

Franchise Laws Protect Investors

Q: I am interested in buying a franchise. Are there laws that protect me in this situation?

A: The Federal Trade Commission (FTC) has a rule which requires a franchisor to provide detailed written disclosures to prospective franchisees. The franchisor must deliver these disclosures at least 14 calendar days before you sign any binding agreement with, and pay any money to, the franchisor.

Q: What type of information must the franchisor provide?

A: There are more than 20 categories of information covered by the FTC rule. This includes history of the franchisor, fees the franchisee will owe, the investment required to start the business, training, the franchisee's obligations, the franchisor's obligations, termination, transfer, dispute resolution and other matters.

Q: Does the FTC check the accuracy of the franchisor's disclosures?

A: No. The FTC makes no review of the written disclosures. You will need to study the disclosures carefully. You also should consult with an advisor, such as your lawyer.

Q: What can I do to gather more information?

A: The written disclosures must list current franchisees and persons who ceased to be franchisees within the past year. You definitely should contact both current and former franchisees to obtain information and the benefit of their experiences.

Q: Does the FTC regulate the terms of the franchise relationship?

A: No. The FTC does require the franchisor to provide the franchise agreement along with the detailed disclosures, but the FTC does not review the agreements. Because the franchise agreement will govern your franchise, you should study it carefully with an advisor.

Q: Can I rely on oral promises made by the franchisor?

A: No. Nearly every franchise agreement states that it is the entire agreement and there are no other promises or agreements.

Q: How, then, can I make certain I have the benefit of oral promises?

A: You will need to negotiate the franchise agreement with the franchisor. You should insist that the franchisor include in the franchise agreement all promises that are important to you.

Q: Are there other documents I should review?

A: Nearly all franchisors have an operating manual. The franchise agreement usually requires the franchisee to do what is in the operating manual. Before buying a franchise, you should obtain and review the operating manual.

Q: Does Ohio have a law to protect me in buying a franchise?

A: Certain states have laws requiring franchisors to make disclosures. Certain states regulate aspects of the franchise relationship such as termination. Ohio does not have a specific franchise law, so the FTC rule governs in Ohio. Ohio *does* have a business opportunity law. This law requires persons who offer others the opportunity to start a business of selling goods or services to make certain disclosures. The law prohibits misleading statements. The law allows persons who are misled to recover damages. This law applies to many, but not all, franchises. Also, if a franchisor makes misrepresentations in selling the franchise, the franchisee may be able to sue to recover damages resulting from the misrepresentation.

—by G. Jack Donson Jr., a partner in the Cincinnati firm of Taft, Stettinius & Hollister, LLP, and Christopher A. Kuhnhein, an associate at that firm.

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