

Should your surgery building be held as a partnership asset?



A surgery building is one of the most valuable assets a GP practice may own, so it is important to understand the implications of how it is held. Partners need to be clear whether their property is held as a partnership asset or not. The answer can have significant implications in relation to ownership rights and obligations, occupancy and even tax.

The nature of partnership assets is complex, but we have summarised some of the main features of holding the building inside and outside the partnership:

1. When the surgery building is held by the partnership

As a partnership has no 'legal personality' it cannot hold property in its own name. Partnership property, therefore, has to be held on trust.

If a surgery is held as a partnership asset the legal owner(s), who are generally those named at the Land Registry, hold the surgery on trust for the 'beneficial owners' who are all the partners in the partnership. There is often reference in GP partnerships to 'owning partners' and 'non-owning partners', but the starting point in law is that all partners are equal owning partners unless there is evidence that something else has been agreed.

It is of course very commonly the case that some partners have a greater interest in the surgery than others, or that some partners have no ownership interest at all, but if the surgery is a partnership asset this will need to be stated. This means it is critical that all rights and entitlements in the building are documented. Otherwise, there is likely to be scope for confusion and disputes over your most valuable asset.

2. When the surgery building is held outside the partnership

If the building is held outside of the GP partnership, then it is generally much clearer who owns it.

The 'legal owners' named at the Land Registry will normally have full ownership rights and be entitled to make decisions such as when to sell or develop it, and be entitled to rent from the partnership occupying it.

However, in this scenario clarity needs to be given over the basis on which the partnership is occupying the building. This could, for example, be via a lease, a licence, or documented in the partnership agreement. Without this being documented, non-owning partners are potentially vulnerable.

Our recommendations

1. Know where you stand

It is essential that all partners understand if the property is held as a partnership asset or not. This should normally be clear from the partnership agreement and supported by the accounts.

2. Check how things have been documented

Next, you need to check that suitable documentation is in place. This should cover the ownership and occupancy of the property. It is always advisable to seek the advice of an experienced legal team here, to ensure all documentation is fit for purpose and up to date.

3. Understand how the situation can change

Finally, be aware that there are situations where a surgery building may 'accidentally' move in and out of a partnership. This can have very significant implications, such as for NHS Premises Funding and for Stamp Duty Land Tax. (For more details on this topic, see ['Are you liable for a 'hidden retirement tax'?](#))

When it comes to property owned by a GP partnership, sadly it's not as straightforward as simply having your name on the deeds. It is a complex area of law and having the right documentation in place is crucial, if you're to guard against potential disputes in the future.

For more information about partnership deeds and assets, or any other related issue, please contact Daphne Robertson on **01483 511555** or email d.robertson@drsolicitors.com