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# What Do I Have to Sign? Navigating New Terms and Conditions Upon Renewal and Transfer

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## I. Introduction

Transfer and renewal are two of the most consequential—and often contentious—moments in the lifecycle of the franchise relationship. At these junctures, a franchisee's expectation of a "right" to continue or exit its business meets the franchisor's strategic need to modernize the system. Although practitioners may consider these milestones as basic administrative tasks, they are actually the main way franchise systems are legally updated—often disrupting the original economic agreement for franchisees.

At the heart of this process there is often a fundamental conflict of expectations. The franchisee, having incurred substantial initial investment costs and developed local goodwill,<sup>1</sup> views transfer and renewal as a protected right related to its livelihood. The franchisor views transfer and renewal as critical opportunities to "harmonize" the system by imposing new operational terms, increasing royalty rates, reducing protected territories, and mandating expensive capital expenditures and technology upgrades. In this setting, transfer and renewal rarely function as a bilateral negotiation.<sup>2</sup> Instead, they often present as take-it-or-leave-it propositions, making a sale difficult and/or forcing the franchisee to choose between accepting more onerous terms or exiting the system under economically unfavorable conditions.

An inconsistent patchwork of laws governs transfer and renewal. While the Federal Trade Commission's Franchise Rule focuses on pre-sale disclosure, it offers little substantive protection during the transfer or renewal process.<sup>3</sup> Consequently, the legal battleground shifts to state franchise relationship statutes and the implied covenant of good faith and fair dealing. In jurisdictions such as California, New Jersey, Minnesota, and Wisconsin, "good cause" requirements may limit a franchisor's ability to refuse renewal.<sup>4</sup> However, even in these protective states, courts frequently grant franchisors significant latitude to condition renewal and approval of a transfer on a variety of factors, including execution of entirely new, less favorable contracts.<sup>5</sup>

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<sup>1</sup> Daniel J. Oates & David M. Byers, *Is This Really the End? Dealing With Renewal and Nonrenewal of Franchise Relationships*, Int'l Franchise Ass'n 48<sup>th</sup> Legal Symposium 1 (May 2015) ("The franchisee likewise invests its time, attention, and money into the relationship, often to the exclusion of any other business or employment that the franchisee's owner might otherwise pursue").

<sup>2</sup> See e.g. *Bishop v. GNC Franchising, LLC*, 2006 WL 2266251 at \*2 (W.D. Pa. Jan. 13, 2006) (Even if they did not have an opportunity to negotiate the contract terms, it was not a contract of adhesion and they were under no pressure to purchase the franchises at issue").

<sup>3</sup> 16 C.F.R. § 436.2 ("In connection with the offer or sale of a franchise . . . it is an unfair or deceptive act . . . [f]or any franchisor to fail to furnish a prospective franchisee with a copy of the franchisor's current disclosure document").

<sup>4</sup> California (CAL. BUS. & PROF. CODE §§ 20025-20026); New Jersey (N.J. STAT. ANN. § 56:10-5); Minnesota (MINN. STAT. § 80C.14(4)); and Wisconsin (WIS. STAT. § 135.03).

<sup>5</sup> See e.g. WIS. STAT. § 135.03 ("A grantor may cancel, terminate, or non-renew a dealership if the dealer refuses to accept changes that are essential, reasonable, and not discriminatory).

This paper provides an overview of the inevitable tension inherent in transfer and renewal as it relates to the imposition of new material terms to the relationship. This paper explores the legal basis for a franchisor's ability to change material terms—such as royalty increases, system standards, and territories—at the transfer and renewal stages; examines how state statutes and the implied covenant of good faith and fair dealing impact the transfer and renewal process; reviews those franchise agreement provisions that most directly affect the economic and legal positions of franchisees at transfer and renewal; and identifies strategic negotiation points to consider during transfer and renewal to navigate the proposed "new terms" of the franchise relationship while protecting the franchisee's equity and expectations.

## **II. The Franchisor's Right to Require Conditions on Transfer and Renewal—Generally**

A franchisor's ability to require new terms as a condition to a transfer and on renewal starts with the general contractual and legal relationship. The franchisee's right to transfer<sup>6</sup> a franchise business and the franchise agreement rights is generally limited by contract.<sup>7</sup> Most, if not all, franchise agreements provide that the rights are unique to the franchisee and any transfer must be approved by the franchisor. Most franchise agreements also have express conditions that the franchisor requires a franchisee to satisfy before it approves a transfer. These can include that the transferee meets the franchisor's then-existing requirements for new franchisees and that the new franchisee completes mandatory training and signs the then-current form of franchise agreement.<sup>8</sup> Most franchise agreements also include terms like payment of a transfer fee and signing a general release.

Franchise renewal rights are also fundamentally creatures of contract. If a franchise agreement does not provide for a right to renew,<sup>9</sup> the court will not impose one, absent a statutory obligation. Unlike certain commercial relationships in which continuation may be presumed absent affirmative termination, a franchisee's right to continue operating beyond the initial term typically depends on strict compliance with the

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<sup>6</sup> We use the term transfer throughout the paper to refer to any transfer, including an assignment and, as defined in many franchise agreements, transfer of an owner's interest (including non-controlling) and even in some agreements placing liens on the franchised business' assets.

<sup>7</sup> Sample provisions providing for transfer and renewal are included in the Appendix to this paper.

<sup>8</sup> *West L.A. Pizza, Inc. v. Domino's Pizza, Inc.*, No. 07-cv-7484, 2008 WL 11424181, at \*9 (C.D. Cal. Feb. 26, 2008) ("[I]t is clear Plaintiffs knowingly and voluntarily signed Franchise Agreements in which they agreed to bind themselves to [Franchisor's] 'aftermarket' restrictions, including terms and conditions of renewal that are 'materially different' from those of the original agreements."); *Terrier, LLC v. HCA Franchise Corporation*, No. 222CV01325GMNEJY, 2022 WL 4280251, at \*7 (D. Nev. Sept. 15, 2022) ("Here, Defendant's decision to condition renewal on the acceptance of new terms does not constitute bad faith").

<sup>9</sup> See, e.g., *Zuckerman v. McDonald's Corp.*, 35 F. Supp. 2d 135, 143 (D. Mass. 1999).

renewal provisions set forth in the franchise agreement.<sup>10</sup> Courts consistently characterize renewal not as an automatic extension, but as a conditional option—one that must be exercised in accordance with specified contractual prerequisites.<sup>11</sup>

Many franchise agreements contain some common prerequisites for renewal which include that the franchisee: (i) provide timely written notice of intent to renew; (ii) be in full compliance with the franchise agreement at the time of renewal;<sup>12</sup> (iii) execute the franchisor’s then-current form of franchise agreement;<sup>13</sup> and (iv) satisfy additional conditions, such as payment of a renewal fee and completion of mandated upgrades.<sup>14</sup> Failure to satisfy these conditions—particularly those framed as conditions precedent—can result in the forfeiture of renewal rights, even where the franchisee has made substantial investments in the business.<sup>15</sup>

Significantly, judicial enforcement of such provisions has generally been strict. Courts have repeatedly held that where a franchise agreement unambiguously conditions renewal on compliance with specified requirements, franchisees must meet those requirements precisely to secure renewal.<sup>16</sup> Courts generally have rejected arguments that substantial performance or equitable considerations should excuse noncompliance with express renewal conditions, particularly where the agreement clearly delineates the prerequisites for continuation.

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<sup>10</sup> See e.g. *Jet, Inc. v. Shell Oil Co.*, 381 F.3d 627, 630 (“[T]he offer of a franchise renewal on a take-it-or-leave-it basis (*i.e.*, the expression of the conditional intent not to renew) did not give rise to a claim for wrongful nonrenewal); *Bonner v. Lyons, Pipes & Cook, P.C.*, 26 So. 3d 1115, 1124 (Ala. 2009) (holding that paying only half of the franchise renewal fee is insufficient performance of renewal conditions).

<sup>11</sup> *Armstrong Business Services, Inc. v. H & R Block*, 96 S.W.3d 867, 878 (“To enforce the automatic renewal provision would enable one party to coerce the other into a perpetual cycle of five-year obligations and would render the five-year provisions of the duration provision meaningless”).

<sup>12</sup> See, e.g., *KAM Dev., LLC v. Marco’s Franchising, LLC*, No. 20-cv-2024, 2020 WL 6146482, at \*4 (N.D. Ohio Oct. 20, 2020) (holding franchisor likely to succeed on nonrenewal where renewal conditioned on franchisee not being in default of franchise agreement and franchisee had failed to meet development schedule). Some franchise agreements provide that to be eligible for renewal, the franchisee must have been in compliance during the entire term.

<sup>13</sup> See, e.g., *Robinson v. Charter Practices Int’l, LLC*, 696 F.App’x 226, 227 (9th Cir. 2017); *West L.A. Pizza, Inc.*, 2008 WL 11424181, at \*5-\*8.

<sup>14</sup> Charles S. Modell & Genevieve A. Beck, *Franchise Renewals – “You Want Me to Do What?”* 22 FRANC.L.J. 4.

<sup>15</sup> *Svela v. Union Oil Co. of Cal.*, 807 F.2d 1494, 1500 (9th Cir. 1987) (“[R]enewal of the franchise relationship can be based on terms and conditions substantially different from those of the original franchise”).

<sup>16</sup> See e.g. *Tatan Mgmt. v. Jacfran Corp.*, 270 F. Supp. 2d 197, 206 (D.P.R. 2003) (finding a franchisee’s failure to renovate franchise as agreed upon in the franchise agreement created good cause for non-renewal).

At the same time, the contractual characterization of renewal as an option or right with significant conditions is not without limits. In certain circumstances, courts have scrutinized a franchisor's position that effectively deprives franchisees of the ability to exercise renewal rights, particularly where such conduct implicates the implied covenant of good faith and fair dealing or applicable statutory protections.<sup>17</sup> For instance, where a franchisor imposes conditions that are commercially unreasonable, inconsistently applied, or designed to force exit rather than enable continuation, franchisees have argued—with varying degrees of success—that such conduct constitutes a constructive denial of renewal.<sup>18</sup> These arguments, however, are highly fact-dependent and often constrained by the deferential approach courts take toward clearly drafted contractual provisions. We explore the issues and arguments around any such limits below.

From a practitioner's perspective, the central implication of this doctrinal framework is straightforward but consequential. Because transfer and renewal rights are defined—and limited—by contract, the transfer and renewal process may present an opportunity for franchisees to negotiate the terms that will govern the next phase of the relationship and for franchisors to modernize and standardize inconsistency that may have developed over the years.

The requirement that franchisees accept updated agreements with materially different terms as a condition of renewal further underscores the importance from a franchisee's perspective of approaching renewal as a negotiation rather than a ministerial exercise and provides a basis for a franchisor to resist negotiating its current form of agreement with a renewing franchisee. Indeed, the specific terms embedded in renewal conditions—ranging from economic obligations to release provisions and operational controls—can materially alter the allocation of risk and value between franchisor and franchisee. Transfer, likewise, presents an opportunity for the selling franchisee to realize the value of the franchised business and the transferee to take over that business. The franchisor's insistence on the transferee agreeing on new terms may change the economics of the business and, therefore, the purchase price.

#### **a. Common Law Concerning Transfer and Renewal**

Courts will generally enforce the plain language of a franchise agreement, including its transfer and renewal provisions.<sup>19</sup> For a transfer, the franchisor's interest in controlling who operates under its brand—considering character and business qualifications—as well as wanting to ensure the undertaking of mandated upgrades, supports enforceability of such clauses without constituting an undue restraint on

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<sup>17</sup> In re Vylene Enterprises, Inc., 90 F.3d 1472, 1477 (9th Cir. 1996) (affirming lower court's finding that the proposed new franchise agreement was commercially unreasonable and that the franchisor failed to negotiate in good faith).

<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., Robinson, 696 F.App'x at 227; West L.A. Pizza, 2008 WL 11424181, at \*5-\*8; Zuckerman, 35 F. Supp. 2d at 143.

alienation. Under common law, restrictions in franchise agreements disallowing the transfer of franchise rights are generally upheld if they are clear and unambiguous.<sup>20</sup> Courts distinguish between the "right" and the "power" to assign, with explicit language forbidding the power to assign rendering any attempted assignment void.<sup>21</sup> Anti-assignment clauses must explicitly state that an assignment without consent is void or invalid to be strictly enforced; otherwise, assignments might be valid despite such clauses.<sup>22</sup>

Still, courts will consider a franchisor's good faith and reasonableness when reviewing a franchisor's decision to withhold consent or disapprove a proposed transfer.<sup>23</sup> For example, in *Larese v. Creamland Dairies, Inc.*, the court explained that franchisors cannot unreasonably withhold consent to transfers unless the contract explicitly grants such absolute right.<sup>24</sup> The court held that under Colorado law, a franchisor lacked absolute right to refuse consent to the sale of franchisees' interest where the assignment provision merely provided that franchisee must obtain franchisor consent prior to transfer.<sup>25</sup> The court reasoned that "the franchisor-franchisee relationship is one which requires the parties to deal with one another in good faith and in a commercially reasonable manner" and emphasized that the franchisee "invested time and money into the franchise and, in doing so, has created benefits for the franchisor."<sup>26</sup> The *Larese* court established an important contractual distinction: "We do not hold that a provision which expressly grants to the franchisor an absolute right to refuse to consent is unenforceable when such an agreement was freely negotiated. We do not believe the Colorado courts would find such an absolute right, however, in a provision such as the one involved in this case which provides simply that the franchisee must obtain franchisor consent prior to transfer."<sup>27</sup> This creates a framework requiring franchisors to explicitly bargain for absolute discretion rather than having courts imply such broad powers from simple consent requirements.

In terms of renewal, under common law, franchise agreements that explicitly negate any right to renewal, or contain terms disclaiming such renewal rights, are generally enforceable and franchisees are typically not entitled to renew absent relevant

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<sup>20</sup> § 21:17. Anti-assignment clauses, Modern Law of Contracts § 21:17.

<sup>21</sup> *Id.*

<sup>22</sup> § 74:22. Effect of contract provision prohibiting assignment, 29 Williston on Contracts § 74:22 (4th ed.).

<sup>23</sup> Phyllis Alden Truby and David A. Beyer, *Fundamentals 201: Transfers and Assignments in Franchising*, ABA 37th ANNUAL FORUM ON FRANCHISING (2014).

<sup>24</sup> *Larese v. Creamland Dairies, Inc.*, 767 F.2d 716, 718 (10th Cir. 1985).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 717.

<sup>27</sup> *Id.* at 718.

contractual provisions.<sup>28</sup> An express provision barring renewal or limiting renewal to a single term will result in expiration of the franchise agreement at the specified time without an implied renewal right.

Courts generally enforce renewal conditions and notice requirements strictly, and a failure by the franchisee to satisfy renewal conditions defeats a claim for renewal.<sup>29</sup> For example, an issue often raised in transfer and renewal disputes includes whether the franchisee met express conditions for transfer or renewal (like providing timely notice<sup>30</sup> and whether the franchisee has been in substantial compliance during the term<sup>31</sup>). Two of the common arguments franchisees advance to challenge a franchisor's instance on new terms on renewal or in connection with a transfer are breach of the implied covenant of good faith and fair dealing and estoppel. We discuss each below.

#### **i. Breach of the implied covenant of good faith and fair dealing**

Franchisee challenges to new terms on transfer or renewal starts with an understanding that courts generally treat contractual terms concerning transfer and renewal as controlling and reject arguments that the covenant of good faith or other policies create implied rights.<sup>32</sup> Since most franchise agreements include a fixed term, if courts were to imply a right to renew or ignore or limit application of express conditions under the common law, they would, in effect, expressly contradict the parties' intention to enter into a relationship with a limited term.<sup>33</sup> As such, requiring the franchisee to agree to materially different terms upon transfer or renewal is permitted.

Franchisees asserting claims when the franchisor has complied with express terms and conditions for transfer and has not violated any applicable statute have not fared well

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<sup>28</sup> § 10:9. Nonrenewal—Generally, 2 Franch & Distr Law & Prac § 10:9.

<sup>29</sup> *Id.*

<sup>30</sup> See e.g. *Ex parte Keelboat Concepts, Inc.*, 938 So. 2d 922, 925 (Ala. 2005).; *Pizza Inn, Inc. v. Clairday*, 979 F.3d 1064, 1066–67 (5th Cir. 2020); *Rd. King Dev., Inc. v. JTH Tax LLC*, 657 F. Supp. 3d 780, 798 (E.D. Va. 2023).

<sup>31</sup> *Sioux Falls Pizza Co. v. Little Caesar Enters., Inc.*, 858 F. Supp. 2d 1053, 1062 (D.S.D. 2012) (holding that while the provision "requiring Little Caesar to exercise 'reasonable judgment' in determining whether a franchisee has substantially and timely complied with contractual obligations restricts Little Caesar from deeming every little compliance issue or unsubstantial contract defaults in the past to be grounds for non-renewal," substantial breaches such as litigation challenging the franchisor's trademark rights provide clear grounds for non-renewal.)

<sup>32</sup> *Barn-Chestnut, Inc. v. CFM Dev. Corp.*, 193 W. Va. 565, 572, 457 S.E.2d 502, 509 (1995).

<sup>33</sup> Craig R. Tractenberg, Robert B. Calihan & Ann-Marie Luciano, *Legal Considerations in Franchise Renewals*, 23 FRANCHISE L.J. 198, 207 n.3 (2004). ("To imply that the term would be extended in contradiction to the expressed duration of the contract would defeat the reasonable expectations of the parties and, in most cases, would violate the parol evidence rule that maintains the integrity of the terms the parties negotiated.") (citing *Chang v. McDonald's Corp.*, 105 F.3d 664 (9th Cir. 1996)).

in challenges under the common law for violation of the implied covenant of good faith and fair dealing. For example, courts in some states have rejected franchisee arguments that the implied covenant of good faith and fair dealing requires franchisors to exercise their right to withhold consent to a transfer reasonably or in good faith if the transfer provision does not require that they do so.

A Wisconsin federal court extensively analyzed this issue in *Queen v. Wineinger*, finding that Wisconsin law does not read a "reasonableness limitation" into consent clauses absent express contractual language.<sup>34</sup> The court emphasized that while the implied duty of good faith and fair dealing applies to consent clauses, "a denial of consent is subject to a lower standard of review than reasonableness."<sup>35</sup> To establish a breach, franchisees must "show something that can support a conclusion that the party accused of bad faith has actually denied the benefit of the bargain originally intended by the parties."<sup>36</sup>

In *Keating v. Baskin-Robbins USA, Co.*, the franchise agreement expressly allowed Baskin-Robbins to withhold consent to a transfer of the franchisee's interest in the franchise agreement "arbitrarily and for any reason whatsoever."<sup>37</sup> Baskin-Robbins did not dispute plaintiffs' allegation that the prospective purchaser was denied approval based on his inability to speak English fluently.<sup>38</sup> The court found that Baskin-Robbins did not breach the franchise agreement because nothing in the agreement required Baskin-Robbins to administer an English proficiency test before denying approval.<sup>39</sup> The court then turned to the separate issue of whether Baskin-Robbins breached the implied covenant of good faith and fair dealing, which "finds particular application in situations where one party is invested with a discretionary power affecting the rights of another."<sup>40</sup> The court held that the assertion of a breach of the implied covenant of good faith and fair dealing failed because that covenant cannot be relied upon to override the express terms of the Agreement.<sup>41</sup> An implied promise to deal fairly had no relevance where the franchise agreement expressly allowed Baskin-Robbins to withhold consent to a transfer

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<sup>34</sup> *Queen v. Wineinger*, No. 21-CV-378-WMC, 2022 WL 3027004, at \*5 (W.D. Wis. Aug. 1, 2022).

<sup>35</sup> *Id.* at \*6.

<sup>36</sup> *Id.*

<sup>37</sup> *Keating v. Baskin-Robbins USA Co.*, No. 5:99-CV-148-BR(3), 2001 WL 407017, at \*10 (E.D.N.C. Mar. 27, 2001).

<sup>38</sup> *Id.* at \*9.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at \*10.

of the franchisee's interest in the franchise agreement "arbitrarily and for any reason whatsoever."<sup>42</sup>

Courts following contract-centric approaches have also consistently held that express disclaimer language defeats common law renewal expectations. In *Michell v. McDonald's Corp.*, the Eastern District of New York ruled that McDonald's franchise agreements containing explicit language that the franchisor makes "no promise or representation" regarding franchise renewal completely barred franchisee claims based on the implied covenant of good faith and fair dealing.<sup>43</sup> The court emphasized that "under Illinois law, the covenant of good faith and fair dealing only applies where the contract terms are ambiguous," and because "the parties' agreement concerning [renewal] is explicit," no implied duties could override the express terms.<sup>44</sup>

By way of another example, in *Payne v. McDonald's Corp.*, the District of Maryland held that a restaurant franchisor did not breach the implied duty of good faith and fair dealing when it required franchisee to rebuild its restaurant as condition to obtaining renewal, where the franchise agreement contained no right of renewal.<sup>45</sup> The court reasoned "[s]ince McDonald's had no obligation to renew, it had the right to condition renewal on the requirement that Payne modernize the Broadway restaurant."<sup>46</sup>

As the above cases demonstrate, in the absence of a relationship statute to the contrary, courts are reluctant to award relief to franchisees based on an implied covenant of good faith and fair dealing where the express terms of the parties' contract require or permit the parties to act in a particular manner.

Specifically relating to requiring the franchisee to agree to new terms, in *Terrier, LLC v. HCA Franchise Corp.*, the District of Nevada held that a franchisor's conditioning renewal on acceptance of new terms did not constitute bad faith when the franchise agreement expressly permitted renewal on materially different terms.<sup>47</sup> The court noted that "the fact that a franchisor presents an agreement to its franchisees on a 'take it or leave it' basis does not show a lack of good faith."<sup>48</sup> This approach reflects the principle that parties cannot use implied covenant theories to add terms that contradict express contractual provisions. When the franchise agreement provides that on renewal and on a

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<sup>42</sup> *Id.*

<sup>43</sup> *Michell v. McDonald's Corp.*, No. 24-CV-3442 (NGG) (PK), 2025 WL 2711951, at \*12 (E.D.N.Y. Sept. 23, 2025), *reconsideration denied*, No. 24-CV-3442 (NGG) (PK), 2025 WL 3546667 (E.D.N.Y. Dec. 11, 2025).

<sup>44</sup> *Id.*

<sup>45</sup> *Payne v. McDonald's Corp.*, 957 F. Supp. 749, 759 (D. Md. 1997).

<sup>46</sup> *Id.* at 758.

<sup>47</sup> *Terrier, LLC*, 2022 WL 4280251, at \*6-7.

<sup>48</sup> *Id.* at \*7.

transfer the franchisee must sign the current form of franchise agreement that may have materially different terms, the courts will enforce that provision.

## ii. Estoppel

Franchisees have argued estoppel theories against franchisors' refusal to renew franchise agreements with mixed results across federal and state courts. Successful cases involve promissory estoppel claims where franchisees made substantial documented investments in reliance on specific renewal promises.

In *Triology Variety Stores, Ltd. v. City Prods. Corp.*, the court articulated the promissory estoppel standard under New York law as requiring "a promise clear and unambiguous in its terms; reliance by the party to whom the promise is made, such reliance to be both reasonable and foreseeable; the party asserting the estoppel must be injured by his reliance."<sup>49</sup> The court found that franchisees who invested \$93,000 in purchasing a franchise and making improvements based on franchisor promises to renew a sublease stated a valid promissory estoppel claim, concluding it would be "unconscionable to apply the statute of frauds in these circumstances."<sup>50</sup>

However, and not unexpectedly, the majority of cases favor franchisors. Anti-waiver provisions in franchise agreements can be a significant obstacle to successful estoppel claims. The Alabama Supreme Court in *Ex parte Keelboat Concepts, Inc.* enforced an anti-waiver clause that provided "[n]o failure of Franchisor to exercise any power reserved to it in this Franchise Agreement or to insist upon compliance by Franchisee with any obligation or condition in this Franchise Agreement . . . shall constitute a waiver of Franchisor's right to demand exact compliance with the terms of this Franchise Agreement."<sup>51</sup> The court held that "under this anti-waiver provision, [the franchisor's] failure to strictly enforce terms of the franchise agreement relating to the day-to-day operations of the restaurant could not amount to a waiver of the requirement that notice of the election to renew be timely given."<sup>52</sup>

This principle was reinforced in *Bonner v. Lyons, Pipes & Cook, P.C.*, where the Alabama Supreme Court held that a franchisor's failure to cite a franchisee's nonpayment of a required fifty percent franchise fee in its initial rejection letter did not result in waiver

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<sup>49</sup> *Triology Variety Stores, Ltd. v. City Prods. Corp.*, 523 F. Supp. 691, 696–97 (S.D.N.Y. 1981).

<sup>50</sup> *Id.* at 698. See also *In re 4Kids Entm't, Inc.*, 463 B.R. 610, 688–89 (Bankr. S.D.N.Y. 2011) (finding licensor's pre-bankruptcy notice of termination ineffective because licensor waived its right to terminate through its conduct in negotiating the payment obligation after it sent the notices); *LaGuardia Assocs. v. Holiday Hosp. Franchising, Inc.*, 92 F. Supp. 2d 119, 130 (E.D.N.Y. 2000) (granting franchisee injunction preventing prior effort to terminate because as a matter of equity and "sensible business practice" franchisor was estopped from terminating—it had previously allowed an unwritten additional grace period for payments after notices and then abruptly discontinued the practice without additional notice).

<sup>51</sup> *Ex parte Keelboat Concepts, Inc.*, 938 So. 2d at 929.

<sup>52</sup> *Id.* at 930.

of that payment obligation as a condition precedent to renewal, because the nonwaiver provision stated that “[n]o failure of [franchisor] ... to insist upon compliance by Franchisee with any obligation or condition in this Franchise Agreement ... shall constitute a waiver of [franchisor's] right to demand exact compliance with the terms of the Franchise Agreement.”<sup>53</sup>

Courts have also held that comprehensive written franchise agreements preclude promissory estoppel claims. In *Oakland Fam. Restaurants, Inc. v. Am. Dairy Queen Corp.*, the Eastern District of Michigan applied the principle that “Michigan courts generally decline to use the doctrine of promissory estoppel to imply the existence of a contract where an express contract covering the same subject matter is in force between the parties.”<sup>54</sup> The court found this “fatal” to the franchisee’s promissory estoppel claim because the franchisee “concede[d] that there was indeed a contract in force between the parties.”<sup>55</sup> These decisions are fact specific, but cases like this reflect courts’ reluctance to allow parties to circumvent negotiated agreement terms through estoppel theories.

## **b. The Impact of State Statutes / Franchise Relationship Laws**

Ten states have franchise relationship laws that deal directly with franchise transfers and impose restrictions on the franchisor’s right to approve or disapprove a transfer request.<sup>56</sup> These state statutes supersede the contractual transfer provisions in franchise agreements and regulate the circumstances under which the franchisor may reject or withhold its consent to a proposed transfer. Some of these statutes require the franchisor to act reasonably or in good faith in denying or rejecting a proposed transfer.<sup>57</sup> Others require good cause or a legitimate business reason to withhold consent to a proposed transfer,<sup>58</sup> and some set forth specific circumstances that constitute “good cause” for purposes of rejecting or disapproving a franchise transfer.<sup>59</sup>

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<sup>53</sup> Bonner, 26 So. 3d at 1124-1125.

<sup>54</sup> *Oakland Fam. Restaurants, Inc. v. Am. Dairy Queen Corp.*, 728 F. Supp. 3d 703, 722 (E.D. Mich. 2024), *aff’d*, No. 24-1331, 2025 WL 789555 (6th Cir. Mar. 12, 2025).

<sup>55</sup> *Id.*

<sup>56</sup> See ARK. CODE ANN. § 4-72-205(b)-(c) (2014); CAL. BUS. & PROF. CODE § 20027 (West 2013); HAW. REV. STAT. § 482E-6(2)(I); IND. CODE § 23- 2-2.7-2(3) (2014); IOWA CODE § 523H.5 (2014); MICH. COMP. LAWS § 445.1527(g); MINN. STAT. § 80C.14(5) (2014); NEB. REV. STAT. § 87-405 (2014); N.J. REV. STAT. § 56:10-6 (2014); WASH. REV. CODE §§ 19.100.030(1), 19.100.180(1), 2(h).

<sup>57</sup> See HAW. REV. STAT. § 482E-6(1); IOWA CODE § 523H.5; MINN. STAT. § 80C.14(5); WASH. REV. CODE §§ 19.100.180(1), 2(h).

<sup>58</sup> See HAW. REV. STAT. § 482E-6(2)(I); IOWA CODE § 523H.5; MICH. COMP. LAWS § 445.1527(g).

<sup>59</sup> See, e.g., HAW. REV. STAT. § 482E-6(1); MICH. COMP. LAWS § 445.1527(g). These lists are not exhaustive, and there may be other valid reasons for the franchisor to reject or disapprove a proposed transfer.

A handful of the state relationship laws require the franchisor to specify in writing the material reasons for withholding consent to a proposed transfer. For example, Arkansas, Nebraska, and New Jersey require the franchisor to set forth the material reasons relating to the “character, financial ability or business experience” of the proposed transferee.<sup>60</sup> This requirement, however, is conditioned on necessary prior written notice of the proposed transfer from the franchisee.<sup>61</sup>

Further still, some states permit the franchisor to condition its consent on the satisfaction of certain conditions, such as compliance with the franchisor’s then-current standards for new franchisees, the completion of the franchisor’s training program, the payment of a reasonable transfer fee and any sums owing to the franchisor or its affiliates, and/or the proposed transferee’s agreement to comply with all lawful requirements of the franchise.<sup>62</sup>

Likewise, in the context of renewal, state franchise relationship laws often place obligations and limits on a franchisor’s ability to unilaterally refuse renewal. Eighteen states, Puerto Rico, and the Virgin Islands have enacted franchise relationship statutes that limit a franchisor’s ability not to renew franchise rights and to impose standards, while requiring notice around renewal and non-renewal of franchise rights.<sup>63</sup> Some require a prescribed amount of advance notice that a franchisor must give a franchisee if the franchisor intends not to renew; other state relationship laws limit the reasons a franchisor may elect not to renew franchise rights or choose to impose new and different terms, and others mandate that the franchisor purchase inventory, equipment and the like of a

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<sup>60</sup> ARK. CODE § 4-72-205(b)(1); NEB. REV. STAT. § 87-405; N.J. REV. STAT. § 56:10-6.

<sup>61</sup> ARK. CODE § 4-72-205(a); NEB. REV. STAT. § 87-405; N.J. REV. STAT. § 56:10-6.

<sup>62</sup> See e.g., ARK. CODE § 4-72-205(c); CAL. BUS. & PROF. CODE § 20027 (West 2013); HAW. REV. STAT. § 482E-6(2)(l); IOWA CODE § 523H.5(3)(a); MICH. COMP. LAWS § 445.1527(g).

<sup>63</sup> ARK. CODE ANN. §§ 4-72-201 et seq.; CAL. BUS. & PROF. CODE §§ 20000 et seq.; CONN. GEN. STAT. §§ 42-133e et seq.; DEL. CODE ANN. tit. 6, §§ 2551 et seq.; HAW. REV. STAT. §§ 482E et seq.; 815 ILL. COMP. STAT. §§ 705/1 et seq.; IND. CODE §§ 23-2-2.5 et seq.; IOWA CODE ANN. § 537A.10; MICH. COMP. LAWS §§ 445.1501 et seq.; MINN. STAT. §§ 80C.01 et seq.; MISS. CODE ANN. §§ 75-24-51 et seq.; MO. REV. STAT. §§ 407.400 et seq.; NEB. REV. STAT. §§ 87-401 et seq.; N.J. STAT. ANN. §§ 56:10-1 et seq. (A bill was recently introduced in the New Jersey Senate which if enacted would have amended certain provisions of the state’s relationship law by, among other things, making it unlawful for a franchisor to prohibit a franchisee from nonrenewing as long as the franchisee provides 60-days’ notice. The proposed bill would also have made it unlawful for a nonrenewing franchisor to require a franchisee to pay excessive damages; require a franchisee to personally guarantee the debts of the franchise to the franchisor; and impose any employment restrictions on the owner or employees of the franchised business that exceeds six months and restricts employment outside the county where the franchised business is located. Finally, the proposed legislation would also have made it unlawful for a franchisor to require a general release from a franchisee as a condition for renewal) (2024 N.J. S.B. 207)); 6 R.I. GEN. LAWS §§ 6-50-1 et seq.; VA CODE ANN. §§ 13.1-557 et seq.; WASH. REV. CODE §§ 19.100.010 et seq.; WIS. STAT. §§ 135.01 et seq.; P.R. LAWS ANN. tit. 10, §§ 278 et seq.; V.I. CODE ANN. tit. 12a, §§ 130 et seq.

nonrenewed franchise under specified circumstances. Many of these laws impose a combination of the foregoing conditions and prescriptions.<sup>64 65</sup>

Many relationship laws that regulate renewal and nonrenewal also require a franchisor to have good cause or the absence of bad faith for nonrenewal.<sup>66</sup> In those jurisdictions with specific good cause requirements for non-renewal, the definition of “good cause” varies and not all statutes even define it. For example, some of the jurisdictions that require good cause for nonrenewal define it to include a failure by the franchisee to have substantially complied with any material obligation of the franchise agreement.<sup>67</sup> Other jurisdictions delineate specific grounds for good cause not to renew.<sup>68</sup>

Whether a good cause requirement creates an “evergreen” contract (meaning the franchisee essentially has perpetual right to renewals) so long as the franchisee is in substantial compliance and meets necessary conditions is an open question in some

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<sup>64</sup> For a detailed summary of relationship statutes that regulate the franchise renewal process, see Julie Lusthaus and Gina Malandrino, *But I Already Bought the Franchise? Exploring Franchisor and Franchisee Rights in the Renewal/Successor Franchise Context*, ABA 44TH ANNUAL FORUM ON FRANCHISING W-22, at App. A (2021) and Justin Klein and Justin Sallis, *You Want Me to Sign What?! – Navigating the Franchise Renewal Process*, ABA 47TH ANNUAL FORUM ON FRANCHISING W-21 (2024).

<sup>65</sup> In addition to franchise relationship laws, there are other potentially applicable statutes based on the industry at issue that practitioners should also consult to determine the extent to which they may restrict nonrenewal rights. See, e.g., Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq. Many states have specific industry laws covering, among other things, renewals and transfers, which as applicable should be consulted in addition the state relationship law when evaluating renewals and transfers. These include for example beer and liquor distributors, auto dealers and certain equipment dealers.

<sup>66</sup> ARK. CODE ANN. § 4-72-204; CONN. GEN. STAT. § 42-133f; DEL. CODE ANN. tit. 6, § 2555; HAW. REV. STAT. § 482E-6(H); IND. CODE § 23-2-2.7-1(8); IOWA CODE ANN. § 537A.10(8); MINN. STAT. § 80C.14, subd. 3 (unless franchisor gives 180-days’ notice and franchisee has been given opportunity to operate over sufficient period to recover the fair market value of the franchise as a going concern); NEB. REV. STAT. § 87-404; N.J. STAT. ANN. § 56:10-5; 6 R.I. GEN. LAWS § 6-50-4; VA. CODE ANN. § 13.1-564; WIS. STAT. § 135.03; P.R. LAWS ANN. tit. 10, § 278a; and V.I. CODE ANN. tit. 12a, § 132.

<sup>67</sup> ARK. CODE ANN. § 4-72-202(5) (requiring also that applicable obligations at issue be “nondiscriminatory” as compared to the requirements imposed on similarly situated franchisees); CONN. GEN. STAT. § 42-133f; HAW. REV. STAT. § 482E-6; IOWA CODE ANN. § 537A.10(8) (“[G]ood cause’ means based on legitimate business reasons.”); MINN. STAT. § 80C.14, subd. 3; NEB. REV. STAT. § 87-402; N.J. STAT. ANN. § 56:10-5; 6 R.I. GEN. LAWS § 6-50-2(4); WIS. STAT. § 135.02(4) (requiring also that applicable obligations be “nondiscriminatory” as compared to the requirements imposed on similarly situated franchisees and also providing that “bad faith” by a franchisee in carrying out the terms of the franchise agreement constitutes “good cause”); P.R. LAWS ANN. tit. 10, § 278(d) and § 278a-1 (but also excluding from the definition of just cause for nonrenewal, among other things, under specified circumstances, a franchisee’s non-compliance with provisions restricting franchisee’s right to change the capital structure of the franchised business, the managerial control of the business, or the manner or form of financing the operation); V.I. CODE ANN. tit. 12a, § 132 (including also in the “good cause” definition the franchisee’s use of bad faith in carrying out the terms of the franchise agreement).

<sup>68</sup> See, e.g., ARK. CODE ANN. § 4-72-202; MINN. STAT. § 80C.14, subd. 3; and 6 R.I. GEN. LAWS §§ 6-50-2 and 60-50-4.

jurisdictions. Several relationship laws that could be argued to create evergreen rights at least absent strict good cause, include Virginia,<sup>69</sup> New Jersey,<sup>70</sup> Arkansas,<sup>71</sup> Puerto Rico,<sup>72</sup> and Wisconsin.<sup>73</sup>

Some relationship laws with a good cause requirement still permit non-renewal if there is a market withdrawal. Both Iowa and California expressly so provide.<sup>74</sup> There are differing decisions on whether market withdrawal is a permitted basis not to renew when a statute requiring good cause is silent.<sup>75</sup>

Relationship laws also contain notice requirements on the franchisor, either or both of intent not to renew<sup>76</sup> and with an opportunity to cure, good cause for non-renewal<sup>77</sup> and certain inventory and equipment repurchase obligations on the franchisor on non-renewal.<sup>78</sup>

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<sup>69</sup> VA. CODE ANN. § 13.1-564. *But see* Betsy-Len Motor Hotel Corp. v. Holiday Inns, Inc., 238 Va. 489, 490-91, 385 S.E. 2d 559, 560 (Va. 1989).

<sup>70</sup> N.J. Stat. Ann. § 56:10-5 (West). *Dunkin' Donuts of America, Inc. v. Middletown Donut Corp.*, 495 A.2d 66 (1985); *Mall Chevrolet, Inc. v. Gen. Motors LLC*, 99 F.4th 622 (3d Cir. 2024).

<sup>71</sup> AR ST §§ 4-72-202; 4-72-204; *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.).

<sup>72</sup> 10 L. P.R.A. § 278. *Nike Int'l Ltd. v. Athletic Sales, Inc.*, 689 F. Supp. 1235, 1238 (D.P.R. 1988).

<sup>73</sup> Wis. Stat. Ann. § 135.02 (4) (a) (West); *Kealey Pharmacy & Home Care Serv., Inc. v. Walgreen Co.*, 539 F. Supp. 1357, 1366 (W.D. Wis. 1982) *affd.*, 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.’”)

<sup>74</sup> CAL. BUS. & PROF. CODE § 20025(e); IOWA CODE ANN. § 537A.10.

<sup>75</sup> Compare *Medina & Medina v. Country Pride Foods, Ltd.*, 858 F.2d 817 (1st Cir. 1988) (Stating Puerto Rico’s relationship law does not prohibit non-renewal if the franchisor withdraws from the market in good faith) with *Maintainco, Inc. v. Mitsubishi Caterpillar Forklift Am., Inc.*, 408 N.J. 461, 975 A.2d 510, 518 (N.J. Sup. Ct. 2009) (citing N.J. STAT. ANN. § 56:10-5 and stating sound business reasons for non-renewal are not permitted absent good cause).

<sup>76</sup> ARK. CODE ANN. § 4-72-204; CAL. BUS. & PROF. CODE § 20025; CONN. GEN. STAT. § 42-133f; DEL. CODE ANN. tit. 6, § 2555; IND. CODE § 23-2-2.7-3; IOWA CODE ANN. § 537A.10(8); MINN. STAT. § 80C.14, subds. 3 and 4; MISS. CODE ANN. § 75-24-53; MO. REV. STAT. § 407.405; NEB. REV. STAT. § 87-404; N.J. STAT. ANN. § 56:10-5; 6 R.I. GEN. LAWS §§ 6-50-4; WIS. STAT. § 135.04; and V.I. CODE ANN. tit. 12a, § 131.

<sup>77</sup> ARK. CODE ANN. § 4-72-204; HAW. REV. STAT. § 482E-6(H); MINN. STAT. § 80C.14, subd. 3; 6 R.I. GEN. LAWS § 60-504; and WIS. STAT. § 135.04.

<sup>78</sup> CAL. BUS. & PROF. CODE § 20022(h); HAW. REV. STAT. § 482E-6(3); 815 ILL. COMP. STAT. § 705/20; MICH. COMP. LAWS § 445.1527(d); AND WASH. REV. CODE § 19.100.180(i).

### **III. Limits on What a Franchisor Can Change in a New Form of Franchise Agreement**

Franchise agreements often contain provisions that require transferees and franchisees to sign the franchisor's then-current form of franchise agreement as a condition of transfer and/or renewal. Only limited circumstances restrict a franchisor's ability to include material changes in the new form of agreement when the transfer or renewal right is expressly conditioned on the signing of the current form of agreement.

#### **a. Legal basis for why franchisors can (and often do) change the terms for a franchise upon transfer or renewal**

##### **i. Under Common Law**

Courts have generally upheld franchisors' rights to have materially different terms and condition transfer or renewal on such conditions, emphasizing that renewal is a distinct contract with potentially new terms. Many courts interpret "renewal on the then-current form" language as permitting the franchisor to require acceptance of new agreements, even with substantial changes, so long as the franchisor acts in good faith and the changes are not discriminatory.<sup>79</sup>

In *AmeriSpec, L.L.C. v. Omni Enters., Inc.*, the U.S. District Court for the Western District of Tennessee examined detailed franchise renewal language stating that "the Franchisee shall execute the Company's then current form of Franchise Agreement and all other agreements and legal instruments and documents then customarily employed by the Company in the grant of Franchises."<sup>80</sup> The court found that franchisees who fail to execute required agreements within thirty days after delivery are deemed to have elected not to renew the franchise.<sup>81</sup> The court noted that parties operated under franchise agreements acknowledging these renewal requirements and that "the Franchise Agreements require any modifications to be in writing and signed by both parties."<sup>82</sup>

The District of Nevada reached a similar conclusion in *Terrier, LLC v. HCA Franchise Corp.*, discussed above, where the court analyzed renewal provisions giving franchisor "sole and absolute discretion" to include "substantially different terms than

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<sup>79</sup> What constitutes the "then-current form" of agreement has seldom been litigated but could be the source of dispute, especially when there are many forms of franchise agreements in use. See e.g. *Test Servs., Inc. v. Princeton Rev., Inc.*, No. 05-CV-01674-MSK-CBS, 2005 WL 3211594 (D. Colo. Nov. 29, 2005), finding the terms and conditions of the new Agreement had to be being offered to "new franchisees," as that was how it was worded in the Agreement.

<sup>80</sup> *AmeriSpec, L.L.C. v. Omni Enters., Inc.*, No. 218CV02247TLPDKV, 2018 WL 2248459, at \*1 (W.D. Tenn. May 16, 2018).

<sup>81</sup> *Id.* at \*5.

<sup>82</sup> *Id.* at \*2.

those contained in [the original Agreement], including but not limited to a higher royalty fee, a higher advertising contribution, [and] a smaller Protected Territory."<sup>83</sup> The court held that "the Agreement expressly permits renewal on substantially different terms consistent with the then-current franchise agreement" and found persuasive authority in cases where franchisors were allowed to impose "other material changes to the franchisor/franchisee relationship, such as the imposition of the updated, uniform computer system."<sup>84</sup>

## ii. Under State Statutes

The court in *Oakland Family Rests., Inc. v. Am. Dairy Queen Corp.*<sup>85</sup> held that a provision in the franchise agreement providing a franchisor with the right to approve a transfer on the condition that the transferee sign the current form of agreement was enforceable notwithstanding the Michigan Franchise Investment Law (MFIL). The court held the MFIL does not require contracts to have an explicit good cause provision alongside a consent-to-assign provision. The court further determined the franchisor had good cause to condition assignment of plaintiffs' franchise rights on the transferee signing a new form of agreement. Specifically, the court held that the franchisor's stated purpose of wanting to standardize and modernize the brand's franchise agreements across all franchises provided good cause under the MFIL.<sup>86</sup>

Courts applying franchise relationship laws have likewise generally reached similar conclusions favoring franchisor ability to condition renewal on the franchisee signing an agreement with different terms. In *Bresler's 33 Flavors Franchising Corp. v. Wokosin*, a federal court applying the Wisconsin Fair Dealership Law held that where a franchisor offered to renew franchise agreements on the terms presently being used with other franchisees, in accordance with the renewal provisions, but franchisees refused to renew on such terms, there was no "termination, cancellation or failure to renew" within the prohibition of Wisconsin fair dealership law.<sup>87</sup> The court found that the franchisor had properly offered renewal under the contract provision requiring renewal "in the form [ ] then being used" by the licensor even though the terms were materially different.<sup>88</sup>

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<sup>83</sup> Terrier, LLC, 2022 WL 4280251 at \*1.

<sup>84</sup> *Id.* at \*6.

<sup>85</sup> *Oakland Family Rests., Inc.*, 728 F. Supp. 3d 703.

<sup>86</sup> See *also*, *Franchise Mgmt. Unlimited v. America's Favorite Chicken*, 561 N.W.2d 123, 242 (Mich. Ct. App. 1997) (Another Michigan good cause case, in which the appellate court rejected a franchisee challenge to a franchisor requirement that it must sign a general release in favor of the franchisor as a condition to approval of a change of ownership based on the Michigan relationship law's requirement of good cause.

<sup>87</sup> *Bresler's 33 Flavors Franchising Corp. v. Wokosin*, 591 F. Supp. 1533, 1537 (E.D. Wis. 1984).

<sup>88</sup> *Id.*

That said, there are arguments and some supporting authority that at least certain relationship laws and, in some instances, the implied covenant of good faith and fair dealing, overrides such terms and supports an argument that a franchisee's failure to sign the then-current form of franchisee agreement likely does not constitute good cause for nonrenewal.<sup>89</sup>

New Jersey is one such jurisdiction. In *Beilowitz v. General Motors Corporation*, a General Motors distributor alleged that GM's attempt to require the distributor to enter into a new supply agreement that restricted the territory across which the distributor could sell parts—where the previous supply agreement contained no such restrictions—violated the New Jersey Franchise Practices Act's restrictions on termination and nonrenewal.<sup>90</sup> Granting the distributor's motion for a preliminary injunction, the court concluded that the distributor was likely to succeed on his claim because the New Jersey franchise law prohibits nonrenewal "for any reason other than the franchisee's substantial breach, even if the franchisor acts in good faith and for a bona fide reason."<sup>91</sup> The court held that GM had not alleged that the distributor substantially breached the supply agreement, thus GM could not non-renew the agreement even if the distributor refused to sign the new agreement.<sup>92</sup>

Under other relationship laws, the issue is open.<sup>93</sup> In *Tatan Management v. Jacfran Corporation*, 270 F. Supp. 2d 197 (D.P.R. 2003), a Puerto Rico district court expressed "doubts as to the lawfulness of requiring the execution of the then-current standard form of the franchise agreement and the execution of a release" as a condition of renewal under Puerto Rico's franchise relationship law.<sup>94</sup> The court, however, did not rule on the issue because the franchisee failed to meet other lawful conditions on renewal, including the payment of a renewal fee and the completion of certain renovations.<sup>95</sup> The franchisee was also in default of its obligations under the existing franchise agreement.<sup>96</sup>

In *Rogers Family Foods, LLC v. DFA, LLC*, a Denny's franchisee claimed that Denny's refusal to renew a franchise agreement based on the franchisee's refusal to sign Denny's then-current form of franchise agreement, which included higher fees than the

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<sup>89</sup> See, e.g., *Beilowitz v. Gen. Motors Corp.*, 233 F. Supp. 2d 631, 644 (D.N.J. 2002).

<sup>90</sup> *Id.* at 643.

<sup>91</sup> *Id.* at 644 (citation omitted).

<sup>92</sup> *Id.*

<sup>93</sup> See, e.g., *Tatan Mgmt.*, 270 F. Supp. 2d at 206; *Rogers Family Foods, LLC v. DFO, LLC*, No. 19-cv-1476, 2020 WL 5816589, at \*8 (D. Minn. Sept. 30, 2020).

<sup>94</sup> *Tatan*, 270 F. Supp. 2d at 206.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

franchisee's prior agreement, violated Minnesota's Franchise Act.<sup>97</sup> Under Minnesota's franchise law, a franchisor must have good cause to non-renew and good cause means "failure by the franchisee to substantially comply with the material and reasonable franchise requirements imposed by the franchisor."<sup>98</sup> The court refused to grant Denny's motion for summary judgment. It held that material issues of fact existed as to, among other things, whether Denny's need to have all franchisees pay the same fees was a material and reasonable franchise requirement.<sup>99</sup>

**b. Common changes and new terms in the New Form of Franchise Agreement**

**i. Territorial Rights - reductions or adjustments to the protected territory**

Franchise agreements conditioning transfer or renewal on the acceptance of a new form of the franchise agreement may include changes to territorial rights. Franchisors generally possess substantial flexibility to modify territorial provisions in connection with a transfer and on renewal, provided they act in good faith and meet applicable statutory requirements.

*Oakland Fam. Restaurants, Inc. v. Am. Dairy Queen Corp.*, discussed above, illustrates how courts balance franchisor modernization needs against franchisee territorial protections.<sup>100</sup> In this case, the Eastern District of Michigan addressed Dairy Queen's requirement that transferees sign new franchise agreements eliminating territorial protections from a 1965 agreement.<sup>101</sup> The court found that Dairy Queen had "good cause" under the Michigan Franchise Investment Law to condition transfer approval on transferees signing new standardized franchise agreements.<sup>102</sup> The court found that the franchisor faced "considerable administrative burdens in ensuring that long-term franchisees (operating under older franchise agreements that omit or fail to define material terms) are able to adapt to recent legal and regulatory changes and remain competitive in the shifting economic landscape," and that the franchisor's desire to modernize and standardize franchise agreements across the entire franchise system was neither unreasonable nor arbitrary.<sup>103</sup> Importantly, the court found that Dairy Queen had "shown a willingness to deal in good faith by offering to grandfather clauses from old

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<sup>97</sup> Rogers Family Foods, LLC, 2020 WL 5816589 at \*1.

<sup>98</sup> *Id.* at \*8 (quoting MINN. STAT. § 80C.14, subd. 3).

<sup>99</sup> *Id.*

<sup>100</sup> *Oakland Fam. Restaurants, Inc.*, 728 F. Supp. 3d 703.

<sup>101</sup> *Id.* at 713.

<sup>102</sup> *Id.* at 720.

<sup>103</sup> *Id.*

agreements making individual locations particularly desirable to prospective purchasers, like seasonality requirements—as well as very reasonable royalty pricing that is no longer in effect for new franchisees.”<sup>104</sup>

Like in transfers, courts enforce territory changes in new agreements on renewal. In *Clark Invs., Inc. v. Airstream, Inc.*, the Illinois Appellate Court held that reducing or eliminating exclusive territorial provisions does not violate franchise protection statutes when such changes do not "substantially change or modify the sales and service obligations or capital requirements" enumerated in the statute as prohibited modifications.<sup>105</sup> The court found that a RV manufacturer's refusal to extend a contract granting the "entire state as its exclusive sales territory" did not violate the Illinois Motor Vehicle Franchise Act because the statute limits prohibited modifications to specific categories, and territorial provisions fall outside those enumerated categories.<sup>106</sup> The court emphasized that "where the plain language of the statute is clear and unambiguous, we cannot read exceptions or conditions into the statute that the legislature did not express."<sup>107</sup>

## ii. **Financial Terms - increased royalty fees / rates, higher marketing or advertising fund contributions, and new fees**

Franchise agreements often include various financial obligations, which may be subject to change upon transfer or renewal of the franchise rights. Courts have addressed numerous cases where franchisors required franchisees to execute new franchise agreements containing different financial terms, including increased royalty fees, higher marketing fund contributions, and new fees. The outcome of challenges to such changes can vary based on the specific contractual language, applicable statutory frameworks, and the franchisor's demonstrated good faith in imposing the modifications.

Courts consistently enforce franchise agreement provisions that explicitly permit financial term modifications upon renewal.<sup>108</sup> The implied covenant of good faith and fair dealing provides limited protection against financial term modifications when franchisors act within express contractual rights. In *Hopkinton Friendly Serv., Inc. v. Glob. Companies LLC*, the District Court of Massachusetts addressed a franchisor's decision to dramatically increase rent through property redevelopment.<sup>109</sup> Despite rent increases from \$11,450

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<sup>104</sup> *Id.*

<sup>105</sup> *Clark Invs., Inc. v. Airstream, Inc.*, 399 Ill. App. 3d 209, 214–15, 926 N.E.2d 408, 413 (2010).

<sup>106</sup> *See id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Terrier, LLC*, 2022 WL 4280251 at \*1 (holding that where franchise agreements contain express language allowing "substantially different terms" including "a higher royalty fee [and] a higher advertising contribution," franchisors may exercise this discretion without breaching the contract.)

<sup>109</sup> *Hopkinton Friendly Serv., Inc. v. Glob. Companies LLC*, 490 F. Supp. 3d 421, 427 (D. Mass. 2020).

monthly in 2015 to \$14,138 in the renewal agreement, with potential increases to approximately \$65,000 monthly upon completion of a \$5 million redevelopment project,<sup>110</sup> the court found no breach of the good faith covenant. The court applied the principle that "it does not create rights or duties beyond the four corners of the contract" and emphasized that franchisees "cannot invoke the covenant of good faith and fair dealing to obtain rights for which it did not contract."<sup>111</sup> The franchisor's actions were deemed consistent with contractual terms because Global "engaged in a series of good faith actions to keep Hopkinton apprised of the redevelopment plans " and provided adequate notice of financial implications before the franchisee signed the renewal agreement.<sup>112</sup>

State franchise protection laws may limit franchisors' ability to modify financial terms, even with express contractual authorization. *Oakland Fam. Restaurants, Inc. v. Am. Dairy Queen Corp.*, discussed above, illustrates how the Michigan Franchise Investment Law requires "good cause" for transfer restrictions.<sup>113</sup> The court held that MCL § 445.1527(g) renders unenforceable any "provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause."<sup>114</sup>

### **iii. Transfer Restrictions - more stringent requirements for owner changes or transfers to third parties**

Franchisors have an interest in keeping and maintaining brand and performance standards, This interest is not only for the purpose of keeping harmony in a franchise system (*i.e.*, to ensure that all franchisees are treated equally and subject to the same expectations), but also so that customers of one franchised unit can feel certain that they and others will have a comparable experience at any other franchised location that does business under the same banner.

To that end, franchisors may set and enforce more onerous restrictions over time when it comes to both: (1) changes of ownership within an existing franchisee; and (2) sales/transfers to others. In so doing, franchisors try to ensure that anyone who owns and operates one of its franchised units is going to keep to the brand and performance standards to which all other franchisees are subject (including the prior owners).

### **iv. Subsequent renewal terms**

There are surprisingly few reported decisions addressing whether a franchisor can change the number of renewal terms granted in the original agreement by reducing the

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<sup>110</sup> See *id.* at 425.

<sup>111</sup> *Id.* at 427-28.

<sup>112</sup> *Id.* at 427.

<sup>113</sup> *Oakland Fam. Restaurants, Inc.*, 728 F. Supp. 3d at 720.

<sup>114</sup> *Id.* at 717.

number of renewal terms in the current form of franchise agreement. The court in *Jos. A. Bank Clothiers, Inc. v. J.A.B.-Columbia, Inc.* confronted this question in the context of a motion on summary judgment and described the arguments and issues but then did not rule on the issue.<sup>115</sup>

In this case, the defendant franchisees had multiple agreements; Jos. A. Bank had entered into initial franchise agreements with defendant franchisees providing 10-year terms and different renewal rights. Jos. A. Bank had been inconsistent in addressing whether it would renew the franchise rights with the original agreement terms or require the franchisee to sign a new form of agreement and this inconsistency resulted in multiple agreements with different renewal terms and conditions and the franchisees alleging certain expectations that the franchisor would renew on the old terms.

In 2015, the conflicting renewal provisions came to a head; the franchisees notified Jos. A. Bank of their desire to renew several agreements. In response, Jos. A. Bank offered what it characterized as its current form of agreement, which did not have any additional renewal rights—effectively cutting off the continuing renewal rights granted in the original agreements. The original agreements called for a term that expired in 2015, and stated in the relevant renewal rights section:

“Franchisee has the right, subject to the conditions contained in Section 16, to buy a successor franchise for the Store on the terms and conditions of Franchisor’s then current form of franchise agreement, if upon expiration of the Term the franchisee is in compliance with the Agreement and agrees to keep the store updated to Jos. A. Bank’s specifications.”

and:

“If Franchisee has the right to buy a successor franchise in accordance with Section 16.01 and states its desire to exercise that right ..., Franchisor and Franchisee ... will execute the form of franchise agreement (which may contain provisions, including royalty fees, materially different from those contained herein) and all ancillary agreements ... which Franchisor then customarily uses, or most recently used, in granting franchise rights for Jos. A. Bank Stores.... Failure by Franchisee ... to sign such agreements ... within 30 days after delivery shall be deemed an election by Franchisee not to buy a successor franchise for the Store.”

The court punted on each argument, refusing to grant summary judgement on the factual and contract interpretation issues. The court found that the phrase the “right to buy a successor franchise” could be interpreted to create a right to more than one

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<sup>115</sup> *Jos. A. Bank Clothiers, Inc. v. J.A.B.-Columbia, Inc.*, No. CV ELH-15-3075, 2017 WL 6406805 (D. Md. Dec. 15, 2017).

renewal.<sup>116</sup> The court noted there was a question as to whether there are limits on changes the franchisor could make through insisting on signing a new agreement and specifically if the franchisor could cut off the number of renewals available by expressly limiting them in the then current form of agreement. But then the court found that there were questions of fact as to whether the franchisor offered a form of agreement that qualified as the franchisor's "then current form," the "customarily used" form, or the "form most recently used." The court was particularly focused on facts suggesting that the form of agreement offered may have been "specially targeted" at these franchisees and was not uniformly required of every franchisee upon renewal, *i.e.*, the change was not actually a part of their "then current form." While the court implied that if the change was unambiguously a part of Jos. A. Bank's then current form, it might be acceptable for the franchisor to extinguish future renewal rights through a new form of agreement that did not have renewal rights, it did not decide that question.<sup>117</sup>

## **v. Operational Requirements**

### **1. Upgrades to the location**

Transfer and renewal provisions in franchise agreements frequently include conditions requiring franchisees to remodel, renovate, or upgrade their locations in accordance with updated franchisor standards, to use new signage and marks, and keep up with updated policies, among other things. Courts have generally upheld a franchisor's right to impose reasonable refurbishment requirements as a condition for transfer and renewal, reinforcing the franchisor's control over brand consistency and quality standards.

In *Payne v. McDonald's Corp.*, discussed above, the court upheld McDonald's conditioning franchise renewal on restaurant modernization, reasoning that since there was no obligation to renew, McDonald's had the right to condition renewal on this modernization.<sup>118</sup> The court found "no duress or undue pressure under the circumstances" because "Payne faced merely that economic pressure regularly encountered by a businessman when confronted with stringent demands during negotiations for renewal."<sup>119</sup>

In *KFC Corp. v. Hooten*, the court interpreted the contractual "undue economic burden" provision, holding that per the terms of the renewal provision franchisors may require facility upgrading "to comply with standards then applicable to new franchisees, provided, however, that such requirement shall not impose an undue economic burden, as measured by the recognized value of uniform national standards to the FRANCHISEE,

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<sup>116</sup> *Id.* \* 9-10.

<sup>117</sup> *Id.* \*12-14.

<sup>118</sup> *Payne*, 957 F. Supp. at 758.

<sup>119</sup> *Id.* at 759.

FRANCHISOR and the franchised system.”<sup>120</sup> The court rejected the franchisee's argument that financial inability alone constituted an undue economic burden, instead requiring "an assessment of the value of uniform national standards compared to any supposed burden to the franchisee.”<sup>121</sup>

However, courts interpreting state franchise protection statutes have imposed additional protections, particularly requiring advance notice and demonstration of business need for substantial renovations.<sup>122</sup> The law distinguishes between legitimate system standardization requirements and impermissible demands used as pretexts to eliminate unwanted franchisees.<sup>123</sup>

There are few reported decisions challenging upgrade requirements and even fewer that recognize a claim or defense to such a condition. One case that recognized a fact issue precluding summary judgment on the franchisee's good faith and fair dealing challenge is *Q of Hasbrouck Heights, LLC v. Qdoba Rest. Corporation*.<sup>124</sup> The case concerned a dispute over whether the franchisor could condition renewal on the franchisee's completing certain upgrades and repairs to the franchise premises.<sup>125</sup> The court allowed the franchisee's claims under New Jersey's franchise relationship law governing renewal, breach of contract, and breach of the implied covenant of good faith and fair dealing to survive summary judgment.<sup>126</sup> It held that whether the franchisor could require upgrades as a condition for renewal remained a disputed issue of fact and the trier of fact should decide whether the franchisor acted in bad faith in refusing to renew.<sup>127</sup>

On the other hand, cases like *Bresler's 33 Flavors Franchising Corp. v. Wokosin* uphold, among other things, required remodeling as condition to renewal even under the Wisconsin relationship law.<sup>128</sup>

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<sup>120</sup> *KFC Corp. v. Hooten*, No. 80-72734, 1982 WL 52090, at \*1 (E.D. Mich. Sept. 16, 1982).

<sup>121</sup> *Id.* at \*5.

<sup>122</sup> *Bronx Auto Mall, Inc. v. Am. Honda Motor Co.*, 934 F. Supp. 596, 609 (S.D.N.Y. 1996), *aff'd*, 113 F.3d 329 (2d Cir. 1997).

<sup>123</sup> *Valentine v. Mobil Oil Corp.*, 789 F.2d 1388, 1391 (9th Cir. 1986).

<sup>124</sup> *Q of Hasbrouck Heights, L.L.C. v. Qdoba Rest. Corp.*, No. CV 17-05038, 2020 WL 13828986 (D.N.J. Sept. 3, 2020)

<sup>125</sup> *Id.* at \*1.

<sup>126</sup> *Id.* at \*9.

<sup>127</sup> *Id.* at \*5.

<sup>128</sup> *Bresler's 33 Flavors Franchising Corp.*, 591 F. Supp. 1533.

## 2. Stricter compliance standards

Franchisors generally have broad authority to require franchisees to execute new franchise agreements with stricter compliance standards as a condition of transfer or renewal, provided such requirements are made in good faith and in the normal course of business. Courts increasingly recognize that franchise systems must adapt to digital marketing requirements, e-commerce integration, data protection obligations, and social media compliance standards not contemplated in older agreements. The COVID-19 pandemic highlighted additional needs for franchise agreements addressing health emergency protocols, delivery and pickup services, and operational flexibility requirements often missing from legacy agreements. These technological and regulatory developments provide franchisors with strong arguments for requiring updated compliance frameworks.

Courts generally uphold franchisor demands for enhanced compliance standards when they serve legitimate business purposes such as system modernization, regulatory compliance, or operational uniformity. Courts apply a deferential standard when reviewing franchisor decisions to require enhanced compliance standards. The focus is generally on franchisor motive rather than the economic impact on franchisees. Once franchisees accept renewal franchise agreements with stricter terms, they generally cannot challenge such arrangements as constructive non-renewals, even if the new terms are significantly less favorable than their original agreements.

### vi. Release

A release in the franchise transfer and renewal context (either in the current form of agreement or as a separate document required to be signed when the franchisee signs the new franchise agreement) is a contractual tool by which a franchisee relinquishes rights to claims against the franchisor. Generally, absent fraud, duress, illegality, or mistake, a general release bars all pre-existing claims.<sup>129</sup> Releases may encompass known and unknown claims existing at execution but do not bar claims that arise afterward. Courts often scrutinize whether the release was fraudulently induced, its scope, and the parties' knowledge of existing claims at signing. Franchise laws in several states prohibit requiring a release as a condition to signing the initial franchise agreement, but such restrictions may not apply if the release is sought later, such as at renewal or in the renewal franchise agreement.<sup>130</sup>

In jurisdictions without specific statutory prohibitions, courts generally enforce release requirements when they are clearly articulated as conditions precedent to franchise renewal. *Rd. King Dev., Inc. v. JTH Tax LLC*, discussed above, illustrates this approach.<sup>131</sup> There, the court analyzed an area development agreement renewal

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<sup>129</sup> See § 8:46. Releases, 2 Franch & Distr Law & Prac § 8:46.

<sup>130</sup> *Id.*

<sup>131</sup> *Rd. King Dev., Inc.*, 657 F. Supp. 3d at 787.

provision stating that franchisees seeking renewal "must execute a general release of all claims it may have against Liberty."<sup>132</sup> The court determined that "[t]he terms of Section 7.2 plainly require compliance with the AD Agreement, timely written notice of renewal, and an execution of a general release as conditions precedent for renewal."<sup>133</sup> Since the franchisee failed to meet other contractual requirements, the court granted summary judgment without reaching the enforceability of the release requirement itself.<sup>134</sup>

Courts have generally applied stringent standards when evaluating unconscionability and duress challenges to mandatory franchise releases. *Coral Gables Imported Motorcars, Inc. v. Fiat Motors of N. Am., Inc.* established that economic pressure from franchise renewal requirements alone cannot establish duress.<sup>135</sup> The Eleventh Circuit held that "[w]hile it is true that appellees would have been unable to continue receiving cars and parts if they had not signed the second agreement, this sort of allegation alone has uniformly been held insufficient to establish duress."<sup>136</sup> The court emphasized that "[t]o hold otherwise would be tantamount to finding that the mere renewal of a franchise agreement, under circumstances where a potential dispute between the parties exists, is sufficient to establish a claim of duress."<sup>137</sup>

In *Ameriprise Fin., Inc. v. Vallandingham*, the West Virginia Intermediate Court of Appeals found that a consent and release agreement was not procedurally unconscionable despite being "a form contract drafted by Ameriprise for franchisees engaging in the purchase of a practice, such as Vallandingham, to either take or leave" because "at the time he executed the Consent and Release he was a certified financial planner who had been an Ameriprise franchisee for almost ten years, he was managing hundreds of clients with over \$20 million in assets, and he had already purchased a practice from another franchisee."<sup>138</sup> The court emphasized that business sophistication and experience can factor in overcoming procedural unconscionability concerns even in adhesion contract situations.<sup>139</sup>

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<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 795.

<sup>134</sup> *Id.* at 796.

<sup>135</sup> *Coral Gables Imported Motorcars, Inc. v. Fiat Motors of N. Am., Inc.*, 673 F.2d 1234, 1239 (11th Cir.), *opinion modified on reh'g sub nom. Coral Gables Imported Motorcars v. Fiat Motors of N. Am., Inc.*, 680 F.2d 105 (11th Cir. 1982).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Ameriprise Fin., Inc. v. Vallandingham*, 252 W. Va. 104, 918 S.E.2d 572, 583 (Ct. App. 2025).

<sup>139</sup> *See id.*

**vii. Renewal fee - requirement to pay a new fee (often a percentage of the current initial franchise fee or a fixed cost)**

Franchisors may also require a renewing franchisee to pay a “renewal fee.” Like an initial franchisee fee that secures certain franchise rights for a franchisee, the remittance of a renewal fee is a form of consideration that a franchisee provides to a franchisor in order to secure the right to continue operating the franchise business under terms set forth in the form franchise agreement that the parties ultimately enter into in order to extend the relationship.

Whether a renewal fee is required, and how a renewal fee is calculated or set, is strictly a matter of contract. A franchisor and franchisee may negotiate this term, as they negotiate other contractual terms that are set forth in their new agreement. And like with other contractual terms, courts will generally enforce the clear, unambiguous terms that are agreed to by the parties unless controlling statutory provisions require otherwise.

**viii. Alter other material terms at transfer and renewal**

As franchise relationships are largely a creature of contract, nearly all terms related to transfer or renewal are subject to negotiation. This includes, without limitation, terms that are material to the relationship.

A term is material to a contract where it goes to the very heart or essence of the commercial relationship that is set forth in the written instrument. A term is also considered material where it played a significant role in inducing a party to enter the contract itself.

In the franchise context, material terms may include those that are essential to the franchisor-franchisee bond, including terms pertaining to: (1) use of intellectual property; (2) territory; (3) brand and performance standards; (4) fees and royalties; and (5) conditions warranting a default and/or termination.

**IV. Negotiation Points for Buyers, Franchisees and Franchisors**

A defining characteristic of franchise relationship law in the United States is its jurisdictional variability. While some states provide relatively robust protections, many jurisdictions impose few or no substantive constraints on non-renewal.<sup>140</sup> Few states regulate the transfer stage of the franchise relationship. Even among protective states, differences in statutory language and judicial interpretation can lead to different outcomes.

This variability has significant practical implications at transfer and renewal. Choice-of-law and forum-selection clauses—often embedded in the franchise agreement and sometimes modified at renewal—can determine whether a franchisee has access to

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<sup>140</sup> Modell, *supra* note 14 at 4 (noting only sixteen states regulate the renewal of franchise relationships).

statutory protections at all. Courts have sometimes enforced such clauses even where doing so limits the applicability of franchise-protective statutes, although this remains an evolving area of law.<sup>141</sup>

From a practitioner's perspective, state franchise relationship statutes should be understood as **important but limited tools** in transfer or renewal negotiations. They provide leverage in certain circumstances—particularly where a franchisor seeks to refuse renewal or impose conditions that effectively force exit—but they do not displace the central role of contract. Accordingly, effective representation of franchisees requires not only familiarity with these statutes, but also strategic use of their protections in conjunction with contractual negotiation and, where necessary, litigation risk assessment.

**a. Importance of strategic preparation for negotiations**

A successful negotiation concerning the transfer of franchise rights or renewal, like any contract negotiation, requires preparation. Each side should be well-versed on, among other things, relevant laws that govern contract construction and franchise relationships, the norms of franchising and the related business industry (or industries), the short-term and long-term interests of the other side, as well as its own interests. By having an appreciation for these factors, a party will hopefully be able to better advance its goals and objectives in negotiation and then have concessions properly memorialized in a formal, fully-executed written instrument that could be enforced in the event of a dispute.

**b. Considerations and negotiation points for transfer**

Negotiations concerning transfer occur at two points: when a prospect is initially entertaining the notion of becoming a franchisee, and when a franchisee wishes to transfer rights to another.

As to the first situation, a prospect should have greater leverage in obtaining concessions from a franchisor with respect to transfer since the franchisor is working to court the prospect into a franchise relationship and may be willing to bend on certain transfer requirements. For example, a franchisor may be willing to waive or reduce any applicable transfer fee, agree to “grandfather” certain terms in the existing agreement and waive a transferee’s signing of the franchisor’s then current form franchise agreement with inconsistent terms, and forgo a potential transferee meeting certain wealth/capital metrics.

Once the prospect becomes a franchisee with terms of transfer memorialized in a franchise agreement, the situational leverage described above is largely gone. However, a franchisee is not without leverage in obtaining concessions on transfer.

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<sup>141</sup> Cadapult Graphic Systems, Inc. v. Tektronix, Inc., 98 F. Supp.2d 560 (D.N.J. 2000) (enforcing forum selection clause in franchise agreement and transferring the case from New Jersey to Oregon).

For example, a franchisee may be able to extract concessions from a franchisor concerning transfer in the context of a dispute. In other words, a franchisor may be willing to waive or show flexibility on certain transfer restrictions as part of resolving alleged claims of wrongdoing and getting a “problematic” franchisee out of its system. Thus, a franchisee may still “negotiate” transfer provisions even after entry into a franchise contract.

**c. Key negotiation points and strategies for renewal**

**i. For franchisees**

Franchise renewal negotiations present significant practical challenges due to the economic, contractual, and legal leverage imbalance between franchisors and franchisees. Franchisees face substantial economic pressure because of their sunk investment costs, established customer relationships, and potential difficulty transitioning to alternative business models.

A franchisee should have its affairs in order before starting the negotiation process. Documentation proves critical throughout renewal negotiations, as franchisees must be prepared to demonstrate compliance with franchise agreement terms, superior performance metrics, and good faith efforts to cure any identified deficiencies.

Successful negotiation strategies include leveraging strong performance history, understanding timing requirements, preparing for typical renewal terms such as fees and modernization requirements, and utilizing good faith negotiation obligations where applicable. Franchisees must strictly comply with notice deadlines and should document all negotiations, as courts generally enforce contractual requirements without exception.

Strong operational performance provides significant leverage, particularly in jurisdictions with good cause requirements. Franchisees should review their performance, metrics and key business indicators. These can include year-over-year sales, customer retention, local marketing impact, and operational compliance. If the franchisee has outperformed other locations or hit milestones faster than projected, these achievements can strengthen the franchise’s case.

Market conditions and franchise system performance can provide additional leverage. If the franchisor's system is struggling or if the franchisee's location significantly outperforms system averages, these factors may influence renewal negotiations. Documentation of superior performance relative to franchise system standards can support arguments that non-renewal lacks good cause. It is also a good idea to benchmark against newer franchisees.

Investment recovery arguments can also be effective to highlight. Franchisees should document their capital investments, lease commitments, and customer relationships that would be lost without renewal.

Legal protections vary dramatically by jurisdiction, and franchisees should understand their local law's requirements. In states with comprehensive franchise relationship laws, franchisees have significantly stronger negotiating positions because franchisors must demonstrate good cause and provide substantial advance notice for non-renewal.

Going into negotiations, the franchisee should decide on top priorities and make sure they are supported by a business rationale. Areas where franchisors can sometimes have some flexibility to amend the franchise agreement may include:

- **Royalty Percentage or Fee Structure:** Some brands will not negotiate on royalties, but if seeking modification it is important to use facts, market conditions, and financial performance to try to negotiate payments to the franchisor. The franchisor might be open to modifying royalties or implementing a tiered structure based on performance.
- **Marketing Fee Contributions:** If the franchisee has been handling a lot of its own marketing and can prove that the success of its location is a direct result of its own marketing efforts, a franchisee might be able to negotiate a lower marketing fund contribution amount.
- **Territorial Rights:** If new locations nearby are impacting the franchisee's business, the renewal phase is an opportunity to gain clarity and potentially renegotiate territory rights.
- **Expansion Rights or Multi-Unit Discounts:** If the franchisee has plans to open additional locations, this might be a time to ask for discounted franchise fees or pre-approval of expansion plans.
- **Training or Support Terms:** If the franchisee feels it has received limited support from the franchisor or a failure to deliver on promises, the franchisee may want to state the case for what should be changed or included in the renewal for a stronger commitment.
- **Exit or Transfer Clauses:** If the franchisee might want to exit during the next franchise term, it may want to seek more flexibility.
- **Contract Length and Renewal Terms:** If the franchisee thinks that market, financial, or personal circumstances might change, it might want to try to negotiate a shorter renewal period.
- **Modernization Requirements:** If the franchisor requires upgrades to equipment or decor, the franchisee may try to seek cost-sharing, caps on costs, or flexibility on timelines.

It is nevertheless important to understand that not every part of a franchise agreement is up for discussion at renewal. Non-negotiables are usually the foundational elements of the franchise agreement or system and may include:

- **Core Brand Standards:** Logos, uniforms, signage, and other fundamentals are generally not up for discussion as they impact the brand's public image.
- **Intellectual Property:** The way the franchisee uses the brand's name, proprietary materials, and processes is usually tightly controlled.
- **System-Wide Pricing:** A franchisor may require standardized pricing on certain products or services.
- **Supply Chain Requirements:** Franchisors choose their vendors strategically, and likely compliance, legal, or operational reasons are behind the approved list of vendors that a franchisee can use.
- **Legal Boilerplate:** The basic terms around disputes, jurisdiction, and liability generally remain standard across all franchise agreements for the brand, including renewals.

Other non-negotiables may exist depending on the franchisor and/or the franchise system.

Notwithstanding thorough franchisee preparation and good-faith arguments, some franchisors may still be unwilling to negotiate the terms of a renewal agreement in order to keep their franchise agreements uniform.

## **ii. For franchisors**

The above-listed topics and positions for franchisee consideration also apply to a franchisor entering renewal discussions with franchisees. A franchisor wanting to insist on compliance with the conditions for renewal in its franchise agreements should be cognizant of the state(s) whose laws may impact on renewal, ensure it complies with any notice requirements it may have (in the agreement and under any applicable statutes), and assess its desires for that territory or location and its views on the performance of the existing franchisee during the term.

Best practices include consistency in the current form of agreement, renewal conditions and compliance, and documenting any reasons for non-renewal. Renewal is a good time and way to ensure that upgrades and modernization of the franchise system, standards and locations occur across the system, and changes are implemented at franchised locations.

Multi-unit and private equity backed franchisee operators have more leverage and some different priorities and if the franchisor is wanting to have larger and more

sophisticated franchisees, it may need to consider agreeing to certain changes in the current form of franchise agreement to facilitate things like transfers, including relaxing the conditions for future approval of a transfer, and agree to “grandfather” certain concessions made up front for any renewal or transfer in the future.

## **V. Conclusion**

The reality is that courts generally enforce franchise agreement provisions allowing franchisors to require execution of a then-current form of franchise agreement with modified terms during transfer or renewal. However, the legal landscape reveals a tension between contractual freedom and franchisee protection, with outcomes largely depending on specific contract language, franchisor conduct, and applicable state law.

## BIOGRAPHIES

**Stephanie Blumstein** is a partner at Plave Koch PLC, where she focuses her practice on franchise and distribution law. Stephanie provides her clients with comprehensive counsel on all aspects of the franchise relationship. She represents clients in developing and growing franchise programs, drafting and negotiating franchise agreements and area development agreements, sales and transfers, and regulatory compliance. She also works with her clients to address issues that arise during the franchise relationship and with dispute resolution. Stephanie has extensive experience representing clients in franchise and commercial litigation matters before state and federal courts across the country, as well as before arbitration tribunals, in alternative dispute resolution forums, and in private mediations. She previously served as Senior Counsel at Wyndham Hotels & Resorts, Inc., advising on regulatory compliance and supporting domestic franchise development and operations. Stephanie is consistently recognized by The Best Lawyers in America® and *Franchise Times* as a leader in franchise law. She is a frequent speaker on franchising-related topics, a regular contributor to industry publications, and serves on various franchise law committees.

**Len MacPhee** has been assisting franchisors and operators for over 25 years. As Co-Chair of Polsinelli's Global Franchise and Supply Network practice, Len represents businesses in franchise and distribution transactions and disputes. His counseling and litigation practice includes disputes related to termination and non-renewal, trade secrets, trade dress, covenants not to compete, enforcement of trademark rights under both contracts and the Lanham Act, as well as defending brands in claims challenging system-wide practices. Len also focuses on analyzing and advising clients on significant supply chain matters and represents clients in structuring and negotiating business strategies for the rollout of products and diverse distribution methods nationally and globally, as well as transitions and winding-down franchise and distribution systems. Len frequently speaks and writes on franchise topics. He is recognized in: Chambers USA: America's Leading Lawyers, Franchise Law (2011-present); Best Lawyers®, Franchise Law (2010-present), and recognized as Denver Lawyer of the Year by Best Lawyers® Franchise Law (2014, 2017, 2019, 2024).

**Ari Stern** is a nationally recognized franchise attorney focused on dispute resolution. A partner in the Franchise & Distribution department of Fox Rothschild LLP, Ari regularly handles litigations, arbitrations, and mediations involving claims of unfair and deceptive acts and practices, fraudulent inducement, negligent misrepresentation, breach of contract, breach of the implied covenant of good faith and fair dealing, and violations of the Federal Trade Commission – Franchise Rule and related state franchise laws. Ari also counsels domestic and international franchisors, master franchisees, franchisees (multi-unit and single unit), franchisee associations, and franchise executives and entrepreneurs in connection with Franchise Disclosure Document issues, risk mitigation, brand protection, and franchise agreement compliance. Ari is recognized in The Best Lawyers in America®, *Franchise Times*, and Super Lawyers®.

## APPENDIX

### **Sample Provisions Relating to Franchise Transfer and Renewal**

The provisions set forth in this section are intended to serve as illustrative examples only and should not be construed as the definitive, recommended, or universally applicable franchise agreement language. The samples do not represent the only acceptable formulation of any given clause and should not be construed as such. These sample provisions are ultimately just that: samples.

#### **I. Sample Transfer Provisions**

The following transfer provisions are offered solely for educational and informational purposes. These samples are intended to facilitate a better understanding of transfer provisions in franchise agreements.

##### **Sample 1:**

12.2.3 Franchisee will notify Franchisor in writing of any proposed Assignment at least 90 days before such Assignment is proposed to take place. Franchisee may not disclose any confidential information to any proposed transferee unless it shall first have obtained, and provided Franchisor with an executed original copy of, a confidentiality agreement in form prescribed or approved by Franchisor, naming Franchisor as an express intended third party beneficiary thereto. Franchisor will not unreasonably withhold its consent to any transfer subject to Franchisor's rights under Section 12.4; but Franchisor may impose reasonable conditions to its assignment including, in its sole discretion, any or all of the following as conditions, each of which shall be deemed to be reasonable:

12.2.3.1 All of Franchisee's accrued monetary obligations and all other outstanding obligations to Franchisor and its Affiliates will have been satisfied;

12.2.3.2 Franchisee is not in material default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between Franchisee and Franchisor or its Affiliates;

12.2.3.3 Franchisee's right to receive compensation pursuant to any agreement for the purchase of any interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Restaurant will be subordinated and secondary to Franchisor's rights to receive any outstanding monetary obligations or other outstanding obligations due from Franchisee pursuant to this Agreement or any other agreement between Franchisor or its Affiliates and Franchisee, whether arising before or after such transfer; 31 607110545.5

12.2.3.4 Franchisee will have executed a general release, in a form satisfactory to Franchisor, of any and all known and unknown claims against Franchisor

and its Affiliates, and their respective officers, directors, shareholders, agents, and employees, in their corporate and individual capacities;<sup>142</sup>

### **Sample 2:**

3.02. Conditions for Approval. If we have not exercised our right of first refusal under Section 13.06, we will not unreasonably withhold our approval of a Transfer of the Franchise that meets all of the reasonable restrictions, requirements and conditions we impose on the transfer, the transferor(s) and/or the transferee(s), including the following:

(a) you have completed development of your Bakery-Cafe and are operating your Bakery-Cafe in accordance with this Agreement;

(b) you and your Owners and Affiliates must be in compliance with the provisions of this Agreement and all other agreements with us or any of our Affiliates; Panera 2025 FDD (132) 21 April 2025

(c) the proposed transferee and its owners must provide us on a timely basis all information we request; the transferee or owners must be individuals acting in their individual capacities who are of good character and reputation; the proposed transferee and its owners must have sufficient business experience, aptitude and financial resources to operate your Bakery-Cafe and must otherwise meet our approval;

(d) the proposed transferee may not be an entity, or be affiliated with an entity, that is an institutional or professional investor or required to comply with reporting and information requirements of the Securities Exchange Act of 1934, as amended;

(e) the transferee (or its operating partner) and its managers, shift supervisors and bakers must have completed our initial training program or must be currently certified by us to operate and/or manage a Panera Bread Bakery-Cafe to our satisfaction;<sup>143</sup>

## **II. Sample Renewal Provisions**

The following sample provisions on renewal rights are offered solely for educational and informational purposes. These samples are intended to facilitate a better understanding of renewal provisions in franchise agreements.

### **Sample 1:**

4.3 Renewal. If the following conditions are met, Licensee may renew its license for one additional renewal term, which will be the shorter of 10 years or the period that Licensee has the right to maintain possession of the Restaurant premises, provided that:

(A) Licensee gives Territory Operator written notice of its intent to renew between 3 and 6 months before the expiration of the term;

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<sup>142</sup> Marble Slab Franchising, LLC, Marble Slab Creamery's Franchise Agreement, 30-31 (February 10, 2026).

<sup>143</sup> Panera, LLC, Franchise Disclosure Document (Minnesota) Exhibit B, Template Franchise Agreement, § 13.02 [https://cards.web.commerce.state.mn.us/documents/%7BE0BA5E97-0000-CD14-AEC9-702D7F63B97A%7D/download?documentClass=FRANCHISE\\_REGISTRATIONS&contentSequence=0](https://cards.web.commerce.state.mn.us/documents/%7BE0BA5E97-0000-CD14-AEC9-702D7F63B97A%7D/download?documentClass=FRANCHISE_REGISTRATIONS&contentSequence=0)

(B) Licensee signs Territory Operator's then-current form of operating agreement (which will be modified to reflect that it is for a renewal term with no additional renewal rights). The terms of the then-current operating agreement may differ materially from this Agreement, including higher or additional fees;

(C) Licensee has complied with the modernization, replacement and upgrade provisions of Section 5.5;

(D) Licensee has been in good standing for at least 6 months, including without limitation, that Licensee has satisfied all monetary obligations on a timely basis for at least 6 months, and Licensee does not have a history of substantial non-compliance with the System or this Agreement;

(E) Licensee has the right to maintain possession of the Restaurant premises, and has provided written proof of its ability to remain in possession of the premises throughout the renewal period if leasing or subleasing;

(F) Licensee pays to Territory Operator a non-refundable license renewal fee in the amount of \$2,500; and DQ OF MT/ND-0425, AS AMENDED 0226 6 81143177;3

(G) Licensee and each Principal Owner sign a general release, in a form acceptable to Territory Operator, of all claims against Territory Operator, Company, and their respective affiliates, officers, directors, employees and agents; and (H) Territory Operator approves the location where the Restaurant will be operated during the renewal period.<sup>144</sup>

### **Sample 2:**

Section 2.2 Renewal. When this Agreement expires (unless it is terminated sooner), Franchisee shall have the option to acquire a renewal franchise and continue operating the Restaurant under the Proprietary Marks and other aspects of the System at the same location for one (1) additional consecutive term of twenty (20) years, subject to the following conditions, all of which must be met prior to or simultaneously with exercising such renewal option:

(a) Franchisee shall give Franchisor written notice of Franchisee's election to renew not less than twelve (12) months nor more than eighteen (18) months prior to the end of the initial term;

(b) Franchisee shall, to Franchisor's reasonable satisfaction, renovate and modernize the Restaurant premises to reflect the then-current standards and image for new Outback Steakhouse restaurants, including, without limitation, renovation of signs, furnishings, fixtures, equipment, and décor; provided that if the Restaurant has been modernized to Franchisor's then current specifications in the seven (7) year period prior to the date of renewal, then, except for any signage, equipment or production upgrades prescribed by Franchisor, Franchisee will not be required to renovate or modernize the Restaurant until the earlier of: (i) the seven (7) year anniversary of such prior modernization; or (ii) such time as a majority of the Outback Steakhouse restaurants then

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<sup>144</sup> American Dairy Queen Corporation, Franchise Disclosure Document (Minnesota) Exhibit B, Template Franchise Agreement, § 4.3 [https://cards.web.commerce.state.mn.us/documents/%7B301FBA9C-0000-CA17-887B-3CBFFCCB5DFB%7D/download?documentClass=FRANCHISE\\_REGISTRATIONS&contentSequence=0](https://cards.web.commerce.state.mn.us/documents/%7B301FBA9C-0000-CA17-887B-3CBFFCCB5DFB%7D/download?documentClass=FRANCHISE_REGISTRATIONS&contentSequence=0)

operated in the United States by Franchisor or its Affiliates (other than Nontraditional Locations or Alternative Segment Outback Steakhouse restaurants) have made or are utilizing commercially reasonable efforts to make such improvements or modifications;

(c) Franchisee and the Franchise Principal shall be in full compliance with all provisions of this Agreement, as amended, and any other agreement between Franchisee or the Franchise Principal, on the one hand, and Franchisor or its Affiliates, on the other hand, and Franchisee and the Franchise Principal shall have substantially complied with all provisions of such agreements during the terms thereof;

(d) Franchisee shall have satisfied all monetary obligations owed to Franchisor and its Affiliates and shall have timely met those obligations throughout the term of this Agreement;

(e) Franchisee shall present satisfactory evidence that Franchisee has the right to remain in possession of the Restaurant's approved location for the duration of the renewal term;

(f) Franchisee shall execute and deliver to Franchisor Franchisor's then current form of renewal franchise agreement, which agreement shall replace this Agreement in all respects, and the terms of which may differ materially from the terms of this Agreement, including, without limitation, a higher percentage royalty fee and advertising contribution and different rights in, and/or geographic area comprising, the Territory; provided, however, that (i) such renewal franchise agreement shall not contain any additional rights to a renewal or successor franchise, and 5 (ii) Franchisee shall pay under such renewal franchise agreement, in lieu of an initial franchise fee, a renewal fee equal to fifty percent (50%) of the standard initial franchise fee being charged to new franchisees of Outback Steakhouse restaurants at the time of renewal;

(g) Franchisee shall execute and deliver to Franchisor a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its Affiliates, and their respective officers, directors, owners, employees, agents, representatives, successors and assigns. The current form of Franchisor's general release is attached as Attachment F, but this form may change significantly by the time this Agreement is up for renewal; and

(h) Franchisee shall comply with Franchisor's then current qualification and training requirements.<sup>145</sup>

### **Sample 3:**

**Renewal.** You will have the right to renew your Culver's® franchise for the Franchised Location for one additional ten (10) year term, provided you meet the following conditions:

1. You have given us written notice at least twelve (12) months (but no more than thirty (30) months) before the end of the term of this Agreement of your intention to renew;  
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<sup>145</sup> Outback Steakhouse of Florida, LLC, Franchise Disclosure Document (Minnesota) Exhibit B-1, Template Franchise Agreement, § 2.2 [https://cards.web.commerce.state.mn.us/documents/%7BC0321A99-0000-C733-B0B1-69DED41D5ECF%7D/download?documentClass=FRANCHISE\\_REGISTRATIONS&contentSequence=0](https://cards.web.commerce.state.mn.us/documents/%7BC0321A99-0000-C733-B0B1-69DED41D5ECF%7D/download?documentClass=FRANCHISE_REGISTRATIONS&contentSequence=0)

2. Throughout the term of this Agreement you have substantially and timely complied with all of the material provisions of this Agreement, including the payment of all monetary obligations you owe to us or your vendors and suppliers, and have complied with our then current training requirements and material operating and quality standards and procedures;

3. In the event that we deem it necessary, you, the Operator of the Restaurant, have attended and successfully completed, a reconnection or new training course(s) or program(s), conducted by us or our designee, and we may charge a fee for such training courses and programs, and you are responsible for all transportation costs, food, lodging and similar costs you incur in attending such course(s) or program(s), and we have the right to determine the time and place of any such training course(s) or program(s);

4. You have at your expense made such reasonable capital expenditures requested and approved by us necessary to remodel, modernize and redecorate the Restaurant premises and to replace and modernize the furniture, fixtures, and equipment used in your business so that your business reflects the then-current physical appearance of new Culver's® Restaurants (for purposes of this Agreement "Restaurant premises" includes the real estate on which the Restaurant is located as well as all improvements thereto), to be completed at least ninety (90) days before the initial (and any renewal) term of this Agreement expires;

5. You have paid a Renewal Fee of Thirty Thousand Dollars (\$30,000) to us at least thirty (30) days before the initial (and any renewal) term of this Agreement expires;

6. You execute the standard franchise agreement then being used by us, which may be materially different from this form, including but not limited to changes to the Continuing Royalty Fee, Advertising Fee and Designated Territory; provided that you will be required to pay the Renewal Fee in lieu of the Initial Franchise Fee stated in the then-current franchise agreement;

7. If you lease the premises of the Franchised Location, you secure a renewal or extension of the lease for the Franchised Location that extends to the end of the renewal term of this Agreement, or secure a new location within the Designated Territory that is not in the designated territory of any other Culver's restaurant and that is acceptable to us; and,

8. You execute a general release of claims in a form satisfactory to us.<sup>146</sup>

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<sup>146</sup> Culver's Franchising System, LLC, Franchise Disclosure Document (Minnesota) Exhibit B, Template Franchise Agreement, §3 [https://cards.web.commerce.state.mn.us/documents/%7B40A86E96-0000-C35C-A604-C5F74B60A4D1%7D/download?documentClass=FRANCHISE\\_REGISTRATIONS&contentSequence=0](https://cards.web.commerce.state.mn.us/documents/%7B40A86E96-0000-C35C-A604-C5F74B60A4D1%7D/download?documentClass=FRANCHISE_REGISTRATIONS&contentSequence=0)

### III. Sample Provisions relating to the “Franchisor’s Current Form of Agreement”

As stated above, these sample provisions are only intended to serve as illustrative examples of provisions relating to the “Franchisor’s Current Form Agreement.” These sample provisions are intended for educational purposes only, and do not purport to reflect the most current or comprehensive treatment of the subject matter they address.

#### **Sample 1:**

You agree to execute upon renewal our then-current form of Franchise Agreement (with appropriate modifications to reflect the fact that the Franchise Agreement relates to the grant of a renewal franchise, and with no further right of renewal), which agreement shall supersede in all respects this Agreement, and the terms of which may materially differ from the terms of this Agreement, including, without limitation, a different percentage Royalty Fee and Advertising Contribution; provided, however, you shall be required to pay a renewal fee equal to twenty five percent (25%) of our then-current standard initial franchise fee (excluding any promotions or discounts);<sup>147</sup>

#### **Sample 2:**

Franchisee may, at Franchisee’s option, obtain one (1) additional ten (10) year term by:

- (i) [ . . . ]
- (ii) Delivering to Franchisor a fully executed franchise agreement in Franchisor’s then-current form of the successor franchise agreement, and all other agreements Franchisor then requires between Franchisee and Franchisor. Franchisee acknowledges that Franchisor’s form of successor franchise agreement may contain terms materially different than those contained in this Agreement, including, but without limitation, higher rates of fees (as herein defined), and additional and/or other fees and charges; provided, however, the fee rates shall not be higher than those being charged to new franchisees of Franchisor as of the Expiration Date.<sup>148</sup>

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<sup>147</sup> Doctor’s Associates, LLC, Franchise Disclosure Document (Minnesota), Exhibit A, Template Franchise Agreement, § 3.5 [https://cards.web.commerce.state.mn.us/documents/%7BA032CB96-0000-C518-9ED4-5B9268F67C2B%7D/download?documentClass=FRANCHISE\\_REGISTRATIONS&contentSequence=0](https://cards.web.commerce.state.mn.us/documents/%7BA032CB96-0000-C518-9ED4-5B9268F67C2B%7D/download?documentClass=FRANCHISE_REGISTRATIONS&contentSequence=0)

<sup>148</sup> AMH Enterprises, Inc., Franchise Disclosure Document (Minnesota), Exhibit B, Template Franchise Agreement, §2.2.1. [https://cards.web.commerce.state.mn.us/documents/%7B00DBEE9A-0000-C137-B351-431C47CCFF0A%7D/download?documentClass=FRANCHISE\\_REGISTRATIONS&contentSequence=0](https://cards.web.commerce.state.mn.us/documents/%7B00DBEE9A-0000-C137-B351-431C47CCFF0A%7D/download?documentClass=FRANCHISE_REGISTRATIONS&contentSequence=0)