<u>SAVING MONEY DURING THE SALE OR PURCHASE OF YOUR VETERINARY PRACTICE</u>

In our prior article entitled, "The Do-It-Yourself Folly" we warned of the foolishness of trying to buy or sell a veterinary practice on your own. We argued that there were too many pitfalls awaiting a veterinarian who elected to "save" money by foregoing the use of advisors knowledgeable of the complexities of buying and selling veterinary practices. Tax savings, protection from liabilities, leasing and due diligence issues were a few of the topics we mentioned that were awaiting you during your purchase or sale. However, we have good news too! There is a simple way to save thousands of dollars during this important transition: you do not (and should not) use the services of an escrow company during the purchase or sale of your veterinary practice. What? Are you crazy? We might be, but that is besides the point. Our goal is to eliminate extra costs during your acquisition or sale; utilizing an escrow company will not only cost you extra money in fees but it can slow down your transaction and can cost both the seller and the buyer thousands of dollars in taxes you are not required to pay!

1. <u>Bulk Sale Issues</u>: The vast majority of escrow companies are set up to handle two types of transactions: real estate transactions and business opportunity transactions (i.e., business sales). The companies handling business opportunity sales are designed to escrow retail business transactions which fall under "bulk sale" laws. What this means is the escrow company will withhold from the selling veterinarian a sum equal to the sales tax applicable to businesses in your state (generally between 3-5% of the purchase price). The problem is: **veterinary practice sales are generally EXEMPT from bulk sale laws!** Therefore, you are not required to pay this sales tax! Almost every state has adopted the Uniform Commercial Code ("UCC") which establishes which businesses fall under "bulk sale" laws. These laws state that a sales tax must be paid to the government prior to the transaction being completed if the business owner sells property used in connection with "retail" sales. As you are well aware, the business conducted in a veterinary practice is not "retail" related, instead your business falls under the term "service business." Since your business is serving the public in the form of veterinary medicine, the sale of the assets associated with the veterinary practice fall under the "occasional sale" exemption of the UCC which allows the sale of assets to be free from bulk sale taxes provided that the sale of the assets is not conducted in the ordinary course of the business.

   Besides paying taxes, businesses which fall under bulk sale laws are also required to publish in newspapers the proposed sale of the business so that all known creditors of the business are put on notice of the proposed sale. Usually this publication must occur at least 21 days prior to the proposed closing date of the transaction. Not only would this subject you to the added cost of the publication fees, but it also slows down your ability to sell or purchase the veterinary practice. An extra three weeks might not seem like a lot of time, but ask yourself this question: what is your production revenue over a three week period?

Since only a small fraction of the businesses in America fall under the "services" and "occasional sales" exemption, most escrow companies are unaware of this exemption and will go through their routine motions of publication and assess the tax against the selling (and sometimes the buying) veterinarian.

2. Lien Searches and Lien Payment. Some may argue that an escrow company is worth the price you pay because they run lien searches on the veterinary practice to insure that there are no existing or contingent liens affecting the marketability of the veterinary practice. If you are using an SBA loan or a traditional bank to finance your purchase of the veterinary practice, you typically will hear this argument after you mention to them the first argument in this article. The problem with this rationale is that the company which is loaning you the money should run the lien searches for you! Who has a better reason to insure that the assets you are purchasing are lien free than the company loaning you the money? However, SBA loans and traditional banks will often be steadfast in their insistence on using an escrow company which will end up costing you more money (and time) to complete the transaction. Therefore, we suggest using lending companies which are knowledgeable in lending on veterinary practices. They will run the lien searches for you, do not require an escrow company to be involved in the transaction and are extremely quick in their determination of funding the purchase price of the veterinary practice. Furthermore, they will pay off any liens attached to the veterinary practice directly to the lienholder without charging you a fee for the service. In short, they lower the overall cost of the transaction by not requiring you to use an escrow company and the turnaround time is much quicker, allowing you to close on the transaction earlier.

While there may be certain times that you should enlist an escrow company when you are purchasing a veterinary practice (i.e., when you are purchasing the real property associated with the veterinary practice), the majority of veterinary practice transactions do not require the use of an escrow company. Everybody wants to save money in an effort to bring down overall costs associated with doing business, but there is a right way and a wrong way to go about it. Not using advisors who are knowledgeable in veterinary practice sales: bad idea. Using advisors and companies who understand the complexities of veterinary practice sales: good idea. A simple solution for a complex issue.

Jason P. Wood, B.A., J.D. and Patrick J. Wood, B.A., J.D.
Jason is a partner and Pat is the founder and senior partner of Wood and Delgado, a law firm which specializes in representing medical professionals for their business transaction needs. Wood and Delgado represents veterinarians nationwide and can be reached at (800) 499-1474 or by email at pat@vetattorneys.com or jason@vetattorneys.com