International Franchise Association
56th Annual Legal Symposium
May 5-7, 2024

It Expired When? Holdover Franchises: What Are the Rules?

Danell Caron
CKE Restaurants Holdings, Inc.
Franklin, Tennessee

Jess Dance
Polsinelli PC
Denver, Colorado

Evan Goldman
The Franchise Firm LLP
Chadds Ford, Pennsylvania

Table of Contents

I. Introduction

Seemingly all too often, a franchise agreement will expire, and the parties' relationship will continue, but the contract will not. The parties – and courts – are then left with the question of what to do. In Section II of this paper, we explore how courts have interpreted the legal status of a contract, post-term. As part of the analysis, we review the different approaches courts have taken to determine contractual status and state franchise relationship law implications.

Once you've uncovered that you have an expired contract on your hands – now what? In Section III, we review different approaches and best practices for addressing the relationship depending on the goals and objectives of the parties.

Finally, in Section IV we outline practical tips and best practices for contract drafting, managing the renewal process in-house and navigating the legal landscape and franchise relationship.

II. Legal Status of Contract Post-Expiration

There are a variety of potential outcomes when determining the legal status of a contract post-term, the two most common being: (1) a clear (and full) renewal of the parties' franchise agreement on the terms and conditions set forth in the now-expired agreement, for the term of the now-expired franchise agreement (i.e., for another five or ten years); and (2) an unclear, implied contract on terms and conditions similar (or dissimilar) to those in the written franchise agreement, for an indefinite period of time. As explained below, which alternative is applied is often a question of fact and the parties' conduct after the franchise agreement naturally expired.

A. Full Renewal – Holdover Franchisee

In *Gafnea v. Pasquale Food Co., Inc.*, the Alabama Supreme Court held that by continuing to operate the franchise business for approximately one year after the Franchise Agreement expired, the parties mutually agreed to a new contract on the same terms as the original agreement.[1] In reaching this decision, the court relied on 62B Am. Jur. 2d Private Franchise Contracts § 322 which states that:

> Where a franchisee continues operation of the franchise after the expiration of a franchise agreement, the parties will be found to have mutually agreed to a new contract, with terms to be measured by the provisions of the previous contract. Thus, a franchisee who continues to exercise the privileges of a franchise after the termination date may be liable for money damages and an accounting based on the written franchise agreement. However, where a franchise agreement does not

[1] *See Gafnea v. Pasquale Food Co., Inc.*, 454 So. 2d 1366 (Ala. 1984) (holding that, by continued operation of the franchise after the agreement expired, the parties mutually agreed to a new contract with the same terms).

> lapse after the original term has concluded but continues on a month-to-month basis until the franchisee writes a letter to the franchisor terminating its ongoing relationship, the franchisee owes the franchisor commissions on transactions still pending when the franchise ended.[2]

Citing the trial court's decision, the Supreme Court of Alabama noted that "by the continued operation of the Gafneas' franchise after the expiration of the franchise agreement, the parties mutually agreed to a new contract with terms to be measured by the provisions of the previous contract."[3] Citing an earlier decision from the Southern District of Alabama, with approval, the Supreme Court of Alabama held:

> It is a general rule of law that where parties who have entered into a contract continue their respective performances under the terms of the contract beyond the expiration date of the contract, the parties are deemed to have mutually agreed to a new implied contract encompassing the same terms. While there is no Alabama authority directly in point, the Alabama cases recognizing that a contract may be implied in fact from circumstances demonstrating a mutual intent to so contract indicate to this Court that Alabama would follow the majority rule set out above.[4]

As discussed in Section II.D, subsequent cases – both those that cite *Gafneas* and those that do not – generally hold that renewal is appropriate where the franchisee continues to operate the franchise, *even* where the franchisee objected to an ongoing, continued contractual relationship.

B. Implied Contract

"[G]eneral principles of contract law teach us that when a contract lapses but the parties to the contract continue to act as if they are performing under a contract, the material terms of the prior contract will survive intact unless either one of the parties clearly and manifestly indicates, through words or through conduct, that it no longer wishes to continue to be bound thereby, or both parties mutually intend that the terms not survive."[5] In the franchise context, nationwide, and as discussed in greater detail below,

---

[2] John Boudreau, et al., 62B Am. Jur. 2d Private Franchise Contracts § 26 (2d ed. 2014).

[3] *Gafnea*, 454 So. 2d at 1369.

[4] *Id*. (internal citations omitted)

[5] *See Intelliga Commc'ns, Inc. v. Ferrari N. Am., Inc.*, 2016 WL 916680, at *4 (D.N.J. Mar. 9, 2016) (observing that, under New Jersey law, "[t]he legal effect of a contract implied in fact is identical to that of an express contract" and that "[p]arties' past practice and course of dealing can supply the terms of their agreement").

courts have repeatedly found implied-in-fact contracts where parties – after the natural expiration of a franchise agreement – continue with business-as-usual.

C. State Relationship Law Implications

One thing to consider is the implication of state relationship laws on the ongoing, post-expiration relationship between franchisor and franchisee. So long as there is no interruption in the operation of the franchised business by the franchisees, in most cases, renewal statutes are not implicated in this dispute. The same thing goes for where the terms of the franchise relationship stay the same post-expiration. However, *if* there are materially-different renewal terms, or the franchisee takes some action adverse to the terms of the now-expired franchise agreement (i.e., stops paying royalties, ceases business, or takes down the trademarks and signage), state relationship laws *may* be implicated and the franchisor *may* be required to re-disclose in order to "renew" the franchise agreement. For a more in-depth discussion of state relationship and disclosure laws, please see Section III.C and Appendices A and B.

D. Recent Case Law

Despite the importance of the *status* of the parties' franchise relationship post-expiration, many courts have left this important question unanswered. For instance, in *Emerging Vision, Inc. v. Main Place Optical, Inc.*, the Supreme Court of New York did not explain the legal status of the parties' recently-expired ten-year franchise agreement but, rather, focused on the parties' conduct following expiration but preceding termination approximately two years later.[6] Similarly, in *ServiceMaster Residential/Commercial Services, L.P. v. Westchester Cleaning Services, Inc.*, the United States District Court for the Southern District of New York did not directly address the scope of the parties' post-expiration relationship.[7] Rather, the District Court simply found that the parties impliedly renewed their five-year franchise agreement, which impliedly included a one-year non-competition provision.[8]

Unlike these Courts in New York, in *AmeriSpec, LLC v. Omni Enterprises, Inc.*, the United States District Court for the Western District of Tennessee addressed the post-expiration status head-on.[9] There, the Court found that "the parties continued to operate as if the contract remained in full force and effect," including by the franchisee continuing to use the franchisor's marks, continuing to make royalty payments, and because the franchisor took no action against the franchisee.[10] Citing Tennessee law, the District Court held that ""when parties continue to perform the same services after a contract for a

[6] *Emerging Vision, Inc. v. Main Place Optical, Inc.*, 814 N.Y.S.2d 560 (Sup. Ct. 2006).

[7] *ServiceMaster Residential/Commercial Services, L.P. v. Westchester Cleaning Services, Inc.*, 2001 WL 396520 (S.D.N.Y. April 19, 2001).

[8] *Id*. at *4.

[9] *AmeriSpec, LLC v. Omni Enterprises, Inc.*, 2018 WL 2248459 (W.D. Tenn. May 16, 2018).

[10] *Id.* at *3.

definite term has expired, it is presumed that they are operating under a new contract having the same terms and conditions as the original one."[11]

In *AmeriSpec*, the District Court enforced post-termination obligations in an expired franchise agreement because the "parties continued to operate as if the contract remained in full force and effect."[12] The franchisee, for example, still used the franchisor's names and marks, training materials, email accounts, forms, and website, and it also actively participated in franchise-wide activities.[13] This conduct lasted for nearly three years, without objection from the franchisor.[14] And, throughout, the franchisee used the same phone number and address and serviced its customers under the franchisor's name in the same territory, until it opened a new business with the announcement: "New Name, Same Team! . . . ."[15] The court thus found that the "the parties operated under the [original] Franchise Agreement, or an implied contract containing its same terms and conditions, until [ ] thirty days after Defendants failed to respond to [the franchisor's] Cease and Desist Letter."[16] As the court reasoned, the franchisee accepted the benefits of being in the system and traded on the goodwill of the franchisor until it abruptly switched its name.[17] The court further emphasized that, during the holdover period, the franchisee took no steps "to effectuate the termination of the agreement, such as providing express notice" or abiding by the post-termination obligations, such as returning the franchisor's material, terminating its right to use its telephone number, and making payment of fees.[18] For these reasons, as the court concluded, "both parties engaged in conduct showing mutual assent to operate under the terms and conditions of the [ ] Franchise Agreement."[19] While addressing many of the key points, the District Court did not address the length of the implied renewal franchise agreement between the parties.[20]

In deciding whether to imply a new contract, courts routinely rely on the parties' historical conduct. For instance, in *Miller Construction Equipment Sales, Inc. v. Clark Equipment Co.*, the evidence suggested that the parties routinely had not met to negotiate a new annual distribution agreement until after the expiration of the prior year's

---

[11] *Id.* at *2.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at *5.

[17] *Id.* at *5.

[18] *Id.* at *5.

[19] *Id.* at *6.

[20] *Id.* at *6.

agreement.[21] The court relied on this historical course of conduct in denying the franchisor's claim for injunctive relief, and finding that the franchisor had not established irreparable harm.[22]

In *JTH Tax LLC v. Pierce*, the United States District Court for the Northern District of George found an implied-in-fact contract was sufficiently pled when franchisor did not immediately sue franchisee for unauthorized use of the marks while the franchisee continued to use the brand and pay for it.[23]

In *Prudence Corp. v. Shred-It-Am, Inc.*, the Ninth Circuit Court of Appeals held that where a franchisee had a right to renew, and the franchisor failed to submit proposed renewal terms, the franchisee was entitled to specific enforcement of the renewal provision at the original royalty rate.[24] Dissimilarly, in *Wis. Music Network, Inc. v. Muzak, L.P.*, the U.S. District Court for the Eastern District of Wisconsin held that, after expiration of the license agreement, a month-to-month agreement existed pending execution of a new agreement.[25]

III. Inadvertent Expiration, Now What?

A. Risks of Doing Nothing.

At the end of the franchise agreement term, the franchisor and franchisee should either renew the agreement or treat it as terminated and ensure compliance with the post-termination provisions. But this is not always what happens. In some instances, the franchisee continues to operate under the brand and in compliance with the terms of the expired agreement, but without signing a new agreement. Upon realization that their franchise agreement has expired (whether days, weeks, or years ago), what should the franchisor and franchisee do? As a preliminary matter, it should go without saying that doing nothing is not a viable strategy.

1. Difference Between the Existence of an Implied Contract and the Terms of Such Implied Contract.

Knowingly continuing to operate without a current written agreement is inherently uncertain. *iMotorsports, Inc. v. Vanderhall Motor Works, Inc.*[26] is illustrative of the risks of leaving it to the courts to determine (and enforce) the terms of the parties' implied contract

[21] *Miller Construction Equipment Sales, Inc. v. Clark Equipment Co.*, *2016 WL 2626803* (D. Alaska May 6, 2016).

[22] *Id*.

[23] *JTH Tax LLC v. Pierce*, 2022 WL 4122215, at *6 (N.D. Ga. Sept. 8, 2022).

[24] *Prudence Corp. v. Shred-It-Am, Inc.*, 365 Fed.Appx. 859 (9th Cir. 2010).

[25] *Wis. Music Network, Inc. v. Muzak, L.P.*, 822 F.Supp. 1332 (E.D. Wis. 1992).

[26] 2022 IL App (2d) 210785, 224 N.E.3d 221 (Ill. Ct. App. 2022), *appeal denied*, 210 N.E.3d 802 (Ill. 2023).

when they continue to perform following expiration of their written agreement. This case involved a motor vehicle franchise dealership. The parties' original dealership agreement contained an exclusivity provision that prohibited the manufacturer (Vanderhall) from authorizing any dealer within 75 miles of iMotorsports' address. After the dealership agreement expired in October 2019, the parties' business relationship continued without change—the defendant continued to provide the plaintiff with new motor vehicles, reimburse it for warranty service, provide it with trademarked material signage, list the plaintiff as a Vanderhall dealer on the brand's website, while the plaintiff continued to sell and service Vanderhall motor vehicles, display Vanderhall's marks, and advertise new Vanderhall vehicles for sale.[27] Notwithstanding the parties' continued performance, Vanderhall appointed a new dealer just 16 miles from iMotorsports' ongoing location, and iMotorsports sued to enforce the exclusivity provision.

In affirming dismissal of franchisee-dealer's breach of implied-in-fact contract claim, the appellate court found there was an implied contract, but that plaintiff had not sufficiently established that the implied contract included the exclusivity provision of the original written contract. The court agreed with Vanderhall that, "by appointing a dealership 16 miles from plaintiff's location, [Vanderhall] "demonstrably did not act in compliance with any 75-mile exclusive territory," and therefore there was no "meeting of the minds" on any exclusive territory after the original agreement expired.[28] The court rejected the plaintiff's argument that the parties' continued performance implied a contract with the same terms (including exclusivity) as the original written contract, finding "Plaintiff is confusing the existence of an implied agreement with the terms of such an agreement."[29] Even assuming an ongoing implied contractual relationship from the parties' continued performance, "there is no indication . . . that there was a 'meeting of the minds' to extend the 75-mile exclusivity provision beyond the expiration date of the Agreement."[30]

iMotorsports underscores the risk of failing to operate without a current written agreement. The court emphasized that, because "[e]ven in the absence of an express contract, an implied contract can be created as a result of the parties' actions,"[31] the focus is on the parties' conduct. Here, the court essentially concluded that the manufacturer's election not to honor a specific term of the parties' original agreement meant that such term was not part of the parties' implied agreement thereafter. While this particular court concluded the defendant's conduct (placing another dealership close to the plaintiff's locations) was evidence that was no "meeting of the minds" as to exclusivity (and thus the original exclusivity terms was not part of the parties' post-expiration, implied-in-fact contract), another court could have easily concluded that the parties' continuing

[27] *Id.* ¶ 4.

[28] *Id.* ¶ 31.

[29] *Id.* ¶ 33.

[30] *Id.*

[31] *Id.* ¶ 32.

performance evinced an implied contract with the same terms as the expired written agreement and thus the defendant's conduct was a breach of such implied contract.

2. Franchise Laws that Require a Written or Oral Contract May Not Apply to an Implied Agreement.

Another risk of operating without a written agreement is that, while the parties' original written agreement qualified as a "franchise" under applicable law, the parties' continued implied agreement does not. For example, the Petroleum Marketing Practices Act ("PMPA") defines "franchise" as any "contract" between a distributor and a retailer under which the distributor authorizes the retailer to use a trademark in connection with the sale of motor fuel.[32] Contract is further defined as "any oral or written agreement."[33] This definition was at issue in *University Exxon, Inc. v. Win Oil Co.*, which involved an expired franchise agreement for a gas station.[34] The parties continued to do business for almost three years after the written franchise agreement expired in 1993. After Win Oil de-branded the service station, University Exxon sued, alleging the de-brand violated the PMPA. While the parties may have had an implied contract under state law based on their post-expiration conduct, the Ninth Circuit affirmed the district court's finding that, because there was no current written or oral agreement and the PMPA governs only "oral or written" agreements, the parties' implied agreement could not constitute a "franchise" under the PMPA.[35]

For the same reason, to the extent a state franchise relationship law's statutory definition of "franchise" requires a "written or oral" contract but does not expressly extend to "implied" contracts as well, such state relationship law may not apply to any post-expiration, implied-in-fact franchise relationships.[36]

3. Without a Current Written Agreement, Any Communication Could Alter the Status Quo.

Parties navigating a holdover franchise should be careful and precise in how they discuss their relationship. *Donut Holdings, Inc. v. Risberg* involved a holdover franchisee who stopped paying royalties but continued to use the Lamar Donut's system and trademark.[37] After the parties' franchise agreement expired in 2004 without renewal, both parties continued to perform without change—the franchisee continued to operate as a

---

[32] 15 U.S.C. § 2801(1)(A).

[33] *Id.* § 2801(10).

[34] 221 F.3d 1350 (9th Cir. 2000) (unpublished opinion).

[35] *Id.* at *1 (court did not address potential state law claims relating to parties' implied contract).

[36] *See, e.g.,* Va. Code § 13.1-559(A) (under Virginia Retail Franchising Act, "Franchise" means "a written contract or agreement between two or more persons" that satisfies various conditions).

[37] 294 Neb. 861, 866-69 (Neb. 2016).

Lamar's Donut store using the brand's marks, trade dress, and system, and the franchisor continued to accept royalty and advertising payments. In June 2009, the franchisee stopped making royalty payments but otherwise continued to operate as a Lamar's Donut. On June 18, 2009, the franchisor (Donut Holdings, Inc. or "DHI") sent a letter to the franchisee pointing out that (1) because the franchisee had not taken any steps to renew the 1994 agreement in 2004, the written contract had expired five years earlier, and (2) therefore, the franchisee should review the agreement's post-term obligations (which required immediately stopping use of the system and trademarks).[38] Despite the letter, the franchisee did not resume paying royalties or marketing fees after June 2009 but continued to operate using the Lamar's Donut system and continued to report its sales to the franchisor.[39] In December 2009, the franchisor sent the franchisee another letter stating that, to the extent the agreement had not expired by its own terms, the franchise agreement was terminated effective immediately due to uncured payment defaults.[40] Nevertheless, the franchisee continued to operate using aspects of Lamar's name, marks, trade dress, mixes, and system until October 2011, and from October 2011 to May 2012 the former franchisee operated a competing donut business that ""continued to make and sell donuts of the same consistency and quality."[41]

DHI sued its former franchisee for breach of contract, seeking unpaid royalties and marketing fees from June 2009 until May 2012. The court agreed the parties had an "implied in fact contract" following the expiration of the written agreement in 2004, as "the parties' conduct [from 2004 to June 2009] showed a mutual intent to contract."[42] However, affirming the lower courts, the Nebraska Supreme Court concluded "the implied in fact contract ended in June 2009 with DHI's letter to Risberg Stores. . . . With DHI directing Risberg Stores to discontinue using the benefits of the franchise agreement, the district court rendered a reasonable reading of the letter that DHI was unwilling to continue to extend benefits. Thus, it was not clearly erroneous for the district court to conclude that DHI's June 2009 letter terminated the implied in fact contract."[43] Once franchisor terminated the implied agreement in June 2009, it was no longer entitled to royalties or advertising fees, precluding its breach-of-contract claim.[44] It is unclear why the franchisor did not take action sooner or assert claims beyond breach of contract.[45] The franchisor's

[38] *Id.* at 863.

[39] *Id.*

[40] *Id.*

[41] *Id.* at 863-64.

[42] *Id.* at 866-67.

[43] *Id.* at 868.

[44] *Id.* at 867, 869.

[45] *Id.* at 867 (the court observed that the franchisee's continued use of Lamar Donut's system, recipes, and trademarks after June 2009 "might be relevant to a claim for unjust enrichment," but the franchisor did not raise that theory on appeal).

mere reference to the expired agreement's post-term obligations was sufficient to end parties' post-term implied agreement.

Taken together it is clear that a holdover franchise relationship that continues after the parties' franchise agreement has expired is inherently uncertain. Accordingly, doing nothing—that is, maintaining the holdover status quo—is not a smart strategy when the parties realize their contract has expired. What then should the parties do upon realizing their franchise agreement has expired? Most immediately, franchisor and franchisee each must evaluate whether they want the franchise relationship to continue or end.

B. Continuing the Franchise Relationship.

If the franchisor and holdover franchisee both want to continue the franchise relationship, it is incumbent on the parties to "paper the file" as soon as possible by either executing an extension agreement or a new or renewal franchise agreement. Whether the franchisor is willing to simply extend the expired agreement for another term or instead requires the franchisee to enter into the "then-current form of franchise agreement" will turn on various factors, including the renewal conditions of the expired franchise agreement, whether the franchisor has a current FDD and is registered, if required, in the relevant states, and potentially how long ago the original agreement expired (even when wanting to continue the relationship, a franchisee may attempt to argue that the franchisor waived its right to demand compliance with certain renewal conditions where the parties had operated for an extended period after expiration).

Though certainly not unique to a holdover situation, parties agreeing to extend their original franchise agreement should be precise regarding how the terms of their extension agreement (if any besides the new term) interact with the terms of the original franchise agreement. In *Bayit Care Corp. v. Tender Loving Care Health Care Servs. of Nassau Suffolk, LLC*,[46] the parties entered into a ten-year franchise agreement in 1992 that granted the franchisee ("Bayit") with the conditional option to renew for five years.[47] In 2002, notwithstanding the express terms of the original franchise agreement authorizing a single five-year renewal, the parties entered into a short Renewal Franchise Agreement that provided in pertinent part:

> 1. Franchisor hereby grants to Franchisee a Renewal Franchise Agreement for additional consecutive terms of ten (10) years, commencing April 1, 2002, and at the election of Franchisee, an option to renew for an additional consecutive term of five (5) years.

[46] *Bayit Care Corp. v. Tender Loving Care Health Care Servs. of Nassau Suffolk, LLC*, No. 11-CV-3929 DRH, 2012 WL 1079042, at *1 (E.D.N.Y. Mar. 30, 2012).

[47] *Id.* at *1-2. One such condition was that the franchisee provide between six and eight months' notice prior to the expiration of the Initial Term (or the Renewal Term). *Id.* at *2.

> 2. Except as provided herein, the Franchise Agreement and all provisions contained therein shall remain in full force and effect.[48]

That is, though entitled a "renewal" agreement, it was essentially an extension of original agreement with a modified term and additional renewal option. The Renewal Franchise Agreement did not contain a renewal notice provision as did the original 1992 Agreement, which required at least six months' notice to begin the renewal process. As the Renewal Franchise Agreement neared expiration, Bayit notified the franchisor on January 10, 2012 that it wanted to exercise its option to renew for an additional five-year term pursuant to Paragraph 1 of the Renewal Franchise Agreement. Not wanting to renew, the franchisor deemed the request untimely given the six-month notice requirement of the original 1992 agreement. Bayit sued seeking to force the franchisor to recognize a five-year extension or renewal of the agreement.[49]

In refusing to issue a temporary restraining order or preliminary injunction, the court found that the 1992 agreement's renewal provisions were "part and parcel of the agreement underlying the present dispute," and Bayit failed to timely seek renewal.[50] The court stated that its decision was based on "literal, common sense reading of paragraphs '1' and '2' [quoted above] of the 2002 Renewal Franchise Agreement."[51] Having failed to demonstrate it was entitled to renewal under the conditions set forth in the original 1992 agreement, Bayit was forced to shut down after twenty years.[52] This case presents a stark example of the potential fallout from parties having a lack of clarity around expiration and renewal rights. Here, it would have been advisable for the franchisee to take the more cautious approach of providing written notice of its intent to renew in accordance with the 1992 Agreement, even if it was arguably not required (or, alternatively, to insist in 2002 Renewal Franchise Agreement of removal of the renewal conditions set forth in the 1992 agreement). And the franchisor, although it avoided the injunction, arguably could have avoided the litigation altogether if it had given the franchisee prior notice that there would be no opportunity for a renewal unless the renewal conditions of the original 1992 franchise agreement were fully satisfied.

1. Disclosure Obligations Upon Renewal or Extension.

One issue often facing franchisors is what disclosure obligations it may have when the franchise agreement ends and the parties want to enter into a written extension

---

[48] *Id.* at *3.

[49] *Id.* at *1.

[50] *Id.* at *6.

[51] *Id.*

[52] *Id.* at *7.

agreement or a renewal franchise agreement. The rules are the same whether dealing with a timely renewal or addressing an expired agreement.

Absent an exemption, the FTC Franchise Rule ("FTC Rule") requires a franchisor to provide timely presale disclosure of a current FDD in connection with any offer or sale of a franchise.[53] The phrase "sale of a franchise," however, "does not include extending or renewing an existing franchise agreement where there has been no interruption in the franchisee's operation of the business, unless the new agreement contains terms and conditions that differ materially from the original agreement."[54] As noted in the FTC's Compliance Guide," [a] franchisor is not required to provide a disclosure document to . . . a franchisee who chooses to keep its existing outlet post-term either by extending its present franchise agreement or by entering into a new agreement, unless the new relationship is under terms and conditions materially different from the present agreement.[55] Thus, so long as the terms of the extension or renewal agreement are not materially different from the terms of the expired or expiring franchise agreement and there was no break in the franchisee's operations, the FTC Rule does not require franchisors to present a franchisee with a new disclosure. However, if the terms governing the renewed or extended relationship are materially different from those set forth in the original franchise agreement, a franchisor should provide disclosure as required under the FTC Rule.

Franchisors also must consider state franchise disclosure and registration laws when considering renewals or extensions. Similar to the FTC Rule, almost all franchise registration states exclude or exempt a franchisor from generally-applicable state registration or disclosure obligations in connection with the renewal or extension of an existing franchise where there has been no interruption in the operation of the franchised business and/or no material change in the franchise relationship: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, and Wisconsin.[56]

Most of the state disclosure statutes, as well as the FTC Rule, are implicated only if there is "an interruption in the operation of the franchise business by the franchisee." Whether or not the original agreement had expired is irrelevant as long as there is no interruption in the franchise operations during the holdover period. In most reported cases, there are no interruptions in the operation of the franchised businesses by the franchisees.[57] But if a franchisee during a holdover period takes down the trademark

[53] 16 C.F.R. § 436.2.

[54] 16 C.F.R. § 436.1(t).

[55] *See* Fed. Trade Comm'n, *Franchise Rule Compliance Guide* at 19 (May 2008), https://www.ftc.gov/system/files/documents/plain-language/bus70-franchise-rule-compliance-guide.pdf.

[56] See Appendix A for information regarding exclusions or exemptions of franchise renewals or exemptions from registration and/or disclosure obligations of state franchise sales laws.

[57] *See, e.g., Rich Food Serv., Inc. v. Rich Plan Corp.,* 98 F. App'x 206, 209-10 (4th Cir. 2004) (holding no disclosure was required under FTC Rule or New York law upon renewal or extension where franchisees'

signs, stops paying royalties, or otherwise ceases to operate the business as a franchise before deciding it wants to resume operations as a franchisee, then any renewal or extension of the temporarily interrupted relationship would likely require compliant disclosures.

In addition, as noted above, both the FTC Rule and various state disclosure laws require disclosure if the extended or renewed franchise relationship contain "materially" different terms than the original agreement. The FTC Rule does not define "material change" or "material difference"; however, the FTC has explained that " 'materiality' . . . is determined by the reasonable consumer standard, or in franchise matters, by the reasonable prospective franchisee standard"; that is, whether a representation, omission, or practice is "likely to affect consumers' conduct or decisions with respect to the product at issue."[58] Most franchise registration states provide a similar eye-of-the-beholder framework. For example, Virginia's franchise regulations state that " '[m]aterial change' includes a fact, circumstance, or condition which would have a substantial likelihood of influencing a reasonable prospective franchisee in the making of a decision relating to the purchase of a franchise."[59] This is inherently a fact-intensive fact.[60]

If a franchisor requires a franchisee to sign the "then-current" form of franchise agreement as a condition for renewal, such new agreement will likely contain at least some substantive differences from the original agreement. If there are no material differences, then it would not be necessary to require the renewing franchisee to sign the then-current agreement. Accordingly, the conservative approach for a franchisor that wants a renewing franchisee to execute the current form of franchise agreement should first disclose its current FDD. If this is not an option, then the franchisor should consider simply extending the original agreement without material changes (besides updating the agreement's term).[61]

2. Addressing What Contract Governs the Holdover Period.

Faced with a holdover situation where the franchisor and franchisee want to continue their relationship, the most important consideration is executing a new contract (whether an extension agreement or a renewal franchise agreement) so the parties know

---

business was not interrupted by executing of new agreement); *Bayit Care Corp. v. Tender Loving Care Health Corp.,* 843 F. Supp. 2d 381, 385 (E.D.N.Y. 2012) (finding franchisee failed to allege any interruption in the operation of the franchised business, which finding would be required to trigger the disclosure requirements under New York's Franchise Sales Act).

[58] Statement of Basis and Purpose, Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. 15444, 15455 (Mar. 30, 2007).

[59] 21 Va. Admin. Code § 5-110-10.

[60] For more on materiality, see Joyce Mazero, W. Michael Garner, and Adam Siegelheim, *What Do These Common Contractual Words Actually Mean?*, 2024 IFA LEGAL SYMPOSIUM (May 2024); Terrence M. Dunn, *Material Changes and the FDD: Amending and Going Dark*, 34 FRANCHISE L.J. 535 (2015).

[61] *Rich Food Servs.,* 98 F. App'x at 209-210 (holding that a subsequent franchise agreement signed by the franchisee which changed only the term of the existing franchise agreement was not a material change requiring disclosure under the FTC Rule).

the written terms that will govern their relationship moving forward. However, in looking forward, the parties should not ignore the holdover period.

When entering into a new agreement, diligent contracting parties will want to clarify which agreement—the original agreement or the new agreement—applied during the period between expiration of the original agreement and execution of the new agreement. For example, if a customer sues the franchisee and franchisor for an incident that occurred during the holdover period, it will be critical for the franchisee and franchisor to know if the franchisee's indemnification obligations are governed by the original contract or the new contract, particularly if there are material differences.

There are different ways for the parties to handle this issue. For example, if the parties are entering into a simple extension agreement for a successor term, the term of the original franchise agreement will be extended for the duration of the agreed-upon successor term, meaning the terms of the original franchise agreement will be deemed to govern during the holdover period before the extension agreement was executed. Alternatively, parties entering into a new franchise agreement may agree to retroactively set its effective day as of the expiration of the original agreement, regardless of when the new agreement is executed, meaning the new franchise agreement governs the holdover period. A third option is for the parties to execute a short extension agreement, retroactively extending the term of the expired agreement until a renewal franchise agreement can be executed, at which point the new, renewal agreement will govern.

C. Ending the Relationship.

Often parties acting in good faith may be willing to honor their existing contractual obligations but have no desire to undertake new obligations; for example, a franchisee may operate during the franchise agreement's initial term but elect not to exercise its contractual renewal option, or a franchisor may grant all renewal terms promised by the original franchise agreement but decide not to grant a new franchise agreement after all of the franchisee's promised renewal options have been exhausted. Thus, expiration (or the belated realization of prior expiration) may provide one or both parties an opportunity to end the franchise relationship.

1. Mutual Agreement.

Even where a party believes it can unilaterally end the franchise relationship (for example, by declaring the agreement to be expired and no longer binding, or if a court is likely to conclude the implied, holdover agreement is terminable at will upon notice to the other party), seeking a mutual agreement is often a far more attractive and potentially cost-effective option for both a franchisor and franchisee willing to end the relationship.

Regardless of what the mutual agreement is called (some options include a mutual termination agreement, voluntary termination agreement, or a confirmation of expiration agreement), a mutual agreement can provide for a smooth transition, thereby preventing legal disputes and potential evictions (if the franchisor controls the real estate), among other benefits. Further, a mutual termination allows both franchisor and franchisee to

mitigate the risk of a lawsuit from the other by including a release as part of the mutual agreement.

In the context of a mutual termination or confirmation of expiration, the parties agree in writing to the terms on which the franchisee will exit the system and wind down operations. The parties will typically sign a termination agreement, outlining the terms on which the outlet will be closed or reacquired, and the settlement of any outstanding amounts owed or other damages. The mutual agreement will naturally be specific to the facts and circumstances of each individual situation, but will typically include a number of key provisions, such as:

- Closure or Purchase of Outlet; Wind Down Period. The termination or expiration confirmation agreement should clarify the date by which the franchisee must cease operation and/or complete an approved transfer. If the franchisee is not required to immediately shut down (or has not already shut down), the agreement should expressly require the franchisee to continue operating the outlet under the terms and conditions of the franchise agreement, including paying all royalties and other fees, through the agreed-upon closure date, and should specify the franchisee's deadline for final payment of royalties and other amounts owed through the closure date. If the franchisor elects to reacquire the outlet, the agreement may contain the purchase terms and conditions, including purchase price and closing conditions, or may refer to a separate purchase agreement negotiated and executed by the parties. Otherwise, the agreement will typically reiterate the broad de-identification and closure obligations under the franchise agreement, as well as calling out any other specific steps the franchisee must take to wind down its operations. Such steps may include returning property of the franchisor, de-identifying the location, cancelling trade names, or transferring administrative controls over any social media accounts.

- Settlement of Monetary Claims. An agreement to end the parties' relationship should address any outstanding royalties or other amounts owed through the closure date. The agreement should detail the amount, terms, and timing of such payment. If such agreed-upon payments will be made over time and not in a single lump sum upon closure, the parties may agree to secure future payments via a promissory note or confessed judgment. Alternatively, a franchisor may be willing to forgive some outstanding fees in certain circumstances, particularly where the franchisee is insolvent or otherwise has no ability to pay or where such concession is necessary to secure a mutual agreement that includes a release of any claims the franchisee may have against the franchisor.

- End of Franchisee's Agreement. The termination agreement or expiration confirmation agreement will specify that the underlying franchise contracts for the franchised location (including the franchise agreement, guarantees, *etc*.) are no longer in effect, while reaffirming that certain obligations under

the franchise agreement survive termination, either temporarily or indefinitely, such as, for example, indemnification, non-competition, confidentiality, and dispute resolution.

- Release. Most franchisors will demand a general release of all claims from franchisee parties to the termination or expiration confirmation agreement, releasing all existing claims against the franchisor and its affiliates. Some states have requirements pertaining to releases that should be carefully observed. For example, Washington prohibits releases of certain statutory claims except in specified circumstances.[62] The outgoing franchisee may demand a parallel release from the franchisor, which, depending on the circumstances, the franchisor may be willing to grant. While covering claims existing as of the termination or confirmed expiration date, in most cases the release should expressly exclude the parties' surviving obligations under the termination agreement and franchise agreement (such as confidentiality and indemnification).

2. Unilateral End.

During the written term of a franchise agreement, there are only a handful of ways the franchise relationship can properly end (without risking the franchisee claiming wrongful termination or the franchisor alleging breach of contract for abandonment). Because most franchise agreements do not permit franchisees to terminate (at least not without a substantial, uncured breach by the franchisor), most in-term franchise terminations are either mutual in nature or effected unilaterally by the franchisor based on one or more defaults by the franchisee. A franchisor's unilateral termination or non-renewal of a franchise agreement can be more complex than a mutual agreement, because it is conducted without the input or acquiescence of the franchisee, resulting in a situation that is ripe for disputes.

Some state franchise relationship laws bar a franchisor from terminating or refusing to renew a franchisee absent some standard of "good cause." Further, several states statutorily require a franchisor to provide the franchisee with written notice of the franchisee's defaults and a specified minimum cure period before the franchisor may proceed with termination or non-renewal (subject to certain narrow grounds that justify immediate termination). In addition, a handful of states also require the franchisor to buy back inventory and supplies of the franchised business at termination or non-renewal. Attached at Appendices A and B are summaries of state franchise relationship laws regarding termination and non-renewal.

While this is the case for franchise terminations or non-renewals generally, a holdover situation introduces several variables as a result of the uncertainty described

[62] WASH. REV. CODE §§ 19.100.180(2)(g), 19.100.220(2) (except in connection with a negotiated settlement of a bona fide dispute, a franchisor cannot require a franchisee to release claims under the Washington Franchise Investment Protection Action).

above as to the existence, duration, and terms of the parties' implied contract and how it may end.

Most franchisors try to be diligent regarding upcoming renewals or expirations. As a result, in most instances, upon expiration of a franchise agreement, a franchisor does not allow its franchisee to continue status quo operations post-expiration in silence.[63] If a franchise agreement has expired and lacks an automatic renewal process, and the franchisor proceeds properly with exercising and documenting the decision to not continue the relationship with the franchisee, then a court is likely to enforce the expiration and nonrenewal, and enjoin unauthorized any continued use of the franchisor's name and marks.[64]

If (once the parties have noticed the expiration) franchisee delays in signing a new agreement, the franchisor may have grounds to declare the franchise agreement expired—or to otherwise threaten termination—based on the franchisee's failure to comply with the originally agreed-upon renewal conditions. An undocumented continuation of operations may require the franchisor to threaten termination in order to get the franchisee to respond and rectify the situation. Threatened termination could be based on the failure of the franchisee to provide the requisite notice of interest in renewing (if required under the franchise agreement) or on the grounds that the agreement has "expired." Counsel will need to review the terms of the franchise agreement and applicable state relationship laws to evaluate the process for renewing, as well as any limitations on the franchisor's ability to refuse to renew the franchise agreement. For example, is a renewal compulsory under the franchise agreement (e.g., is there evergreen renewal language in the contract or applicable state law)?

In addition, like any termination or non-renewal, franchisors should be aware of the statutory requirements and restrictions imposed by applicable state relationship laws. Some franchise relationship statutes require the franchisor to have good cause to refuse to renew or terminate the franchise agreement, and to provide specified notice (and potentially an opportunity to cure). If the franchisor wants to insist on the franchisee signing the then-current form of agreement and the franchisee refuses to agree to the new terms, the franchisor could terminate, but may need to offer a notice of intent not to renew and permit the franchisee to continue to operate for a statutory period under the

---

[63] *See, e.g., Merry Maids, L.P. v. WWJD Enters., Inc.,* No. 8:06CV36, 2006 WL 1720487, at *3-5 (D. Neb. June 20, 2006), on reconsideration in part, 2006 WL 2040245 (D. Neb. July 20, 2006) (granting injunction to enforce franchise agreement's post-termination non-competition provisions; franchisor sent multiple communications to franchisee regarding expiration of franchise agreement and opportunity for renewal, but franchisee failed to respond until after the final extended expiration date had passed); *RE/MAX N. Cent., Inc. v. Cook,* 124 F. Supp. 2d 638, 640-41 (E.D. Wis. 2000) (finding franchisee cannot "hold a franchisor's trademarks hostage" while attempting to renegotiate a contract).

[64] *See, e.g.*, *ServiceMaster Residential/Com. Servs., L.P. v. Westchester Cleaning Servs., Inc.*, No. 01 CIV. 2229 (JSM), 2001 WL 396520, at *4 (S.D.N.Y. Apr. 19, 2001) (granting franchisor's application for preliminary injunction to enforce the non-compete clause).

old terms.[65] Further, in Arkansas, Wisconsin, New Jersey, and Puerto Rico, a franchisee has an automatic right to renew the franchise agreement in perpetuity unless the franchisor can show "good cause" to terminate the agreement.[66]

A franchisor that knowingly or unknowingly permits the relationship to continue beyond expiration of the franchise agreement for an extended period of time or without a clear interim agreement may find it difficult to seek relief from the franchisee's continued operations. Much of this stems from the varying ways courts treat implied-in-fact contracts.

Even if the original contract only allowed for termination for cause (as is typical for franchise agreements), some courts may conclude the implied-in-fact contract that exists when the parties continue to perform following expiration is terminable at will by either party. This was the case in *Andersen v. Waco Scaffold & Equip. Co.*[67] After their franchise agreement was not formally renewed by mutual agreement (as required by the original contract) but the parties continued to operate on the same terms, the Oregon Supreme Court held the franchisee and franchisor were involved in an "informal continuation under the terms of the contract; since no new agreement with a specific duration was reached,

---

[65] *See, e.g.,* N.J. STAT. § 56:10-5, prohibiting a failure to renew without at least 60 days' prior notice of intent not to renew and the grounds for the refusal to renew, except in limited circumstances, and further requiring the franchisor to have good cause for its decision not to renew in the form of the franchisee's failure to "substantially comply" with requirements of the franchise agreement. *See also* CAL. BUS. & PROF. CODE § 20025, prohibiting a franchisor from failing to renew a franchise agreement except where the franchisor provides 180 days' prior notice of refusal to renew and meets certain other criteria enumerated in the statute.

[66] *Volvo Trademark Holding Aktiebolaget v. Clark Mach. Co*., 510 F.3d 474, 482 (4th Cir. 2007) (noting that the grounds for terminating a franchise agreement set forth in the Arkansas Franchise Practices Act are exclusive, and that a termination without satisfying the statutory definition of "good cause" constitutes a violation of the statute, even if in conformity with the franchise agreement); *BP Prods. N. Am., Inc. v. Hillside Serv., Inc.*, Nos. 9-4210, 9-5143, 2011 WL 4343452 (D.N.J. Sept. 14, 2011) (holding that a franchisor's failure to renew a franchise agreement that contains no express right of renewal violates the prohibition of the New Jersey Franchise Practices Act (NJFPA) against a franchisor's terminating, canceling, or failing to renew a franchise agreement without good cause); *Gen. Motors Corp. v. Gallo GMC Truck Sales, Inc.*, 711 F. Supp. 810, 816 (D.N.J. 1989) ("It is a violation of the [New Jersey Franchise Practices] Act . . . to cancel a franchise for any reason other than the franchisee's substantial breach . . . ."); *Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp*., 100 N.J. 166, 185, 495 A.2d 66 (1985) ("With the advent of the New Jersey Franchise Practices Act, once a franchise relationship begins, all that a franchisee must do is comply substantially with the terms of the agreement, in return for which he receives the benefit of an 'infinite' franchise—he cannot be terminated or refused renewal*."); Gemco Latinoamerica, Inc. v. Seiko Time Corp.*, 623 F. Supp. 912, 918 (D.P.R. 1985) ("The Supreme Court of Puerto Rico explained . . . that 'the practical effect of Act No. 75 is to extend the contract indefinitely, unless there is just cause for its termination or unless the principal is willing to pay damages.'") (quoting *Warner Lambert Co. v. Superior Court of Puerto Rico*, 101 D.P.R. 378, 399 (1973)); *Kealey Pharmacy & Home Care Serv., Inc. v. Walgreen Co*., 539 F. Supp. 1357, 1366 (W.D. Wis. 1982) *aff'd*, 761 F.2d 345 (7th Cir. 1985) ("Under the [Wisconsin] Fair Dealership Law, all terminations, cancellations, or failures to renew dealership agreements are violative of the statute unless they are effected for 'good cause.'").

[67] *Andersen v. Waco Scaffold & Equip. Co.*, 259 Or. 100 (1971).

the relationship between the parties was terminable at will of either."[68] Subject to any applicable state franchise relationship laws restricting a franchisor's ability to terminate, either party can terminate at any time upon reasonable notice if the implied contract is deemed to be terminable at will. For example, a franchisee that could not terminate for convenience during the franchise agreement's written term could terminate at will the holdover implied-in-fact agreement.

On the other hand, some courts may conclude that the parties' continued post-expiration performance without a formal renewal or new agreement nevertheless impliedly renewed the agreement for another full term (or for any renewal term available under the expired agreement). For example, *Cloverdale Equipment Co. v. Manitowoc Engineering Co.* involved an expired distribution agreement.[69] The original contract had a one-year initial term and the parties had entered into six successive written one-year agreements. After the last written agreement expired in June 1995, the parties continued to engage in "business as usual." While the defendant argued that the parties' resulting implied contract was "terminable at will," the Sixth Circuit disagreed, affirming the district court's finding that, by continuing to perform, the parties "entered into a one-year implied contract incorporating the same material terms as the parties' six previous express contracts."[70] As another example, a California federal court held that, where the franchisor willfully breached the original franchise agreement by refusing to offer the plaintiff a new contract as required by the expiring agreement's renewal provisions, the court deemed the original franchise agreement to be have been reoffered to the franchisee.[71] A court that concludes an implied-in-fact has a specific contractual duration (as well as the same default and termination provisions as the original, expired contract) is likely to conclude the agreement can only be terminated for the specified grounds enumerated in the written contract.[72]

Accordingly, assessing how applicable law is likely to view the status of the parties' holdover contract is a critical preliminary step in deciding whether and how to end the relationship, as is evaluating any applicable state franchise relationship laws. Critically, regardless of how the common law may treat an implied-in-fact contract, franchisors

---

[68] *Id.* at 104-05.

[69] *Cloverdale Equipment Co. v. Manitowoc Engineering Co.*, 149 F.3d 1182 (6th Cir. July 1, 1998) (unpublished opinion).

[70] *Id.* at *3-4.

[71] *Prudence Corp. v. Shred-It-Am., Inc.*, No. SACV07555AGRNBX, 2008 WL 11342748, at *1-2 (C.D. Cal. Sept. 30, 2008) (franchisor's failure to timely submit proposed renewal terms (as required by franchise agreement), and resultant harm to franchisee, resulted in finding of renewal on original agreement terms), *aff'd,* 365 F. App'x 859 (9th Cir. 2010).

[72] Among other issues, implying a multi-year term for an implied-in-fact contract may raise statute of frauds concerns.

should comply with an applicable state franchise relationship law in connection with the termination or non-renewal of a franchisee in a relationship law state.

3. Post-Term Rights, Options, and Obligations.

Franchise agreements typically impose various obligations upon the franchisee upon expiration or termination of the franchise agreement, including obligations to: pay all amounts owed to the franchisor or its affiliates (which may include agreed-upon liquidated damages); cease use of the franchisor's name, marks, and system; de-identify the location (if the franchisor is not exercising an option to take over the site); return manuals and other confidential information; assign telephone numbers, email accounts, and domain names used in the franchised business to the franchisor; and comply with post-term covenants not to compete. Further, franchise agreements often grant the franchisor the option (but not the obligation) to take over the location or purchase some or all of the franchisee's equipment, inventory, and other assets used in the business upon expiration or termination. Injunctive relief is often available to enforce a franchise agreement's post-term obligations and options.[73]

Because such obligations and options apply upon expiration or termination of the franchise agreement, what happens when the parties knowingly continue to mutually perform for months or years after expiration without a new written agreement or formal extension? We highlight a few examples below.

4. De-Identification and Use of the Franchisor's Marks.

It is critical for a franchisor to protect the brand, especially the system's trademarks, trade dress, and reputation. As result, expiration or termination of the franchise agreement requires the franchisee to cease use of the franchisor's name, marks, and system, and, subject to a franchisor's options regarding taking over the site, de-identify its former franchised business.

Courts frequently grant franchisors injunctive relief where a former franchisee is continuing to use the brand's name and marks without authorization following expiration

[73] *See, e.g.*, *Domino's Pizza Franchising, LLC v. VTM Pizza, Inc.*, No. 15-cv-13312, 2015 WL 9500791, at *2 (E.D. Mich. Dec. 31, 2015) (enforcing franchisee's post-term obligations by, among other things, enjoining former franchisee from continuing to use store's telephone number and ordering franchisee to assign such telephone number to Domino's following termination); *Am. Dairy Queen Corp. v. YS & J Enters.,* No. 5:14-CV-151-BR, 2014 WL 1327017 (E.D.N.C. Apr. 2, 2014) (granting franchisor's preliminary injunction motion and enjoining former franchisee's continued use of the franchisor's name and trademarks after franchisee continued to operate as a Dairy Queen location following termination for cause and multiple cease-and-desist letters); *7-Eleven, Inc. v. Spear*, No. 10-cv-6697, 2011 WL 830069, at *5 (N.D. Ill. Mar. 3, 2011) (issuing preliminary injunction to enforce post-termination obligations in franchise agreement, including immediately delivering and surrendering "full and complete possession of the [s]tore, the equipment, and the inventory" to the franchisor); *Big O Tires, LLC v. JDV, LLC*, No. 08-CV-1046-WYD, 2008 WL 4787619, at *5 (D. Colo. Oct. 31, 2008) (finding defendants' refusal to assign telephone number to franchisor would irreparably harm franchisor, justifying preliminary injunction); *Gold v. Holiday Rent–A–Car Int'l, Inc.,* 627 F. Supp. 280, 285 (W.D. Mo. 1985) (issuing preliminary injunction to enforce post-termination obligation in franchise agreement to transfer franchisee's telephone numbers to franchisor).

or termination of the franchise agreement. "Once a [trademark] license has expired, use of the formerly licensed trademark constitutes infringement."[74] For example, in *Burger King Corp. v. Agad*,[75] a franchisee refused to stop operating a Burger King restaurant following expiration of the parties' franchise agreement (which expressly stated the franchisee had no right to renewal). The court concluded that, upon expiration of the franchise agreement, the franchisee had no further contractual right to use the marks and thus any further use constituted trademark infringement.[76] A former franchisee's claim that it was wrongfully terminated or improperly denied a successor franchise agreement "is not a defense to an action for trademark infringement."[77] Rather, "as a matter of law, a terminated franchisee's remedy for wrongful termination is an action for money damages and not the continued unauthorized use of its franchisor's trademarks. Thus, while the [former franchisees] may assert a claim for money damages (a matter the Court is not addressing at this time), they do not have the right to continue using the [Burger King] trademark[s] as an infringer."[78] Ruling in favor of Burger King, the court entered an injunction Burger King to an injunction requiring the franchisee to stop using or displaying Burger King's marks, to return all manuals, to vacate the premises per the parties' contracts, and fully comply with the post-termination covenants of the franchise agreement and lease.[79]

While a mutual holdover situation may constitute a temporary implied license to continue using the franchisor's trademarks, a franchisee must cease use of the trademarks once the franchise relationship ends. *Tinder Box International, Ltd. v. Patterson* is instructive.[80] In *Tinder Box*, the franchisees—the Pattersons—signed a ten-year franchise agreement in October 1996 to operate a franchised Tinder Box store. Neither the franchisees nor the franchisor noticed that the franchise agreement expired in October 2006, and the franchise relationship continued for several months. In February 2007, the parties discovered their oversight and briefly attempted to negotiate a renewal; however, in mid-March 2007, the Pattersons declined the franchisor's offer to renew, partially de-branded, and continued operating a similar business at the location. In November 2007, the franchisor sued, claiming the Pattersons were breaching their covenant not to compete and wrongfully using the brand's protected trademarks. While refusing to enforce the non-compete (as discussed below), the court held the former franchisees had violated the Lanham Act. Once the parties' relationship ended in mid-March 2007, the Pattersons no longer had the franchisor's consent to use the Tinder Box name or sell its

---

[74] *United States Jaycees v. Philadelphia Jaycees,* 639 F.2d 134, 143 (3d Cir. 1981).

[75] *Burger King Corp. v. Agad*, 911 F. Supp. 1499 (S.D. Fla. 1995).

[76] *Id.* at 1503.

[77] *Id.* at 1506.

[78] *Id.*

[79] *Id.* at 1510.

[80] No. 07-cv-05014, 2010 WL 2302298 (E.D. Pa. June 7, 2010).

products. While defendants had partially de-branded, their store and website continued to display Tinder Box's name, marks, and products after March 2007. The court concluded such unauthorized use of the franchisor's name and marks after March 2007 violated the Lanham Act.[81]

On the other hand, a franchisor that knowingly allows an expired franchisee to continue using the marks for some period following expiration of the franchise agreement should not be able to later seek for damages for trademark infringement for such period. In *Big O Tires, LLC v. Felix Bros., Inc.,* the parties' franchise agreement contained a provision requiring the franchisee to de-identify their Big O franchise and return proprietary materials upon termination or expiration.[82] Big O sued the former franchisee for damages for trademark infringement, trade dress infringement, and trade secret misappropriation after the parties' franchise agreement expired. In the three months between the expiration of the agreement and the lawsuit, the defendants held off removing the plaintiffs trademarks from their business "on account of ongoing negotiations with Big O regarding the possibility of . . . a buyout" and Big O's potential takeover of the locations.[83] The U.S. District Court for the District of Colorado denied Big O's motion for summary judgment, finding the franchisor was "at a minimum, sending mixed signals," and thus that there was a genuine dispute of material fact regarding whether Big O "acquiesced in the use of its marks during the ongoing negotiations."[84] Of note, the court focused on the fact that Big O negotiated an extension of the franchise agreement after a previous expiration, and

> There is no indication that defendants were expected to de-identify during those earlier negotiations, only to re-identify upon a granting of the extension. To the extent plaintiff was aware of the continued operation of the business and was actively engaging in discussion regarding the possibility of the [] location remaining a Big O franchise in some form or another, a jury could conclude that plaintiff implied that it would not assert its trademark and trade dress rights until all negotiations over termination of [defendant's] franchise were complete.[85]

Critically, Big O was seeking monetary damages for the former franchisee's alleged trademark infringement during the post-expiration period when the parties were negotiating a potential continuation or, alternatively, a winddown of the relationship. It did not involve a situation where, belatedly or not, the relationship had clearly ended and the franchisor was seeking to enjoin further use of the brand's name or marks. Nevertheless,

---

[81] *Id.* at *3-4.

[82] No. 10-cv-00362, 2011 WL 6181448 (D. Colo. Dec. 13, 2011).

[83] *Id.* at *1.

[84] *Id.* at *7.

[85] *Id.*

the *Big O* case is a reminder that franchisors should uniformly and aggressively enforce their post-expiration provisions or otherwise risk an adverse ruling as a result of their post-expiration interactions, inactions, or conduct with the former franchisee.

5. Noncompetition Covenant

Post-term covenants not to compete are one of the most commonly fought over provisions in franchise agreements. Presuming the general enforceability of a post-term restrictive covenant,[86] the situation of holdover franchises poses a unique challenge regarding such post-term covenants: when do they begin to run?

As discussed above, "[w]here a franchisee continues operation of the franchise after the expiration of a franchise agreement, the parties will be found to have mutually agreed to a new contract, with terms to be measured by the provisions of the previous contract."[87] Faced with a post-term restrictive covenant in a holdover franchise situation, some courts have held that the agreed-upon non-compete period should run from the end of the parties' implied-in-fact contract and not from the earlier expiration of the franchise agreement if the parties continued to mutually perform.

Gafnea v. Pasquale Food Co., Inc. is an illustrative franchise case.[88] Upon expiration of the franchise agreement's initial ten-year term in January 1982, neither party stopped operating or expressly sought renewal; instead, both continued operating without change for a few months. The franchisee (Gafnea) stopped paying royalties in May 1982, closed as a franchised Pasquale restaurant on December 31, 1982, and reopened as a competing restaurant in March 1983—in violation of the five-miles, 18-month post-term covenant not to compete.[89] Granting the franchisor's preliminary injunction motion, the district court held that non-compete should run from December 31, 1982 (the date Gafnea stopped operating as a franchised restaurant), instead of the earlier January 1982 expiration of the franchise agreement. In affirming, the Alabama Supreme Court held that, "by the continued operation of the Gafneas' franchise after the expiration of the franchise agreement, the parties mutually agreed to a new contract with terms to be measured by the provisions of the previous contract."[90] As a result, the post-term non-compete should run from the end of the new (implied) contract, not the earlier expiration of the written contract.[91]

---

[86] A primer on the enforceability of non-compete clauses, and the increasing federal and state hostility to such restrictive covenants, is beyond the scope of this paper. For more information, see Lindsay Henner, Brian Esser, & Antonia Scholz, *How to Protect the Franchise System in a World Without Enforceable Non-Competition Covenants*, 2024 IFA LEGAL SYMPOSIUM (May 2024).

[87] 62B Am. Jur. 2d Private Franchise Contracts § 322.

[88] *Gafnea v. Pasquale Food Co., Inc.*, 454 So.2d 1366 (Ala. 1984).

[89] *Id.* at 1368.

[90] *Id.* at 1369.

Bambu Franchising, LLC v. Nguyen is another interesting example.[92] In 2015, the founders of the Bambu brand sold the franchise system (and assigned all existing franchise agreements) to plaintiff. As part of the transaction, the founders (the Nguyen Defendants) retained their right to continue operating their Bambu Hostetter location in San Jose, California, as a franchisee. The three-year franchise agreement for the Bambu Hostetter location expired in September 2017 without being renewed, but the Nguyen Defendants continued to operate without change. In 2020, the Nguyen Defendants refused to implement a new POS system, menu signage, and customer loyalty program required by the new franchisor.[93] In September 2020, franchisor provided notice to the Nguyen Defendants that their Bambu Hostetter franchise agreement would not renew and would terminate effective September 30, 2020. On October 1, 2020, the Nguyen Defendants reopened the location as a competing store (under the name LyChe) without franchisor's permission and the franchisor moved for preliminary injunction to enforce the franchise agreement's two-year, ten-mile post-term non-compete.[94] In opposing the requested injunction, the Nguyen Defendants argued that, because they never renewed after the franchise agreement expired in September 2017, the two-year non-compete period expired in September 2019—long before they converted to a competing business in October 2020.[95] The court disagreed and granted an injunction enforcing the post-term non-compete.[96] "Although the Nguyen Defendants never signed a new franchise agreement, it is undisputed that they continued to operate the Hostetter Shoppe using signs, flyers, posters, and other materials with the Bambu name and logo. Furthermore, the evidence shows [defendant] understood she was operating the Hostetter Shoppe pursuant to the FA [including continued use of signs, flyers, posters, and other branded materials until just before reopening as LyChe] . . . This evidence establishes that an implied-in-fact contract existed with the same terms as the FA well beyond the original three-year term."[97]

In *JTH Tax LLC v. Pierce*,[98] the franchisor of the Liberty Tax system sought to enforce a two-year post-term non-compete following its termination of franchisee in May 2020. The franchisee moved to dismiss, arguing that the five-year franchise agreement had expired without being renewed in 2017 and thus the two-year post-term covenant expired in 2019.[99] In denying franchisee's motion to dismiss, the court held that post-term

---

[91] *Id.*

[92] *Bambu Franchising, LLC v. Nguyen*, 537 F. Supp. 3d 1066 (N.D. Cal. 2021).

[93] *Id.* at 1070-71.

[94] *Id.* at 1071.

[95] *Id.* at 1076-77.

[96] *Id.* at 1080.

[97] *Id.* at 1077.

[98] *JTH Tax LLC v. Pierce*, No. 1:22-cv-1237-SEG, 2022 WL 4122215 (N.D. Ga. Sept. 8, 2022).

non-compete may apply to the parties' implied contractual relationship, even though original agreement had expired several years earlier:

> [T]he Court makes no findings here about the terms or existence of any implied-in-fact agreement between the parties—such findings will require evidence and briefings not available to the Court at this stage. But the allegations in the First Amended Verified Complaint and the plain language of the franchise agreement make the existence of such an implied contract at least 'plausible on its face.' . . . The same goes for the possibility that an implied-in-fact agreement incorporated the [two-year] post-term noncompete covenant. Defendants are correct that the covenant's conclusion is pegged to a particular date, but so are all the in-term provisions, which all parties agree were due to expire five years after the agreement was executed. Defendants have not persuaded the Court that, as a matter of law or the plain language of the franchise agreement, there is any reason to think that the post-term covenants could not be incorporated into a post-expiration implied-in-fact agreement. The question is not whether the covenant was clearly time-limited in the written franchise agreement. It is whether a subsequent implied contract—reflecting the course of dealing under the written agreement but formally separate from it—might have incorporated the noncompete provision.[100]

By contrast, other courts tie the start of any post-term covenants not to compete and other post-term obligations to the specific date the franchise agreement expired, even where the parties' franchise relationship continued without change for some period thereafter.

Tinder Box International, Ltd. v. Patterson is instructive. As noted above, both parties continued to fully perform for several months following the expiration of their franchise agreement in October 2006. In March 2007, the franchisees declined the franchisor's offer to renew, partially de-branded, and began operating a competing business at the location. In November 2007, the franchisor sued to, among other things, enforce the franchise agreement's one-year post-term non-compete covenant. Following a bench trial, the U.S. District Court for the Eastern District of Pennsylvania ruled in favor of the former franchisees regarding the non-compete.[101] The court first concluded "the parties' post-expiration conduct did not renew, extend, or alter the terms of the franchise agreement."[102] The court rejected the franchisor's argument that, "where parties maintain their business relations after their contract lapses, the provisions of that contract continue

---

[99] *Id.* at *6.

[100] *Id.* at *7-8 (while denying franchisee's motion to dismiss, the court noted any non-compete may not be enforceable under Georgia law).

[101] *Tinder Box*, 2010 WL 2302298, at *2-3.

[102] *Id.*

to govern the relationship."[103] Instead, the court found the franchise agreement imposed a set term, detailed various obligations when expiration occurred (including a one-year non-competition period), and required a signed writing for any modifications. Rejecting the notion of any implied contract, the court held "[t]hese limitations demonstrate the parties' mutual intent to prevent any implied alternation, renewal, or extension of the agreement."[104] The court offered no explanation of what, if any, terms governed the parties' relationship between the expiration of the franchise agreement in October 2006 and the franchisee's decision in March 2007 to stop operating as a Tinder Box store and convert to a competing business. Thus, notwithstanding the franchisee's continued operation as a Tinder Box franchisee until March 2007, the court concluded the one-year non-compete period began to run upon expiration of the written agreement in October 2006.[105]

The *Tinder Box* court further held that the franchise agreement's one-year contractual limitations period regarding claims "arising out of or under the agreement" barred all of the franchisor's claims that depend on provisions of the franchise agreement, including regarding the franchisee's post-term obligations. Noting that the franchise agreement required the defendants to de-brand, stop selling all Tinder Box products, and comply with the one-year non-compete clause upon expiration of the franchise agreement in October 2006, the court acknowledged that defendants' continued operation "unequivocally indicated a breach of the franchise agreement."[106] However, because the franchisor did not file suit until November 2007—over one year after expiration—its claims were time barred. According to the court, the fact that the franchisor did not notice the expiration does not change the fact that the franchisor (which was a party to the franchise agreement) had imputed knowledge of the contract's terms and had actual knowledge of the defendant's operations after October 2006.[107] As a result, *Tinder Box* is a warning to all franchisors that are not diligently monitoring the expiration and renewals of their existing agreements.[108]

As a final consideration, some franchise agreements expressly state that the post-term non-compete begins to run from the date the franchisee comes into compliance with the restrictive covenant (or that the non-compete period does not run during any periods of noncompliance). Such contractual language may be an effective way for a franchisor to proactively circumvent the inherent uncertainty of enforcing a post-term restrictive

---

[103] *Id.*

[104] *Id.* at *2.

[105] *Id.*

[106] *Id.* at *3.

[107] *Id.* at *2-3.

[108] *AmeriSpec, L.L.C. v. Omni Enterprises, Inc.*, No. 218CV02247TLPDKV, 2018 WL 2248459, at *8 (W.D. Tenn. May 16, 2018) (granting preliminary injunction enforcing one-year noncompete from expiration of the franchise agreements, not any later dates).

covenant where the parties continue to operate for some period following the nominal expiration of the contract before the franchisee switches to a competing business.[109]

6. Post-Term Lease Assignment and Purchase Rights or Obligations.

Many franchise agreements grant the franchisor the option (but not the obligation) to take over the site (whether by assuming the lease or purchasing the property if the franchisee owns it) and/or to purchase equipment, furniture, fixtures, inventory, etc. within a specified period (often 30 days) following expiration or termination of the franchise agreement. Where the franchisor timely exercises its option and the franchisor fails to comply, courts can grant injunctive relief and order specific performance.[110]

Similar to the issue of when a post-term non-compete period should start running when the parties continue to perform following expiration, disputes may arise as to the start of a franchisor's post-term option period in a holdover situation. For the same reason that some courts conclude the post-term non-competition period must begin on the date the written contract expired (even where the parties continue to perform for months or years thereafter), such courts are likely to similarly conclude that a franchisor's purchase option period necessarily begins on the written contract's expiration date, regardless of the parties' continued performance. Under such circumstances, the short post-term option period could have long expired by the time the holdover relationship ends and the franchisee actually stops operating as a franchised location.

Separate from any contractual repurchase (or lease assignment) option granted to the franchisor under the franchise agreement, some state franchise relationship laws expressly require the franchisor to repurchase the franchisee's inventory, equipment, or branded materials upon the franchisor's termination and/or non-renewal of the franchise agreement.[111] Notably, a few states impose a repurchase obligation in the event of termination but not non-renewal, or vice versa.[112] To the extent a franchisor seeking to

---

[109] *Merry Maids,* 2006 WL 1720487, at *12 (granting franchisor a preliminary injunction commensurate with a full-year of non-competition from the date of the order, instead of from the date of the expiration of the franchise agreement, because the franchisee had been refusing to comply with the post-expiration restrictive terms during that time);

[110] *See Dunkin' Donuts, Inc. v. Taseski,* 47 F. Supp. 2d 867, 868-69 (E.D. Mich. 1999) (ordering franchise to execute a lease and deliver possession of the premises to franchisor after franchisor sent a timely notice of elect under the parties' lease option agreement following termination of the franchise agreement); *Snelling & Snelling, Inc. v. Martin,* No. C 97-4479 FMS, 1998 WL 56995, at *4 (N.D. Cal. Jan. 28, 1998) (granting injunction enforcing provisions in three franchise agreements requiring the franchisee to assign its leases to the franchisor upon termination);

[111] See Appendices A and B.

[112] For example, under the Michigan Franchise Investment Law, a franchisor that refuses to renew a franchise must "fairly compensate[e] the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings." Mich. Comp. Laws § 445.1527(d) (this provision only applies if (1) the franchise's term is less than five years, and (2) the franchisee is prohibited from continuing to operate a substantially similar business in the same area

end a holdover franchise has the option of phrasing it is a termination, non-renewal, or expiration, the nuances of state franchise relationship laws (including when repurchase obligations are or are not triggered) should be carefully considered.

IV. Practical Tips for Managing the Renewal Process

A. Drafting Tips

When considering renewal rights, agreement expiration and the rights and obligations of franchisor and franchisee, the contractual provisions of the franchise agreement matter. In this Section IV.A, we outline drafting tips to help frame up approaches with respect to these key contractual provisions.

1. Initial Term

The initial term of the franchise agreement is the length of time, typically expressed in years, for which the franchise agreement remains in effect, and during which franchisee has the right and obligation to operate the franchised business. While there isn't a great amount of variation in the technical drafting of the initial term provision, the initial term clause typically contains two common components which often vary by franchise agreement.

The first variable found in the initial term clause is the commencement date of the initial term. Under many franchise agreements, the initial term begins on the date of execution. Other franchisors, however, may choose to begin the term on the date the franchisee executes its lease, on the lease commencement date, or on the date the franchise opens for business. The second variable in an initial term provision is the length of the term. Such lengths vary widely by franchise system and often are determined based on the estimated initial investment and franchisee opportunity to recoup its initial investment and customary lease terms for the particular franchised business.

Sample initial term provisions include the following:

> The Initial Term of this Agreement and the Franchise Rights granted by this Agreement shall begin on the date of this Agreement and expire at midnight on the day preceding the 20th anniversary of the date the Franchised Business first opened for business, unless this Agreement is terminated at an earlier date pursuant to the terms of this Agreement. Upon the opening of the Franchised Business, Franchisor and Franchisee will sign a Commencement Date Addendum confirming the expiration date of this Agreement. Franchisee agrees to continuously operate the Franchised Business during the Initial Term.

---

following expiration or the franchisee does not receive at least six months' notice of franchisor's intent not to renew). Michigan's franchise relationship law does not impose a similar buyback obligation in the event of termination.

OR

The Initial Term of this Agreement and the Franchise Rights granted by this Agreement shall begin on the date Franchisor signs this Agreement (the "Effective Date") and expire at midnight on the day preceding the 10th anniversary of the Effective Date of this Agreement, unless this Agreement is terminated at an earlier date pursuant to the terms of this Agreement.

2. Renewal Options

In addition to the initial term, most franchise agreements include a renewal provision, providing a franchisee with the right to continue operating the franchised business for an additional period of time following the expiration of the initial term. Like the initial term, typical renewal provisions include two components. First, the renewal term identifies the number of renewal options provided to the franchisee – which, renewal options can vary from one to an indefinite number of options. The second component outlines the renewal term – or the additional number of years the franchisee has the right and obligation to operate the franchised business. As with the initial term, the length of the renewal term varies by industry but is often tied to the remaining lease term and lease term options customary for the franchised business.

Sample renewal term provisions are as follows:

Franchisee may renew the rights licensed in this Agreement for consecutive additional renewal terms of 10 years each from the date of expiration of the initial term.

OR

At the expiration of the Initial Term, Franchisee shall have one option to remain as a franchisee for a Renewal Term of 10 years or, at Franchisee's option, 5 years from the date of expiration of the Initial Term.

3. Renewal Requirements

Regardless of how many renewal terms a franchisee is granted, most franchisors typically condition a franchisee's renewal right on various conditions the franchisee must satisfy. Typical conditions to renew include the following:

- Provide advance written notice to the franchisor of the franchisee's intention to renew within a specific period of time prior to expiration of the initial term.

- Franchisee must perform, at franchisee's expense, such renovation to and replacement of building, premises, leasehold improvements, equipment, fixtures and signage as franchisor reasonably requires so that the Franchised Business conforms with then-current System standards

- Franchisee must sign franchisor's then-current form of franchise agreement, which agreement may contain terms materially different from those in franchisee's current form of franchise agreement, including additional or increased fee amounts.

- Pay franchisor a renewal fee in the amount provided for in the franchise agreement.

- Franchisee must be in compliance with the franchise agreement and all other agreements with franchisor and its affiliates and must be in compliance with all franchisor policies.

- Be current on all payments due and owing to franchisor and its affiliates.

- Franchisee, along with any franchisee guarantors, must sign a general release of claims in favor of franchisor.

- Provide franchisor with written proof that franchisee has the right to remain in possession of the franchised business premises for the entire renewal term.

- Attend additional training, if required.

4. Holdover Language

In an effort to proactively address those situations when the initial term of a franchise agreement expires prior to the renewal process being complete, some franchisors include holdover language in their franchise agreement. Holdover language outlines how the franchise relationship will work in the event the renewal conditions are not satisfied prior to the expiration of the initial term and the franchisee continues operating the franchised business following the expiration of the initial (or, as applicable, renewal) term. Below is sample holdover language:

> If Franchisee continues to accept the benefits of this Agreement after the expiration of the initial term but does not satisfy the renewal conditions outlined in this Agreement then, at Franchisor's sole option, this Agreement may be treated as: (a) expired as of the date of the expiration and Franchisee will be operating without a franchise or license to do so and in violation of Franchisor's rights to the Marks, brand and System; or (b) continued on a month-to-month basis (an "Interim Period") and all of Franchisee's obligations will remain in full force and effect during the Interim Period as if the Agreement had not expired. Each Interim Period expires at the end of each calendar month unless this Agreement is renewed as provided for this Agreement. The Interim Period does not create any new franchise rights and upon expiration of the final Interim Period; provided Franchisee does not renew the rights licensed in this Agreement as

specified in this Agreement, Franchisee will be bound by all post-term obligations as provided in this Agreement.

The holdover language is designed to outline the rights and obligations of each party in the event the renewal conditions are not satisfied prior to expiration.

5. Post-Term Rights and Obligations

Finally, it's important to ensure that all post-term rights and obligations – including any post-term lease assignment, step-in and purchase rights – expressly apply not only in the event of termination but upon expiration of the franchise agreement term. Further, it is advisable that franchisors review their non-competition provisions to ensure the language clearly addresses termination and expiration.

B. Tracking Practices and Enforcing Renewal Conditions

A great place to start in establishing a renewal process is to review the renewal conditions and requirements outlined in the franchise agreement. Understanding the timing and scope of the contractual renewal requirements is key to a franchisor determining when to start its internal renewal process and which business units need to be included in the process. Starting the renewal process early is key to avoiding many of the issues outlined in this paper. For example, if as part of the renewal conditions a franchisee must provide the franchisor with 90 days advance written notice of its intent to renew a franchisor would be well-advised to begin tracking franchise renewals at least six (6) months prior to expiration and proactively contacting franchisees to determine renewal intent. Applying a proactive approach and following up with franchisee's intent from a renewal perspective not only ensures that agreements and franchise rights are renewed timely but also allows a franchisor to address a situation when a franchisee does not intend to renew. Understanding early when a franchisee does not intend to renew its franchise rights provides a franchisor with the option to discuss various exit strategies with the franchisee including potentially preserving the location by stepping in to operate the location or helping to facilitate a transfer.

Depending on the contract management system utilized by the franchisor, certain aspects of the tracking and renewal process can be automated – including, generating renewal reports and trackers and potentially sending out automated renewal reminder notices. Unfortunately, however, much of the renewal process is manual and involves direct follow up with the franchisee and internal stakeholders to ensure the process is managed properly and the renewal completed prior to expiration.

In developing a renewal process, Franchisors should consider the various legal and business units that need to be part of the renewal process. Typically, the renewal process is managed by the franchisor's in-house legal team. The legal team must ensure that the franchisee is properly disclosed, all applicable waiting periods followed, and all legal documentation – including the renewal franchise agreement, renewal addendum and general release (as applicable) are signed prior to expiration. Additionally, the franchisor's legal team often coordinates the overall renewal process to ensure all

renewal conditions are satisfied. Taking the sample renewal requirements outlined in Section IV.A.3 above, members from a franchisor's internal legal, operations, finance, construction, real estate and training teams should all be part of the renewal process to ensure all conditions are satisfied.

- Renovation & Remodel. If renewal is conditioned on the franchisee renovating or remodeling the franchised business, it will be important for the construction team to conduct an onsite inspection of the franchised business prior to renewal and summarize the renovation and remodel items that must be completed in connection with renewal. Providing a franchisee with any requirements so that the franchised business conforms with System standards provide the franchisee with time to evaluate additional investment costs and potential work with the franchisee's landlord to secure additional lease term and tenant improvement dollars to help offset the required construction costs.

- Financial Compliance. The finance department can confirm that the franchisee is compliant with all monetary obligations under the franchise agreement and any related agreements. Additionally, the finance department can review historical franchisee financial statements to ensure the franchisee is well-positioned to continue operating the franchised business during the renewal term.

- Operational Compliance. Review by the operations team is important to confirm that the franchisee is operating the franchised business consistent with key operational metrics and system standards. Renewal is a key opportunity from a relationship standpoint to address any operational assessment concerns to ensure the franchisee is operating the franchised business in full compliance with the terms of the franchise agreement.

- Real Estate. The real estate team must confirm with the franchisee that the franchisee has the right to remain in possession of the franchised business premises for the entire renewal term. Further, renewal of the franchise agreement provides a natural opportunity for the franchisee to review its business lease and consider lease renewal opportunities and potential tenant improvement dollars, especially if significant renovation and remodel investments are necessary for the franchise rights renewal.

- Training. Consult with the education and training department to determine whether any additional training or certification requirements must be satisfied prior to renewal.

C. Franchise Relationship & Business Considerations

Renewal provides a natural opportunity for franchisor and franchisee to complete a full business review, discuss future goals, succession planning, and opportunities from

a business perspective and gain alignment with respect to any compliance or operational concerns. Additionally, and as noted above, franchise renewal is an ideal time to support a franchisee in connection with lease renewal or obtaining beneficial lease terms.

Additionally, and as noted in Section III.C above and Appendices A and B, if a franchisor desires to withhold its consent to renew, it's important that a franchisor addresses its concerns with the franchisee well in advance of the expiration date and complies with any state relationship law requirements.

V. Conclusion

Uncovering a situation where the franchise agreement has expired but the relationship continues is not ideal, and courts have interpreted the rights, responsibilities and obligations of the parties differently. If a franchisor finds itself in this situation, doing nothing is not a viable strategy. Instead, the focus for franchisor, franchisee and their respective counsel must be on confirming the parties' respective intentions moving forward and properly documenting the future (or end) of the franchise relationship. Preventing this situation requires thoughtful drafting and consistent processes and documentation to ensure a franchisor doesn't find itself in a holdover situation.

APPENDIX A

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
Arkansas	Arkansas Franchise Practices Act, ARK. CODE ANN. §§ 4-72-204	N/A	The Arkansas Franchise Practices Act prohibits franchisors from failing to renew a franchise except for good cause or except in accordance with current policies, practices, and standards established by the franchisor which are not arbitrary or capricious. A franchisor is also required to provide ninety days' written notice of its intention not to renew. Notably, however, if the reason for failure to renew is for repeated deficiencies within a twelve-month period, the franchisee has ten days to rectify the repeated deficiencies and thereby void the notice. ARK. CODE ANN. § 4-72-204.	Only for termination. N/A to non-renewal.
California	California Franchise Investment Law, CAL. CORP. CODE § 31018 California Franchise Relations Act, CAL. BUS. & PROF. CODE §§ 20022, 20025–26, 20030.	"The terms defined in this section [of the California Franchise Investment Law] do not include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee; provided, that a material modification of an existing franchise, whether upon renewal or otherwise, is a 'sale' within the meaning of this section." CAL. CORP. CODE § 31018.	While the California Franchise Relations Act permits non-renewal without cause, a franchisor is required to provide the franchisee 180 days to sell its business to a purchaser meeting the franchisor's requirements for purchasing a franchise. A franchisor may refuse to renew where the franchisee fails to agree to changes or additions to the terms and conditions of the franchise agreement, if such changes or additions would result in renewal of the franchise agreement on substantially the same terms and conditions on which the franchisor is then customarily granting	The California Franchise Relations Act requires franchisor, upon nonrenewal, to repurchase all inventory, supplies, equipment, fixtures, and furnishings purchased by franchisor under the terms of the franchise relationship at the time of notice of nonrenewal. There are 6 exceptions: (1) no repurchase of personalized items, (2) if franchisee declines an offer to renew, (3) franchisor does not prevent the franchisee

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
			new and renewal franchises, or if the franchisor is not granting a significant number of renewal franchises on the terms and conditions then-given to original franchisees. Franchisors are barred, however, from refusing to renew a franchise for the purpose of converting the franchisee's business to a company-owned operation. CAL. BUS. & PROF. CODE § 20025. Notices of non-renewal must be: (i) in writing; (ii) posted by registered, certified or other receipted mail; (iii) delivered by telegram or personally delivered to the franchisee; (iii) contain a statement of intent to terminate and the reasons therefore; and (iv) specify the effective date of termination. CAL. BUS. & PROF. CODE § 20030.	from retaining control of the principal place of the franchise business, (4) franchisor has withdrawn from all relevant geographic market area where franchisee is located, (5) parties mutually agree in writing to not renew, and (6) items sold post notice of nonrenewal. Franchisor may offset against amounts owed by franchisee so long as amounts are undisputed. CAL. BUS. & PROF. CODE §§ 20022.
Connecticut	Connecticut Trading Stamps, Mail Order, Franchises, Credit Programs, Subscription Act, CONN. GEN. STAT. §§ 42-133f, 42-133*l*.	N/A	Connecticut Franchise Act bars franchisors from failing to renew a franchise, except for good cause, which includes the franchisee's refusal or failure to comply substantially with any material and reasonable obligation of the franchise agreement. Moreover, when a franchisor decides to not renew a franchise, the franchisor is required to provide six months' written notice, with	Only for termination. N/A to non-renewal.

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
			limited exceptions. With respect to a franchisor who leases real property to the franchisor, nonrenewal is permitted where the franchisor: (1) sells or leases the real property to a non-affiliated entity; (2) sells or leases the real property to an affiliated entity, except that such entity shall not use the property for the operation of the same business of the franchisee; (3) converts the real property to a use not covered by the franchise agreement; or (4) where the franchisor leased the property from a third-party that terminates or does not renew the lease. CONN. GEN. STAT. § 42-133f.	
Delaware	Delaware Franchise Security Law, DEL. CODE §§ 6-25-2552 – 2555	N/A	Delaware Franchise Security Law provides a franchisor may not "unjustly fail or refuse to renew a franchise." A franchisor's failure to renew is "unjust" if such failure to renew is without good cause or in bad faith. Franchisor must provide at least 90 days' notice of non-renewal. DEL. CODE §§ 6-25-2552, -2555	None.
Hawaii	Hawaii Franchise Investment Law, HAW. REV. STAT. §§ 482E-4(a)(5), 482E-6	The registration and disclosure obligations of Hawaii's Franchise Investment Law "shall not apply to: . . . The extension or renewal of an existing franchise or the exchange or substitution of a modified or amended	Hawaii's Franchise Investment Law prohibits the non-renewal of a franchise except for good cause, or in accordance with the terms and standards established by the franchisor, which must apply equally to all franchisees,	If the franchisor fails to renew a franchisee, the franchisor must compensate the franchisee for the fair market value of the franchisee's inventory, supplies, equipment, and furnishings that

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
		franchise agreement or the transfer of the location of a franchise where there is no interruption in the operation of the franchise business of the franchisee, and no material change in the franchise relationship." HAW. REV. STAT. § 482E-4(a)(5).	unless the franchisor proves that treating a specific franchisee differently is reasonable, proper and justified, and not arbitrary. HAW. REV. STAT. § 482E-6.	were purchased from the franchisor or a designated supplier, less monies due to franchisor or cost to transport or dispose items. Moreover, if the franchise is not renewed so that the franchisor can convert and operate the business, the franchisor must also compensate the franchisee for the loss of good will. HAW. REV. STAT. § 482E-6.
Illinois	Illinois Franchise Disclosure Act of 1987, 815 ILL. COMP. STAT. 705/7, 705/20	The Illinois Franchise Disclosure Act recognizes a registration and disclosure exemption for "the extension or renewal of an existing franchise or the exchange or substitution of a modified or amended franchise agreement where there is no interruption in the operation of the franchise business by the franchisee." 815 ILL. COMP. STAT. 705/7.	It is a violation of the Illinois Franchise Disclosure Act for a franchisor to refuse to renew a franchise without compensating the franchisee by either repurchase or by other means for the diminution in the value of the franchise business caused by the expiration of the franchise where: (i) the franchisee is barred from continuing to conduct substantially the same business under the intellectual property; or (ii) the franchisee has not been sent notice of the franchisor's intent not to renew at least 6 months before the expiration date of the franchise. 815 ILL. COMP. STAT. 705/20.	If triggered, franchisor must compensate the franchisee by either repurchase or by other means for the diminution in the value of the franchise business caused by the expiration. 815 ILL. COMP. STAT. 705/20.

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
Indiana	Indiana Franchise Disclosure Act, IND. CODE ANN. IND. CODE § 23-2-2.5-1(g). Indiana Deceptive Franchise Practices Act, IND. CODE § 23-2-2.7-1–3.	Under the Indiana Franchise Act, the term "'offer to sell' does not include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee." IND. CODE § 23-2-2.5-1(g).	Indiana Deceptive Franchise Practices Act requires a franchisor that elects not to renew a franchise must provide at least 90 days' written notice. IND. CODE § 23-2-2.7-3.	None.
Iowa	Iowa Franchise Act, IOWA CODE § 537A.10(7) (for franchise agreements entered into on or after July 1, 2000)	N/A	Under the 2000 Iowa Franchise Act, a franchisor is barred from failing to renew a franchise unless: (i) the franchisor has provided at least six months' written notice to the franchisee of its intent not to renew; and (ii) any of the following circumstances exist: (a) good cause exists, provided that the refusal is based on legitimate business interests and is not arbitrary and capricious; (b) the franchisor and franchisee agree not to renew; or (c) the franchisor completely withdraws from the geographic area (under this scenario, a franchisor cannot seek to enforce any post-termination covenants not to compete). A franchisor may require a renewing franchisee to sign a franchise agreement with the then-current requirements for franchisees, which may include different	None.

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
			terms and fees than the expiring agreement. IOWA CODE § 537A.10(8).	
Maryland	Maryland Franchise Registration and Disclosure Law, MD. CODE ANN., BUS. REG. § 14-203(c)	The Maryland Franchise Disclosure Act "does not apply to the renewal or extension of an existing franchise if there is no interruption in the operation of the franchised business." MD. CODE ANN. § 14-203(c).	N/A	N/A
Michigan	Michigan Franchise Investment Law, MICH. COMP. LAWS §§ 445.1506, 445.1527	Michigan's Franchise Investment Law recognizes a registration and disclosure exemption for "an extension or renewal of an existing franchise or the exchange or substitution of a modified or amended franchise agreement where there is no interruption in the operation of the franchise business of the franchisee, and no material change in the franchise relationship." MICH. COMP. LAWS § 445.1506(1)(e). Nevertheless, if a franchisor has a compliant FDD, it must still disclose that FDD at least ten business days before the agreement is signed or any consideration is paid, regardless of any exemption. *Id.* § 445.1506(2).	Under the Michigan Franchise Investment Law, it is unlawful for a franchisor to refuse to renew a franchise without fairly compensating the franchisee, by repurchase or other means, for the fair market value of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. This provision only applies, however, where the term of the franchise agreement is less than 5 years, and where the franchisee is prohibited by the franchise agreement from continuing to conduct substantially the same business under other intellectual property, or where the franchisee does not receive at least six months' advance notice of the franchisor's intent not to renew the franchise. It is also a violation of Michigan law to refuse to renew a franchise on terms generally available to	If triggered, franchisor that refuses to renew a franchisee must fairly compensating the franchisee, by repurchase or other means, for the fair market value of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. MICH. COMP. LAWS § 445.1527.

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
			other franchisees of the same class or type under similar circumstances. MICH. COMP. LAWS § 445.1527.	
Minnesota	Minnesota Franchises Act, MINN. STAT. § 80C.14; Minn. R. 2860.1100(4).	An extension or renewal of an existing franchise is exempt from the registration and disclosure requirements under the Minnesota Franchise Act, "unless the extended, renewed, or additional franchise varies substantially from the franchise that is presently possessed by the franchisee. However, no person, as a condition of the extension or renewal . . . may requires a franchisee to conform to any franchise contract or agreement the provisions of which are 'unfair and inequitable' as those terms are defined within these rules." MINN. R. 2860.1100(4).	The Minnesota Franchise Act prohibits a franchisor from refusing to renew a franchise unless based on good cause, as therein defined, and where the franchisee has failed to correct the deficiencies. Furthermore, a franchisor is barred from failing to renew a franchise unless (1) the franchisee has been given written notice at least 180 days in advance, and (2) the franchisee has been given an opportunity to operate over a sufficient period of time to enable the franchisee to recover the fair market value of the franchise as a going concern. Minnesota also expressly prohibits a franchise from refusing to renew a franchise for the purpose of converting the franchisee's business to a franchisor-operated business. MINN. STAT. § 80C.14.	None.
Mississippi	Mississippi Franchises Act, MISS. CODE § 75-24-53	N/A	Under Mississippi law, franchisors cannot fail to renew a franchise without notifying the franchisee of the non-renewal, in writing, at least ninety days in	None.

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
			advance, with limited exception. MISS. CODE § 75-24-53.	
Missouri	Missouri Pyramid Sales Scheme Act, MO. REV. STAT. § 407.405	N/A	Under the Missouri Franchise Law, franchisors cannot fail to renew a franchise without notifying the franchisee of the non-renewal, in writing, at least ninety days in advance, with limited exception. MO. REV. STAT. § 407.405.	None.
Nebraska	Nebraska Franchise Practices Act, NEB. REV. STAT. § 87-404	N/A	The Nebraska Franchise Law bars a franchisor from failing to renew a franchise without giving notice at least 60 days in advance of renewal, with limited exceptions. Nebraska explicitly permits, however, a franchisor to not renew a franchise if the franchisee is unable or unwilling to meet reasonable renewal conditions. NEB. REV. STAT. § 87-404.	None.
New Jersey	New Jersey Franchise Practices Act, N.J. STAT. § 56:10-5	N/A	New Jersey Franchise Practices Act bars a franchisor from failing to renew a franchise without first giving written notice setting forth all the reasons for its intent to not renew at least sixty days in advance of the expiration of the franchise agreement, with limited exception. Under New Jersey law, good cause is limited to the franchisee's failure to comply with the requirements imposed by the franchisor.	None.

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
			N.J. STAT. ANN. § 56:10-5. Federal courts addressing the 60-day statutory notice period have expressed differing views, albeit in dicta, as to whether such period is simply a notice period or a notice and cure period. *Compare Jiffy Lube Intl v. Weiss Bros., Inc.,* 834 F. Supp. 683, 689 (D.N.J. 1993) (providing a notice period) *with Dunkin' Donuts, Inc. v. All Madina Corp.,* No. 04-cv-0199, 2006 WL 842403, at *5 (D.N.J. Mar. 28, 2006) (providing a notice and cure period).	
New York	New York Franchise Law, N.Y. Gen. Bus. Law § 681(11)	Under the New York Franchise Sales Act, "[t]erms 'offer' and 'offer to sell' do not include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee." N.Y. GEN. BUS. LAW § 681(11).	N/A	N/A
North Dakota	North Dakota Franchise Investment Law, N.D. CENT. CODE § 51-19-02(14)(a)(2).	Under the North Dakota Franchise Investment Law, the terms "offer" and "offer to sell" "do not include the renewal or extension of an existing franchise where there is no interruption of the operation of the franchised business by the	N/A	N/A

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
		franchisee." N.D. CENT. CODE § 51-19-02(14)(a)(2).		
Puerto Rico	Puerto Rico Dealer's Act of 1964	N/A	The Puerto Rico Dealer's Act of 1964 bars a franchisor—regardless of any contractual provision to the contrary—from refusing to renew a franchise agreement on its normal expiration, except for just cause, which is defined to include "[n]onperformance of any of the essential obligations of the dealer's contract, on the part of the dealer, or any action or omission on his part that adversely and substantially affects the interests of the principal or grantor in promoting the marketing or distribution of the merchandise or service." 10 L.P.R.A. § 278, *et seq.*	None.
Rhode Island	Rhode Island Franchise Investment Act, R.I. GEN. LAWS §§ 19-28.1-6(6), -8. Rhode Island Fair Dealership Act, R.I. GEN. LAWS §§ 6-50-2, 6-50-4, 6-50-5	Under the Rhode Island Franchise Investment Act, there is a registration (but not disclosure) exemption for "[t]he offer or sale of a franchise involving a renewal, extension, modification, or amendment of an existing franchise agreement if there is no interruption in the operation of the franchised business and there is no material change in the franchise relationship. For purposes of this subdivision, an interruption in the	The Rhode Island Fair Dealership Act requires that, notwithstanding the terms of any franchise agreement, and with limited exception, the franchisor shall provide the franchisee 60 days' prior written notice of nonrenewal, and shall provide at least thirty days in which to cure any claimed deficiency to the dealer. R.I. CODE § 6-50-4(a).	Only for termination. N/A to non-renewal.

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
		operation of the franchised business solely for the purpose of renovating or relocating that business is not a material change in the franchise relationship or an interruption in the operation of the franchise business." R.I. GEN. LAWS § 19-28.1-6(6). While a renewal or extension is exempt from Rhode Island's registration requirement, timely presale disclosure of a compliant FDD is still required. *Id.* § 19-28.1-8.		
South Dakota	South Dakota Franchise Investment Law, S.D. CODIFIED LAWS §§ 37-5B-1(16), 1(28).	Under the South Dakota Franchise Investment Law, the terms "offer" and "sale of a franchise" expressly exclude an extension or renewal of an existing franchise if there has been "no interruption in the franchisee's operation of the business," unless the terms and conditions of the renewal or extension "differ materially from the original agreement." S.D. CODIFIED LAWS §§ 37-5B-1(16), 1(28).	N/A	N/A
U.S. Virgin Islands	Virgin Islands Franchise Act, V.I. Code tit. 12A V.I.C. § 132.	N/A	Virgin Islands Franchise Act prohibits a franchisor from failing to renew a franchise unless based on good cause, which includes the failure of a franchisee to substantially comply with the terms of the franchise agreement, or comply with	None.

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
			the terms in bad faith. V.I. Code tit. 12A V.I.C. § 132. Notice must be provided of failure to renew of at least 120 days. V.I. Code tit. 12A V.I.C. § 131.	
Virginia	Virginia Retail Franchising Act, VA. CODE ANN. § 13.1-564; 21 VA. ADMIN. CODE §§ 5-110-75(2), -75(7)	Under Virginia's Retail Franchising Act provides, "[t]he offer or sale of a franchise involving a renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business, and there is no material change in the franchise relationship, is exempt [from registration]. For purposes of this subdivision, an interruption in the franchised business solely for the purpose of renovating or relocating that business is not a material change in the franchise relationship or an interruption in the operation of the franchised business." 21 VA. ADMIN. CODE § 5-110-75(2). It is also an exemption from state disclosure obligations. *Id.* § 5-10-75(7).	Franchisor may not cancel a franchise without reasonable cause or use undue influence to induce a franchisee to surrender any right given to franchisee by any provision contained in the franchise agreement. VA. CODE ANN. § 13.1-564.	None.
Washington	Washington Franchise Investment Protection Act,	N/A. Washington's Franchise Investment Protection Act does not expressly exclude or exempt renewals or extensions of an existing franchisee from the state's registration or disclosure obligations.	Washington Franchise Investment Protection Act provides that it is unlawful for a franchisor to refuse to renew a franchise without fairly compensating the franchisee for the fair market value of the franchisee's good will and	Subject to exceptions, franchisor that refuses to renew a franchisee must fairly compensate the franchisee for fair market value of the franchisee's goodwill and

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
	WASH. REV. CODE § 19.100.180(2)(i)	However, some commentators have contended that a renewal is arguably a sale of an additional franchise to an existing franchisee. Washington recognizes a registration and disclosure exemption in connection with "[t]he offer or sale of an additional franchise to an existing franchisee of the franchisor for the franchisee's own account that is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or sale, provided the prior sale to the franchisee was pursuant to a franchise offering that was registered in the state of Washington." WASH. REV. CODE § 19.100.030(6); *see id.* § 19.100.070(1) (disclosure is only required where a franchisor is registered or required to be registered). The authors are not aware of any precedent applying Washington's exemption for the sale of an additional franchise to an existing franchisee to the situation of renewing or extension of an existing franchise	inventory, supplies, equipment, and furnishings purchased from the franchisor. The franchisor may wholly avoid this requirement if it: (i) gives the franchisee one year's notice of nonrenewal; and (ii) agrees not to enforce any covenant which restrains the franchisee from competing with the franchisor. In addition, a violation of the nonrenewal provisions is a violation of the Washington Unfair or Deceptive Practices Act. WASH. REV. CODE § 19.100.180(2)(i).	inventory, supplies, equipment, and furnishings purchased from the franchisor. WASH. REV. CODE § 19.100.180(2)(i).
Wisconsin	Wisconsin Franchise Investment Law,	The Wisconsin Franchise Investment Law excludes "the renewal or extension of an existing franchise where there is no interruption in the	No grantor, directly or through any officer, agent or employee, may terminate, cancel, fail to renew or substantially change the competitive	Only for termination. N/A to non-renewal. Wisc. Stat. § 135.045.

SUMMARY OF STATE FRANCHISE LAWS AND RELATIONSHIP LAWS REGARDING RENEWAL / NON-RENEWAL				
State	**Statute**	**Renewal/Extension Exempt or Excluded From State Franchise Registration or Disclosure Obligations?**	**Requirements for Non-Renewal**	**Repurchase Obligations**
	WIS. STAT. §§ 553.03(8r), (11) Wisconsin Fair Dealership Law, WIS. STAT. § 135.03 - .045	operation of the franchised business by the franchisee" from the definitions of "sale," "sell," and "offer to sell." WIS. STAT. §§ 553.03(8r), (11)	circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor. Wisc. Stat. § 135.03.	

APPENDIX B

SUMMARY OF STATE FRANCHISE RELATIONSHIP LAWS REGARDING TERMINATION			
State	**Statute**	**Requirements for Termination**	**Repurchase Obligations**
Arkansas	Arkansas Franchise Practices Act, ARK. CODE ANN. §§ 4-72-202 – 209	Franchisor may not terminate a franchise agreement without: (a) good cause; (b) 90 days' written notice; and (c) a 30-day cure period (10-day cure period for repeated deficiencies occurring within a 12-month period), though some enumerated defaults are subject to immediate termination. The Arkansas Franchise Practices Act does not apply to franchises subject to the FTC Franchise Rule.	The Arkansas Franchise Practices Act allows franchisees who were terminated without good cause, to request repurchase by franchisor of franchisee's inventory, supplies, equipment, and furnishings purchased by the franchisee from the franchisor at franchisee's net cost less reasonable allowances for depreciation or obsolescence. ARK. CODE ANN. §§ 4-72-209
California	California Franchise Relations Act, CAL. BUS. & PROF. CODE §§ 20020–22, 20030	Franchisor may not terminate a franchise agreement without "good cause," defined as failure of the franchisee to substantially comply with any lawful requirement of the franchise agreement after applicable cure period. For franchise agreements entered into or renewed on or after January 1, 2016, terminations for "good cause" require 60 days advance notice, and a cure period between 60 and 75 days from the date of notice. For any other franchise agreement, terminations made for "good cause" may be effected after giving notice and a reasonable opportunity to cure, which need not exceed 30 days. A franchisor may immediately terminate the franchise agreement with notice upon: bankruptcy or insolvency of the franchised business; voluntary abandonment; franchisee's failure to comply with applicable law (after 10 days' notice); franchisee's repeated failure to comply with the terms of the franchise agreement; seizure of the franchised business's assets; parties' mutual written agreement to terminate; franchisee's conviction for a felony or conduct that reflects materially and unfavorably upon the operation and	The California Franchise Relations Act requires franchisor, upon termination, to repurchase all inventory, supplies, equipment, fixtures, and furnishings purchased by franchisor under the terms of the franchise relationship at the time of notice of termination. There are 6 exceptions: (1) no repurchase of personalized items, (2) if franchisee declines an offer to terminate, (3) franchisor does not prevent the franchisee from retaining control of the principal place of the franchise business, (4) franchisor has withdrawn from all relevant geographic market area where franchisee is located, (5) parties mutually agree in writing to not terminate, and (6) items sold post notice of termination. Franchisor may offset against amounts owed by franchisee so long as amounts are undisputed. CAL. BUS. & PROF. CODE §§ 20022.

SUMMARY OF STATE FRANCHISE RELATIONSHIP LAWS REGARDING TERMINATION			
State	**Statute**	**Requirements for Termination**	**Repurchase Obligations**
		reputation of the franchise business or system; imminent danger to public health or safety; franchisee's material misrepresentations in connection with the acquisition of the franchise. CAL. BUS. & PROF. CODE § 20000–20022. Notices of termination must be: (i) in writing; (ii) posted by registered, certified or other receipted mail; (iii) delivered by telegram or personally delivered to the franchisee; (iii) contain a statement of intent to terminate and the reasons therefore; and (iv) specify the effective date of termination. CAL. BUS. & PROF. CODE § 20030.	
Connecticut	Connecticut Trading Stamps, Mail Order, Franchises, Credit Programs, Subscription Act, CONN. GEN. STAT. §§ 42-133f, 42-133l.	Franchisor may not terminate the franchise agreement without good cause, including, without limitation, franchisee's refusal or failure to comply substantially with any material and reasonable obligation of the franchise agreement. Termination requires 60 days' notice, except franchisor may terminate upon 30 days' written notice if franchisee abandons the franchise relationship and franchisor may immediately terminate upon notice if franchisee is convicted of felony directly related to the franchised business. If franchise is on premises leased by the franchisor to franchisee, notice must be served by neutral party and state the lease will terminate and the franchisee may have certain rights under the Connecticut law. CONN. GEN. STAT. § 42-133f.	Connecticut Franchise Act requires that franchisee shall be allowed fair and reasonable compensation by the franchisor for the franchisee's inventory, supplies, equipment, and furnishings (specifically excluding personalized items) purchased under the franchise relationship. CONN. GEN. STAT. §§ 42-133f. Franchisor does not need to repurchase items if (1) the franchisee has been given at least one year's notice or (2) franchisor agrees in writing not to enforce any non-compete. Franchisor may offset amounts by amounts owed by franchisee. CONN. GEN. STAT. §§ 42-133l.

SUMMARY OF STATE FRANCHISE RELATIONSHIP LAWS REGARDING TERMINATION			
State	**Statute**	**Requirements for Termination**	**Repurchase Obligations**
Delaware	Delaware Franchise Security Law, DEL. CODE § 6-25-2551 – 2556	Franchisor may not unjustly terminate a franchise (unjust is defined as without good cause or in bad faith) and must provide at least 90 days' notice of termination.	None.
Hawaii	Hawaii Franchise Investment Law, HAW. REV. STAT. § 482E-6	Franchisor may not terminate the franchise agreement except for good cause, or in accordance with the current terms and standards established by the franchisor then equally applicable to all franchisees, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is reasonable, is based on proper and justifiable distinctions and is not arbitrary. Good cause includes, but is not limited to, franchisee's failure to comply with any lawful, material provision of the franchise agreement after having been given written notice thereof and an opportunity to cure the failure within a reasonable period of time.	If the franchisor terminates a franchisee, the franchisor must compensate the franchisee for the fair market value of the franchisee's inventory, supplies, equipment, and furnishings that were purchased from the franchisor or a designated supplier, less monies due to franchisor or cost to transport or dispose items. HAW. REV. STAT. § 482E-6.
Illinois	Illinois Franchise Disclosure Act of 1987, 815 ILL. COMP. STAT. 705/19	Franchisor may not terminate a franchise agreement without good cause, which includes but is not limited to, franchisee's failure to comply with any lawful provision of the franchise or other agreement after 30 days' notice and opportunity to cure. Franchisor may immediately termination, without prior or opportunity to cure, if franchisee: makes an assignment for the benefit of creditors or a similar disposition of the assets of the franchised business; voluntarily abandons the franchise business; is convicted of a felony or other crime which substantially impairs the good will associated with the franchisor's trademark,	Only for nonrenewal. N/A to termination.

SUMMARY OF STATE FRANCHISE RELATIONSHIP LAWS REGARDING TERMINATION			
State	**Statute**	**Requirements for Termination**	**Repurchase Obligations**
		service mark, trade name or commercial symbol; or repeatedly fails to comply with the lawful provisions of the franchise or other agreement.	
Indiana	Indiana Deceptive Franchise Practices Act, IND. CODE ANN. § 23-2-2.7-1(7), -3	Franchisor may not include a provision in the franchise agreement permitting it to unilaterally terminate if such termination is without good cause (defined as failure to comply with any material provision of the franchise agreement). Unless otherwise provided for in the franchise agreement, franchisor may not terminate the franchise agreement without providing at least 90 days' notice of termination.	None.
Iowa	Iowa Franchise Act, IOWA CODE § 537A.10(7) (for franchise agreements entered into on or after July 1, 2000)	Franchisor may not terminate a franchise agreement without good cause. "Good cause" is "cause based upon a legitimate business reason" and includes noncompliance with any material lawful requirement of the franchise agreement. Termination may not be arbitration or capricious. Termination requires written notice stating basis for termination, with a "reasonable cure period" of at least 30 to 90 days (with a 30-day cure period for payment defaults). Franchisor may immediately terminate upon notice, without providing an opportunity to cure, upon: bankruptcy or insolvency, or assignment of assets to creditor; voluntary abandonment; mutual written agreement to terminate; seizure or foreclosure of the franchised business; franchisee knowingly makes material misrepresentations in connection with the acquisition, ownership, or	None.

SUMMARY OF STATE FRANCHISE RELATIONSHIP LAWS REGARDING TERMINATION			
State	**Statute**	**Requirements for Termination**	**Repurchase Obligations**
		operation of the franchise; felony conviction related to the franchise; conduct that materially and adversely affects the operation, maintenance, or goodwill of the franchise; imminent danger to public health or safety; repeated failure to comply with material provisions of the franchise agreement.	
Michigan	Michigan Franchise Investment Law, MICH. COMP. LAWS § 445.1527	Franchisor may not terminate the franchise agreement without good cause, including franchisee's failure to comply with any material and reasonable obligation of the franchise agreement, after being given written notice and a reasonable cure period of up to 30 days.	Only for nonrenewal. N/A to termination.
Minnesota	Minnesota Franchises Act, MINN. STAT. § 80C.14	Franchisor may not terminate the franchise agreement without: (i) good cause (defined as failure of franchisee to substantially comply with material and reasonable franchise requirements imposed by the franchisor); (ii) 90 days' written notice; and (iii) a 60-day cure period. Termination may be effective immediately with notice upon: voluntary abandonment of the franchise relationship by the franchisee; franchisee's conviction for an offense directly related to the business conducted pursuant to the franchise; or franchisee's failure to cure a default under the franchise agreement that materially impairs the good will associated with the franchisor's trade name, trademark, service mark, logotype or other commercial symbol after the franchisee has received written notice and a 24-hour opportunity to cure.	None.

SUMMARY OF STATE FRANCHISE RELATIONSHIP LAWS REGARDING TERMINATION			
State	**Statute**	**Requirements for Termination**	**Repurchase Obligations**
		Statutorily enumerated examples of good cause include: (i) bankruptcy or insolvency of the franchisee; (ii) assignment for the benefit of creditors or similar disposition of the assets of the franchised business; (ii) voluntary abandonment of the franchised business; (iii) conviction or a plea of guilty or no contest to a charge of violating any law relating to the franchise business; and (iv) any act by or conduct of the franchisee which materially impairs the goodwill associated with the franchisor's trademark, trade name, service mark, logotype or other commercial symbol.	
Mississippi	Mississippi Franchises Act, MISS. CODE § 75-24-53	Franchisor may not terminate a franchise agreement without 90 days' written notice of termination, provided that 90 days' notice is not required in the event of criminal misconduct, fraud, abandonment, bankruptcy or insolvency of the franchisee, or the giving of a no account or insufficient funds check.	None.
Missouri	Missouri Pyramid Sales Scheme Act, MO. REV. STAT. § 407.405	Franchisor may not terminate a franchise agreement without 90 days' written notice of termination, unless termination is for: criminal misconduct, fraud, abandonment, bankruptcy or insolvency of the franchisee, or the giving of a no account or insufficient funds check.	None.
Nebraska	Nebraska Franchise Practices Act, NEB. REV. STAT. § 87-404	Franchisor may not terminate a franchise agreement without good cause (defined as franchisee's failure to substantially comply with the requirements imposed upon him or her by the franchise). Termination requires 60 days' written notice, but only 15 days' written notice is required	None.

SUMMARY OF STATE FRANCHISE RELATIONSHIP LAWS REGARDING TERMINATION			
State	**Statute**	**Requirements for Termination**	**Repurchase Obligations**
		if termination is based on voluntary abandonment. Franchisor may terminate the franchise agreement immediately with notice upon: franchisee's conviction for an indictable offense directly relating to the business conducted pursuant to the franchise; franchisee's insolvency or the institution of bankruptcy or receivership proceedings; franchisee's default in payment of an obligation or failure to account for the proceeds of a sale of goods by the franchisee to the franchisor or a subsidiary of the franchisor; franchisee's falsification of records and reports required by the franchisor; the existence of an imminent danger to public health or safety; or loss of the right to occupy the premises from which the franchise is operated.	
New Jersey	New Jersey Franchise Practices Act, N.J. STAT. § 56:10-5	Franchisor may not terminate a franchise agreement without good cause, which is limited to failure by the franchisee to substantially comply with the requirements imposed upon franchisee by the franchise. Termination requires 60 days' written notice, or only 15 days' written notice of termination is based on abandonment. Termination is effective immediately upon written notice of a felony conviction related to the franchise.	None (except in connection with termination of motor vehicle franchise, N.J. STAT. § 56:10-13.2).
Rhode Island	Rhode Island Fair Dealership Act, R.I. GEN. LAWS §§ 6-50-2, 6-50-4, 6-50-5	Termination requires good cause, including: (i) failure to comply with reasonable requirements; (ii) voluntary abandonment; (iii) felony conviction related to the franchise; (iv) substantial action impairing goodwill, trade name, trademark, service mark, or commercial symbols; (v) material	At the franchisee's option, the franchisor must repurchase all inventory at the fair, wholesale market value. R.I. CODE § 6-50-5.

SUMMARY OF STATE FRANCHISE RELATIONSHIP LAWS REGARDING TERMINATION			
State	**Statute**	**Requirements for Termination**	**Repurchase Obligations**
		misrepresentation relating to franchise; (vi) unauthorized transfer; (vii) insolvency or bankruptcy; and (viii) assignment for the benefit of creditors. Termination requires 60 days' written notice stating basis for termination, or with a 30-day cure period, is required for terminations for failure to comply with reasonable requirements, provided franchisee has had the right to cure 3 times in any annual period. Termination is effective immediately upon written notice for (ii) – (viii) in definition of "good cause". Termination based on nonpayment requires a 10-day cure period after written notice, provided franchisee has had the right to cure 3 times in any annual period. Termination based on violations of public health or safety requires a 24-hour cure period after written notice.	
Virginia	Virginia Retail Franchising Act, VA. CODE ANN. § 13.1-564	Franchisor may not cancel a franchise without reasonable cause or use undue influence to induce a franchisee to surrender any right given to franchisee by any provision contained in the franchise agreement. VA. CODE ANN. § 13.1-564.	None.
Washington	Washington Franchise Investment Protection Act, WASH. REV. CODE § 19.100.180(2)(j)	Franchisor may not terminate a franchise agreement without good cause, including, without limitation, franchisee's: (i) failure to comply with lawful material provisions of the franchise or other agreement between the parties; and (ii) franchisee's failure cure such default after 30 days' notice and opportunity to cure, or if such default cannot reasonably be cured within 30 days, the failure of the franchisee to initiate a cure within 30 days. Franchisor may immediately	Franchisor must purchase inventory and supplies at fair market value at the time of termination, excluding personalized materials, inventory or supplies not required for the franchise, and inventory and supplies not purchased from the franchisor or by express requirement if the franchisee retains the premises. Amounts paid for inventory and supplies may be offset against outstanding amounts owed.

SUMMARY OF STATE FRANCHISE RELATIONSHIP LAWS REGARDING TERMINATION			
State	**Statute**	**Requirements for Termination**	**Repurchase Obligations**
		terminate upon notice if franchisee: commits of four willful and material breaches of same term of the franchise agreement in any 12-month period (after notice and opportunity to cure on the first three breaches); is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors or similar disposition of the assets of the franchised business; voluntarily abandons the franchised business; or is convicted of or pleads guilty or no contest to a charge of violating any law relating to the franchised business.	
Wisconsin	Wisconsin Fair Dealership Law, WIS. STAT. §§ 135.02 – 135.045	Termination requires good cause, which means the failure to comply substantially with essential, reasonable, and non- discriminatory requirements, or act in bad faith in carrying out the terms of the franchise. Termination generally requires 90 days' written notice stating the basis for termination and a 60-day cure period. Termination for nonpayment of amounts due requires 90 days' written notice and a 10-day cure period. Termination is effective immediately for bankruptcy, insolvency, or an assignment for the benefit of creditors.	At the option of franchisee, the franchisor must repurchase all inventory at the fair, wholesale market value.