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IFA 26

LEGAL

WASHINGTON, DC | MAY 17-19

The Next Generation of Ownership: Succession Planning as a Strategy for Franchise System Stability

From reactive problem-solving to proactive system design



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🎯 Strategic Goals & Objectives



Operational Continuity

Ensure seamless business operations during ownership transitions



Brand Protection

Maintain brand standards and quality control



Enterprise Value

Preserve and enhance franchise value



Stakeholder Interests

Protect franchisee's family, employees, customers, and vendors

Key Insight: Leading franchisors treat estate planning as an integrated component of business model design, not a reactive afterthought → franchise system stability.



Risks

- **Intestacy Risk:** No will leads to state-mandated asset division
- **Unauthorized Transfers:** DIY planning without franchisor consent
- **Successor Unqualified:** Heir lacks operational experience
- **Disruption of Operations**



Five Critical Estate Planning Errors

1. Intestacy (No Will)

High Risk

Dying without a will means state law divides assets among heirs according to a formula. This can create uncertainty for franchisors and franchisees' families.

2. DIY LLC Transfers

Unauthorized

Transferring franchise interest to a "Family Franchise Franchise LLC" without franchisor consent. The franchisor may consider this an unauthorized transfer.

3. Trust Funding Without Consent

Voidable

Funding a revocable trust with franchise interest without franchisor approval. This may be void or voidable as an unauthorized transfer.

4. Assumed Successors

Unqualified

Assuming a spouse, child, or sibling will naturally step in without validating their interest, capability, or approval odds.

5. Poor Bequest Design

Residuary Issues

Using residuary distributions instead of specific bequests for franchise interests, creating ambiguity and potential disputes.



Key Insight: Estate planning with franchises requires coordination with the franchisor. Franchise interests are contractual rights, not simple estate assets.



Plan early



Get consent



Mess Scenarios



- **Uncertain Management Period**

Franchise continues operating without legally authorized party to act on behalf of estate



- **Family Resists Probate**

Family claims probate unnecessary, no authorized counterparty for franchisor



- **Unauthorized Transfers**

Family claims franchise held in trust/LLC unknown to franchisor



Resulting Risks

→ **Brand Risk:** Quality control / brand standards

→ **Operations:** Cost and disruption

→ **Legal Liability:** Multiple claimants and/or creditors



The Scenario

Year 1 Franchisee dies unexpectedly. Co-franchisee son assumes full responsibility for operating the franchise.

Year 2 Son continues operating without formal probate or estate administration. No estate documents provided to franchisor.

Year 4 Franchisor discovers situation during renewal process. Son claims full ownership, ownership, requests name change.

Estate remains unprobated. Family structure unclear. Multiple potential beneficiaries identified. Creditors unknown.

- ✓ Early detection prevents prolonged disruption
- ✓ Formal probate ensures clear title
- ✓ Family releases protect against claims

Key Risks

- **No Authorized Fiduciary:** No person legally authorized to act on behalf of estate
- **Competing Claims:** Multiple family members may have rights to franchise
- **Hidden Stakeholders:** Unknown LLC members or trust beneficiaries
- **Operational Instability:** Business continues without proper legal authority

Resolution Path

- **Require Probate:** Insist on formal estate administration and executor appointment
- **Clean Up LLC:** Dissolve unauthorized LLC structures
- **Obtain Releases:** Seek indemnities from family members
- **Alternatives?**



Example Scenarios



#1

#2

#3



Conclusions:



Types of Trusts

Revocable Trust

Tax neutral and used for probate avoidance. Becomes irrevocable on death.

Irrevocable Trust

Common structure for making lifetime gifts. Represents change of ownership.


Marital Trust (QTIP)

Qualified Terminable Interest Property trust for deduction.

Other Types

Joint revocable trusts, GRATs, and specialized structures.

Key Considerations

 Trust documents

 Trustee identity


 Beneficiaries

Important Factors

 **Legal Structure:** Title owner (trustee) vs. beneficial owner

 **Financial Criteria:** Are financial requirements met?

 **Active Involvement:** Who will be actively involved in business?

 **Documentation:** Trust certification or affidavit required



Revocable Trust Structure

Revocable Living Trust

A revocable trust is a flexible estate planning tool that allows the grantor to maintain control over assets during their lifetime while providing a seamless transfer mechanism upon death. This structure is particularly valuable for franchise owners seeking to avoid probate complications.

- ✓ **Tax Neutral:** No immediate tax implications during the grantor's lifetime. Assets remain part of the grantor's estate for tax purposes.
- ✓ **Probate Avoidance:** Assets transfer directly to beneficiaries without going through probate court, saving time and legal fees.
- ✓ **Becomes Irrevocable:** Upon the grantor's death, the trust becomes irrevocable and assets are distributed according to trust terms.

Key Benefits

- ✓ Avoids probate delays and costs
- ✓ Maintains privacy of asset distribution
- ✓ Provides continuity for business operations
- ✓ Flexible management during lifetime

Important Considerations

- i Requires proper asset titling
- i Must fund the trust with assets
- i Successor trustee designation



Key Characteristics

Change of Ownership

Represents a change of ownership → equivalent to gifting the franchise rights. Once established, cannot be modified or revoked.

Lifetime Gifts

Common structure for making lifetime gifts. Allows for tax-efficient transfer of assets to beneficiaries.

Ownership Structure

Title Owner
Trustee(s)

Beneficial Owner
Beneficiaries

No Ownership
Original Owner

⚠ Important: The original owner/franchisee who created the trust has no ownership rights once the trust is established.

Trust Details

Trust Document: Must be properly drafted and executed to establish the trust structure.

Trustee Responsibilities: Manages trust assets and makes decisions in beneficiaries' best interests.

Beneficiary Rights: Receive distributions as specified in trust terms.

Asset Protection: Assets are protected from creditors of the original owner.



Key Trust Terms

Identity of Trustees

Who is legally responsible for managing trust assets

Identity of Beneficiaries

Who receives benefits from the trust

Successor Trustees

Who takes over if primary trustee is unable to serve


Distributions & Withdrawal Terms


Rules for when and how assets are distributed

Transition Points

Key events that trigger changes in trust administration, such as death of original trustee/trust grantor

Roles & Responsibilities

 **Trustee** Legal owner of trust assets, responsible for management and distribution

 **Beneficiary** Person who receives benefits from the trust

 **Trust Grantor** Person who created and funded the trust

 **Successor Trustee** Backup trustee who takes over if needed

 **Trust Protector** Person who can modify trust terms if needed



Legal Agreements

Guaranty Agreement

Personal guarantee from trustee or beneficiary to ensure obligations are met

- Required for most transfers

Releases

Formal release of claims or liabilities related to the trust trust

- Standard procedure

Indemnity

Protection against losses or damages arising from trust operations

- Critical for risk management

Confidentiality / Non-Compete

Protection of sensitive information and business operations

- Essential for franchise transfers

Risk Factors

 **Complicated Plans:** Contested or unclear succession plans

 **Creditor Risk:** Claims against the estate

 **Financial Impact:** Business continuity concerns

 **Time Sensitivity:** Delays in transfer process



Key Considerations



Identifying Heirs/Beneficiaries

Determining rightful heirs and beneficiaries



Will vs. Intestate Succession

With or without a valid will



Probate Process

What happens in probate court



Risks & Complications

Contested or complicated plans



Important: Always verify the authority of the person claiming to represent the estate before proceeding with any transfers.



Focus Areas



Focus 1: Beneficiaries / Heirs and Creditors

Identify all beneficiaries and heirs, including potential creditors who may have claims against the estate.



Focus 2: Duly Appointed Fiduciary / Authority to Act

Ensure proper appointment of executor or administrator with legal authority to act on behalf of the estate.



Business Judgment



When to Make a Business Judgment?

Key considerations for making business decisions during franchisee transfer process, including risk assessment and timeline evaluation.

- ✓ Evaluate current business operations and financial status
- ✓ Assess potential risks and liabilities
- ✓ Consider timeline and transition requirements



What Risks?

Understanding potential risks involved in the transfer process and how to mitigate them effectively.

- 🛡️ Financial liability exposure
- 🛡️ Operational disruption risks



Odds and Ends



Small Estate Affidavit: Simplified transfer process for estates under certain value thresholds



Community Property Rights: Understanding spousal rights in community property states



Beneficiary Rights: Rights of beneficiaries and withdrawal considerations



Documentation: Required paperwork and legal filings



Revocable Trusts

Pre-approved structures for probate avoidance

- ✓ Franchisee as sole trustee/beneficiary during life
- ✓ Named successor trustees for seamless transition
- ✓ Continuing guaranty requirements



LLC Structuring

Simple cap table with family transfers

- ✓ Pre-approved intra-family transfers
- ✓ ROFR preserved for franchisor
- ✓ Guaranty requirements defined



Will Drafting

Specific bequests with contingencies

- ✓ Specific bequests of franchise interests
- ✓ Contingent beneficiaries included
- ✓ Executor flexibility for sale/adjustment



Successor Validation

Pre-vet candidate qualifications

- ✓ Financial qualifications verified
- ✓ Training completion requirements
- ✓ Landlord/lender acceptance



Process Guardrails

Clear transfer policies and SLAs

- ✓ Clear transfer policies and fees
- ✓ Emergency authority letters
- ✓ Checklists and documentation



State Compliance

Alignment with franchise relationship laws

- ✓ Review of state-specific requirements
- ✓ Compliance with transfer restrictions
- ✓ Court order requirements

Governance Framework

FDD/FA Provisions

Key provisions for death/incapacity scenarios, transfer approval standards, and succession planning requirements.

- ✓ Death/incapacity windows and notice requirements
- ✓ Transfer approval standards and training requirements
- ✓ ROFR provisions and release requirements

Policy Toolkit

Succession templates, guidebooks, and sample trust/LLC language for franchisees.

- ✓ Succession planning templates and guidebooks
- ✓ Sample trust/LLC language and required representations

Risk Mitigation
Proactive planning reduces disruption

Stakeholder Alignment
All parties benefit from proper planning

System Stability
Continuity for brand and business

Leadership Clarity

Designate Successor Operator, Interim Operator, and Executor roles with clear RACI and communications tree.

Successor Operator

Pre-vetted, qualified candidate ready to assume operations

Interim Operator

Temporary management during transition period

Field Enablement

Equip franchise business consultants to recognize risk signals and facilitate early dialogue.

- ✓ Training for FBCs on estate planning red flags
- ✓ Support for franchisees in developing executable plans



State Franchise Relationship Laws

Jurisdictional Overview



10+ jurisdictions limit assignment restrictions; some address death transfers specifically

CA

California

Heirs can operate for reasonable time

IN

Indiana

Opportunity to wind down business

IA

Iowa

Heirs can participate in operation

NJ

New Jersey

Non-controlling interest rights

AR

Arkansas

Heir rights to non-controlling interest

NE

Nebraska

Non-controlling interest rights



Operational Windows

Timeframes for heirs to participate in franchise operations



California

Heirs can operate for "reasonable time" after death, subject to continued compliance and qualification standards



Indiana

Courts have interpreted as providing opportunity to wind down business rather than indefinite succession right



Iowa

Heirs can participate in franchise operation for reasonable time after death



New Jersey

Provides for heir rights to receive non-controlling interest in franchise



Practice Tip

Rights are narrower and state-specific—confirm domicile, applicable relationship statute, and reconcile with FA terms and approval process. Always review state-specific requirements before making transfer decisions.

10+ Jurisdictions

6 States with Death Transfer Provisions

4 States with Operational Windows



For Franchisees

F Franchisee Business Owner

- ✓ **Plan early:** Engage in estate planning before issues arise **High**
- ✓ **Use revocable trust:** With franchisor consent **High**
- ✓ **Name successor:** Prepare and validate candidate **Medium**
- ✓ **Keep documents current:** Update as circumstances change **Medium**
- ✓ **Notify franchisor:** On life events and changes **Medium**

★ **Key Action:** Schedule annual estate plan review

For Franchisors

Fr Franchisor System Manager

- ✓ **Review Franchise Agreements:** Transfer provisions **High**
- ✓ **Publish clear policy:** Transfer/estate guidelines **High**
- ✓ **Pre-approve structures:** Standardize trust/LLC **High**
- ✓ **Align fees:** Reasonable transfer costs **Medium**
- ✓ **Require notifications:** Of ownership changes **Medium**
- ✓ **Equip field teams:** Train on risk signals **Medium**

★ **Key Action:** Create succession planning toolkit

For Counsel

C Legal Counsel Advisory Role

- ✓ **Confirm consent:** Verify franchisor approval **High**
- ✓ **Avoid unauthorized transfers:** Review agreements **High**
- ✓ **Draft contingencies:** Specific bequests with alternatives **Medium**
- ✓ **Document decisions:** Maintain consistent records **Medium**

★ **Key Action:** Review estate plans annually

3 Stakeholder Groups

15+ Action Items

100% Compliance Focus

1 Unified Goal

Thank You

Questions & Discussion



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