



54TH ANNUAL IFA LEGAL SYMPOSIUM



IFA[®]

INTERNATIONAL FRANCHISE ASSOCIATION



Basics Track: Handling Defaults and Terminations

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Speakers

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Nothing basic about defaults and terminations

Steps for Issuing Default/Termination Notice

- 1) Due Diligence/Gathering Facts
 - Collect and consider all the facts
- 2) Review Franchise Agreement
- 3) Review Applicable State Relationship Laws
 - Note conflicts between agreement and statutes
- 4) Review Potential Counterclaims/Defenses

KEY TAKEAWAY:
**Comply with franchise
agreement and applicable
statutes**

Franchise Agreement Provisions

- Basis for Default
- Default and Termination Provision
 - Cure Period
 - Effective Date
- Notice Requirements
 - Hand Delivery/Courier, Certified Mail, Email, etc.
 - Address/Timing of Notice

Nonrenewal as a Termination

- Nonrenewal is a mechanism to terminate the franchise agreement.
- Pay attention not only to the specific notice requirements in the franchise agreement, but also beware of specific state laws regarding nonrenewal.
- Some states prevent franchisor from denying a renewal of the franchise without “good cause”.
 - In these states, the franchisee may continue to conduct business as long as the franchise is capably performing.
- “Good cause” could include such things as failure to comply with the material terms of the franchise agreement, failure to meet sales quotas, or failure to achieve quality standards.

States with Termination-Related Laws

Arkansas	Iowa	Rhode Island
California	Michigan	Virginia
Connecticut	Minnesota	Washington
Delaware	Mississippi	Wisconsin
Hawaii	Missouri	Puerto Rico
Illinois	Nebraska	Virgin Islands
Indiana	New Jersey	

Cure Period & Termination Notice

- **Cure Period: Illinois**
 - "Good cause" shall include, but not be limited to, the failure of the franchisee to comply with any lawful provisions of the franchise or other agreement and to cure such default after being given notice thereof and a reasonable opportunity to cure such default, which in no event need be more than 30 days. 815 Ill. Comp. Stat. Ann. 705/19.
- **Notice: Connecticut**
 - The franchisor shall give the franchisee written notice of such termination, cancellation or intent not to renew, at least sixty days in advance to such termination, cancellation or failure to renew with the cause stated thereon. Conn. Gen. Stat. Ann. § 42-133f.
- **Concurrent: Wisconsin**
 - Except as provided in this section, a grantor shall provide a dealer at least 90 days' prior written notice of termination, cancellation, nonrenewal or substantial change in competitive circumstances. The notice shall state all the reasons for termination, cancellation, nonrenewal or substantial change in competitive circumstances and shall provide that the dealer has 60 days in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days the notice shall be void. Wis. Stat. Ann. § 135.04.

Application

- **Outlet in state:** Arkansas

- This subchapter applies only to a franchise entered into, renewed, or transferred after March 4, 1977, the performance of which contemplates or requires the franchise to establish or maintain a place of business within the State of Arkansas. Ark. Code Ann. § 4-72-203.

- **Outlet or Franchisee in state:** California

- The provisions of this chapter apply to any franchise where either the franchisee is domiciled in this state or the franchised business is or has been operated in this state. Cal. Bus. & Prof. Code § 20015.

- **Sale/Offer:** Minnesota

- The provisions of sections 80C.01 to 80C.22 concerning sales and offers to sell shall apply when a sale or offer to sell is made in this state; when an offer to purchase is made and accepted in this state; or when the franchise is to be located in this state. Minn. Stat. Ann. § 80C.19.

State Relationship Laws

- Incurable Defaults
- Buyback Provisions
- Waiver

CONSIDERATIONS BEFORE AND AFTER ISSUING DEFAULTS AND TERMINATIONS

Identifying Potential Problems Before They Arise

- Monitor Early Warning Signs
- Common Early Warning Signs of a Troubled Franchisee
 - Financially Related Red Flags
 - Non-Financial Red Flags

Identifying Potential Problems Before They Arise

- Addressing Early Warning Signs
 - Reaching out to Franchisees in Distress
 - Sending Pre-Default Warnings
 - Modifications to Franchise Agreement/Workout Agreements/Forbearance Agreements

Dealing with Other Franchisees

- Selective Enforcement
- Impact of Termination on Other Franchisees
- Information Provided to Other Franchisees About a Termination
- Impact of Termination on Potential Franchisees

Enforcement

- What Court to File in?
- What Action to Take?
 - Injunctive Relief/TRO?
- Prepare for Unit Closure and Possible Brand Image Issues

Franchisee Defenses

- Good Faith and Fair Dealing/Good Cause
- Waiver
- Tortious Interference
- Compliance with Local Law
- Late Cure
- Franchisor's Fault
- Force majeure

Questions?

Thank you!