

# Stick to the Path

Get your trip down franchise-buying lane off on the right foot with a little how-to help.

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Digging into the franchise mine for that perfect nugget of a franchise program presents a serious challenge: not finding willing sellers, but rather, being swamped by the number of programs from which to choose.

The best defense you have against the franchise-selling onslaught is to have a sharp idea of what will bring you happiness and what you can afford. This requires some planning before you jump into the marketplace. Jot down your real interests in business ownership. Do you want to own a business that serves the general public? Or would you prefer to cater to business customers? Are you nuts about specialty foods? Do you need part-time work or high levels of flexibility? Do you want to get family members involved? The planning questions are endless. The point is to think out your personal business goals. As any navigator will tell you, if you don't know where you're going, you won't know when you've arrived.

The sources of information on franchises are plentiful. One of the easiest ways to get a feel for the marketplace is to attend a franchise and business opportunity trade show. A handful of organizations run trade shows in major cities throughout the year.

When you get to the show, spend a few minutes going over the exhibitors listed in the show brochure. Identify companies you recognize and especially those that fit into your planning profile. Work your way through the aisles systematically, stopping by every booth you've noted in your brochure. Dress for casual business. Leave your personal business cards with companies that interest you, and plan to follow up for more information.

The Internet is an indefatigable source of franchise information. The hype-to-fact ratio is high, but you can gather a lot of basic information. Check out

*Entrepreneur's* [FranchiseZone](#) for comprehensive sector coverage. Magazines and books also offer good material, including my new book, *Franchises & Business Opportunities*. And don't hesitate to contact a franchisor directly for program information.

Once you've identified a few franchise offerings that intrigue you, it's time to dig deeper. You probably have a collection of promotional information, and that's fine as far as it goes, but as a franchise investor, you have a great advantage over people buying an independent business: the Uniform Franchise Offering Circular. The UFOC is an offering prospectus prepared by every franchisor, required by law to be delivered to a prospective franchisee at least a couple weeks before the contract is signed or you invest money in the franchise.

## Mining the UFOC

What a gold mine of information! A UFOC contains a sample copy of the franchise agreement, a set of financial statements to tell you about the financial health of the franchisor, and a running description (in plain English, no less) of the key aspects of the franchise investment:

- The business background of the franchisor, and its key executives, as well as the company's litigation and bankruptcy history
- The franchisee's fees and total initial investment
- The purchasing requirements and product restrictions imposed on the franchisee
- Financing offered by the franchisor, and other franchisor obligations under the franchise agreement
- Your territorial, patent, copyright and trademark rights
- A summary of provisions describing renewal, termination, transfer and dispute resolution
- Earnings claims and system performance information
- Statistics about the national franchise system, including a list of the names, addresses and telephone numbers of franchisees in your region

Read this important document. Get franchisor representatives to answer all your questions, and leave no stone unturned. Take the UFOC to your accountant and a good attorney, so you know exactly what you're getting into.

The single most important step in your franchise evaluation is to talk to current franchisees. Use the contact list in the UFOC, get in your car and visit their businesses. Find a convenient time to talk to the owners and find out what they like and don't like about being a franchisee.

**How Uncle Sam Protects You** As a franchise buyer, you need Uncle Sam. Here's how the government helps to protect you from illegitimate franchises:

- **The Feds:** For more than two decades, the FTC has been in the business of insisting that prospective franchisees receive full pre-sale disclosure. The FTC's Franchise Rule, adopted in the dark ages of the past century (OK, 1979), requires franchisors to deliver an offering disclosure document the size of a small phone book to every prospective franchisee at least a couple of weeks before the contract is signed. The intended result: fully informed franchise investors. Franchisors aren't required to register or otherwise file with the FTC; they satisfy the Franchise Rule by delivering full disclosure on time. The FTC may bring an enforcement action against any franchisor that doesn't meet its disclosure obligations or exhibits more serious problems. Most of its cases have targeted business opportunity sellers, not franchisors. The FTC's [Web site](#) is a great source of information.
- **Sale Regulation:** Fourteen states require franchisors to deliver a pre-sale offering prospectus (the UFOC), register the offering with a state agency and renew the registration annually. These laws create a private right of action for investors injured by franchisors who don't comply with the rules, and the administering agencies (usually the attorney general or the securities agency) can provide information to investors about specific franchise companies. The franchise registration states are California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.
- **State Relationship Laws:** Eighteen states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands have adopted laws that protect franchisees from arbitrary termination of their franchise without good cause. Under these laws, an injured franchisee has the right to sue for damages. The franchise relationship law states are

Arkansas, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, South Dakota, Virginia, Washington and Wisconsin.

## Before You Sign on the Dotted Line

Once the franchisor has thoroughly checked out the applicant's qualifications, and the applicant has reviewed all the documents, seen an accountant and attorney, scraped together the money required to buy the franchise, and completed all the necessary discussions, it is time to close on the transaction.

Purchasing the franchise rights for a business that has not yet been built is not a complicated transaction, and the closing involves nothing more than signing a few contracts and sliding a check across the table for the initial franchise fee. Most "closings" for franchise sales do not take place in a room face-to-face with the franchisor. They take place through the mail. The company sends you a final package with tabs showing where your signature is needed and a cover letter stating the amount of the initial franchise fee. You sign and return, and it's done.

However, you should pay attention to the following before you sign on the dotted line:

- **The franchise agreement:** This contract should have been in your hands with all blanks filled in for at least five business days before you sign and date it. That's a requirement imposed on the franchisor by state and federal law; it's not the franchisee's responsibility to see this is met. Make sure your attorney has reviewed the contract and signed off on it. If you've requested any changes to accommodate you, make sure they appear in the final form of the contract. Many companies ask you to sign two originals and return them to the company. The franchisor then executes the agreement and returns one original to you for your records.
- **Always date your signature:** Begin the habit of adding a date to any legal document that contains your signature. If the form you're signing doesn't have a space to show the date, simply jot it immediately after your signature. Dates are important in the regulation of franchise sales, and you may be called upon to swear as to a series of dated events. The date of delivery of the UFOC, the

- date you first had a face-to-face meeting with the franchisor, the date on which you received a completed franchise agreement and the date on which you signed the franchise agreement are all important. Never backdate a document, even if asked to do so by the franchisor; it will only confuse your recollection of events. Make sure your document record is clear on the dates.
- **Other contracts:** You may be presented with other contracts to sign that are ancillary to the franchise agreement. All such documents should be included in the UFOC and not come as a surprise at closing. If you do receive a surprise contract, check it with your attorney. Ancillary contracts may include a site selection agreement (if you don't have a site selected yet), an agreement regarding necessary lease terms and an acknowledgment of the training schedule.
  - **UFOC:** If you have not received the franchisor's UFOC at least 10 business days before you're asked to sign the franchise agreement, stop. Don't sign the contract; don't send any money. This could indicate a mere oversight, or it could mean you have a more serious problem. Contact your franchisor representative.
  - **Lease paperwork:** If you've selected a location for the franchised business, you probably have received a proposed lease from the landlord. Make sure your attorney sees this lease form and that you understand what requirements the franchisor might impose on the lease terms. It probably won't hold up the closing if this isn't resolved, but you want to give all parties--and their attorneys--as much notice as possible regarding the potential terms of any lease.
  - **Bank paperwork:** If you've arranged a loan from a bank or other lending institution, it'll want a copy of the franchise agreement (and every other piece of paper related to the franchise) as soon as possible. Talk to your banker about the steps necessary to provide the money you're borrowing, and when it'll be available. Make sure all is in order before you close.

*Excerpted from Franchise & Business Opportunities: How to Find, Buy and Operate a Successful Business by Andrew A. Caffey*

## Now That You're an Owner...

You sign the franchise agreement and celebrate taking such a giant step in your business career. Then what? What can you expect of the franchisor

and the business development process? Though there are too many variables to pinpoint a "typical" process, expect some common steps in your franchise's development.

A well-organized franchisor will have every step in the development of your new business mapped out in detail. You'll probably be assigned a lead person to help you push through the stages necessary to open on time.

- **Site location:** Your first task is to find a site. You'll rely on the expertise and guidance of the franchisor for the business features of a strong site. What levels of automotive and pedestrian traffic should you look for? What neighborhood demographics make an ideal site for your business? Finding a location takes time, and you should jump into it with enthusiasm. Locate a commercial real estate broker. Many franchisors will visit your market to discuss possibilities.
- **Orientation:** Most franchisors schedule a visit to company headquarters soon after you sign the franchise agreement. Expect to spend the better part of a week meeting with franchise representatives and receiving the complete introduction to the company, top to bottom.
- **Team-building:** One of the most critical steps in preparing for business is to find a solid team of managers and line employees. Expect to tackle this yourself, taking out newspaper ads and interviewing candidates. The franchisor can tell you how many people you need to hire before you begin the business.
- **Training:** You and your managers will probably attend a full training program at the franchisor's training center, covering everything from opening the front doors in the morning to cleanup procedures at the end of the day. Great training is the hallmark of the best franchise organizations.
- **Build-out:** The franchisor usually provides a set of standard architectural drawings, which you and your contractor can adapt to your specific location. At this point, you tap into the financing you have lined up for the business. With money flowing, you buy operating equipment, small wares, signs, fixtures and build-ins for installation. The contractor and his or her team will pull it together into a complete business. Remember that the franchisor will have to approve all aspects of the build-out, so make sure you touch base at all critical stages with your franchisor company representative. Now the

business starts to take shape, leaping out of your imagination into a real commercial space.

- **Opening:** Ah, the unparalleled excitement of opening day! Many franchisors send out an entire training team that does nothing but train new employee groups for store openings. The opening team arrives about 10 days before opening day and trains all your employees in the various parts of operation.
- **Field support:** Your franchisor will visit your operation regularly to discuss what's going right and what needs to be improved. Some franchise programs have adopted elaborate evaluation points systems, but the thrust of the concept is the same: giving you an evaluation of the strengths and weaknesses of the business, and an expert assessment of where and how you can make improvements.

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