

## What happens if I don't like being a franchisee? How locked up am I?

By: Michael H. Seid and Kay Marie Ainsley, Managing Directors, Michael H. Seid & Associates, LLC

Sometimes the choices we make don't work out as we expected. The franchise you chose may be very profitable but:

- The hours are very long and you don't get home until the children are asleep. You're just burned out.
- You thought the business was going to automatically attract customers and now you find that you need to make cold sales calls.
- You didn't expect the problems you found in hiring and retaining good employees.
- The franchisor doesn't understand that your market is different from all of their other franchised locations and they won't let you make the changes you want to make. Likely you are an entrepreneur and probably should have not bought a franchise to start with.
- You thought you had the entire market to yourself and now the franchisor is talking about selling more franchises in your area.
- You resent paying the franchisor a percentage of your gross sales because you don't think you are getting valuable service from the franchisor.
- You can't draw out of the business enough money to let you maintain the quality of life you had before you bought the franchise

Or, maybe it just isn't making any money and you don't think it ever will. What ever your reasons are you usually have options when the end comes

But, before you make that final decision to exit the system – Are you sure that your problems cannot be corrected – after all, you invested a lot of time and money developing the business.

- Have you discussed your problems with your franchisor?
- Have you spoken to any other franchisees to see if they had the same problem and what solutions they used?

If your problem concerns the services or the fees or the policies of the franchisor have you spoken to other franchisees to see if they have the same problem? If they do, maybe a solution can be found when you all speak to the franchisor together.

Too often though the first person a franchisee speaks with is an attorney and before they know it they are involved in an unnecessary lawsuit. Remember what Ambrose Bierce said – “Litigation is a machine in which you go into as a pig and come out of as a sausage”. There are rarely any real winners in litigation – except the lawyers. Discuss your concerns with your franchisor and other franchisees before you speak with your lawyer. There is always time for you to bring in the legal help later on if you really need it.

Even if you are losing money on the business – don’t just lock the door and walk away. That will be a waste of whatever equity you have built up – whether real equity or just sweat equity. If you close the door and try to disappear, you likely will still have liabilities remaining to the bank on your financing, your landlord on the lease, financing companies on the equipment and possibly even your franchisor.

Most franchise agreements will allow you to sell your business and transfer your franchise agreement to a new owner provided that the new owner meets the franchisor’s requirements. You should review your agreement with your attorney to see what your rights are. Most agreements will require the new franchisee (if they don’t already own other franchised locations) to attend training and either you or they will likely be charged a transfer fee.

Depending on your contract, the new franchisee may need to sign a new franchise agreement and the terms of that agreement may be different than your current agreement. Sometimes, the terms of the new form of agreement can dramatically impact the value of your business. For instance the monthly royalty rate may have gone up or the franchisor may no longer be offering protected territories. You need to carefully review the terms of your contract.

Your franchisor may also have the right to purchase your business at the same price you accepted from another buyer. They have what is called a “right of first refusal”. Check with your franchisor before you put your business on the market if they are interested in purchasing your franchise. If they are not, get them to waive their right before you market the business – and get the waiver in writing. Some buyers do not want to even begin the process of buying a business if the franchisor can simply match their offer. Buying a business can be an expensive and time consuming process and rights of first refusal are sometimes a barrier to making a sale.

The value of your business will depend on a lot of factors including the amount of time you have left on your agreement and as we said before, the terms of the franchise agreement the new owner will be required to sign. Discuss with your franchisor and other franchisees what similar franchises have been selling for. This will give you an

idea of the value. You can also hire an independent appraiser that can provide you with comparables in your marketplace.

Many business people place their business with a business broker. Before you do, ask your franchisor if they can help you market your franchise to others in the system. Selling your franchise to an existing franchisee or back to the franchisor may be the fastest way to sell your business. If you do use a broker, make certain that they have dealt in the offering of franchises before. There are legal requirements that need to be met when you sell a franchise and your broker needs to understand these requirements.

Finally, when you bought your franchise you may have noticed a section in the back of the agreement that deal with what rights or obligations you have when you leave the franchise system. Those "post term covenants" may have an impact on your future plans. Read them carefully and if you have any questions, discuss them with your attorney and your franchisor.

Selling a franchise is more complicated than selling an independent business. Make certain that you understand your rights and your obligations before you begin the selling process.