



Advance
Business Brokers

W 61 8 6401 3789

M 0416 109 017

Email angela@advancebusinessbrokers.com
AIBB Certified Practising Business Broker (CPBB)

Sale Process - General Information for Sellers

Website Listings

Your listing will show on www.advancebusinessbrokers.com, www.advancechildcaresales.com.au, www.buyingsellingsbusinesses.com.au, www.seekbusiness.com.au, www.Businessesforsale.com, www.Commercialrealestate.com.au

GST

GST is not usually payable on the sale of a business if the business is sold as a going concern. The new owner must be registered for GST prior to purchasing the business. There are other criteria set by the ATO in this regard to deem the business to be defined as a "Going Concern". Please refer to the ATO, your solicitor or accountant for further clarification.

Enquiries from Prospective Buyers

All enquiries will complete a Confidentiality Agreement prior to business information being supplied. This will include - but not limited to -

- Profile of Business
- Profit & Loss accounts for the last two years
- Schedule of Lease from your lease document
- Schedule of Franchise Agreement if applicable
- Balance sheet
- Plant & equipment list
- Staff information - roster or information on qualifications, wages, position
- Occupancy reports
- Centre license
- Centres latest quality report

Be aware that prospects may wish to speak to your accountant.

The following information should NEVER be disclosed until or close to settlement:

- Client lists
- Database information
- Corporate client names and information
- Full names of staff until staff are required to be issued with letters of offer by purchaser.

This is your GOODWILL, and revealing this information may be damaging to your business.

Contracts

After the purchaser has viewed the accounts and done their due diligence in conjunction with their financial adviser, accountant and possibly lawyer, an offer is negotiated. Due diligence may be a condition of contract. This can include but limited to :

- Bank Statements
- Sales/occupancy reports
- Lease
- Staff contracts
- Debtors
- Expenses – invoices
- Supplier contracts
- Financial accounts up to 5 years

A contract is drawn up by Advance Business Brokers or your solicitor, or in some cases the Franchisor. This will first be forwarded to the vendor for their inspection and then presented to the purchaser for signing prior to the seller signing. This process can take a couple of weeks depending on the complexity of the business.

A contract may also be subject to finance. The standard finance clause is 60 days for businesses. Banks do very thorough due diligence and it is not unusual currently for finance for business transactions to require extensions to finance beyond what may be in the contract.

The contract must have attached to it the following documents if applicable - or any other documentation applicable to sale.

It is the sellers responsibility to ensure the following documentation when applicable, is ready to give to Advance Business Brokers so contracts can expedited swiftly.

Copy of the Full lease of the premises with all amendments, extensions

Copy of full lease or hire agreements being transferred to purchaser

A complete final list of all fixtures & fittings and plant & equipment that are being sold as assets with the business. These would include e.g. air conditioner in the wall that a previous or current lessee has installed but not been paid for by the landlord.

Copy of business registration name with ASIC

Copy of Child Care license

Leases

Most contracts will be subject to the transfer/assignment of lease or the negotiation of a new lease on terms acceptable to the purchaser. This is covered in nearly all states under specific Commercial Real Estate Acts. Childcare Centres' as a service industry are not covered under the Commercial leases ACT in WA so approval is at the discretion of landlords within reason or the terms outlined in the current lease.

Where time is of the essence, the vendor or the vendor's settlement agent should notify the landlord or their representative in writing as soon as contracts have been signed. This should be done in writing as the landlord must approve or decline the buyer.

It is then up to the purchaser or their representative, to expedite the transfer or new lease. Most commercial leases require a bond or bank guarantee for between 1 - 6 months rent in advance. The commercial norm is 3 months rent in advance. Bonds may vary between different applicants. This is in addition to the first months rent in advance.

Once the landlord or managing agent has approved the buyer/applicant the Department of Communities require a letter from the landlord/managing agent confirming the approval to lease. Childcare licensing will not commence the Transfer of License application until this letter is provided along with the transfer paperwork.

The following may be required: - Business references – ie. Bank manager, accountant, previous work references or suppliers

- Business Plan
- Qualifications – experience
- Statement of financial situation
- Copies of Bank Accounts
- Transfer of lease document
- Bond
- Rent in advance – this can vary from 1 month to 6 months for shopping centres
- Guarantors
- Credit checks
- Where finance is involved Right Of Entries may be required by the Bank providing finance

Where the current vendor has a good relationship with the landlord or their representative it can help this procedure, if they can assist the purchaser with this process.

Council Health & Safety checks

Some purchasers may make the above check a condition of contract. If this is the case as soon as contracts are signed the vendor should organise with their council to make a time to visit the premises to conduct this check. Councils can take up to two weeks to make an appointment and there maybe things they require to be attended to.

Child Care Centres – Licensing

Department of Communities is currently quoting 45 days for transfer of license to be processed. If the buyer does not have a Child Care provider number this will take up to an additional 90 days which must be secured prior to applying for transfer of service license.

Existing Child Care Providers

As existing Child Care Providers will already have a Child Care Provider Number only a transfer of the Existing license of the Centre being sold is required. This will require the completion of form: 1-SA04_NotificationOfTransferOfServiceApproval-CBC_v4.pdf This form is available at the Department of Community Website.

Approval by landlord of assignment of lease must be in writing and supplied with this application form.

This form takes approximately 30 – 45 days to be processed by Dept of Communities.

If the buyer is purchasing the Centre in a New company they will need to apply for a NEW provider number for that particular Company and do the full process below.

Child Care Centres - NOT an Existing Child Care Provider

Buyers will need to complete the following forms to first be approved by the Department of Communities prior to applying for transfer of license of Centre being purchased.

PA01_ApplicationForProviderApproval_v4.pdf

PA02_DeclarationOfFitnessAndPropriety_v4.pdf

1-SA04_NotificationOfTransferOfServiceApproval-CBC_v4.pdf

To lodge the above forms you will require:

Police Clearance – obtained via Australia Post – takes approximately three weeks so it would be suggested this be applied for as soon as Contracts are signed.

Working with Children application – applied for via Aust Post - approximately three weeks.

Again approval by landlord of assignment of lease required for transfer application.

The Application for Provider number takes approximately 90 days to be processed. They can happen more quickly depending on work load at Communities.

All of the above forms can be lodged together OR; The First two can be lodged (must be lodged together) and then the transfer can be lodged once the approval from Landlord is received and finance has been approved.

It is advisable the above forms PA 01 & PA 02 be lodged as soon as possible after signing of contracts to expedite the process.

Settlement

Prior to settlement you should consider all of the following as to whether they need to be actioned and when -

- Have an IT professional back up any information on the office computer you may wish to keep and wipe all personal information not relevant to the running of the business. Including any accounting information relating to your business or personal tax returns.
- Change over or cancellation of phone, fax, mobile phone numbers, internet connections and website keys to take-over websites and domain names.
- Purchasers have to set up their own new EFTPOS/merchant facilities as your facility needs to be cut off exactly at time of settlement.
- **Staff** – if the current business is a Pty Ltd company with ASIC then any staff regulations are covered under Fair Work Australia. If it is sole trader or Partnership staff are covered under Wageline.
- The General Conditions for the Sale of Business will state how staff will be administered in relation to the sale. The conditions may say termination on day of settlement OR buyer agreeing to take-over existing staff. A seller must read carefully the General Conditions of Sale contract as to their liability in regard to staff and staff entitlements. However, it is **IMPERATIVE** that both the Seller and the purchaser follow the rules relating to termination under the applicable Government Body listed below. Failure to do so can result in existing contracts being enforced.
- It is **IMPORTANT** – that a seller make enquiries with the relevant organisation or seek professional advice as to the requirements under the relevant ACT, relating to termination or transfer notices, prior to or at the time a Contract is entered in to.
- What entitlements are required to be paid out at settlement, how far in advance they are to be advised, how they are to be advised e.g. in writing. It can be very important that at the time staff are advised of their termination, (if that is the conditions of contract) that the purchaser has new employment letters ready to be handed out so they are not left in limbo wondering if they still have a job. It can be a good idea if there is a staff meeting and the current owner and purchaser handle this process together. The purchaser can then also do a brief interview with each employee at this time if they wish.
- Or, if they are not being re-employed advised of such. Under the AIBB General Conditions in the Sale of Business Contract, (Section 12) states the conditions of contract relating to Staff. Please read carefully and implement at time of contract if applicable.
 - Is the Business name registration current so it can be transferred to purchasers? Check date of expiry.

- Transfer of domain names, websites with any keys and passwords that are required for access and continued use.
- Hand-over period agreed to in the contract. This can vary from No days to One month or longer depending on the value and type of business being sold. The average is 5 - 10 working days. This needs to be discussed prior to contract and will depend on the experience and requirements of the purchaser. This is provided at NO COST to the purchaser and is part of general conditions in a standard Business for Sale Contract. It is to provide the purchaser with a reasonable understanding of the business to help ensure a smooth continuance of the day – to – day running, names of suppliers and introduction to regular customers. As hard as it can be once settlement has occurred it is no longer your business. During this hand-over period you are there to guide and assist by providing the information they need to continue running the business. The seller is not there during the hand-over period to actually “work” in the business and is under no circumstances to handle money.

How you use to do things is probably not how they operate and that is their prerogative.

Personal Properties & Security Act

This Act was legislated 30 January 2013. If a business has plant & equipment/assets it may be advisable to be registered under this Act. There is a minimal cost for registration. If you are unaware of the ACT I would recommend you discuss with your accountant. Having Plant & equipment registered provides for clear title at settlement.

It is particularly relevant to any items that are on lease, hire purchase, mortgage, rented out, borrowed or under finance. Cars owned by companies should be considered.

The ACT does not apply to land or properties.

Deposits

A deposit will be collected at the time of contract. This is usually 10% of purchase price. Less than 10% will be discussed with vendor at time of negotiation.

The deposit will be held in the Trust Account of Advance Business Brokers until settlement. At that time a tax invoice for the commission due including GST, will be issued and any surplus funds will be paid direct into your bank account or Trust cheque will be forwarded to you depending on your wishes

Any additional funds due if applicable, will also be payable at settlement day.

Settlement

Rarely do businesses actually settle on the date set in the contract. Due to the complexities of business sales a date is set as the date both parties will aim for. If any issues arise during the contract period it is helpful if the settlement agent informs the broker. If we are not informed of a problem it is very difficult to do anything about it.

Settlement can vary from business to business, but generally speaking, around 16 weeks from contract signing is the norm for Childcare Centres.

Words of Wisdom

Business sales are never straightforward. From the point of negotiation onwards – if both the seller and buyer both work diligently towards a positive outcome the business should reach settlement. The Broker is there to assist this process.

Go with the flow and within reason, don't try and enforce deadlines for finance, due diligence, leases, transfer of licenses, where they are out of the control of the buyer.

We hope you have found the above useful.