

# USING BROKERS AND SALESPERSONS TO SELL FRANCHISES – OH MY!

**Andrew P. Beilfuss**  
Quarles & Brady, LLC  
Naples, FL

**Theresa Leets**  
State of California – Dept. of  
Financial Protection and Innovation  
Los Angeles, CA

**Brian Romanzo**  
REP'M Group  
Cornelius, NC

**Tom Wood**  
Floor Coverings International  
Norcross, GA

**iFA** INTERNATIONAL  
FRANCHISE  
ASSOCIATION

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# Standard Regulator Speaker Disclaimer

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- California Department of Financial Protection and Innovation (DFPI),
- The DFPI commissioner, nor
- the North American Securities Administrators Association, Inc. (NASAA)

# Agenda

1. Introduction to Franchise Brokers
2. Legal and Regulatory Framework
3. State-by-State Requirements
4. Legal Risks and Case Studies
5. Best Practices and Reform

# Introduction to Franchise Brokers

- Who are franchise brokers?
- What services do they provide?
- How do they influence the franchise sales process?
- Why their role is growing in importance

# Historical Context of Broker Use

- Brokers role as a matchmaker between F'ees & F'ors
- Early days
  - Stigmatized by fraud
  - Wild West

# CA Broker Registration & Disclosure

## California Senate Bill 919

- Annual broker registration
- Broker disclosure



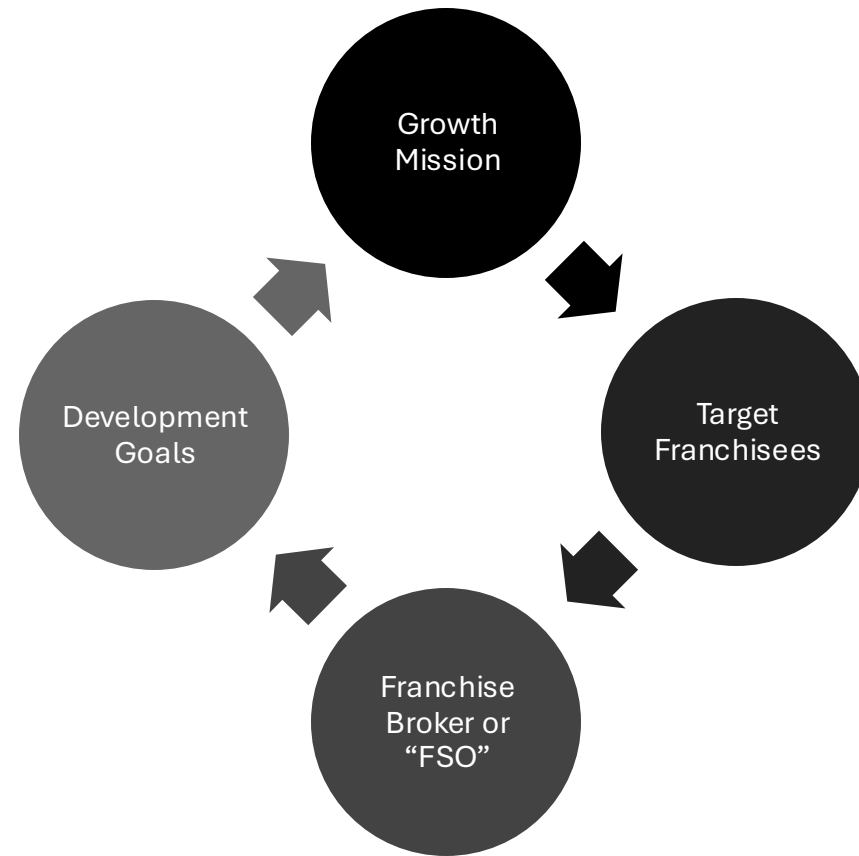
# NASAA Model Franchise Broker Registration Act

North American Securities Administrators Association (NASAA)

- NASAA Franchise & Business Opportunities Project Group
- Model Franchise Broker Registration Act
  - ✓ 200 public comments
  - ✓ Based loosely on Investment Advisers

# Role of the Franchise Broker and Salesperson

- The role of the franchise broker or franchise salesperson is to carry out the growth mission of the franchise.





# Franchise Brokers vs. Franchise Sales Organization

- Franchise Brokers: Commonly referred to as Franchise Consultants, match candidates to franchises; usually compensated by franchisors.
- Franchise Sales Organizations “FSO”: help franchise brands find and recruit potential franchisees; provide a larger scope of service; compensation varies.

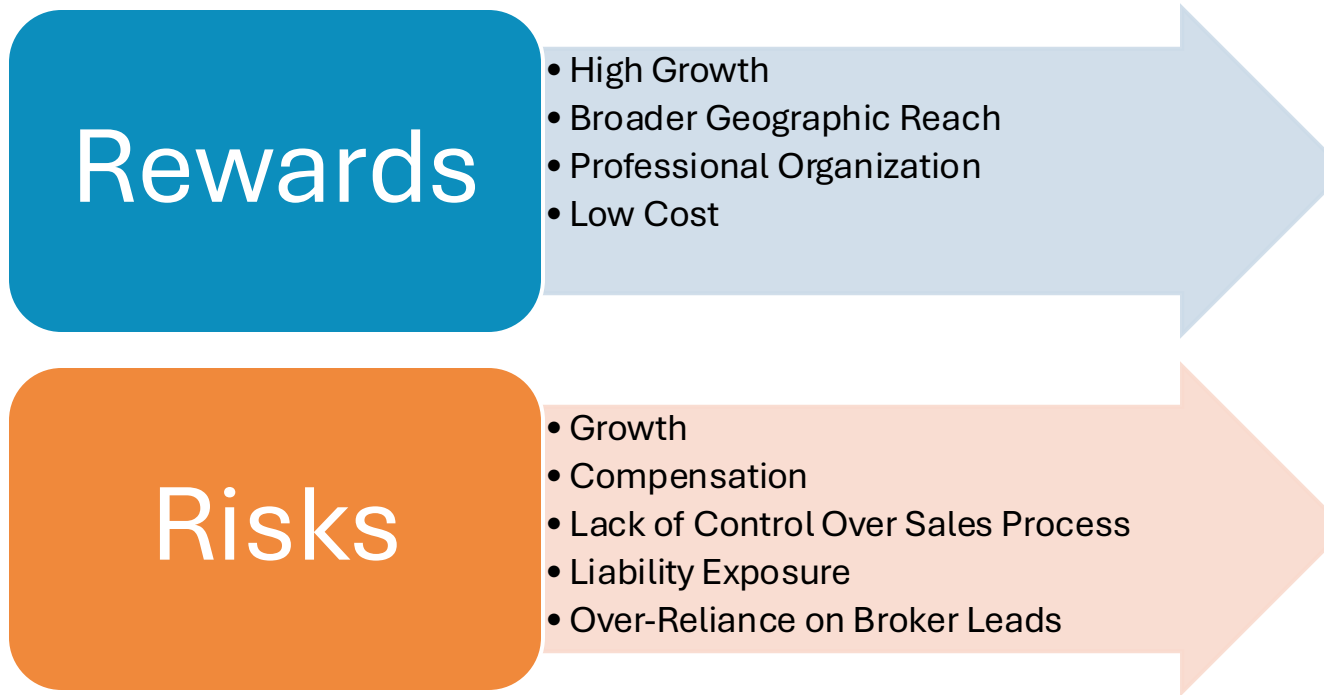
# The Franchise Sale Journey

- Awareness → Inquiry → Evaluation → Discovery Day → Decision.
- Brokers typically involved from inquiry through evaluation.

# The Do's and Don'ts

DO'S	DONT'S
Third-Party OR In-House	Inadequate Sales and Operations Infrastructure
Due Diligence	The Rogue Broker
Sales Contract	Over Reliance
Compliance Programs	Candidate Screening
Creative Compensations	Growth Mission
Skill Sets	

# The Risks and Rewards of Using Franchise Brokers or Franchise Sales Organization



# Minimizing Franchisor Liability Exposure

- In-House vs Third Party Franchise Broker
- Broker Due Diligence (i.e. background check, earnings claims, reputation status)
- Marketing Material Review
- Compliance Training
- Franchisor Oversight
- Well-Drafted Contract
  - Scope of Work
  - Development Schedule
  - Exclusivity
  - Indemnification
  - Insurance

# Example #1 | Anchored Tiny Homes (ATH)

- For located in Northern California
- Builds ADUs (granny units)
- Partnered with Franchise Fastlane
- Fastest-growing custom ADU Builders
- Fees, customers and contractors left empty handed
  - Where did \$100 million go?
  - For abandoned operations
  - Facebook group “Scammed by ATH”



## Example #2 | Burgerim

- For located in Southern California
- Fast-casual burger chain
- Sold 1,550 franchises between 2015-2019
  - High pressure sales strategy
  - Most successful early-growth story in franchising history
- FTC issued
  - permanent injunction from selling in America
  - \$56 million in monetary awards

# The FTC Franchise Rule: An Overview

- Governs franchise sales and disclosures at the federal level.
- Requires FDD (Franchise Disclosure Document) delivery before sale.
- IFA Foundations of Franchising Bootcamp
  - 6 week program
  - 100% online

# Triggers for Legal Liability

- Failure to register | renew | update FDD
- Failure to comply with FDD delivery requirements
- Failure to comply with financial assurances
- Not telling the truth
  - Misrepresentations
  - Omissions
- Unlawful FPR

# Disclosure Obligations Under FTC Rule

- Franchise Sellers include anyone who offers for sale or sells a franchise.
  - Brokers must ensure compliance with disclosure timing.
- Failure to comply may void franchise agreements.

# State Law Layer: State-Specific Broker Registration Requirements

- Several states have franchise registration and broker regulations.
- Brokers may face additional obligations depending on the state.
- **California**: Brokers must register and disclose relationships.
- **New York & Washington**: Filing requirements for broker activity.

# Best Practices for Brokers

- Regular sales trainings and compliance certifications
- Use checklists to ensure uniformity and compliance
- Ensure all documentation is identified and collected
- Ensure proper contracts are in place, that include indemnity clauses
- Ensure franchisor has proper insurance coverages



# IFA's Position & Reform Recommendations

- IFA supports clarity and consistency in broker regulation.
- Encourages federal-state coordination.

# Future Outlook: Regulatory Trends

- States likely to increase scrutiny of brokers.
- Possible amendments to FTC Rule regarding broker roles.
- NASAA Model Franchise Broker Registration Act

# Q&A

- Open for questions and discussion.

# Conclusion & Contact Info

- Thank you for attending!
- Contact:
  - Andrew P. Beilfuss ([Andrew.Beilfuss@quarles.com](mailto:Andrew.Beilfuss@quarles.com))
  - Theresa Leets ([Theresa.Leets@dfpi.ca.gov](mailto:Theresa.Leets@dfpi.ca.gov))
  - Brian Romanzo ([Brian@repmggroup.com](mailto:Brian@repmggroup.com))
  - Tom Wood ([twood@floorcoveringsinternational.com](mailto:twood@floorcoveringsinternational.com))