# Thinking Ahead Before Terminating: Buyback Rights and Rights of the Franchisor When the Franchisee is Not Successful

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#### Today's Panel:



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#### Overview

- Identifying struggling franchisees
- Addressing underperformance
- Sale, buyback & step-in strategies
- Valuation and rights of first refusal
- Legal considerations & case law



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### Identifying Struggling Franchisees



- Importance of early detection and trust
- Red flags: debt, personal hardship, performance metrics
- Minimum performance standards in franchise agreements
- Forbearance agreements as a temporary remedy





### Addressing Defaults & Legal Considerations

- Curable (e.g., late payment) vs. incurable defaults (e.g., fraud)
- Procedural compliance is critical
- Use mediation, coaching, graduated enforcement
- Dispute documentation and pre-litigation strategies
- Risk of claims: discrimination, bad faith, inconsistent enforcement



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## Selling the Business

- Buyers: existing franchisees, brokers, external parties
- Key issues: buyer incentives, liabilities, pricing, confidentiality
- Tough-love talks & managing emotional ties to the business







### Handling Underperformance

- Franchisee defenses: unfair standards, market conditions
- Importance of objective and realistic performance criteria
- Consideration of substantial compliance under state laws
- Litigation vs. alternative solutions

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## Sale as an Exit Strategy



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- Franchisor support: candidate pools, internal interest
- Challenges: limited buyer pool, emotional hurdles
- Importance of realism: timelines (6–18 months), pricing, readiness
- Use of brokers for validation and process management

# **Buyback & Step-In Rights**

- When to consider franchisor buyback
- Step-in rights allow temporary operation control
- Legal backing for step-in rights (e.g., *Sunni v. Edible Arrangements*)
- Risk of liability, logistical challenges for franchisors

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#### Lease Assignment Considerations

- Critical for location-based businesses
- Use lease riders and collateral lease assignments
- Ensure landlord consent
- Protect against successor liability







#### Valuation & Fair Market Value



- Focus on asset-based valuations for distressed units
- Strategies: "quick win" fixes, transparency, documentation
- Right of first refusal can define exit options





## Right of First Refusal (ROFR)

- Allows franchisors to match third-party sale offers
- Must meet contract standards (e.g., fixed price)
- ROFR scope matters limited to franchise assets





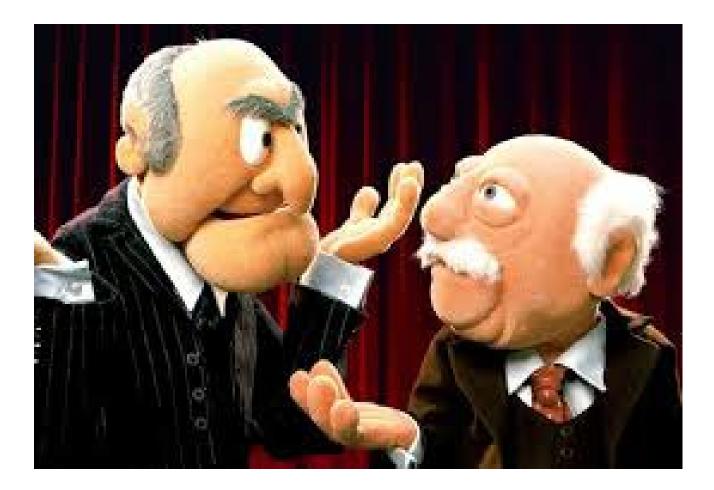


#### Legal & Business Considerations

Review franchise agreement & state franchise laws

Disclosure obligations (e.g., FDD Item 20 impacts)

Strategic alternatives to termination can minimize losses







#### Conclusion

- No one-size-fits-all solution
- Planning ahead is critical for both parties
- The goal: fair, efficient resolution that avoids litigation





