



**BEFORE**  
**YOU BUY A FRANCHISE**

**UNDERSTAND YOUR RISKS**



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PLEASE VISIT OUR WEB SITE WHERE YOU WILL FIND:

This booklet ("*Before You Buy a Franchise*"), the *Illinois Franchise Disclosure Act and Rules*, and other information about the Illinois Attorney General's office.

The address is: [www.ag.state.il.us](http://www.ag.state.il.us) (click "Publications")

## A MESSAGE FROM THE ATTORNEY GENERAL

Franchising can provide mutually beneficial opportunities for businesses that want to expand and investors who want the benefit of the franchisor's leadership and resources with an established product or service.

However, it is vital that as a potential franchisee you understand the obligations and rights created by the Illinois Franchise law. Carefully research your franchise choices before signing a contract or paying money to a franchisor.

The Franchise Bureau of the Attorney General's Office administers the Illinois Franchise Disclosure Act with the goal of encouraging business development, while protecting the interests of the franchisors, franchisees and Illinois residents.

Please carefully read the disclosure documents franchisors are required to provide you with and, at a minimum, obtain answers to the types of questions raised in this booklet before you buy a franchise. During your investigation of opportunities it is important that you seek legal and accounting advice.

I am sure you will find this handbook helpful. My Franchise Bureau also stands ready to assist franchisees and franchisors if there are any questions about the administration of the Illinois Franchise Disclosure Act and Rules.

I would like to thank the members of my Franchise Advisory Board and the staff members of my Franchise Bureau for assisting in the creation of this valuable publication that every prospective franchisee should read.

Sincerely,

A handwritten signature in black ink that reads "Lisa Madigan". The signature is written in a cursive, flowing style.

LISA MADIGAN  
Illinois Attorney General

## WARNING

THE CONTENTS OF THIS BOOKLET ARE NOT PROVIDED FOR PURPOSES OF GIVING LEGAL, ACCOUNTING OR FINANCIAL ADVICE TO THE READER. THE PURPOSE OF THIS PUBLICATION IS TO PROVOKE THOUGHTFUL ANALYSIS BY POTENTIAL BUSINESS BUYERS BEFORE THEY PAY MONEY OR SIGN CONTRACTS AND TO ENCOURAGE PROSPECTIVE FRANCHISEES TO SEEK PROFESSIONAL ADVICE THROUGHOUT THE EVALUATION OF FRANCHISE OPPORTUNITIES.

CAUTIONARY MESSAGES, QUESTIONS OR LEGAL PITFALLS PRESENTED IN THIS BOOKLET ARE NOT THE ONLY LEGAL OR FINANCIAL ISSUES YOU NEED TO BE CONCERNED ABOUT. READING THIS BOOKLET IS A GOOD BEGINNING, BUT YOUR PROFESSIONAL ADVISORS WILL BE IN THE BEST POSITION TO HELP YOU MAKE AN INFORMED DECISION.

You may contact the Attorney General for a copy of the Illinois Franchise Disclosure Act (815 ILCS 705) and of the Rules under the Act (14 Ill Admin Code §200). That publication sets out the registration, disclosure and other obligations of franchisors and the rights of franchisees:

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# **B E F O R E**

## **YOU BUY A FRANCHISE**

### **Understand Your Risks**

#### **I. INTRODUCTION**

Franchising is one of many ways that goods and services are distributed to consumers, but instead of being wholly independent, franchisees enter a business and legal relationship with franchisors in a desire to gain an advantage in the marketplace because of the established good will associated with the franchisor's trademarks and service marks, and the franchisor's expertise.

Properly researched franchise opportunities, matched with qualified franchisees, will reduce the risk of failure. You will be spending your money and committing to make future expenditures in a business relationship that can involve a significant part of your productive life. In return, you have expectations based on:

1. REPUTATION—The franchisor's reputation for integrity and the reputation of its product/service;
2. A BUSINESS SYSTEM—The franchisor's business system which franchisees are typically required to follow;
3. EXPERIENCE—The collective abilities of the franchisor's management now and over the years you are a franchisee; and
4. THE FRANCHISE AGREEMENT—The specific provisions of the franchise agreement itself.

Considerable time, effort and money are expended by franchisors and the Attorney General's Franchise Bureau to create and provide you with extensive disclosure of business background information before you commit what may be a high percentage of your life's savings to enter into a franchisor's system.

All of this effort to make you an informed buyer will be worthless if you do not read all of this information and discuss your plans with your lawyer and accountant before paying out your money or signing a contract. It is extremely unlikely that your lawyer will be able to undo a contract you already signed. Responsible franchisors want good franchisee relations, which start with you being well informed to guard against "buyer's remorse", unnecessary misunderstandings and trying to enter a business for which you are not suited.

Throughout this booklet you will find highlighted boxes with “Red Flag” warnings. Some of these “Red Flags” are statements you may hear from a franchise salesperson or executive that are designed to divert your attention from important rights which you have or to avoid dealing with specific, significant issues.

Other “Red Flags” may refer to extremely important aspects of the franchise relationship where you need to be sure that you have complete information and the time to evaluate the answers you receive.

Keep asking questions and follow up until you get complete answers. Take enough time to think about the answers to your questions and decide whether you and your advisors are satisfied with the answers.



“You know this is what you want; you’re ready; we’re ready – you don’t need an attorney to look over these things we’ve agreed to!”

You will also find references to items in the UFOC (Uniform Franchise Offering Circular) after many of the questions. Some of the answers you need are in the UFOC, but you should also speak directly with the franchisor, franchisees and your advisors to be sure you have complete answers to each question.

The information that follows is directed toward Illinois franchisees and refers to Illinois law and rules, but the suggested questions should be helpful for anyone about to buy a franchise.

## II. WHAT A FRANCHISE IS IN ILLINOIS

### FRANCHISE DISCLOSURE ACT OF 1987 815 ILCS 705/1-44 (1995)

#### 705/3. DEFINITIONS As used in this Act:

(1) “**Franchise**” means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:



(a) a franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services, under a marketing plan or system prescribed or suggested in substantial part by a franchisor; and

(b) the operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

(c) the person granted the right to engage in such business is required to pay, directly or indirectly, a franchise fee of \$500 or more;

**[PLEASE NOTE:** the Act lists very limited exemptions after this definition and other exemptions may apply to those portions of the Act related to registration.

There are also Rules under this Act that further explain the various elements of this definition. Copies of the Act and Rules are available upon request from the Attorney General's Office].

IT DOES NOT MATTER WHAT THE CONTRACT OR SALESPERSON CALL THE BUSINESS RELATIONSHIP. IF IT MEETS THE DEFINITION OF A FRANCHISE, IT IS A FRANCHISE, UNLESS IT IS EXEMPT FROM THE ACT.

\* \* \* \* \*

If you are considering a business purchase that appears to meet the definition of a franchise, but when you call the Attorney General's Franchise Bureau you learn that the company is not registered in Illinois, you should talk to your attorney and alert the Illinois Attorney General. An unregistered franchise offered in Illinois not only violates the law, but also indicates a lack of preparation that brings into question whether the franchisor is capable of administering or maintaining a franchise system.

\* \* \* \* \*



There are two times when a man shouldn't speculate:  
The first is when he doesn't have any money;  
the second is when he does.



*Mark Twain*

### III. KNOW WHAT A UFOC IS

The franchisor is required to give you a Uniform Franchise Offering Circular (“UFOC” or “Offering Circular”). Their document tells you all about the business you are considering. The franchisor **must** give you a UFOC at least fourteen days before you either sign a contract or pay money to the franchisor.

The only documents you should sign initially are the “Acknowledgment of Receipt” page (Item 23 of the UFOC) or other receipts showing you received particular documents. Notify the Attorney General if you do not receive the UFOC before salespeople started trying to sell you their franchise.

The Federal Trade Commission (FTC) also requires that you receive copies of the documents you are to sign at least fourteen days before signing them and the FTC Franchise Rule requires that you receive a UFOC (or FTC format disclosure) at your first personal meeting with the franchisor representative.

The UFOC is a vital document for you and your professional advisors to read thoroughly. It has 23 “Items” that will provide many of the answers to the questions below and because these UFOC reports are “uniform” it will be easier to compare franchises. A UFOC Table of Contents will look like this:

#### **TABLE OF CONTENTS**

#### **ITEM**

1	Franchisor/Predecessor/Affiliate
2	Business Experience
3	Litigation
4	Bankruptcy
5	Initial Franchise Fee
6	Other Fees
7	Initial Investment
8	Restricted Product/Services Sources
9	Franchisee’s Obligations
10	Financing
11	Franchisor’s Obligations
12	Territory
13	Trademarks
14	Patents/Copyright
15	Management Requirements
16	What Franchise May Sell
17	Renewal/Termination/Disputes
18	Public Figures
19	Earnings Claims
20	List of Outlets
21	Financial Statements
22	Contracts
23	Receipt

#### **RELATED ITEMS**

1-4, 13 & 14, 18-21 tell about the franchisor.

5-7 tell your costs to be a franchisee in the system.

8-12, 15-17 & 22 tell what you and the franchisor agree to do.

“The important thing is that you received the disclosure documents – don’t worry about the date on the receipt you are now signing.”



#### IV. QUESTIONS TO ASK BEFORE YOU BUY

You should answer the following types of questions **before** committing to the franchise method of doing business and **before** deciding on a particular franchisor program. No one will ever create a truly complete list of questions, but this one should help you in making your own list and a more informed decision. Please review the suggestions toward the end of this booklet to help you do your research.

##### A. KNOW YOURSELF FIRST

Your first step should be a thorough self-evaluation of your ability to buy and manage a business. Some questions you should ask yourself before investing in a franchise might include:

- Will your personality allow you to interact well with customers?
- Do you have the financial resources and emotional energy to start and sustain a business? You may experience many months when you pay out more than you take in.
- Are you able to develop the skill of managing people you will have to hire?
- Has your education or experience prepared you to deal with a variety of business areas every day, such as: bookkeeping; purchasing; banking; advertising; marketing; employment law; health requirements; contract law; employee, customer and premises security; insurance; finance; taxes; ... ?
- If your business plans depend upon a spouse or family member to be your partner or employee, do they have the necessary skills and will you be able to work together compatibly?
- Are you willing to devote the extraordinary amount of time most franchise businesses will require, just like any other independent, start-up business?
- Are you willing to invest substantial time and money in a business that you do not completely control and where the franchisor may dictate virtually everything you can and cannot do?

- Are you willing to accept the additional layer of rules and controls that are present if your site is in a shopping center with a manager and tenant's association?



“You could probably run this business in your spare time” or, “you can hire a manager and this will leave you lots of time for other things while earning a great living.”

If you hear comments like this one, be sure that there are facts to support the salesperson's “puffing”. Look at the contract, consider the answers other franchisees give you and decide what will happen if the franchised business turns out to take more time or is less profitable than you had hoped.

- If you plan to eventually have someone else manage your business, will the franchisor allow this?
- Have other franchisees in the system you are considering demonstrated that there will be sufficient cash flow and income to support you and a manager?
- Can you be an effective absentee owner/supervisor over your manager?



No one plans to fail, but failures fail to plan.



AT OPPOSITE ENDS OF THE BUSINESS INVESTOR SPECTRUM ARE THE “PLUNGER” AND THE “PLUGGER”. THE PLUNGER DIVES RIGHT IN WITHOUT ANY REASONABLE PREPARATION. THE PLUGGER NEVER MAKES A DECISION, NEVER IS SATISFIED AND NEVER TAKES A RISK. IF YOU ARE EITHER OF THESE, FRANCHISING MAY NOT BE FOR YOU. SOLID PREPARATION, RATIONAL RISK TAKING AND THE ABILITY TO MAKE WELL REASONED DECISIONS ARE CRUCIAL TO YOUR SUCCESS.

## B. KNOW YOUR INDUSTRY

Your second step should be to thoroughly explore the industry you would like to be in and the various competitors (not just franchises) within that industry. Ask the following types of questions:

- Is your desire to be in a particular industry compatible with your experience, education and ability to learn? Will you be motivated because you like the product or industry? Will you be confident because you know or can quickly learn what is necessary to make your business succeed?
- Have you talked to knowledgeable people in your chosen industry and read current articles and books to learn how healthy that industry is, what changes are taking place, and what the future looks like for both the industry and your proposed product or service?
- Have you researched how popular your product or service will be in the general area in which you would like to locate? Who will buy your product or service?
- Have you explored how seasonal your business would be in your area and what product mix is likely to sustain your business throughout the year?
- Is your chosen industry regulated by any federal, state or local government? If so, how difficult and expensive is compliance? Is the franchisor in compliance? What is its record in complying with applicable laws? Will you need a special license to operate your business?  
[UFOC Item 1– see p. 4 re: UFOC]
- Did you consider starting up your own business independently or buying an existing business instead of buying a franchise?

### **C. KNOW YOUR FRANCHISOR**

After choosing an industry, a product or service, one or more franchises, and reading the Offering Circular(s) [UFOC], you should be able to answer some or all of the following questions:

- What is the franchisor’s past and present financial condition and does it indicate the ability and willingness to meet all contractual obligations to suppliers and franchisees? If the franchisor’s financial condition is poor or marginal, it may affect you. Ask present and past franchisees if the franchisor had problems meeting its obligations [UFOC Item 21]
- Is the business dependent upon trademarks, patents or copyrights (or licenses for them) that will soon expire? [UFOC Items 13 and 14]
- Does the franchisor clearly have the right to license to you any essential federal or state trade or service marks, copyrights, patents, logos, tradenames or other commercial symbols? [UFOC Items 13 and 14]

- Are there any infringements on, or pending challenges to, the trademarked, patented or copyrighted property described above? [UFOC Items 13 and 14]
- Have you spoken and met with many present and former franchisees to learn how they are, or were, treated by the franchisor? Did you ask them what it took to make their business perform well and whether the franchisor was cooperative in the resale of individual franchises?



“You really don’t need to call other franchisees, but I’ll get you some names if you insist.”

- Have you closely examined the franchisee list in Item 20 of the UFOC and decided which franchisees you will contact? Do not just rely on a few names the franchisor says to call and which will be their best references.
- Have you reviewed the background of the franchisor’s officers and directors to determine their experience—with the industry, in franchising, in business, and with this particular franchisor? [UFOC Item 2].
- Have you carefully reviewed the franchisor’s litigation history—particularly between the franchisor and its franchisees? Some litigation is unavoidable, whereas other cases may lead you to vital information about how the franchisor treats its franchisees. [UFOC Item 3].
- If you are aware of an executive for the franchisor company, but that person’s name does not appear in Item 2 of the UFOC list of officers, directors, trustees, partners or subfranchisors—find out why. Get this supplemental information and let the Illinois Attorney General’s Franchise Bureau know of this omission. A few franchisors do not want to disclose someone’s lack of experience, questionable background, prior bankruptcy or adverse litigation history. The franchisor is required to put this information in the UFOC.
- If the franchise system is new or comparatively small, determine exactly what test market efforts were done and what were the results.
- What is the franchisor’s present corporate structure and what staffing growth does it anticipate during the next ten years?
- Can you meet with the company representative(s) who will be assigned to your site, before you sign the contract?

- Franchise sites close for a variety of reasons. What does the UFOC show about your franchisor’s site closure ratios (sites closed for the reason(s) listed divided by total number of sites for that year). Did you learn the reasons for closure when you spoke with some former site owners? The information in UFOC Item 20 is very valuable to you and can give you an idea of how much faith to place in your franchisor’s claimed expertise in selecting successful sites and accepting franchisees who are likely to succeed.
- Has the franchisor ever selected a poor site that did not meet projections through no fault of the owner and if so, what did it do to help the franchisee? If this has never occurred, what would it do if this does happen?
- What will the franchisor do to supplement your education and experience? Will the franchisor train you about its product or service? Will it also train you about bookkeeping, marketing, employee management, insurance, taxes and the many other business management subjects you need to know about?

#### **D. QUESTIONS TO ASK PRESENT OR FORMER FRANCHISEES**

Be considerate of the franchisees you talk with. They do not have to talk with you and you cannot expect them to spend time with you during their busiest hours. Explain who you are, why you are calling and ask, if they can’t talk now, what time could you call back or visit their operation. But do call and visit several people! Be a good listener when you ask your questions:



Sign in Lyndon Johnson’s Office  
while he was a senator:

**“You Ain’t Learnin’ Nothin’  
When You’re Talkin’.”**



- Why did you (the franchisee) select this particular franchise system over others in the same type of business?
- Did you get the training, quality products and support you paid for and were promised? Did the promised training take place when you needed it and did the training prepare you to compete with other businesses providing similar products or services?
- What problems did you encounter with:
  - (1) the franchisor (during start-up and later),
  - (2) the site,

(3) producing business, and

(4) how the franchisor responded to each problem?

- How would you describe your overall franchisor/franchisee relationship?
- Is there a franchisee association or advisory council? Was there some incident or problem that caused franchisees to band together? How long has the association existed? Do the franchisees or the franchisor control the association? What current issues are being dealt with between the association and the franchisor? Is there a meeting scheduled that you could attend?
- What is your opinion about how competitive your franchise is with similar businesses? What, if any, trends do you see in the industry, in the franchisor's business, and in your particular market area?
- Do your royalty and advertising fees leave you with enough of a profit for yourself?
- Have there been any problems with how your franchisor spent your ad fund payments?
- Are there any other franchisees or former franchisees whom you might recommend I contact?
- How often have you found it necessary to refer to your franchise agreement after your business opened? Did the agreement provide the answer to question(s)? What do you wish the agreement had included? If many franchisees in the same system are turning frequently to their agreements to solve problems with the franchisor, the franchisor/franchisee relationship may not be a healthy one.
- Consider asking a cooperative franchisee if you could work with him or her for a period of time for free before you commit to buying your own franchise.
- If they are a former franchisee:
  1. Why did you leave the franchise system?
  2. Did the franchisor cooperate in helping you sell your franchise?
  3. Do you own any other franchise or would you buy a franchise from a different franchisor?



4. If there was a termination or nonrenewal, did the franchisor explain why and provide a reasonable opportunity for you to cure the problem?
- When speaking with a current franchisee, and after having all of your specific questions answered, ask: “Are you having fun running your business and if you could do it all over again, would you buy this franchise or do anything differently”?

**NOTE:** Be alert for isolated franchisees who may have created their own problems, but who attack the franchisor in general terms instead of giving specific facts. By speaking to many present and former franchisees you will have a much better picture of how successful the system is and what, if any, actual problems there are.

## V. UNDERSTAND YOUR CONTRACT

With the help of your advisors, you should review, discuss and understand each term in the proposed franchise agreement. Illinois franchise law applies to oral and written agreements. If there is no written agreement, find out why and how your rights and obligations will be determined. These are some of the things you should discuss:

### A. YOUR MONEY

#### **YOU WILL BE PAYING “UP FRONT” AND “ONGOING” COSTS – LEARN WHAT THEY WILL BE!**

Throughout your contacts with the franchisor’s salespeople, you are asked little or nothing about your education, experience, management ability, personal goals, etc., but you are asked over and over again about your ability to pay or finance the franchise fees and costs.



- What are the up front costs, such as an initial franchise fee (how much, when is it payable; is interest added to installment payments; and is the fee refundable under any circumstances)? [UFOC Item 5].
- What opening inventory is required; are there advertising costs to be paid before you open? Do you pay for any aspect of training (instruction, materials, travel/lodging, etc.)? [UFOC Item 7].

- What are your up front site costs? Some of these costs could be: initial rent and deposits, purchase of a site, new construction or remodeling, decorating, equipment and fixtures, zoning changes, insurance and signs. [UFOC Item 7].
- If your business will be interrupted now or in the future because of franchisor required structural or decorating changes, or a name change, are royalties reduced or suspended? [UFOC Item 6].
- Are there any other costs not covered by the agreement? Do you have to pay these costs before you open the business and start generating income? Some of these costs could be: legal and accounting fees, finance charges, business and other licenses, and operating capital.
- Who provides the accounting/bookkeeping system for your business? Must you use a specified system and who pays for it? Is this part of a computer package you are required to buy or use and, if so, will the franchisor have direct access to your computer and any information you maintain or run on your computer system? [UFOC Items 6 and 8].
- Continuing costs will always have an impact on your net income. These costs should be part of your planning to help you know when the business will begin supporting itself. In addition to the usual business costs of payroll, rent/mortgage, utilities, insurance, inventory, and the like, have you considered on-going royalty or service franchise fees, advertising costs payable to the franchisor and additional costs for special local advertising, and periodic training costs for yourself and your employees? [UFOC Item 6].
- For what purpose might the franchisor charge you a fee from the date you commit to buy, through the time you open your site? Be sure to budget for the many other costs you will incur that do not originate from the franchisor. Will you be charged for the following items [UFOC Item 6]:
  1. Initial franchise fee;
  2. Operations Manual;
  3. Site Selection assistance;
  4. Pre-opening assistance;
  5. “Grand-opening” assistance;
  6. Franchisee and staff training before and after opening;
  7. Start-up advertising and marketing assistance;
  8. Pre-opening inventory of products and supplies;
  9. Required insurance provided through franchisor;
  10. Remodeling costs;
  11. Transfer fees (usually paid by seller, but ask)?

- What fees might the franchisor charge you for after you open? [UFOC Item 6].
  1. Royalties or License Fees:
    - a. What are they based upon?
    - b. Is there a minimum royalty?
    - c. Is there any program under which you (or other franchisees) can reduce your royalty?
    - d. How often are royalties payable?
    - e. Do you pay the royalties to the franchisor based on a percentage of your sales, or does all money you earn in your business go to the franchisor and you in turn receive the net after royalty deductions?
  2. Accounting Services?
  3. Up-dated manuals?
  4. Continuing training for existing or new products or services?
  5. Advertising costs:
    - a. National or regional ad funds collected and administered by franchisor. How is the fee calculated; when is payment due; and is any part of the fund available for franchisee, self-directed local advertising?
    - b. Does the franchisor require a minimum level of franchisee paid local advertising? Must any ad program and ad copy be pre-approved by the franchisor?
  6. Site costs, including remodelling and redecorating?
  7. Equipment, fixtures and supplies: what does franchisor require and what else might you need?
  8. Computer services and software: what does franchisor require and what else might you need?
- Loan costs will be one of your largest overhead payments. Will you be able to make these payments? Have you shopped for the best financing and compared the terms to whatever financing the franchisor offers? [UFOC Item 10].
- Did you ask the franchisor if there are any other fees you have not planned for that are payable to the franchisor or which you may have to pay to a third party?
- If reasonable efforts by you and the franchisor do not lead to an acceptable site for the franchise, are you entitled to a refund of any money paid or do you have the right to switch to another territory? [UFOC Item 5].
- Does the franchisor provide discounted prices directly or through suppliers for inventory, supplies and equipment? Are you required to use these suppliers? [UFOC Item 8].

- Have you obtained price lists to compare with alternative sources, and explored whether the franchisor will approve of alternative suppliers who provide products of the same or better quality than the franchisor specifies? Have any franchisees been successful in obtaining such approval? [UFOC Item 8].
- Does the franchisor or its affiliates receive income from your purchases of supplies, inventory, equipment or the lease payments for your site? Have the franchisees you interviewed had any problems with the approved vendors or their products? [UFOC Item 8].
- Can the franchisor require you to update your equipment or inventory? If so, how are such improvements decided upon; how often can such changes be required; and is there a limit on the amount the franchisor can require you to spend?
- Will you be allowed to sell non-competing goods and services? If this is allowed, do you have to pay royalties on these sales? [UFOC Item 16].
- If your franchisor markets through a catalog, do you get the benefit of a franchisor catalog with your name on it in addition to the sales effort at your retail site, or do you compete with your own franchisor offering your same products in its catalog without any payment for customers in your territory? [UFOC Item 12].

## **B. THEIR MONEY**

- Is the franchisor financially able to meet its obligations to you and the other franchisees in the system?
- Have you carefully reviewed the financial impact of the information provided in the UFOC with your accountant? Did the franchisor provide adequate answers to all questions you had about the franchisor's financial statements and financial condition?
- What are the franchisor's expansion plans? How will these plans be financed? Do they have enough money to meet their goals and still support their franchisees?
- If the franchisor's growth is slow or nonexistent, is this an industry and market that will thrive without growth?
- Regarding a franchisor's income, what is the ratio of initial franchise fees to franchise royalty income? You should look very closely at a franchisor that relies heavily upon initial franchise fees to meet its financial obligations.

- Does the franchisor offer financing? You should carefully check the details of the financing and compare the terms with any other sources available to you. Loan costs can represent a large percentage of your overhead expense—carefully review your options and ability to repay. [UFOC Item 10].
- Does the franchisor disclose revenue it or its affiliates makes on the sale of products and services to its franchisees? Is revenue from approved vendors that are paid to the franchisor disclosed? [UFOC Item 8].
- Will the franchisor buy back your franchise if you want to sell or must sell? Will the franchisor help you find a buyer? Is there an agreed method for valuing your franchise if it has to be sold? Will the franchisor credit any remaining debts against the resale price and pay you the excess?

**THOROUGHLY DISCUSS THESE FINANCIAL QUESTIONS AND ANSWERS WITH THE FRANCHISOR, YOUR ACCOUNTANT, YOUR ATTORNEY, AND YOUR BANKER**

### C. LOCATION, LOCATION, LOCATION

Real estate experts say that the three most important factors for investing in a home or business site are location, location and location. It is very important that you know who is responsible for each step in selecting a site and who will pay the resulting costs. Even if the franchisor makes all the decisions about the site selection and its development, you need to satisfy yourself that the chosen site is the best for your type of franchise.

“Don’t concern yourself about new site selection; the franchisor really knows how to pick the best locations.”



- If a fixed site is necessary, who picks the site? Will the franchisor help evaluate the site? Must the franchisor approve the site? If most of the decisions are yours, have you consulted experts in site selection? Have these experts considered visibility, traffic patterns (vehicle and pedestrian), desirability of being near or far from competitors, site cost comparisons, adequate space inside, sufficient parking, area demographics, . . . ? [UFOC Items 11/ 12].
- If your franchise site will be the first in Illinois or the first at one end of the state or the other, this could be a great opportunity OR a disaster, depending upon many factors, including:

1. How dependent your product is upon the franchisor's local name recognition;
  2. How good the product or service is;
  3. How carefully an appropriate site was selected;
  4. How good a businessperson you are or will quickly become; and
  5. How supportive the franchisor has been toward other pioneering sites.
- What assurances have you been given about advertising, marketing and training support? Exactly what will the franchisor do to help you develop this new market area and what is the franchisor's development plan for additional sites?
  - What are the franchisor's site selection standards? If there are none, why don't such standards exist? If your site is being recommended by the franchisor, despite its not meeting such standards, why are certain criteria no longer important? [UFOC Item 11].
  - Whether drive-in/walk-in traffic is important to your business site or if you have a base of operations from which you go out to see prospective customers, "demographics" may be important to you, including:
    1. **Population statistics** for your potential customer area, such as age, income, marital status and transitory populations such as office workers, schools...etc.
    2. **Vehicle Counts:** Is the traffic local or is it through traffic that doesn't go to your site? What are the comparison counts for traffic in all directions throughout the hours you would be open? If there are other businesses next to your site, what is the percentage of local village stickers compared to distant ones in the parking lots? How many registered vehicles are there in your territory?
    3. **Parking:** How important is parking to the success of your franchise? Is there parking immediately adjacent to your front door? Are there nearby businesses or any other activities that will overwhelm your need for convenient parking? Are there time limitations on parking that are shorter than the normal visit by your customers?
    4. **Pedestrian Counts:** Are you in a location where most people will be walking to your site or taking public transportation? What are the hours of such traffic and their peaks?

5. **Competition:** Where are your competitors located; why do you think they picked their sites; were they successful in making their choices; does your market area contain enough potential customers that your site can divide market share with your competitors and still make a reasonable rate of return on your investment of time and money?
- Is your site accessible? Is it easy to find? Can people get into your parking lot regardless of which direction they are driving? Is there undeveloped land near your site that could later affect traffic patterns and your access? Have you checked with the city, county and state to learn of any nearby road or bridge construction projects?
  - If you must build or remodel to the franchisor's specifications, who negotiates the lease or purchase, obtains the contractors, supervises the work, and obtains the construction and mortgage financing? Does the contract carefully set out any shared obligations? If the franchisor's representatives said they will help you throughout the process or at specific stages—make sure that these representations are in the contract.
  - Are you given freedom in your remodeling and decorating choices and are you free to decide who will do the work? How often has the franchisor required substantial changes to other sites and who paid for them?
  - Have you carefully researched your labor market to be sure you will find qualified applicants within a reasonable distance from your site? Will public transportation for your employees be important in determining a site for your franchise? Have you included realistic wage costs in your business plan?

#### **D. TERRITORY**

Do Not Assume you will have a territory where other franchisees in your system cannot sell or where the franchisor cannot sell a site to another franchisee. Ask the following questions:

- Exactly what is your territory, and can it be drawn on a map or otherwise described in detail? Will the franchisor make such a map or description an exhibit to the contract? [UFOC Item 12].
- Under what circumstances can your territory be changed during the life of the contract? [UFOC Item 12].
- Will you be given the opportunity to buy any new franchises adjacent to your territory before such sites are offered to others? [UFOC Item 12].

- Will you be obligated to develop your territory by adding sites within a certain time period regardless of profits from your first site?
- If other types of franchise sites could be opened within your territory, do you have a right of first refusal? [UFOC Item 12].
- Under what terms can you buy additional franchises?
- Are there official criteria that must be met before a territory and site are sold to a franchisee? Has the franchisor adhered to the criteria so far?
- Is there any protection against new sites in your territory if your franchisor merges with a competing franchise system or forms a holding company that opens a new site too close to yours?
- Is there any potential customer to whom you cannot sell? Are there “direct”, “institutional”, or “house” accounts? Do you get any income from such accounts whether they were generated by you or not? Is this one-time income or a continuing source of income when you develop such accounts? [UFOC Item 12].
- Will comparable merchandise or services be offered under another name controlled by your franchisor and sold in your territory? If so, will the pricing be comparable to what you offer? If the franchisor states that they do not and will not compete in your territory during the term of your contract, will they include this in the contract? [UFOC Item 12].
- What does the franchisor agree not to do within your territory?
- What does the contract say the franchisor can do in your territory,—or—if silent, what marketing efforts do you or your advisors think might be done in your territory by the franchisor that could effectively decrease your sales?

Such a decrease in sales in your territory or market area might result from:

- (a) Other franchisees with the same trade name you purchased;
- (b) Other franchisees under a different franchise system, but with similar or identical products or services, where the same franchisor owns or controls both franchise systems;
- (c) Company, factory outlet, or off price stores;
- (d) Distribution agreements (with grocery stores, other retail stores, restaurants...);



- (e) Nontraditional sales or distribution systems such as hospitals, schools, office buildings, train stations ...;
  - (f) Catalog sales; or
  - (g) Co-brand franchising or “bundling” (one franchisor agrees to share space with another franchisor’s system).
- If you cannot sell other companys’ products and you cannot sell outside your territory, can you live with the franchisor’s “right” to sell the same product within your territory or to establish competing franchises under a different name or method of distribution within your territory?
- Are there any sales quotas or performance standards you must meet to avoid the franchisor being able to change or terminate your territory? Who sets these standards? Are the requirements and their enforcement uniform across the franchise system? If you fail to meet your quota, what can the franchisor do and what grace periods or alternative remedies are available to you? What was the experience of the franchisees you interviewed regarding quotas and enforcement? [UFOC Item 12].
- Is there any restriction on your business activities after your franchise ends (for how long, in what geographic area, product/service restrictions)? Can the franchisor take over your site when your franchise ends?

## **E. ADVERTISING**

One of the most important and expensive costs of doing business for most franchisees is advertising. You must determine how much advertising will be necessary and how it will be paid for. If your franchisor requires you to make periodic payments into an advertising fund, you should learn the answers to these questions:

- What is the full extent of your advertising obligation?
- Is there any co-op advertising organization that handles the system-wide advertising program or parts of it? How does it work? Who is in charge? Will you have any influence upon the advertising decisions it makes?
- Is the advertising fund a trust account with limitations upon the purposes for expenditures? In addition to actual print and electronic media ad placements to promote the product or service you are to sell, can the franchisor:
  1. Keep ad discounts allowed on ads placed, instead of using such discounts or commissions for more advertising?

2. Spend ad funds to sell franchises [such as paying for brochures, ads, trade-shows and other activities designed to attract more franchisees]?
3. Pay for preparation of its UFOC out of this fund?
4. Pay for legal fees to defend against lawsuits [including those brought by franchisees]?

If you will be obligated to make advertising payments, but it is handled in a different way, you should get all of the details.

- Will the franchisor make a contractual commitment to spend all ad funds collected from franchisees on your product and services advertising and to return all commissions, discounts or rebates realized by franchisor or its affiliates back to the advertising fund for use in promoting your product or service? [UFOC Item 11].
- Who owns any money allocated from the fund for a grand opening or local advertising, particularly when a franchise is being resold?
- In addition to the national or regional ad fund you may be required to contribute to, are you also required to spend a certain amount of money locally, including such things as yellow page ads, coupons or the like? What is the scope of your discretion to place advertising or conduct special promotional events?
- Do company stores contribute toward the ad fund and if so is it at the same rate you are expected to contribute? [UFOC Item 11].
- Are there any categories of franchisees that contribute at a different rate than you will be paying? [UFOC Item 11].
- Have you or your accountant reviewed a financial statement for the ad fund? [UFOC Item 11].
- What limitations are there on how the advertising money will be apportioned among national, regional or local advertising? [UFOC Item 11].
- Will you be given any discretion as to how local advertising money from this fund will be spent? Are there any restrictions upon carrying out your own ad campaign if you want to spend additional money? If you do spend your own money for ads, will the franchisor reduce the payments you are required to make into the ad fund? [UFOC Item 11].

- What is the franchisor’s track record for spending this ad money according to the franchisor and franchisees who are or were in the system?

## F. TRAINING



The person who is too old to learn  
was probably always too old to learn.



“Don’t worry about training. With your natural ability, life experience and the popularity of our [product/service], you don’t really need training.”



One of the primary reasons franchising has grown so much is the prospect of being taught what you need to know to effectively run your business. However, part of your self-evaluation must include a realistic assessment of what you know already and what you must learn. The franchisor will usually not teach you every aspect of successful business management. If you have no business experience whatsoever, you may not be ready for franchising.

The franchisor probably will teach you how to market its product line or services. The franchisor may also direct you to sources that can fill in some of the blanks in your education or background. The better franchisors will not sell a franchise to someone who is not already qualified to run a business. However, a few will sell to anyone who will pay the franchise fee.

- If you and the advisors you respect believe you are ready to run a business and the only question is which one, training is still going to be important so that you learn: (1) the franchise operating system; (2) how to comply with your contract; and (3) how to take advantage of all the potential your chosen franchise has to offer. If the franchisor offers training, see if the agreement or UFOC Item 11 describe:
  - (a) what training is offered (short overview or in depth, what topics, experience of instructors);
  - (b) when this training will be offered (is it once in the beginning, refresher courses, periodic updates, before or after you commence doing business, etc.);
  - (c) where this training will take place (your site, franchisor headquarters, another franchisee’s site, etc.);

- (d) who can take advantage of this training (you, other managers, staff); and
- (e) who pays for each type of training (including: tuition, transportation, lodging, materials) and what will it cost you?



“We don’t have any training manuals at this time, but someone from headquarters will stop by and tell you everything you need to know.”

- Ask them to look at their training manuals before signing the franchise agreement to see how extensive they are. You can check UFOC Item 11 to see an outline of what subjects the manuals cover, but you will learn more about their training program by seeing the actual manuals. The franchisor need not give you a copy, but you may be allowed to see it.
- Once you have determined what training you will receive from the franchisor, is there additional training you must obtain? If so, will you be able to schedule the time and afford the additional cost when the training is available?
- If the combination of what you already know and what you learn from the training will not be sufficient for you to adequately manage your proposed business, you may want to look for a partner who complements your education and experience. You may also want to wait until you have gained more knowledge before committing to a franchise.
- The training subjects and the number of days or weeks to conduct training should be specific to the type of franchise you are buying and the product or service you will offer. Some franchises require more extensive training than others, but it would be extremely rare for a successful franchise system to provide no training. If it is obvious that no training is necessary, it should raise the very realistic question of “why should I pay you for what is so easy to do on my own?”
- You need to determine what training you require to be successful and then find out exactly what training the franchisor will provide, over what period of time and at what cost to you. What training will the franchisor not provide that you need to have before opening your doors for business?



It may be true that you cannot teach an old dog new tricks, but you sure can teach him some good old ones!



## G. EARNINGS CLAIMS/FINANCIAL PERFORMANCE

The first question almost every potential franchisee asks is “how much money can I make?” To receive a meaningful answer, you will have to ask a variety of questions to know how the potential income was calculated. You must then decide how this potential income might apply to you and your proposed site.

- Franchisors are not required to make earnings claims. However, when they do tell you about earnings, they must substantiate such claims. Both the Illinois Franchise Disclosure Act Rules and the Federal Trade Commission Franchise Rule require substantiation of earnings claims. [UFOC Item 19].
- You should understand that franchisor representatives are selling. Sales people will try to put every statement or answer to a question in the best possible light. It is up to you, the buyer, to be cautious enough to verify important statements and to get earnings claims confirmed in writing.
- If a franchisor states that “a franchisee earned a net profit of \$75,000”, this does not indicate your potential for success if that franchisee was the only one out of fifty to earn this much while the others earned a net profit of \$20,000. If a “majority” of franchisees gross \$100,000 per year, this may be a negative result if their costs eat up most, all or an excess of their gross income. Did the owner or officers take a salary before the “net profit” figure was arrived at?
- Earnings claims can also be subtle, such as a salesperson saying “by this time next year you will be driving that Mercedes you wanted.” If such a claim cannot be substantiated in UFOC Item 19, it is an unlawful earnings claim and you should contact the Attorney General.
- A franchisee site held up as an example for having paid all its bills, that allowed the owner a draw of \$35,000 for salary and that had \$10,000 left over at the end of the year may be headed for disaster if the site needs extensive repair or renovation, the equipment needs to be replaced, or sales have been sliding downward each year. Did the franchisee show a profit only because family members worked for low or no pay instead of using regular employees? Are you and your family willing to do the same?

- Are the earnings figures you are being given based upon franchisees running businesses comparable to the one you want to buy? Or, are the gross or net figures coming from company stores that may have a very different level of expenses and income?
- Do you have confidence in this franchisor’s system? Are the vast majority of franchisees in the system able to: remain competitive; properly maintain their business; sustain steady growth; pay their bills; and show a profit sufficient to justify your risks and satisfy your personal requirements? Careful analysis of all earnings claims is absolutely essential, even if you are a confident, experienced businessperson. This is another area where an experienced accountant can provide invaluable advice.
- Too many factors are involved to simply accept an earnings claim and assume you can do as well or better. How good the other franchisee’s site locations are; what their competition is; how long they have been there; management skills; and unique local factors that produce customers are just some of the factors that may prevent earnings claims from directly applying to your proposed franchise site.
- Do you realize that it is not unusual for a new business [franchise or independent] to take a year, two years or more before ever showing a net profit, and maybe before you can even draw your own salary?
- Be cautious about “studies” that show franchising to be phenomenally more successful than independent businesses.

THERE IS NO CORRECT ANSWER

The reason these studies are referred to here at all is to ask you to put statistical information in perspective. Different industries have widely different start-up costs, overhead and success rates. Different franchisees within a specific industry and within a specific franchisor’s system have varying costs and track records.

**H. RESOLVING DISPUTES**

- Is there a procedure in the contract that sets out how disputes must be resolved? [UFOC Item 17].
- Does this structure allow you to “cure” or resolve your default or your failure to comply with the contract? How long do you have to cure? [UFOC Item 17]. Illinois requires a “reasonable opportunity to cure”. [815 ILCS 705/19].

- Are you required to arbitrate disputes rather than litigate in court? [Items 17 & 22] If so, will the arbitration take place out-of-state or at a great distance from your site and at extra cost to you? Do you know the difference between using arbitration or the courts?
- Does the contract provide for court litigation to take place in Illinois [Illinois law prohibits jurisdiction or venue to be outside of Illinois (815 ILCS 705/4 and Rule 608)]? The UFOC should make this clear on the cover page or in an addendum specific to Illinois.
- Will the franchisor or one of its affiliates be your landlord? This may give the franchisor greater control over your business and provide the franchisor with additional remedies if you and your franchisor have a dispute.

IT IS VERY IMPORTANT THAT YOU FIND OUT FROM EXISTING, AND PARTICULARLY FORMER FRANCHISEES, HOW THE FRANCHISOR LANDLORD TREATED ITS TENANTS.

## I. ENDING YOUR FRANCHISE RELATIONSHIP



Plan your exit strategies before you buy.



Eventually **you will leave the franchise system** you are buying into. You may end up leaving because: the franchisor terminated your relationship; the franchise term under your agreement expired; or because you or your estate transferred ownership to someone else.

- What will your rights be when the franchise relationship ends with regard to your lease or site ownership, equipment and fixtures, signage, supplies, current inventory and other valuable parts of our franchise?
- If the franchisor fails, are you capable of continuing in business without franchisor support?

### 1. Termination

Don't worry about reading the termination clauses, we hardly ever use them.



- Do you understand each contract provision by which the franchisor can terminate you as a franchisee?

- Does the contract make clear what constitutes “good cause” that would entitle the franchisor to terminate your franchise contract or refuse to renew your agreement?
- Are you willing to accept a contract clause stating that you cannot end the contract and stay at the present site? Your contract may require that you assign the lease to the franchisor when the contract ends. Even if you can keep the lease and you change all references to the franchisor or previously carried product, you may not be allowed to sell a competing product or service at the site.

**NOTE:** See Illinois Franchise Disclosure Act 815 ILCS 705/19 regarding franchisee rights in the event of termination.

## 2. Nonrenewal



“Don’t be concerned about your fixed term of ownership – we almost always renew.”

- Is your contract for a fixed period with no right to renew?
- Can the franchisor refuse to renew your franchise contract when the contract period agreed upon ends?
- Do you realize that to renew your contract many changes could be required that could reduce your territory or increase your costs?
- Like the termination clauses mentioned above, in the event of nonrenewal you may not be allowed to stay at your site.

**NOTE:** See Illinois Franchise Disclosure Act 815 ILCS 705/20 regarding franchisee rights in the event of nonrenewal.

## 3. Transfer



“Don’t worry about selling your franchise when you want to retire – there’s always a line of buyers a block long and we help make selling at a great price easy.”



- Check with former franchisees to see how smoothly the actual transfer of ownership went and ask current franchisees if they have tried to sell and how cooperative was the franchisor?
- Are your rights to sell or transfer ownership the same whether you were terminated, refused renewal by the franchisor or you voluntarily decided to sell? You can expect the franchisor to require prior approval of buyers, but who can you sell to:
  1. the franchisor;
  2. a potential buyer you locate [whether a stranger or a family member]; and
  3. what are the rights of your estate to sell or operate your franchise in the event of your death?
- If you view the eventual sale of your franchise as an integral part of your personal investment plan, how will each part of your franchise be valued if the franchisor buys it back? Will the franchisor have a say as to what the selling price will be to a third party? Some franchisors will tell a prospective, third party buyer that the sale price is too high. Ask the questions that let you know what to expect when you want to sell your franchise, or if you must sell. What is the transfer fee, if any?
- If the contract severely limits your ability to resell your franchise, have you carefully projected your potential yearly net income? WILL YOU HAVE EARNED ENOUGH DURING THE TERM OF YOUR CONTRACT TO WALK AWAY WITH A REASONABLE RETURN ON YOUR INVESTMENT DESPITE BEING UNABLE TO SELL OR RENEW?
- If the franchisor has the right to take over your lease or if you transfer the franchise to another person, will you still have any responsibility in the event of default by the franchisor or the new franchisee?

#### **4. Non-compete**

- Are the non-compete terms reasonable in geographical location, duration, and narrowly described as to what activities are prohibited? Are you aware that the non-compete clause may remain in effect even if you declare bankruptcy?

## J. CONTRACT NEGOTIATIONS



After brief answers to your questions and implying that your questions are unreasonable, or not the questions an entrepreneur would ask, the salesperson says: “I can tell you love your [wife/husband] – don’t you think [she/he] deserves the standard of living you can provide by buying this franchise?”

There is no material issue that you are concerned about that should not be raised with your prospective franchisor and answered to your satisfaction. You also have every right to ask that answers to your most important questions be included in your contract or other written document.

Some franchisors will say that they are not allowed to negotiate under Illinois law and the FTC Rule or that these laws would require expensive amendments to their UFOC. Illinois law (section 11 of the Act and Rule 114) encourages the franchisor and franchisee to negotiate and specifies that no amendment to the UFOC is necessary unless the new term(s) is material and is also made a part of consecutive franchise sales. The FTC Rule does not prohibit negotiations and would not require an UFOC amendment just because one sale involved an amended contract that the parties agreed to. Your lawyer should be able to advise you about what contract terms the franchisor is more likely to add, delete or change.

NOTE: Illinois law prohibits a franchisor from unreasonably and materially discriminating in the charges offered or made for franchise fees, royalties, goods, services, equipment, rental or advertising services under certain circumstances. In a few cases this may affect the ability of a franchisor to negotiate the terms of the franchise. [see Illinois Franchise Disclosure Act 815 ILCS 705/18].

Whether a franchisor will agree to make changes in the proposed contract will depend upon many factors, a few of which are:

1. If the franchisor has many franchisees and a proven track record, it may want to avoid any changes to what the franchisor considers to be a complete contract.
2. One of the keys to franchise success is uniformity and too many alterations to individual contracts can threaten that uniformity.
3. All businesses of any kind want to retain as much flexibility as possible and trying to cover every conceivable future problem might create as many problems as you are trying to solve.

4. Existing and other future franchisees would be upset if they did not receive the same treatment.

You are probably attracted to franchising because you have seen and read about franchise success stories and you want to be part of such success. However, the hallmark of franchising is a reliable product or service, marketed under a uniform system and with the benefit of a recognizable trade name. To join the “uniform” system and benefit from a proven business approach requires that you conform to that franchisor’s requirements.

Yes, you can negotiate some changes and assurances, . . . but . . . NO, you are not an independent entrepreneur who is free to change the system or make fundamental decisions on your own. Therefore, you must learn exactly what to expect once you buy your franchise and decide if you can be satisfied with the franchisor and the contract you negotiate.

If essential terms are not negotiable to your satisfaction, you must be willing to walk away from the deal, especially if the franchise system has no track record or if your investigation revealed numerous franchisee complaints about material issues.



AGREEMENTS PREVENT DISAGREEMENTS



## VI. CHOOSING A LAWYER AND OTHER PROFESSIONALS

You are not required to use an attorney to buy or own a franchise, but the experience of the Attorney General’s Franchise Bureau is such that you are strongly encouraged to do so.

### ONE OF THE SADDEST TALES WE HEAR TOO OFTEN

**Franchisee:** “I was lied to by my franchisor; they terminated me even though they said my franchise would be mine as long as I live. There were a bunch of things in the contract they didn’t explain to me.”

**Attorney General:** “What did the contract say; what did you learn from the UFOC; and what did your attorney say before you signed the contract?”

**Franchisee:** “I didn’t have an attorney and I didn’t read the UFOC or the contract.”



If there were no bad people  
there would be no good lawyers.



*Dickens*

Select your lawyer carefully and do not hesitate to use his or her services at each critical stage of your franchise exploration, purchase and business development. Your lawyer works for you and you have every right to say what you want and to expect a high standard of performance.

1. Look for an attorney with substantial franchise experience.
2. Obtain and check references from prior franchise work.
3. You have a right to get reasonable estimates from your attorney as to what each phase of your entry into franchising might cost in legal fees.
4. If you already have a lawyer who has done good work for you in other areas of the law and who you want to do the franchise work for you despite his or her lack of experience, ask if your lawyer will consult with a franchise attorney before negotiating with the franchisor and again before signing the contract. Find out what these other additional legal fees will cost.

Use similar care when selecting an accountant, banker or other professional advisor. It may be difficult to find an accountant or banker knowledgeable about franchising, but it can be to your advantage if they have such experience.

An accountant who has other franchisee clients might be your best choice, but at a minimum your accountant should have small business experience in bookkeeping, taxation, pension plans, etc.

Financial institutions unfamiliar with franchising may not provide loans to prospective franchisees unless the loan applicant already has a strong relationship with the lender. Be prepared to educate the lender about franchising, your choice of franchisor, your ability to run the business and your financial history.

It is important to your success for you to establish long term relationships with your attorney, accountant and banker, instead of being a stranger seeking help at the last minute or after it is too late. Involve your professional advisors in your plans before you commit to buy any business and continue to use their services throughout your business life.

## VII. RESEARCH

Most public libraries have business sections where a wealth of information is available about publicly traded companies and many privately held companies. They also will have a periodical section with publications that may have articles, past and current, about your potential franchise and important franchise topics. Ask the librarian for help—you can save yourself a lot of time.

If you have access to the internet, use it to learn about various franchises. Some may have their own web page and you may find franchisees to talk with. Some internet services include public records [including franchise information] and access to periodicals and newspapers and some libraries subscribe to these services—ask!

You should contact the Illinois Attorney General's Franchise Bureau in Springfield, (217) 782-4465, to find out the latest registration status of a franchise you are interested in.

The Attorney General's Consumer Fraud Bureau in Springfield or Chicago is another potential source of information about a franchisor's business practices. Other information may be obtained from the Better Business Bureau near you or the local Chamber of Commerce. The Federal Trade Commission Bureau of Consumer Affairs also regulates franchises and can be contacted through their Regional Office in Chicago, or their main office in Washington (6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580). The FTC also publishes the booklet "A Consumer Guide to Buying A Franchise."

There are trade associations that may be helpful before and after you buy your franchise and if you believe franchising may be for you, you may want to become active in one or more of these groups. They have publications, seminars and people who will try to help you.

**IF YOU DON'T ALREADY MAKE IT A HABIT  
TO DOCUMENT EACH CALL OR MEETING WITH  
FRANCHISEES OR FRANCHISORS—START NOW!**

Who said what when?

If the issue is important to your success, get it in writing, or at a minimum send a letter to the franchisor acknowledging the date, place and person who made representations to you. Such confirmation letters about phone calls or meetings will help reinforce your memory and may help you later if the franchisor denies such statements were made.

Are you documenting each step you take toward buying your franchise?

Research to make a business buying decision is made easier if the prospective franchise, principal officers of the franchisor and the primary product or service have admirable track records. If the product or service is a new concept, the principal officers have minimal experience in franchising and the business to be franchised is new – your chance for success is statistically reduced.

This makes the effort you put into researching the franchise opportunity all the more important. You could be in the vanguard of a highly rewarding opportunity or destroy your economic life – depending upon whether you get satisfactory answers to the many questions you should be asking and how much attention you pay to quality professional advice.

Remember:



Experience is what you get when  
you didn't get what you wanted.



## VIII. FRANCHISING FACTORS TO CONSIDER

You will hear different opinions about why franchising is or is not the ideal business format. Some of the following factors may be either advantages or disadvantages depending upon your personal viewpoint.

**TIME** – You should not have to spend as much time getting a new franchise business open as you would when planning every aspect of a similar, new, independent business.

**YOU WILL NOT BE AN INDEPENDENT ENTREPRENEUR** – The very nature of franchising requires that standards be maintained and controls implemented to guarantee those standards. Your franchisor may not react to local marketing problems in the manner or with the speed you would on your own. You may not be able to offer goods or services that you believe would be good for your particular market, but which do not meet what the franchisor believes fits the regional or national system.

**KNOWLEDGE** – You benefit from the people who went before you and whose experience, good and bad, should make you more successful in a specific industry and product.

This knowledge should include market research, site selection, specialized training, selection of equipment and inventory, “start-up” assistance, on-going management and marketing expertise.

**ESTABLISHED TRADENAME** – Depending upon the type of business, a well-known, respected name can be very valuable to attract customers and sources for capital and credit. However, bad publicity you have no responsibility for can affect the profits of everyone in the system.

**INTELLECTUAL PROPERTY** – The franchisor may own certain trademarks, patents, copyrights or trade secrets (or possess licenses to use these assets) that will give you a competitive advantage.

**FRANCHISE FEES** – The up front fee and ongoing royalties are costs you could be applying to your own advertising, site improvements, equipment or unrelated investments.

**TERRITORIAL PROTECTION** – Many franchises provide, to varying degrees, protected territories that are intended to prevent competition from fellow franchisees and the franchisor.

**ADVERTISING** – A well thought out national, regional and local advertising campaign should be more effective than independent competitors can do. However, a local business spending its own ad money may be more in tune with the market than someone from out of town who makes these decisions.

**FRANCHISEE OWNER INCENTIVE** – A franchisee who invests a substantial amount of money and personal involvement in the success of his or her franchise results in a dedication that may not be present in a competing method of distribution that relies substantially upon managers instead of owner/operators.

**RESALE** – The ease and value of franchise resales depends upon the particular franchise system, your site and many other local factors. For some franchise systems there is great demand and therefore the ability to resell could be an advantage, but an uncooperative franchisor can make resale difficult or impossible.

**UNFULFILLED EXPECTATIONS** – If the franchisee does not achieve the level of success he or she expected (regardless of whether the fault lies with the franchisor or the franchisee), that franchisee is a bad advertisement for the entire system.

**INTERDEPENDENCE OF FRANCHISOR AND ALL OTHER FRANCHISEES** – If the franchisor does not have an effective program to determine in advance which prospective franchisees will be most likely to succeed, or if the franchisor does not provide the leadership to maintain or increase market share, or dozens of factors that could reduce the effectiveness of the

particular franchise system—you could find yourself with a deteriorating business despite your best efforts.

**SALE OF FRANCHISOR** – If the franchisor sells to or merges with a company that does not understand franchising or if it has a different set of goals that allows the system to deteriorate, you, the franchisee, can suffer. The opposite could also occur, where the acquiring company is more adept at managing a franchise system and may have additional capital to improve the system.

**RESTRICTIONS ON OUTSIDE BUSINESS** – The franchisor may require you to work exclusively on your franchise and prohibit any outside employment, business ownership or the sale of unapproved products or services. This is a highly personal factor that will have no effect on some people, but be very important to others. This can also be unnecessarily restrictive to certain personalities or a vital necessity to keep other types of people focused on the franchise.

## CONCLUSION

Now you can seriously research specific franchisors and make your own list of questions to ask before you invest.

It is not at all unusual to be nervous about starting your first business venture, but stack the deck in your favor by doing your homework and by being willing to pass up opportunities that do not fit your business plan and personal needs. Ultimately you must make the business successful.

You cannot possibly absorb all of the information you must read and discuss in a day or two. Even the fourteen day disclosure rule, regarding the time between receiving your UFOC and signing a contract or paying your franchise fee, may not be long enough to know if you are ready to buy a particular franchise.



“If you do not sign a contract today you will lose this opportunity and [the price will go up] or [someone else who said they want this territory will get it] . . . ”

TAKE THE TIME TO EDUCATE YOURSELF.  
NO DEAL IS SO GOOD THAT YOU MUST ACT INSTANTLY  
OR BEFORE YOUR QUESTIONS ARE ANSWERED.

If the answers are satisfactory and you have carefully considered the advice of your accountant, attorney and financial advisor, you will have a much better chance of making the right decision.





# **ESSENTIAL ELEMENTS FOR FRANCHISEE SUCCESS**

**POSITIVE ATTITUDE**

•

**ABILITY TO LEARN BUSINESS MANAGEMENT**

•

**THOROUGH RESEARCH**

•

**EXPERIENCED ADVISORS**

•

**ADEQUATE FINANCING**

•

**MARKETABLE PRODUCT/SERVICE**

•

**A QUALIFIED, CAPABLE FRANCHISOR**

•

**TOTAL INVOLVEMENT IN THE BUSINESS  
BY THE FRANCHISEE**

Please visit our Web site where you will find:  
This book (*"Before You Buy A Franchise"*),  
*"The Illinois Franchise Disclosure Act and Rules"*  
and other information about the Illinois Attorney General's Office.

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