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

Presented By:

Stephanie Blumstein

Len MacPhee

Ari Stern

Contractual Right to Renew / Transfer

- Typical Length of Initial Term and Renewal Terms
- Transfer Terms
- Subject to Meeting Certain Requirements
 - Including signing a new / current form of franchise agreement



The New Current Form of Franchise Agreement May Change “Business as Usual” For the Franchisee

- Changes in Territory Protections
- Financial Terms: increased royalty fees / rates, higher marketing or advertising fund contributions, new fees
- Transfer Restrictions
- Subsequent Renewal Terms
- Operational Standards – Upgrades, Stricter Compliance Standards
- Release
- Renewal Fee
- Alteration of Other Material Terms at Transfer / Renewal

Common Law

- Enforce plain, unambiguous contractual language
- Breach of implied covenant of good faith and fair dealing
- Estoppel





Hypothetical 1:



- Franchisees operating under a 10-year Franchise Agreement in New Mexico.
- Right to renew conditioned on franchisees executing:
 - Franchisor's then-current standard form of Franchise Agreement, which may, at Franchisor's sole and absolute discretion, include substantially different terms than those contained in this Agreement, including but not limited to a higher royalty fee, a higher advertising contribution, a smaller Protected Territory, and the term of which shall be the renewal term and contain further renewal rights, if applicable.
- New form of agreement contains a compulsory sale provision, or purchase right, which grants Franchisor the discretionary authority to purchase Franchisee's business at any time.

Polling Question 1:

Is conditioning renewal on the inclusion of this provision:

- A. Breach of Contract?
- B. Breach of Covenant of Good Faith and Fair Dealing?
- C. Neither; permissible exercise of franchisor discretion.



Terrier, LLC v. HCA Franchise Corp.

No. 222CV01325GMNEJY, 2022 WL 4280251 (D. Nev. Sept. 15, 2022)

- Under the express terms of the Agreement, the parties agreed to potentially include substantially different terms during the renewal process. Here, the express terms of the Agreement allowed Franchisor “at [its] sole and absolute discretion, include substantially different terms than those contained in [the original Agreement].”
- Franchisor's decision to condition renewal on the acceptance of new terms did not constitute bad faith. As the Franchise Agreement expressly permitted renewal on materially different terms consistent with the then-current renewal agreement, there was no violation of the implied covenant of good faith and fair dealing for exercising that provision.



Hypothetical 2:



- Franchisees in Michigan operate twelve yogurt shop franchises and want to reward some longtime loyal employees by assigning franchise rights to them.
- The Franchisee Agreement provides the Franchisee can not “assign this agreement . . . without first obtaining the written consent and approval of Franchisor.”
- Franchisor conditions its consent for that assignment on the new owners signing updated franchise agreements.
- Franchisor’s position is that it has implemented a new company-wide transfer policy requiring all new franchisees to sign an updated agreement because it wanted to modernize its agreements to the changed legal, technological, and competitive landscape and to create brand consistency.

Polling Question 2:

Is conditioning transfer on executing a new franchise agreement:

- A. Breach of Contract?
- B. Breach of Michigan’s Franchise Investment Law (MFIL)?
MFIL provides that a “provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise” is “void and unenforceable,” except for when the provision permits refusal “for good cause.” Section 27(g) lists examples of good cause, such as if the proposed transferee does not meet the franchisor’s reasonable qualification standards or if the proposed transferee is unwilling to comply with its lawful obligations.
- C. Neither; permissible exercise of franchisor discretion.



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)

- Without “clear and convincing evidence” of an intent to modify or waive the consent requirement, the terms of the contract must be enforced as written.
- MFIL §27(g) does not render the FA’s consent-to-assign provision unenforceable in this circumstance.
- Franchisor's condition that new franchisees sign an updated franchise agreement is commercially reasonable. (“The good cause requirement centers on commercial reasonability.”) Wanting to standardize franchise agreements and update old agreements to meet modern demands is reasonable.



Hypothetical 3:



- A condition to renew is that the franchisee signs a current form of franchise agreement which franchisor then customarily uses or most recently used.
- Original franchise agreement provides that franchisee has the right to 3 renewals if it satisfies the enumerated conditions.
- Current form of franchise agreement provides for only 1 renewal.
- What is the current form of agreement?

Polling Question 3:

May the franchisor reduce the original number of renewals granted in the initial franchise agreement by having fewer in the current form of agreement?

A. Yes

B. No

Does the answer change if original agreement provides for evergreen renewals?

A. Yes

B. No



Jos. A. Bank Clothiers, Inc. v. J.A.B.-Columbia, Inc.

No. CV ELH-15-3075, 2017 WL 6406805 (D. Md. Dec. 15, 2017)

The Franchise Agreement:

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.

...

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.

Court Findings

- The court found that the phrase the “right to buy a successor franchise” could be interpreted to create a right to more than one renewal.
- The court also 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 was “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.”
- The court stated that it would save for trial the question of whether Jos. A. Bank could require the franchisee to sign the current form extinguishing the perpetual renewal rights.

The Impact of State Statutes / Franchise Relationship Laws

Transfers

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.

- 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)

Transfers - Typical Terms

- Franchisor must act reasonably or in good faith in denying or rejecting a proposed transfer.
- Franchisor must have good cause or a legitimate business reason to withhold consent to a proposed transfer.
- Franchisor must set forth specific circumstances that constitute “good cause” for purposes of rejecting or disapproving a franchise transfer.



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.

- 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.*
- 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.*

Renewal - Typical Terms

- A prescribed amount of advance notice that a franchisor must give a franchisee if the franchisor intends not to renew
- Limits on the reasons a franchisor may elect not to renew franchise rights or choose to impose new and different terms
- Mandate that the franchisor purchase inventory, equipment and the like of a nonrenewed franchise under specified circumstances





Hypothetical 4:



- Franchise Agreement requires as a condition of renewal that the franchisee sign its then-current form of franchise agreement.
- Franchisee is in Minnesota.
- Franchisee refuses to sign because current form agreement contains higher fees and royalties.

Polling Question 4:

May the franchisor require franchisee to sign its current form of agreement with higher fees?

A. Yes

B. No



Rogers Family Foods, LLC v. DFO, LLC

No. 19-cv-1476, 2020 WL 5816589 (D. Minn. Sept. 30, 2020)

- 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 franchisee’s prior agreement, violated Minnesota’s Franchise Act.
- 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.”
- Court denied Denny’s summary judgment.
- Court found 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.

Polling Question (cont.):

Does the answer change if the original agreement expressly stated that the current form of agreement could include materially different terms?

- A. Yes
- B. No

Does the answer change if the original agreement expressly stated that the current form of agreement could include materially different terms which may include higher fees?

- A. Yes
- B. No





Hypothetical 5:



- Condition of renewal is that franchisee sign a new franchise agreement on the terms presently being used with other franchisees.
- Current form of agreement requires upgrades to location and higher advertising.
- In Wisconsin, which provides franchisor may not terminate, cancel or fail to renew or “substantially change the competitive circumstances of the dealership,” without good cause.
- Franchisee claims the added costs will cause their profits to be drastically reduced.
- Franchisees refuses to sign the new form of agreement with terms presently being used with other franchisees.

Polling Question 5:

Does the franchisor violate the WFDL if it refuses to renew if the franchisee refuses to sign the new agreement with terms presently being used with other franchisees?

- A. Yes
- B. No



Bresler's 33 Flavors Franchising Corp. v. Wokosin

591 F. Supp. 1533 (E.D. Wis. 1984)

- Applying the Wisconsin Fair Dealership Law
- Court holds that where a franchisor offered to renew franchise agreements on the terms presently being used with other franchisees and franchisee refused to renew on such terms, there was no "termination, cancellation or failure to renew" within the prohibition of Wisconsin fair dealership law.
- Court also finds franchisee failed to establish change in competitive circumstances.

Bresler's 33 Flavors Franchising Corp. v. Wokosin

591 F. Supp. 1533 (E.D. Wis. 1984)

- Court states that franchisee failed to establish they would have reduced profits:
 - Did not substantiate the assumption that the volume sales will not increase with the advent of new decorations and advertising.
 - Did not explain why some costs could not be passed onto customers.
- The Court recognizes that much of the information necessary to that determination would be quite complex and not easily susceptible of proof, and that the burden of proof placed on dealers in this context is quite demanding.



Hypothetical 6:



- Manufacturer requires distributor in New Jersey to enter into a new supply agreement on renewal that restricts the territory when the previous supply agreement contained no such restrictions.

Polling Question 6:

Does the Manufacturer violate New Jersey Franchise Act?

- A. Yes
- B. No



Beilowitz v. Gen. Motors Corp.

233 F. Supp. 2d 631(D.N.J. 2002)

- Court granted distributor preliminary injunction.
- Found distributor was likely to succeed on the merits 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.”
- Because GM had not alleged the distributor substantially breached the supply agreement, it could not non-renew the agreement even if the distributor refused to sign the new agreement.



Hypothetical 7:



- One of the conditions for renewal is that the franchisee signs the franchisor's current form of franchise agreement.
- Franchisee is based in Puerto Rico.

Polling Question 7:

May a franchisor require a franchisee based in Puerto Rico to sign the franchisor's current form franchise agreement?

- A. Yes
- B. No



Tatan Management v. Jacfran Corporation

270 F. Supp. 2d 197 (D.P.R. 2003)

- 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.
- The court did not rule on the issue because the franchisee failed to meet other lawful conditions on renewal (e.g., the payment of a renewal fee and the completion of certain renovations).
- The franchisee was also in default of its obligations under the existing franchise agreement.

Franchisees – Key Negotiation Points / Strategies for Transfer

- Two opportunities for negotiation: (1) when prospect is entertaining franchise opportunity; and (2) when franchisee wishes to transfer to another.
- Prospect likely has greater leverage since franchisor is attempting to court prospect into a relationship.
- Franchisor may be willing to:
 - Waive or reduce any applicable transfer fee
 - Agree to “grandfather” certain terms in the existing agreement
Waive a transferee’s signing of the franchisor’s then current form franchise agreement
 - Forgo a potential transferee meeting certain wealth / capital metrics
- Existing franchisee still may be able to extract concessions from franchisor in connection with transfer.
- 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.

Franchisees – Strategies on Renewal

- Compile documentation to demonstrate Franchise Agreement compliance, performance metrics, and good faith efforts to cure any deficiencies.
- Understand any applicable legal protections that govern non-renewal.
- Decide on top priorities and support with a business rationale.
- Not every part of the agreement is up for discussion; foundational elements of the Agreement or System are usually non-negotiable.

Franchisees – Areas for Negotiation on Renewal

- Royalty Percentage or Fee Structure
- Marketing Fee Contributions
- Territorial Rights
- Expansion Rights or Multi-Unit Discounts
- Training or Support Terms
- Exit or Transfer Clauses
- Contract Length and Renewal Terms
- 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

Common Non-Negotiables for Franchisors

- Core Brand Standards
- Intellectual Property
- System-Wide Pricing
- Supply Chain Requirements
- Legal Boilerplate



Franchisors – Key Points on Renewal

- A franchisor wanting to insist on compliance with the conditions for renewal in its Franchise Agreements should:
 - 1) Appreciate relevant state(s) whose laws impact renewal
 - 2) Comply with notice requirements
 - 3) Assesses desires / interests concerning territory / location
- Multi-unit and private equity backed franchisee operators have more leverage



Extra Credit Hypos



Hypothetical 8:



- A condition for renewal is that the franchisee was in full compliance during the term.
- Franchisee received 3 notices of default over the initial 10 year term (7 years ago, 5 years ago, and 3 years ago) and cured all three.

Polling Question 8:

May the Franchisor refuse to renew?

- A. Yes
- B. No





Hypothetical 9:



- There is a minimum revenue threshold in the Franchise Agreement.
- The ramification for not meeting the minimum revenue threshold is paying a minimum royalty—as long as the franchisee pays that that minimum royalty, the Franchise Agreement provides that the franchisee is not in default.
- Franchisee is bottom $\frac{1}{4}$ of revenue performance.

Polling Question 9:

May the Franchisor refuse to renew on the basis that the franchisee has not fully complied during the term?

- A. Yes
- B. No





Hypothetical 10:



- Now there is no minimum revenue threshold in the Franchise Agreement.
- A condition of renewal is that the renewing franchisee meets the criteria for renewing franchisees as may be established from time to time by the franchisor.
- Franchisor has set up new criteria for renewal in the operations manual which provides that, to be eligible for renewal, franchisee must be in the top half of the franchisees in the system in gross revenues.

Polling Question 10:

Franchisee is ranked 49% in gross revenue.

May the Franchisor refuse to renew:

- A. Yes
- B. No





Hypothetical 11:



- New “standard” in operations manual provides that a multi-unit owner must have a non-family member manager with at least 20% equity in the territory / unit franchisee. That is the standard for new franchisees and for renewal.

Polling Question 11:

May franchisor enforce that requirement and refuse to renew if franchisee does not give 20% equity in the unit to its manager?

- A. Yes
- B. No





Hypothetical 12:



- Franchisee wants to sell 25% ownership to son who she is grooming to be new owner / operator of franchised business.
- Franchisee wants to borrow to make capital improvements and bank lien on franchised business assets.
- Franchise Agreement provides:
 - Franchisor and Franchisee agree that so long as Franchisee is not in default of this Franchise Agreement six months prior to the expiration of this Agreement, that Franchisee, upon proper written notice, may renew the franchise relationship for three (3) additional terms.
- Franchisee provided proper written notice, but failed to make requisite royalty payments over past few months.
- Franchisee has locations in Puerto Rico, New York, and Massachusetts, with Puerto Rico location the oldest and the first one subject to the renewal provision.

Polling Question 12:

May the Franchisor refuse to renew the franchise relationship in light of defaults?

- A. Yes
- B. No

Let's say the Franchisor had issued a Notice of Default prior to receiving proper written notice. Would that change the analysis and/or outcome?

- A. Yes
- B. No

Let's say the location that was subject to renewal was actually the Massachusetts Location (as compared to the Puerto Rico Location). Would that change the analysis and/or outcome?

- A. Yes
- B. No

Let's say the location that was subject to renewal was the New York Location (as compared to the Puerto Rico Location). Would that change the analysis and/or outcome?

- A. Yes
- B. No





Hypothetical 13:



- Franchisee has locations in Puerto Rico, New York, and Massachusetts.
- The Franchise Agreements for the New York and Massachusetts locations are silent when it comes to transfer. In other words, there are no provisions that govern a transfer one way or another.
- Puerto Rico Franchise Agreement contains the following provision;
 - Franchisee may transfer this Franchise Agreement to another so long as the Franchisor consents to the transfer (with consent not to be commercially withheld), and the transferee shall have a net worth of over \$2,500,000.00.

Polling Question 13:

May Franchisee proceed with a transfer of the Franchise Agreement governing the Massachusetts Location to Individual net worth of approximately \$1,500,000.00?

- A. Yes
- B. No

May Franchisee proceed with a transfer of the Franchise Agreement governing the New York Location to Individual with net worth of approximately \$1,500,000.00?

- A. Yes
- B. No

May Franchisee proceed with a transfer of the Franchise Agreement governing the Puerto Rico Location to Individual with net worth of approximately \$1,500,000.00?

- A. Yes
- B. No



Questions?

Stephanie Blumstein

Plave Koch PLC - sblumstein@plavekoch.com

Len MacPhee

Polsinelli PC - LMacPhee@Polsinelli.com

Ari Stern

Fox Rothschild LLP - astern@foxrothschild.com