

HOW TO EVALUATE A FRANCHISE AGREEMENT

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It's an unfortunate fact in franchising that many franchisees simply do not read their franchise agreement carefully and completely before signing on the dotted line. Granted, it's a long and complex document written in the language of the law, which means, quite frankly, it tends to put the average reader to sleep. Another problem may be that, after prospective franchisees read the disclosure portion of the franchisor's Uniform Franchise Offering Circular, they think they understand the deal and only scan through the franchise agreement. Their comprehension of the deal may be partially right, but often, it's tragically wrong.

It's important to understand that the purpose of the UFOC is to describe the relationship between the franchisor and franchisee. It is the franchise agreement, however—the written contract—that governs that relationship.

Looking back, a well-intentioned change in franchise disclosure—requiring them to be written in “plain English”—probably hurt individual prospective franchisees more than helped them. The new standard allows prospective franchisees to believe they understand the relationship as described in the disclosure document. Consequently, some franchisees, in trying to save money, forgo hiring an attorney to help them interpret the contract. Many franchisors recognize this frailty in the change to “plain English” UFOCs and encourage or even require their franchise candidates to seek outside legal assistance.

By the time you begin your review of a franchise agreement, you've probably already met with the franchisor and toured their offices and some of their locations. Hopefully you have also spoken to other franchisees in their system, evaluated the financial aspects of the relationship and conducted other steps in a proper due diligence examination. At this point, you're probably sold on the opportunity. Now you need to hire your franchise advisor.

Franchise law is a specialty. The local attorney who helped you close escrow on your house or write out your will probably doesn't have the franchise experience necessary to be of any real practical assistance. They may not understand why certain issues may be negotiable and why others aren't, or know when something in the agreement is unusual and possibly unfair. For that, you need experience. Two great sources for qualified franchise attorneys are the International Franchise Association's Council of Franchise Suppliers (www.franchise.org) [MARIA: OK?] and Franchise Update [ITAL?] Magazine's Directory of Franchise Attorneys (www.franchise-update.com). Another good source is the American Bar Association's Forum on Franchising, which sells a directory of member attorneys for \$35. You can reach the ABA's franchise forum by going to www.abanet.org, clicking on forums and then scrolling down to franchising.

Elements you and your attorney should be looking for in the franchise agreement include:

--Promises the franchisor made to you verbally when you met. If these promises aren't in the franchise agreement, they won't be part of the legal relationship, and the franchisor may not be required to provide them to you.

--Consistency between the franchise agreement and the disclosure document. Usually that's not a problem, but sometimes you'll find items you thought you understood in the disclosure document aren't quite the same in the legal agreement. Make certain the deal you sign up for is the deal you sign on the dotted line for.

If you're working with a franchise broker, don't rely on them for legal advice. While most are honorable and knowledgeable, usually they get paid by the franchisor when they succeed in selling you a franchise. Even if they have been friendly and helpful in getting you together with the franchise system of your dreams, they work for the franchisor, not you.

One last piece of advice: Never sign a franchise agreement you do not understand, especially when it comes to the sections dealing with defaults, terminations and what happens when the relationship between you and the franchisor ends—and it will end at some time. Clarify the issues you don't understand, try to negotiate those points that don't fit your needs, and rely on an experienced franchise attorney to assist you in making your franchise decision.