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6 Essential Considerations In a Private Veterinary Practice Sale

Selling a veterinary practice can be an intimidating and complicated venture for those unfamiliar with the transactional process. As an entrepreneurial veterinarian that spent years establishing and growing your practice, you should know what to expect when it comes time to sell the business you worked so hard to build. Below we have set forth 6 essential considerations for every veterinary owner exploring a private veterinary practice sale.

1. Understanding Your Role Post-Sale

One preliminary, yet crucial factor you must consider prior to selling your veterinary practice is what it is you intend to do after the sale. Many practice owners decide to sell because they believe the transaction market is ripe for profits. Others become motivated to sell because they are ready to enter retirement. Your post-sale intentions often affect the market for your practice (i.e., who is willing to purchase your practice and how much they are willing to pay), as well as what obligations you will be expected to fulfill post-sale. This is because a substantial amount of the goodwill of your practice attaches to you, personally. As a result, some prospective buyers will seek

out practices with veterinarians willing to remain with the practice following the sale in an employee capacity. In such event, you will be expected to negotiate and enter into an employment agreement in connection with your sale. In other cases, the prospective buyer may have little-to-no interest in what you intend to do following the sale but may still request that you perform some short-term administrative services on behalf of the practice to help ease the practice transition. In any event, you will want to have an idea of what obligations you are willing to accept post-sale so that you can properly identify a buyer and a deal that is right for you.

2. Entering into a Letter of Intent

The Letter of Intent (“LOI”) serves many important purposes in a veterinary practice sale; not only does the LOI set forth a number of the material terms of the transaction, but also aids attorneys in drafting and negotiating the purchase agreement, which can save you from incurring additional and sometimes unnecessary expenses. An LOI is a document that outlines the preliminary agreements and understandings of the buying and selling parties; however, it is generally not a legally binding contract. Rather, the LOI typically symbolizes a good-faith commitment of the parties to finalize the transaction in accordance with the fundamental deal terms contained therein. In addition, because the parties have agreed in

advance to certain key points, less is left open for negotiation, and the chances of the deal falling through is generally reduced. Note that LOIs are not present in every practice sale; however, for the reasons noted above, you may want to consider entering into an LOI in the early stages of your transaction. Deal terms commonly encompassed by an LOI include (but are not limited to): purchase price of the practice (often in accordance with a fair market independent practice appraisal), terms of the restrictive covenant, the intended closing date, the buyer’s due diligence period, and more. Another notable provision you will likely find in the LOI relates to transactional exclusivity. This provision essentially holds that, for a specified period of time, you

will not seek out or entertain other prospective buyers of your practice, and will instead negotiate exclusively with the buying party contemplated by the LOI. As previously stated, the LOI is generally non-binding, meaning the parties are not legally obligated to complete the proposed transaction after signing. However, it is worthwhile to consult with an

attorney during the negotiation of the LOI to ensure all key provisions of the transaction are adequately considered, and that the potential buyer has signed a “Non-Disclosure Agreement” to prohibit them from availing your private business-related information to third parties in the event the transaction does not move forward.

3. The Due Diligence Process

During the due diligence period, the buyer, as well as their accountant, attorney and lender, will have the opportunity to carefully assess all relevant aspects of the past, present and future of your veterinary practice. This process typically involves detailed investigation into the legal, financial, and economic fitness of the business. In short, this is the buyer’s opportunity to “kick the tires” on the practice and get a true understanding of what it is they intend on purchasing. During this time, it will be your duty to provide the buyer with any documents or information reasonably necessary for the buyer to comprehensively assess the viability of the practice. Thus, you will always want to ensure that the buyer has

agreed to conduct their due diligence in full confidentiality. Additionally, you will want to ensure that the due diligence process is being conducted within prespecified boundaries, as typically set forth in the LOI. By way of example, you do not want the buyer entering your practice without your prior consent, or contacting your employees prior to being authorized to do so. Notably, throughout the due diligence period, the buyer will generally have the opportunity to walk away from the transaction for any reason and without consequence. The due diligence period typically begins after an LOI is signed and may be limited in duration to an agreed-upon period or may continue through the closing date.

4. The Purchase Agreement

The purchase agreement is the legally binding contract that will affirmatively establish the terms and conditions of your veterinary practicesale. Throughout the drafting and negotiation of the purchase agreement, your attorney will utilize the terms previously agreed upon in

the LOI to move the deal forward at an efficient pace. However, the purchase agreement will be considerably more comprehensive than the LOI, and will contain many material terms not previously contemplated by the parties. During the drafting process, you should expect to be

regularly communicating with your attorney about any disputed terms and issues so that your attorney can effectively negotiate and advocate on your behalf. In addition to the fundamental terms contained in the LOI, you should expect the purchase agreement to contain provisions setting forth specific representations and warranties that you will be required to make relating to the general fitness of your practice. The purchase agreement will also address issues like how the inventory of the practice will be handled, when and to what extent each party will indemnify the other from liability, and more. You

may also be asked to assemble certain ancillary transactional documents, namely “disclosure schedules”, which set forth detailed information pertaining to various information requests contained within the purchase agreement. When the time arrives to close the transaction, you should expect to be obligated to pay off any outstanding liens held by third parties against the practice (typically related to past loans, financing, etc.), as the buyer’s expectation will always be to acquire complete and unencumbered title to the practice assets upon closing.

5. Real Estate Considerations

An additional component to every veterinary practice sale relates to the practice real estate. In addition to purchasing the assets of the practice, a buyer is purchasing the right to utilize the real estate upon which the practice is positioned. As a result, an ancillary and separate agreement pertaining specifically to the real estate will attach to nearly every veterinary practice sale. The function of this separate real estate agreement will typically depend on how you and the real estate are situated prior to the closing of the transaction. If you are the owner of the property upon which your practice is located, you may need to consider selling the real estate along with the practice, which would involve the drafting and negotiation of a separate agreement of sale, title considerations, and more. Alternatively, if you are currently the owner of the practice property and you do not wish to sell the real estate along with the practice, you should

expect to negotiate and enter into a lease agreement with the buyer, whereby you would act as landlord and the buyer would act as tenant post-sale. If, instead, you lease the practice space from a third-party landlord as opposed to owning it yourself, the buyer will either negotiate and enter into an entirely new lease with the landlord, or the buyer will “step into your shoes” as tenant and assume your existing lease agreement (and accompanying obligations and liabilities) following the sale. Note, however, that the landlord will ultimately have to approve the terms of a lease assignment and will thus be active in related negotiations. If the buyer intends on assuming your existing lease agreement with the landlord, you will want to be sure that you are released from any obligations or guaranties under that lease agreement to the greatest extent possible following the close of the transaction.

6. Restrictive Covenants

Most veterinarians are no stranger to the infamous “restrictive covenant,” which is a provision commonly utilized within the industry and usually contained in employment agreements and partnership agreements. As a practice owner, you may have at some point requested an associate veterinarian to agree to a restrictive covenant as a condition of his/her employment with your practice. Now, in your role as a seller, you will almost certainly be required to agree to some form of restrictive covenant as a condition of your practice sale. In this context, the restrictive covenant will typically limit, within a specified geographic radius of the practice, your ability to treat patients and provide clinical services, your right to solicit certain clientele, your right to employ your soon-to-be former employees, and your right to disclose certain confidential information relating to practice operations. The scope and duration of the geographical limitation attaching to the restrictive covenant will vary depending on the location of your practice. Note that many veterinarians tend to subscribe to the false assumption that restrictive covenants are always unenforceable. However, unlike an employment relationship where courts commonly disfavor the restriction of a person’s right to work, restrictive covenants are treated differently in the context of the sale of a business, where it is generally considered a more reasonable term of agreement. This is because it would make little sense for a buyer to pay substantial

monetary consideration to purchase a business if the seller could simply open or work for a competing business in the same neighborhood shortly after the sale. Thus, when selling your practice, you should be prepared to remove yourself from the veterinary marketplace for a period of time following your sale; subject, of course, to your election to remain with the practice as an employee.

Notes



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