PUBLICATION

Five Steps Every Operator Should Take Before a Sale (Even If You Aren't Planning to Sell)

Authors: Claire T. Tuley
April 18, 2022

Selling a long term care facility is a labor-intensive process, and one that often must be kept confidential until the sale occurs. During this time, the seller has a duty to provide due diligence to the purchaser. It can be difficult for sellers to balance those deliveries with the need for confidentiality. So, how can a seller gather large amounts of information about the facility without disclosing the sale to the facility employees?

The good news is that there are proactive steps a seller can take as soon as the Letter of Intent (LOI) is signed that will make gathering due diligence easy without raising suspicions among key employees. And if you're not planning to sell? We still recommend implementing these steps! This will make your next refinance much smoother. And if that offer you can't refuse comes in, you'll be even better prepared.

1. Assemble your transaction team. Ideally, your transaction team should include at least one person from your corporate office involved with operations and one person from the facility; however, most sellers are understandably wary about including facility personnel in the early stages. If you don't want to loop in someone from the facility, make sure that a member on the transaction team already has a good rapport with the facility administrator and has requested facility updates and documents from them in the past.

2. Know your land. Some sellers don't think about the land on which the facility is located when they prepare to sell it. There are two things you should always know about your land:

a. Do you own any adjacent vacant parcels that a purchaser would be interested in? If you do and want to sell it, make sure you have the survey and title information for those parcels handy. And if you don't want to sell adjacent parcels, make sure the purchaser understands that and their parcels are excluded in your LOI.

b. Are there any restrictive covenants or easements that impact your use of the land? Do you lease parking spaces from another property owner? Is there anything a little odd about how you use the property? Get that information to the purchaser as soon as you can to avoid any surprises.

3. Hold onto your closing binders! As soon as the purchase agreement is signed, the purchaser will ask for the most recent title policy, survey, and third-party reports. You should have these from when you purchased or refinanced the facility. Having these on hand so you can deliver them right away will make the purchaser very happy and speed up the due diligence process.

4. Hold onto your contracts too. Compiling a list of material service contracts at the facility can be difficult, but it's crucial. Failing to provide a full list can lead to a contract that isn't assumed or canceled, which will be a cost to the seller. Typically, you will have to reach out to the administrator to ask for these. If the administrator is not aware of the sale, you can say the request is related to a refinance or internal audit. One "cover story" we recommend isn't really one at all – any long term care operator, not just sellers, should implement a policy that requires their corporate office to keep up-to-date copies of all service contracts. As the responsible party under those contracts, you need to know what your administrator has entered into on your behalf. You also should check to see if any of the contracts are master agreements that include other facilities and therefore can't be assigned or contain confidential terms, such as pricing, that cannot be disclosed to a buyer.

5. Let us know about facility changes. As seller's counsel, we need to know if anything changes at the facility. Are there any repairs that might lead to a mechanic's lien? Did your administrator enter into a new service contract? Are there any threatened lawsuits? All of that information needs to be disclosed to the purchaser, and we can help you with that communication.

We know that selling a facility can be intimidating, especially when you have to rely on a small internal team to keep the matter confidential. But if you go into the process with a plan, you can keep due diligence organized, under control, and most importantly, quiet.

For more information, please contact Claire T. Tuley or any member of Baker Donelson's Long Term Care Group.