

HOW TO PROTECT YOURSELF WHEN ACQUIRING A VETERINARY PRACTICE

I must admit it. It has taken me years to get up the courage to say this since it seems that everyone hears this saying and automatically believes it to be true, but I can't take it anymore! I hate it when people say anything with the phrase "win-win" in it! "I have a win-win philosophy." "We approach this from a win-win position." "How can we make this a win-win transaction." This phrase has been hijacked for people really trying to say: "I don't want this to be a hassle and I want this deal to go through so I will compromise your future without any thought as to how it will impact you." I had the pleasure while in law school of studying under one of the authors of "Getting to Yes," the book on which the win-win philosophy is based. In no way does the book mention giving up important issues for the sake of making a deal easy, nor does it recommend moving forward with an acquisition because the deal was set up from a "compromise" viewpoint. The point of the win-win philosophy is to figure out what truly matters and fight extremely hard for these positions while giving up less important provisions which are very important to the other side. Figuring out this game and playing it well is what makes the win-win approach a solid framework for conducting business and maintaining goodwill subsequent to the transition of a veterinary practice. When this phrase is used when acquiring a veterinary practice this can have significant and real consequences to a buyer if the doctor believes this phrase to be true just because someone uttered it. This article will attempt to highlight some of the many provisions which should be contained in a veterinary practice purchase agreement in order to properly protect your newly acquired practice. But remember, every veterinary practice acquisition is unique, which means that the following issues may/may not be significant in your particular practice. It is therefore recommended that you enlist the services of competent advisors to help you throughout this process.

Restrictive Covenants

This is the beating heart of your contract. All of the goodwill that you will be acquiring is tied to the provisions related to the restrictive covenants that you will have against the seller once you acquire the veterinary practice. If the restrictive covenants are too narrow or are too broad, they won't protect you on the one hand and won't be enforceable against the Seller on the other. Therefore, it is extremely important that these provisions be crafted properly, lest your investment be left open to attack. For the record, there is no "standard" way of handling restrictive covenants, and anyone explaining this to you is using the wrong interpretation of the win-win philosophy. Many non-experts will tell you that anything greater than a two-year covenant not to compete would be unenforceable against a Seller. This is incorrect and does not adequately protect your goodwill since client loyalty will not have transferred to you fully in two years. Geographic area is also where many individuals use a standard radius rather than utilizing the actual geographic radius from which the practice pulls clients from. A large animal clinic is going to have a much broader radius than a small animal clinic. Therefore, it is essential that the covenant not to compete not only focus on the proper time period but also on the proper geographic radius. There are additional restrictive covenants that should be in a properly drafted purchase agreement, but many agreements only contain a covenant not to compete! In order to properly protect oneself there should also be a (i) covenant not to solicit clients of the practice, (ii) covenant not to solicit or hire employees of the practice, (iii) covenant not to treat any animals associated with clients of the practice and if a specialty practice is being acquired where referrals are important to the lifeblood of the

practice a (iv) covenant not to solicit or accept referrals. For instance, a clinic focusing on equine medicine is going to have a very broad radius but is also going to have a network of referring doctors that a buyer needs to know about. If you do not have a covenant not to solicit or accepts referrals, and the selling doctor moves just outside of the covenant not to compete area and begins to solicit the referral sources of the practice, you will lose most, if not all, of your practice's production.

Assets You Are Acquiring

It is extremely important that you know exactly what you are acquiring. Other than the goodwill mentioned above, there are multiple assets that you need to acquire when purchasing your veterinary practice.

- A. You should have a detailed breakdown of the practice equipment that you are acquiring as an exhibit to the contract. I recommend doing a walkthrough of the practice with a video camera to make sure that your equipment exhibit matches what is in the practice. In addition, you should have a provision which states that all equipment is in good operating condition as of the closing date. That way the Seller will be responsible for non-functioning equipment.
- B. You should acquire the website associated with the practice as well as all intellectual property associated with it. This will include Facebook, Twitter and other social media outlets connected to the practice.
- C. All client records that are required to be kept at the practice should be transferred to you on the closing date. However, you should have a provision built into your contract that states that you have no knowledge of actually receiving individual charts/records. This will protect you from liability associated with charts/records that you never received from the Seller.
- D. If you acquire the accounts receivable as part of the purchase price, or in addition to the purchase price, make sure that you get a detailed aging report on the closing date that lists all outstanding accounts receivable. Furthermore, there should be a provision which states that all receivables are for bona fide sales/procedures.

Representations and Warranties

One of the most important aspects of your purchase agreement will be the representations and warranties that your Seller is agreeing to be bound by. A well written document will contain more than two dozen reasonable representations and warranties that the Seller is making to you. While these are numerous, some of the more important ones to request are that the Seller is transferring marketable title to all of the assets, that there are no pending or threatened lawsuits or board investigations, that all procedures are bona fide procedures performed by the Seller or Seller's staff, that the revenues are true and accurate and that all employee obligations have been satisfied by the Seller. These are but some of the important issues which need to be contained in your purchase agreement.

This article is intended to provide a brief synopsis of some of the important issues contained in a properly drafted purchase agreement. There remains numerous other provisions which are extremely

important to have in a purchase agreement (i.e. employee issues, lease concerns, indemnification from prior acts, etc.). This short article's intent was to highlight some of the more misunderstood, and oftentimes, abused provisions of the "win-win" philosophy's disciples. The goal of any successful transition of a veterinary practice should be that both the Seller and the Buyer are happy about their respective positions once the closing has occurred. It does not, nor has it ever meant, sacrificing important provisions of a contract in order to get to a speedy resolution. The next time you see or hear the term "win-win." make sure to have this article handy to compare the document provided to you so that you truly can create a winning transition that protects your interests, while allowing the transition to go through.

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