



Illustration by Johanna Bandle

## Buyers Must Be Wary of the Practice Real Estate

*When suburban sprawl overtakes the old rural clinic site, there's usually a windfall for the seller. But, for the buyer, unseen liabilities may lurk on the property.*

By William P. Prescott, EMBA, JD

**V**eterinarians are more likely to own the property where they practice than dentists or physicians who often lease space in medical arts buildings. In many cases, when the practice began decades ago, the property was considered rural. At the time, veterinarians needed the space since a lot of them were mixed animal practitioners. Local zoning laws may even have dictated a multi-acre site. But, with residential and commercial development mushrooming around the clinic, the real estate alone may be worth more than the practice itself. When veterinarians decide to sell their practices, they often attach a condition stipulating that the real estate is to be sold with the practice. Sellers should not be so quick to package the property and the practice into one deal. Certainly not without valuing the real estate. Practitioners who wish to sell can maximize their proceeds by handling both entities as separate transactions.

Even though these transactions should be treated individually, the due diligence process of analyzing and investigating the practice and the real estate ought to be conducted simultaneously. At the same time, the purchaser may negotiate an option or right-of-first-refusal to buy the real estate. Under an option to purchase, the buying veterinarian has complete freedom to exercise or not exercise an option to buy the land during a designated period of time. Under the right-of-first-refusal, only a third party interested in the real estate can trigger this right by making an offer for the property. The underlying theory in either case is that the purchaser retains an ability to acquire the practice real estate at a later date.

As a separate transaction, the buyer and seller must agree on a price for the real estate. In arriving at a price, the seller and buyer may each select an

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appraiser to submit valuations. In the inevitable event that the two appraisals differ, the buyer and seller can average the two prices and determine the final sale figure. Another appraisal technique that usually results in an agreeable, fair assessment is to use a third appraiser who actually looks at the property. This person is selected by the two appraisers representing the buyer and the seller.

The point to remember is to agree in writing on the appraisal method at the time the *option* or *right-of-first-refusal* is guaranteed.

Once the appraisal method is hammered out, it's time to address another important concern. Prospective buyers need to realize that when they acquire the property they could be subject to costly compliance with new zoning and environmental laws that may have been "grandfathered" out of the current owners' responsibilities.

### **Environmental Concerns**

In a typical situation that happens all too frequently, a veterinarian acquires practice real estate in a seemingly ideal spot with high traffic volume and the promise of continued residential and commercial growth. As the practitioner is expanding the parking lot or excavating for additional building space, construction workers find decomposed storage tanks containing hazardous substances from a former enterprise, such as an automobile service station. In a less obvious situation, contaminated groundwater or substances may have seeped onto the practitioner's property beneath the surface.

In accordance with the Superfund Act (formerly the Comprehensive Environmental Response, Compensation and Liability Act of 1980), the current owner of the contaminated real estate is responsible for the clean-up and is liable for fines imposed for the damage — despite the fact that the present owner did not create the problem.

The Superfund Act can hold culpable the former owners as well as the individuals or institutions that created the hazard, and all parties are subject to lim-

ited defense. What is more, if the previous owners of the property are found to be insolvent and uncollectible, the present occupant of the property, while possibly relieved from punitive judgments, will still have to produce the clean-up funds. In the case of underground contamination caused by a remote industrial site, the chances that the polluting plant is still in business are slim.

Hiring an engineering firm to conduct an assessment or study of possible risks to the environment is one way to minimize potential liabilities from unseen dangers and contaminants.

Environmental assessments are generally conducted in phases. The initial phase includes an analysis of the surface soil conditions: a search of records to determine the existence or removal of underground storage tanks, regulated electric transformers, or other equipment that may contain PCB contaminated oil.

If the environmental engineering firm finds sufficient cause, it will want to continue its investigation. All of this is costly.

From the standpoint of the potential buyer, the key is to have these problems identified before closing and to negotiate the costs associated with the investigation and the clean-up into a fair final selling price.

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