PLANNING FOR RETIREMENT: BRINGING IN AN ASSOCIATE

Creating a plan today that can help you retire when you are ready will not only make your practice and hard work more valuable, but save you financial and emotional headaches in the years to come.

By Kimberly S. Brown

Many veterinarians use the practice that they have built up over a lifetime of hard work as their "retirement account." Unfortunately, unless they have planned properly, that "account" might not have the value that the veterinarian thinks it should have when the time to retire is at hand.

At the 2013 AAEP Business Education meeting, Charlotte A. Lacroix, DVM, JD, and James E. Guenther, DVM, MBA, MHA, CVPM, AVA, discussed how to help you successfully plan your exit from veterinary practice. In this article we'll hear tips from Guenther and Lacroix on options that you should consider.

"There is no better time to plan for the future than right now," stated Guenther. "Most exit planners state that it will take at least three to five years to have the practice in a strong position to garner the most for the business (when it is sold)."

Some Things to Think About

It's great if you have time to plan for your retirement, but you should also realize there are other reasons that your practice might be sold or you might be forced to leave the business. Lacroix listed these as possible "involuntary" triggers for your practice being sold:

- Death
- Disability
- Divorce
- Bankruptcy
- Expulsion
- Mandatory retirement

The speakers warned that you need to be prepared if something happens on the above list. However, the focus of the presentations by Guenther and Lacroix were on actively planning for your eventual retirement from veterinary practice.

Options for Retirement Planning

Among the options for voluntary retirement and "passing the torch" of your practice to another individual or group are:

- Bring in an associate with the idea that the associate will eventually buy you out.
- Bring in partners and take a "back

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You should plan for your retirement and decide who will take over your practice.

Negotiating the Contract

Here are some tips on negotiating that contract with an associate from Charlotte A. Lacroix, DVM, JD, and James E Guenther, DVM, MBA, MHA, CVPM, AVA.

- When your wants and what his/her wants are compatible:
  - If what they want is cheap for me, I want to make it seem expensive for me.
- When both parties are committed to the deal and convinced there is greater value in having a deal than no deal, it is easier to negotiate.
  - "This is where unreasonable, uninformed, stubborn and uncontrolled advisors kill the deal," said Lacroix.
- Tell them right up front that there is a non-compete and it's a deal-breaker. Putting that off might cause you to miss someone else who would sign.
- There is no negotiability with someone who:
  - Doesn't need the deal
  - Isn't in a hurry
  - Knows the other party will do anything to get the deal done.

seat" position in the practice while still drawing a salary.

- Sell to an outside veterinarian or practice.
- Merge your practice with another practice.
- Corporate buy-out (not as likely in large animal as small animal).

In this first article we'll look at the common business practice of bringing in an associate with the idea that the associate will learn and grow in the business, then eventually buy out the founding veterinarian. There are many things the practice owner needs to do in order to prepare to bring on an associate. Then there is the search process for the right person. The crucial negotiation follows, with a contract signed by both parties. Then, if all goes well, eventually the associate will buy you out and you get back what you have invested in developing your practice as a nice nest egg for your retirement years.

But there are many issues that need to be addressed in order to avoid problems with this scenario. Lacroix and Guenther walk you through some of these on the road to retirement.

Bringing in an Associate

Guenther said that in today's world, it's much easier to sell a small animal practice than a large animal practice. He noted that there are many challenges in selling a large animal practice, and that veterinarians need to plan farther in advance for that transition than most do today.

He advised: Don't want until last minute to plan for retirement.

"You need a five- to 10-year strategic plan with targets and benchmarks you can follow," noted Guenther.

"One of your best routes for your succession is to find an associate," noted Guenther. "If I were a solo practitioner and in your shoes, I would build the practice to bring in an associate. It is a better use of your time and resources, and you have a better chance of getting a succession plan in place."

Guenther said the work mindset of the current generation of veterinarians isn't the same as the Baby Boomers. "They don't live to work, they work to live," he said. "So provide an environment where multiple people can make less money, but work less. However, with the average starting salary at $43,000 per year, it is hard to pay less."

Having a practice that is growing makes it possible to bring in an associate. In order to have a growing practice, Guenther said, you must become proficient at reading a Profit and Loss (P&L) statement, then apply that information to help you understand your profitability, how to increase fees and income, and how to grow the practice.

But if you bring in an associate with the understanding they will be allowed to buy into the practice, make sure that happens.

Guenther said, "I have a lot of associates who left practices because they were told they would be allowed to buy in, but never got that opportunity."

Lacroix said you should make sure that you and the associate understand what you agree upon by having a contract. It is well worth the time and investment to have your attorney draw up the contract and outline what each party is expected to do and how an eventual buyout will occur.

Employee Cost Allocation

You should know what your employee costs you, said Charlotte A. Lacroix, DVM, JD. Using a worksheet to determine the costs will not only help you, but you can show that to anyone you hire. Keep in mind that salary is just one part of the employee cost. Other expenses can include bonuses, federal and state unemployment taxes, FICA, Medicare, Worker's Compensation, health (and other medical benefits), other insurances, vacation, sick/personal time, CE, auto allowance or cost of vehicle and equipment, licenses/dues, etc.

Lacroix noted that in 2012, 89.2% of vet school graduates have debt according to the AVMA, which probably means they will be negotiating for as much as they can get in salary and benefits. Figures from JAVMA showed that vet school graduates have an average of $150,000 debt and look forward to an average of $66,000 in salary. The benefit package averages about $8,000-$12,000 depending on what you are offering.

"What type of practice you have will dictate what you can offer in a contract to an associate," noted Lacroix. "What are your points of leverage? That's critical."

Guenther said the good thing about veterinary medicine is that, "We eat what we kill. If you bring on a vet or partner, or do a self assessment, you should figure out what your productivity is. If I'm a new grad and I bring in more than someone who has been there eight years, then I should make more than that person."

In that world, you are valuable to the business only as long as you are producing, said Guenther.

Sometimes you have "top investors" who are the vets who built the practice, and who make more profit, but who might not earn as much. Some people might not consider that fair, but Gunther said you should make sure that is clear in your contract.

"So 'fairness' is what is that person is bringing to the table," said Guenther. "Is that person (associate) bringing something to the table that you don't have? If you are looking for someone as a partner for your succession plan, then make sure they are bringing in something to the partnership."

Keep in mind that the sole purpose of the contract is to act as a tool of enforcement, said Lacroix. "That's why agreements are needed."

Lacroix added, "If something in the agreement says 'if we mutually agree,' then it's not worth the paper it's written on. Agreement must have absolutes. You must work 55 hours a week, but not over 60. So the default rule is set so if either party needs something else, then there is a foundation on which to negotiate."

Lacroix said most business misunderstandings in veterinary practice arise from:

- Work hours or work environment
- Compensation and how it is calculated
- Termination
- Benefits
- Non-compete contracts/clauses
- Promises to buy-in

Lacroix walked through some scenarios that might help you better understand some of these complications.

Bad Outcome Scenarios for the Employer

Scenario #1 If you hire an associate without having a non-compete in place, things don't "work out" after four years, so your associate quits and sets up a practice within your trade area.

First, of course, understand that you need a non-compete agreement with any employee. But even with that legal contract in place, there are some things you can do to avoid a former veterinary employee taking clients with them when they leave, and also making your practice more easily transferred to the next generation.

One way that Guenther recommended to help avoid this situation is to remove the personal tie from your clients and rotate your practice clientele among your vets so the clients are bonded to your practice instead of one vet. This seems foreign to many veterinarians who have worked for years (sometimes decades) to have clients loyal to him or her.

"The bulk of your practice's clientele can be seen by any qualified equine practitioner," said Guenther. "We need to remove our ego and have brand recognition to the practice and not to you."

He advised that practice owners should be a "dispensable" member of the practice. "That way as you are exiting practice, you can practice two days a week and have the clients be happy with the other vets the rest of the time."

One thing that Guenther and Lacroix noted is that if you have a veterinarian leave and want to set up practice in the same area, that litigation is a battlefield. "Victory is based on leverage, strategy and money," said Lacroix. "When they sign a non-compete, they are enforceable, but the courts are not happy toward non-competes, and it takes money to litigate."

If you must take legal action against a former employee based on a non-compete, Lacroix advised you do it immediately and aggressively: "You must send a cease and desist order so that you can get an injunction to stop them from practicing."

Conversely, make sure if you hire a veterinarian who previously worked at a practice in your area that the person is clear of the non-compete from that former practice. "If hire someone who has a non-compete, the other practice owner can sue you because of the non-compete," noted Guenther.

Scenario #2 You agree to pay for benefits, but you rely on the employee to obtain their own malpractice insurance and he/she doesn't, and you get sued.

Malpractice insurance is important because you, as the practice owner, share some of the risk of having that veterinarian on your payroll. Guenther said many practices will pay for the state veterinary license and malpractice insurance, and might pay for other benefits (insurance, retirement, etc.).

Bad Outcome Scenarios for the Employee

Scenario #3 The associate signs a non-compete thinking it is unenforceable.

"Create a path of tremendous resistance, risk and combative behavior, and make it take time," said Lacroix. "Vets usually don't have the stomach for lawsuits. However, they might have a lawyer in family. Profile your employees."

Lacroix noted that non-compete clauses or contracts are considered Restrictive Covenants. "Courts are hostile to them," she said. "You can only protect your trade area, not prevent someone from practicing. And at that, you can only protect about 85% of your client base."

The non-compete must be reasonable and based on a geographic restriction. This can be different for each practice.

One thing you want to enforce is that the former veterinary employee cannot solicit employees or clients and they cannot release confidential information from the practice, said Guenther.

"If you don't own a CONFIDENTIAL stamp to use, then go buy one and use it!" Guenther emphasized. "Courts won't enforce sloppy business practices. Your employee handbook, vendor list, client list, etc. should be stamped. And once a year you should talk to your staff about confidentiality and have everyone sign a confidentiality agreement."

It is also normal for a company to "seed" a few names into the client list, so if someone uses that list for purposes outside your company's business you can be alerted. These can be actual people, relatives, or fake names with addresses of a friend, family member or client. If one of your "seeds" gets mail or email from someone that wasn't authorized by your company, then you know the confidentiality of your list has been compromised.

Guenther said the normal restriction for a non-compete is one year for every year of employment. He said the maximum is about three years.

"The court will ask if that creates an undue hardship for employee," noted Guenther. "If that person has a specific, unique skill set, then there might be problem keeping them out of practice."

Lacroix said most non-compete disagreements get settled out of court, usually for $100,000-$150,000. That means the "offending" veterinarian pays you to get out of the contract. But if you have to fight to uphold the non-compete contract, then you need it to be as solid as possible.

"You win if the court says the person can't practice until the lawsuit is settled," said Lacroix. "That can take up to a month and $10,000-$50,000 to get to that phase. Most associates don't have that kind of money. Legal fees are what it takes you to enforce the non-compete."

There is the possibility to set up a buy-out clause in a non-compete contract, but Lacroix does not like to set them ahead of time.

"If you have an associate who is eight years into game and you have a buy-out for $100,000, they might walk in with a check and get out and start competing against you," she said.

Scenario #4 You agree to work for an employer on the verbal condition that you get the opportunity to buy in.

Verbal agreements can be upheld in court, noted the presenters. Therefore it is in the best interest of both parties to have a written contract so avoid the potential for misunderstanding.

"Contracts are a must, and negotiation is an art," said Lacroix. "You may not like to negotiate, but never offer your best deal first. That gives you something to trade."

Added Lacroix, "In business you don't get what you deserve, you get what you negotiate."

Guenther also advised that you keep in mind that if you own a company or LLC, you work for that company. "Your clients belong to the company, not you," he said. "You must keep in mind: What is in the best interest of the business?"

This is hard for vets, he said, because they are so involved in the identity of that business. "If you are using your personal checking account as your business account, then you aren't respecting your business," said Guenther.

He added that the Veterinary Business Management Association (VBMA), a student-run organization in vet schools, focuses on teaching business to students. "Ask recent graduates if they had a VBMA program at their school and whether they participated," said Guenther.

Scenario #5 You verbally agree to work 45-55 hours per week, five days per week, and you end up working 65-75 hours per week six or seven days per week for the same pay.

Again, said Lacroix, contracts can protect both parties. Verbal agreements are contracts, but you risk the "he said/she said" battle in court.

Since you must have a contract, see the sidebar ??where?? for tips on how to get the best deal for you and your practice.

Determining Associate Compensation

If you decided to hire an associate, you need to know what you can afford to pay in salary and benefits, and where that fits into your practice's budget.

Guenther said the practice owner needs to know the profit of the business. "That is the number one thing you need to know as the business owner. Are you 5% return on investment? Are you 15% return on investment? Those also depend on how you look at your chart of accounts," he said.

If you don't know the profitability of your company, then you don't know whether you can afford an associate.

Once you have determined you can afford an associate, you can help in the negotiation process by asking a few questions of the potential employee, and having some figures at hand for guidance.

- What is his/her financial needs…they need a budget they can show you
- What are their financial wants
- What is that employee worth to the employer (i.e., productivity)
- What can the employer afford
- Know the salary norms of the industry
- Do you have leverage; Can you offer
  - Good clients
  - Good support staff
  - Good equipment
  - Good facility

Guenther reminds practice owners that student debt is not the practice's responsibility. "I can provide the environment in which you can make money," needs to be the practice's position.

If there is a gap between income and associate monetary needs, "See if you can offer something to allow them to make up the money," advised Lacroix. "Maybe they are on call every night (thus get the additional compensation from those cases). You need to make the projections and have the numbers to support what you offer."

On the other hand, you as the practice owner should know whether you can afford to have the associate.

"You also need to have a marketing plan," Guenther said. "For the first three months the associate might work 70 hours a week just to get his/her face out there."

LaCroix said the employer needs to determine what he/she can afford to pay an associate. For example, for every dollar of gross income earned:

- 25-30% goes to costs of providing professional services
  - i.e., drugs, medications, supplies
- 17-22% goes to pay support staff
- 2-5% goes to pay the hospital manager
- 3-8% goes to pay rent or mortgage
- 12-18% is used for benefits, equipment, marketing, taxes

She said this leaves about 25% to compensate veterinarians for their efforts and 14-23% for profit to the practice (your target should be 10-20%).

How much will the associate generate? This will depend on the person's training, specialized skills, advanced degrees, and services that are new to your practice and in demand. Lacroix said you also need to look at the potential fee schedule and appointment schedule of a new associate. Will that person require a tech? Will you be footing the expenses for a new practice vehicle?

Once you determine your hard expenses, you should show that to candidates you are seeking to hire as an associate to help them understand that salary isn't the only thing they are getting from you.

Guenther also advised that you stop treating associates as just vets in your practice, "They need to understand the practice business" if you want them to be successful enough to buy in.

That means you need to help them save money so they have enough to buy you out when you are ready to retire.

How You Can Pay Associates

Lacroix noted that there are several ways to structure how your associate gets paid. If it is a flat salary, then the veterinarian gets paid the same no matter how much or how little they bring in for the practice. That base salary can include benefits or not. Benefits can cost the practice owner $3,000-$10,000 depending on what you offer (health, disability, life, professional liability, dues and licenses, retirement matching, housing or housing allowance). Don't forget to value the benefits of sick/personal time, professional develop and paid vacation time. You also might offer relocation expenses for a new hire.

You also can pay a lower base salary and add benefits as listed above, plus a percentage of what the associate earns. She said that can be 24-25% when the benefits are included, or 19-30% when benefits are not included. She said she has found that equine and small animal are compatible in that associates are getting paid 20-21% of what they generate.

"If you have lower expenses, then you can afford to pay more," noted Lacroix. "This is very individualized, and you might not want to just go on what your colleagues are paying."

Prepare for Problems

Keep in mind that employment law was designed to protect the employee, the speakers stressed. When you are dealing with employment law, you have to analyze the law.

1. Is it a job protection law? This is designed to protect a person's job.

2. Is it a money law? This is written to protect the person's pay.

3. Is it a discriminatory law? This exists to protect the employee from discrimination.

Lacroix reminded that the Family Medical Leave Act is only applicable if have 50 or more employees. "So don't mention it if you are a small practice!" she stressed.

So what happens if your new associate gets pregnant and can't do some work? How do you adjust compensation?

"Pregnancy is not different from any other medical issue," said Lacroix. She recommended that the practice owner have a conversation with the pregnant employee that goes something like this: "This will impact what you can do and how much you can do it. I don't know what those things are, but take your job description to your physician and let me know what you can or cannot do, then we will adjust your compensation appropriately."

Lacroix said the immediate response of most associates will be that you shouldn't change their compensation. Here is a scenario of how the rest of that conversation might go:

Your response should be: "Why Not?"

"That's what you promised me."

"I promised that to you under what stipulation?"

"That I work full-time."

"Are you working full-time?"

"No."

"Then why should I pay you full compensation?"

Lacroix said you need to make the associate "own" the problem.

Once you have what their doctor says is appropriate work for them, then have your attorney draw up an amendment to their contract including those changes in the job description and what the compensation will be.

"If they say they won't sign the amendment, then say the grounds you were hired on aren't being upheld and you can terminate them based on contract," said Lacroix.

Structuring the Buy-In

If you truly want the associate you hired to make and save enough money to buy you out in a specific amount of time (five or 10 years, perhaps), then you need to take an active role in mentoring that young veterinarian on the business of practice. Otherwise the time might come that you want to retire, and the associate doesn't have the money saved or the equity in some other property or investment to use to buy you out.

Lacroix said when you hire an associate with the plan that that person will buy you out, then you need to start planning on how that person will accrue the money now.

She said there also is an option that a percentage of the associate's money can go into an interest-bearing account, and you can trigger the buy-out at a specific money target rather than in a specific year.

The speakers aid you as the current practice owner need to plan for what you will do post-sale of your practice. Do you want to be "hired" for a specific amount of time? Do you want to work as just another veterinarian rather than as the practice owner?

"Keep in mind if you sell the practice and continue working for the new owner, then you only get paid as a veterinarian, not as a practice manager or as the practice owner," said Lacroix.

Take-Home Message

There are several ways that you can sell your practice. In this article we have discussed the common practice of hiring an associate with an agreement that he/she will buy you out at some point in the future. This is not the only means by which you can divest yourself of your practice, and you should discuss any such plans with your attorney and CPA to ensure you will be structured appropriately to get a good return out of your practice years invested in your business.

Also keep in mind that while this article was mostly geared toward the current practice owner, there are some good points in there that the incoming associate can use when negotiating a position that will enable you to buy out a practice owner.

You may contact the authors through their websites:

Charlotte A. Lacroix, DVM, JD, verinarybusinessadvisors.com

James E Guenther, DVM, MBA, MHA, CVPM, AVA, strategicveterinaryconsulting.com