



## **Franchise Sales Compliance Handbook**

The offer and sale of franchises is governed by the Federal Trade Commission's trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising; Final Rule," 16 C.F.R. Part 436 (the "Amended Franchise Rule"), and various states' laws governing the offer and sale of franchises and business opportunities.

### ***Overview of Federal Law***

The Amended FTC Rule, which applies to the sale of franchises to be located in the United States of America and its territories and possessions (but not to the sale of franchises to be located in foreign countries), (1) requires the pre-sale delivery of a franchise disclosure document ("FDD") and advance delivery of the final franchise contracts, (2) prohibits sharing any financial information with prospective franchisees (orally or in writing) except to the extent that Item 19 of the FDD contains a formal financial performance representation, and (3) prohibits certain trade practices which have been determined to be deceptive to prospective franchisees.

### ***Overview of States' Laws***

In addition to the Federal disclosure requirement, the offer and sale of franchises is regulated by the "franchise sales laws" of 15 states and - potentially - by the business opportunity laws of 25 states.

The states with franchise sales laws are: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, Oregon, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin. These laws potentially apply to a franchise sale if the offer is made in the state, the offer is accepted in the state, the franchisee is domiciled in the state and/or the franchised business will be operated in the state.

The states with business opportunity laws are: Alabama, Alaska, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and Washington.

Most business opportunity laws exclude or exempt from their application the offer and sale of franchises made in full compliance with Federal law. A federal trademark registration is needed, however, to claim the exemption in Connecticut, Georgia, Louisiana, Maine, North Carolina and South Carolina. Franchisors without a registered trademark desiring to offer and sell franchises in these states either must register and comply with applicable business opportunity laws, or look for a different exemption. A one-time exemption filing is needed to claim exemption from the business opportunity

laws of Kentucky, Nebraska and Texas, and annual exemption filings are needed to claim exemption from the business opportunity laws of Florida and Utah.

### ***Franchise Relationship Laws***

Once a franchise is sold, a different set of laws and regulations apply. These laws are commonly known as "franchise relationship laws" because they govern important aspects of the franchise relationship, such as the franchisee's right to sell or transfer the franchise to a third party, and the franchisor's right to terminate or refuse to renew the franchise relationship.

See the printable version for a comprehensive discussion of these laws.

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