

Buyer Beware: Take Seller Employment Agreements Out of Practice Purchase Contracts.

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When buying a veterinary practice, a Buyer often finds it helpful to hire the Seller back for a transition period to work as an associate in the practice. This is especially true in specialty practices. It is a natural fit since the Seller knows all of the referral sources of clients, and can make the clients and their pets comfortable with the new veterinarian.

As logical as these arrangements are, a very high percentage of them do not last long term and result in the Seller being forced out of the practice. This can be caused by many factors, from there not being enough work to support both veterinarians to the staff not recognizing the Buyer as the new owner. Whatever the reason, if the Buyer has made a long-term commitment to the Seller, he or she may be forced to cancel the Seller's employment, resulting in litigation between the Buyer and his or her associate-Seller.

In drafting practice purchase agreements, it is often tempting for the Buyer and Seller to have the terms of the post-sale employment embodied in the purchase agreement so as to alleviate additional legal and other practice transition related fees. Beware, as this can be a fatal mistake! If the Buyer breaches the employment provisions contained in the practice purchase agreement, this may void the entire contract, including all covenants. This would result in the Seller being free to compete with the Buyer, and having the right to solicit the clients and hire the staff away from the Buyer's veterinary practice. The Buyer may even lose the entire practice! Understand that this is not applicable for a Seller who is staying post-closing simply to finish up cases and to help transition the practice to the Buyer. However, if you are contemplating keeping the Seller around for a year or more, it is strongly recommended that you do not cut corners on an otherwise innocuous relationship.

A simple solution is to create a separate employment agreement for the Seller, and to avoid incorporating that agreement into the practice purchase agreement. By doing this, the Seller's remedies would be limited to monetary damages, and won't give the Seller an excuse to "take back" the practice. It does not need to be a lengthy document but adequate time should be spent on limiting your liability for patient treatment and maximizing both parties tax incentives for such continued arrangement. In fact, if done correctly both parties can profit handsomely from such arrangement, especially for doctors in their late 50's to early 60's as it relates to retirement planning.

Another solution is to determine if the practice can even support a long term employment of the Seller, even on a part time basis. If a practice produces less than Nine Hundred Thousand Dollars (\$900,000), I would suggest that providing even a single day of employment is harming your ability to optimize your production capability and, therefore, you should not embrace a long-term employment with the Seller. First, you need to determine what you can produce on a monthly level and determine if you cannot

adequately meet the monthly doctor production of the practice you are looking at acquiring (note: you need to analyze the production of the practice, not the collections as this is the actual work you will be providing on a monthly basis). If you can provide all of the doctor production, then continued employment of the Seller should probably only be done for a short period of time, and usually only to help transition the practice to you and complete any uncompleted veterinary work. However, if you cannot adequately provide all of the doctor production, then requiring the Seller to stay on at least for a year is an integral part of the acquisition. Be careful though to limit the Seller's employment to one to two days per week as anything more may prevent you from transitioning the patient base over to you.

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