

Hiring a lawyer before starting a franchise could save you down the road

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Many people come out of a corporate environment with a severance payment and look for a business that they can invest in.

If they were in middle management, they may feel that they know what they are doing in picking up a franchise opportunity. That being said, it is still a good idea to hire a franchise lawyer to assist you in reviewing the documents, which can include the offering circular, franchise agreement and lease or purchase of the property where the franchise may be located.

One may think that every franchise has a successful formula, but that is not the case. In various studies on franchises in the late 1990's, the study found that five years after their start, 62 percent of the franchise firms were still in business, compared with 68 percent of the independent companies reviewed in the study.

Although the good franchisors have corrected most of their business mistakes before franchising the business, which lowers the business risk, it is apparent by these numbers that your due diligence is critical to your successful purchase and long-term operation of the right franchise for you.

Although the provisions of the franchise agreements favor the franchisor, there have been new rules from the Federal Trade Commission that may help alter the balance toward the franchisee.

These rules take effect on a voluntary basis July 1, 2007 and will become mandatory July 1, 2008.

One of the changes is that the franchisor must disclose all lawsuits that were filed against their franchisees. They must also detail any bankruptcy filing by any of the franchisor's parent companies.

Another rule requires the franchisor to state whether they are selling product directly through an alternative channel like the Internet, which may hurt sales in the franchise location you are contemplating.

Another positive change for the prospective franchisee is that the franchisor will be required to disclose if they have confidentiality agreements with current or former franchisees which would prevent them from speaking candidly about their experience with the franchisor.

This is an important part of the due diligence in purchasing a franchise, as the current or former franchisees can provide a wealth of information about the training program, the involvement of the franchisor in the day to day activities of the franchisee, the advertising program, the capital improvement program and how much competition you may have with holders of adjacent territories,.

There are also new rules to make available more information to determine how frequently franchises were terminated, sold or transferred - also a good indicator of stability of the investment in that franchise.



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Even with this knowledge, it is still important to review this information and digest it with your attorney to allow you to make the right decision. If you do your homework properly, you will have the information you need from the franchisor to digest and make an informed decision. Then, you will be more likely to be in the 62 percent of franchise businesses that are still in business after five years.

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