

Legal Review of Your Franchise



Why use an attorney?

Franchise agreements are notoriously one sided in favor of the franchisor and most franchisors take the position that their agreement is not negotiable. So why bother with a legal review?

First, even if you change nothing in the agreement, you should understand what you are signing. While the Franchise Disclosure Document is written in “plain English” the franchise agreement is written in “legalese,” and the agreement is what governs your relationship with the franchisor.

Second, a good franchise attorney knows the norms of franchise law. They will be able to tell if there are unusual or extreme provisions. Equally important they will be able to tell if important issues are not addressed by the agreement.

Third, an experienced franchise attorney knows where the franchisor is more likely to be able to make adjustments or addendums to the agreement.

How to select an attorney

Don't train your lawyer. There are many excellent attorneys; even attorney's who do a lot of business law that never have had occasion to work on a franchise. No doubt they can learn it, but they will be learning on your nickel.

Interview your attorney. Ask them what experience they have in franchise law. How many agreements have they reviewed? Satisfy yourself that they have been through this process enough to do a good job for you.

If your personal attorney is not experienced at franchise law they can probably make a referral. You can also contact the local bar association. Most franchise consultants can recommend an experienced attorney in your area.

What will the attorney do for me?

Most franchise attorneys offer a range of services. At the most fundamental level they will review the FDD and Agreement and give you a letter of opinion. At the other extreme they will negotiate on your behalf with the franchisor. By the way, the same attorney can help you with incorporation, lease agreements, etc. Of course the more the attorney does for you the more it will cost.

Again, interview the attorney, get their perspective on the pros and cons of their range of services and the estimated cost, and then decide what is best for you.

One word of caution: Attorneys are only human and may be tempted to give you their advice on the viability of the business model. This includes observations about the market, competition, profitability, etc. If you have done your research properly this is the area where you should know better than your lawyer. As with any advice you get, if the attorney raises an issue you have not considered, check it out by going to the people who really know – the franchisees.

When should I involve my attorney?

As you start to focus on a specific franchise is probably the time to select a franchise attorney, but due to the cost, the time to use the attorney is once you have eliminated all your other questions about the business. Ask yourself this question: “If the legal review of the agreement is satisfactory, am I ready to sign the agreement and write the check?” If the answer is no, then get your other questions resolved first. Why? Most other questions can be resolved by discussion with franchisor and franchisees or other sources at little or no cost. If your answer is yes then it is time to have your lawyer get to work.

What should I expect to spend?

The cost will vary depending on the services you use and the attorney you choose. It is reasonable to assume a budget of \$1000-2000. Some attorney’s may offer a “standard” fee for the basic review, but more often they will give you an estimated cost based on their hourly rate.