity to buy the business? Are there any pitfalls to be avoided? Does the highest price always equal the best deal? As a seller you may have preferences as to whom you would (or would not) want to sell to, a good agent will always be sensitive to this.

**VALUATION** and negotiation are inextricably linked and this point is often overlooked and misunderstood by buyers and sellers. A valuation of a business begins with an appraisal of recent trading history but it is then "weighted" according to the valuer's knowledge of that type of business, in that area and the type of buyers actively and successfully buying similar businesses. The agent must consider each particular business in relation to its current size and profitability, potential for growth and development, opportunities for expansion in the hands of new proprietors and the benefits available to increase profit or market share or deny access to other competitors intending to encroach upon the opposition's traditional trading areas. All these points influence the outcome, in terms of achieved price, when comparing a valuation to an actual sale price. The last true valuation of any business is the price achieved when it was last sold in a competitive environment on the open market.

**SHARES OR ASSETS?** If the sale or purchase is of a business currently owned by an independent operator trading as a limited company, the transaction will almost certainly take the form of a share sale, which has specific taxation advantages to the vendor. A purchaser acquires the assets of the business along with pre-existing liabilities and it follows there is usually an extensive set of Warranties required to protect the buyer from unexpected liabilities. A due diligence exercise (a close examination of the financial/legal state of the business and to verify representations made by or on behalf of the vendor are accurate) is quite expensive but will be necessary not only to satisfy the purchaser but most importantly, satisfy the bank/supplier providing the funds/loan guarantee.

An asset sale can take place by extracting the business from the limited company or winding up the company itself but this has become quite rare. It is more usual for a pharmacy owned by a sole trader/partnership to take place as an asset sale. The buyer purchases that intangible but most valuable asset "goodwill" along with the fixtures and fittings and trade equipment which form the contents and then pays an additional sum on completion for the stock in trade.

**BUYERS** usually register their interest with several agents who specialise in the pharmacy field and who offer businesses in their chosen geographical area. Frequently independent buyers and regional operators will restrict their search to specific parts of the country, whilst the multiples are generally perceived to have no such barriers. This is not entirely true. Multiples might, indeed, have target areas for expansion but often they feel they are sufficiently well represented in some parts as not to need further outlets.

**SELLERS** inevitably call for a valuation initially to help decide whether the time is right for them to sell what has probably become their largest single investment, often referred to as their "pension pot". The last few years have seen a staggering rise in the number of "incorporations", well-intentioned advice from owner's accountants to take advantage of taxation rules which reduce the individual's liabilities.

The valuation of a business, which will eventually be offered for sale by way of shares in the company, will, initially, be approached as a straightforward asset disposal. The value of the goodwill will be calculated by reference to recent market evidence gathered from the successful sale of similar businesses. The resulting figure will be further adjusted by consultation between accountants acting independently for the buyer and the seller to allow for changes to current assets and net liabilities since the last financial years results were audited.

**PROPERTY** at which the business is conducted will generally fall into one of two categories. It might be a freehold interest in the property owned by the vendor who might choose either to include the property or to retain the freehold interest and to grant a new lease to the buyer of the business. A cautionary note: - where the business is being sold by a limited company, it does not necessarily follow that that company also owns the property. One or more of the directors or members of the vendor's family might own it separately. Living accommodation forming only a part of the property might be subject to an existing or proposed tenancy agreement.

Both parties' solicitors will need to establish the precise nature of any existing agreements to be excluded or included with the sale of the business. A separate valuation of the "bricks and mortar" will be required if included within the sale and as a purchaser's bank will normally nominate one of their approved "panel" valuers, the cost is usually borne by the purchaser.

Leases are frequently protected under the Landlord and Tenant Act 1954 resulting in virtually an automatic renewal (subject to agreement upon the revised/amended terms as permitted under the lease) upon expiration of the old lease, always assuming there are no pre-existing breaches of terms and conditions. That does include paying the rent! Occasionally a lease can be "contracted out" sometimes described as "excluded from the Act" where the tenant has no automatic right to renewal. A new agreement will need to be negotiated with the landlord. Leases *per se* have nil monetary value unless there is a "profit rental" i.e. a contracted rental paid below the current market value.

Assignment of an existing lease should be relatively straightforward providing acceptable references can be supplied in favour of the purchaser. It should be remembered the landlord will engage a solicitor and his legal costs will frequently be borne by the purchaser. Delays to the transaction can occur where landlords cannot be located except through their managing agents and ample time should be allowed to trace errant owners. Just as your solicitor will try to protect your interests, the landlord's solicitor will invariably wish to safeguard his client's entitlement to continue to receive rent and future rent revisions.

**SOLICITORS** acting for the buyer and the seller will need to agree the sale/purchase agreement or contract. Do remind your legal adviser that an NHS contract cannot be produced in evidence as a written legal document! Both sides, rightly, will attempt to secure maximum protection for their clients but inevitably some further negotiation and a need to be a little flexible might become necessary. The agent is frequently called upon to persuade the other party of the "reasonable stance" adopted by the other side, even sometimes if he does not entirely agree. Good advice would be "leave room for manoeuvre". Do not lose sight of the overall objective (to sell) by becoming obsessed with a minor dispute, however irritating it might become to the parties involved.

**FIXTURES AND FITTINGS** transferred with the sale of a business usually attach to the sale contract papers in the form of an Inventory. Some items of trade equipment might be subject to existing finance agreements which might not be directly transferable to a purchaser. It is important to obtain copies of all agreements and establish precisely what is being bought and sold. Vendors might need to obtain a "settlement figure" from the supplier, ending the finance/hire agreement before selling the item which is now legally his to the buyer.

**EMPLOYEES** will generally remain with the business after completion of the sale as a going concern due to the protection afforded by the Transfer of Undertakings (Protection of Employment) Regulations 1981. Gone are the days when purchasers could remove existing staff by replacing them with their own employees.



**FINANCE** - banks generally see pharmacy as a stable business with good returns especially in relation to other High Street outlets and as an agent we will always try to support a credible buyer with advice on how to go about raising finance. But, as we act only for the vendor, our concern is solely directed towards their best interests. A good agent will not accept any offer unless it is fully supported by either a bank loan or proof that private funding is available. We will not start the transfer process - incurring you costs - by instructing solicitors and accountants only then to find that finance is not available.

**STOCKTAKING** should be straightforward, early on in the transfer process agree with the buyer how you want to go about this. Will you each have an individual stocktake or are you happy to instruct one and then share the costs, in either case try to agree on this sooner rather than later and make sure that whatever you decide on the stocktaker is booked in plenty of time.

**TRANSFER OF NHS CONTRACT** is normally managed by the buyer and it is incumbent on them to inform the local PCT that they intend to buy the contract. When selling assets - as oppose to shares - the PCT will need up to 45 days to make any enquiries about the buyer which will include asking all the local competing pharmacies if they have any objections. It is at this point that your proposed sale will become known and you may wish to consider how you want to address this with the staff. It will normally be unnecessary for a change of ownership application in the case of a share sale but courtesy notification to the PCT will not go amiss. If anything has crept into procedures to cause a delay to the transaction these days, it is a buyers Fitness to Practice. A buyer recognised by one PCT might feel he is treated as an alien if he tries to buy a business in a neighbouring area.

**LEGAL COMPLETION** is time to review arrangements which have been made or might have been overlooked. With the modern-day practice of simultaneous exchange of contracts and legal completion, there is little time for complacency or manoeuvre. On the day of completion the buyer's solicitor will transfer the balance of funds to your solicitor in order to trigger release of the keys [less any deposit which might have been lodged by the purchaser] to the owner's solicitor, frequently withholding a percentage of the purchase price known as a retainer. Essentially this is a sum of money withheld by the purchaser against any potential claims against the business which only arise and become known after the date of takeover. A retainer can be held for usually up to 12 months from the day of completion but are released in full providing no claims have been made and all warranties have been satisfied. The whole process, on average, should take approximately three to four months from the time of instructing solicitors to the day of completion.

Many clients only go through this process once in a lifetime. We have over two lifetimes worth of experience working on this process alone; that's why you should call us if you're thinking about selling. Our aim with every single sale is to achieve a problem free transaction, at the highest possible price to the most suitable buyer.

**SCOTLAND & NORTH** | STEWART HOUSE, STEWART ROAD, FALKIRK FK2 7AS  
**01324 631 542**

**MIDLANDS & WALES** | SOVEREIGN HOUSE, 22 GATE LANE, SUTTON COLDFIELD B73 5TT  
**0121 362 8880**

**SOUTH** | QUAY WEST, SALAMANDER QUAY, PARK LANE, HAREFIELD, MIDDLESEX UB9 6NZ  
**01895 549 659**