

SLIMEBALLS, AMBULANCE CHASERS AND GOOD-FOR-NOTHINGS. . . AND WHY YOU STILL NEED US

Ohh boy do I love my litigation brethren; they give us such a good name! Entire books have been written containing hundreds of jokes about attorneys. Unfortunately for the vast majority of the public all attorneys are created equal. They all do legal work; therefore, my attorney should know how to handle my case or my transaction. This ignorance causes a series of false assumptions that usually harms the client long after the attorney and the client part ways. But veterinarians know better right? After all, the veterinary profession is based upon specialties and thus they know not to use an attorney that does patent law to represent them for a practice transition, right? Or, the fact that a litigation attorney is programmed to start fights rather than create compromise that will allow a deal to be successfully created. Unfortunately, many veterinarians either choose not to have legal counsel or have someone they know personally, but who lacks experience, represent them on their most important career decisions which causes them to miss a myriad of issues that could potentially cost hundreds of thousands of dollars. This article is a brief attempt to show readers the many areas in which the advice of experienced legal counsel is needed when you have decided to either start your own veterinary practice or purchase an existing veterinary practice from another practitioner.

BUILDING YOUR DREAM PRACTICE

An attorney's role in representing a veterinarian in a startup situation can be as broad or as narrow as you want it. You can enlist them as your quarterback to vet... no pun intended... your contractors and possible lenders, speak with your architect about various local codes and supervise many other issues for you until you have opened for business. **However**, I think most of that is a waste of money. It is our firm's belief that you should enlist the most qualified individuals for each segment of building your practice and an attorney that plays the role of supervisor may end up overriding or missing important steps that may help you. I definitely believe that an attorney with extensive experience in this industry should be able to direct you to the right people for every facet of your build out, but he/she shouldn't be enlisted to look over everyone's shoulder. At a minimum your attorney should be involved in:

Reviewing the Letter of Intent

If you have enlisted the services of an experienced lease negotiator, then you do not need your attorney to negotiate your letter of intent. You should however, have your attorney review it, prior to submitting it to the landlord, because if the parties can agree upon some core issues in the letter of intent stage, your legal fees should be a little lower overall on the deal and the likelihood of getting key concessions is statistically greater at the letter of intent stage rather than during the lease negotiation stage. For instance, I am more likely to get option period rent modified to be more favorable for a veterinarian if I negotiate this at the letter of intent stage than if I am brought in to review and modify the lease which could save you tens of thousands of dollars. There are some firms, like ours, that will do this negotiation for free if the letter of intent cannot be successfully negotiated.

Reviewing/Modifying the Lease

This is the most important issue that you can use an attorney for when starting a veterinary practice or acquiring one. Leases are nasty. They contain numerous negative provisions that uniquely harm veterinarians. Unless you have a two-page lease written in 1975, I can confidently say that you have a minimum of 15 provisions which can detrimentally impact the value, saleability and transferability of your veterinary practice! There are some provisions which are designed to take up to 50% of your future sale price! It is not your lease negotiator/broker's job to negotiate these out of your lease (in fact it would be the unauthorized practice of law if they did) and, therefore, many veterinarians who believed they were protected because they used a lease broker have numerous pitfalls contained in their leases. Make sure that you hire an attorney with extensive lease review experience so that they will catch these issues for you.

CREATING THE PROPER ENTITY FOR YOUR VETERINARY PRACTICE

Being a veterinarian is hard. You have to comply with so many regulations, many of which you have never even heard of. Choosing the proper entity falls into this category as a veterinarian must not only comply with the normal laws relative to corporations, LLCs and other entities, but they must also comply with their state veterinary practice act. Your state veterinary practice act will control not only which entity structure you are allowed to utilize but also the name you are allowed to use.

ACQUIRING A VETERINARY PRACTICE

Here, an experienced veterinary attorney can provide a much bigger role in your transition process. From selecting the right practice to meet your strengths and weaknesses, to recommending the best professionals in other areas to help you with your due diligence, your attorney should be an instrumental part of your team, if not the team leader for your other professionals. When speaking to a potential new client who is looking at acquiring a practice, I spend about an hour on the phone asking various questions to make sure the practice that my potential client is looking at sounds right for them. Hopefully, your attorney will provide this as a free service as our firm does in order to help you feel comfortable in moving forward with your acquisition. At a minimum your attorney should be involved with:

PREPARING AND NEGOTIATING THE LETTER OF INTENT

This is huge. Many brokers discourage the use of an attorney at this stage because they do not want negotiations on price and other extremely important issues. They want you to be "locked" into what you have agreed on in the letter of intent BEFORE you hire competent advisors. As in the LOI stage for leases, this will hopefully be offered as a free service by your attorney until the LOI is accepted. A properly negotiated LOI can save you thousands of dollars and increase the likelihood that your acquisition will be successful. It also tends to lower overall attorney fees since some of the more "intense" issues have already been negotiated.

REVIEWING THE EXISTING LEASE

As is the case in a start up, your lease is one of the most important assets you will be acquiring when you purchase a veterinary practice. As indicated above, there are numerous issues which you must have reviewed, and possibly revised, in order to protect your investment.

REVIEWING AND MODIFYING THE PURCHASE AGREEMENT

Knowing what is required in order to protect your future career and your investment is instrumental when choosing who you will hire as your attorney. A properly structured agreement should: protect you from the seller competing with you subsequent to the closing; properly deal with accounts receivable and uncompleted work; protect you with numerous Seller representations and warranties; dictate how retreatment will be performed; indemnify you from the Seller's actions prior to you acquiring the practice; as well as numerous other issues which deal with patient retention, the transfer of the goodwill to you, staff issues, etc. The important thing to remember is that no one ever wants a transition to "go south", but the reality is they sometimes do. A properly structured purchase agreement will hopefully protect you from this and, more importantly, provide you with a very clear picture for a judge if you are forced to litigate.

PROPER ENTITY SELECTION

As stated above, you need to make sure that you are set up properly in accordance with your various state rules, regulations and laws pertaining to how a veterinarian can legally operate.

The decision to start a veterinary practice or acquire an existing will be one of the most important decisions you will make in your professional career. The decisions you will be met with throughout this process are complicated and unique to the veterinary profession. The attorney that you choose for this decision will uniquely shape the fortunes of your future. The more they understand what you are going through, the more they can help prepare for that future. The use of an attorney during these important decisions should not be the question you ask yourself, rather which "rock star" veterinary attorney do I need on my team for this particular transaction?

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