



# What is a Franchise?

California Corporation Code Section 31005. (a) “Franchise” means a contract or agreement , either expressed or implied, whether oral or written, between two or more persons by which:

(1) A franchise is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and

(2) The operation of the franchisee’s business pursuant to such plan or system is substantially associated with the franchisor’s trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and

(3) The franchisee is required to pay, directly, or indirectly, a franchise fee.

# Basic Franchise Terms

**Franchisor:** A person or company that grants the rights to the franchisee to use their brand and services.

**Franchisee:** The person or company that is given the right to do business under the franchisor's brand.

**Franchise Disclosure Documents:** ("FDD") The legal document franchisor provides to the prospective franchisee regarding the franchise opportunity. The FDD contains may disclosures, franchise agreement and numerous exhibits.

**Franchise Fee:** The initial fee paid by the franchisee to the franchisor, usually upon execution of the franchise agreement. The franchise fee is used to offset the franchisor's costs in marketing the franchise and providing training to the franchisee.

**Royalty Fee:** In most cases is a percentage of the gross sales paid by the franchisee to the franchisor on a monthly basis. It can also be a fixed dollar amount.

**Trademark:** A federally registered trademark, logo or tag line with the United States Patent and Trademark Office.

**Master Franchisee:** A franchise relationship granted for the development of a specified area, which allows the master franchisee to sub-franchise to other franchisees within the specified territory.

**Area Franchise:** An agreement between the franchisor and franchisee which grants the franchisee the right to develop a set number of franchise locations in a specified area over a specific time period.

**Discovery Day:** A face-to-face meeting between the franchisor and prospective franchisee at the franchisor's corporation headquarters. This includes meetings with the franchisor's team and tour of existing franchisees.



# What Steps You Need to Take to Successfully Franchise Your Business

Topic 1

Is my business something that can be franchised?

Topic 2

Advantages of Franchising

Topic 3

Time Frames and Things to Consider

Topic 4

Steps to Take to Franchise Your Business

Topic 5

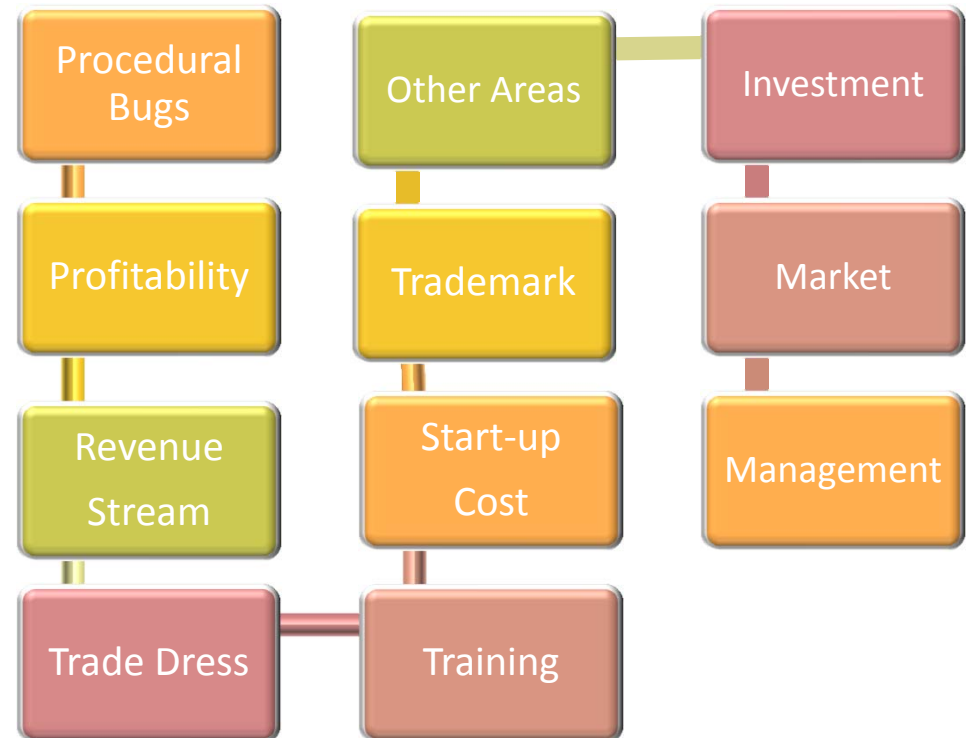
Mandatory Disclosures



# Is my BUSINESS something that can be Franchised?

*Have I validated the model?*

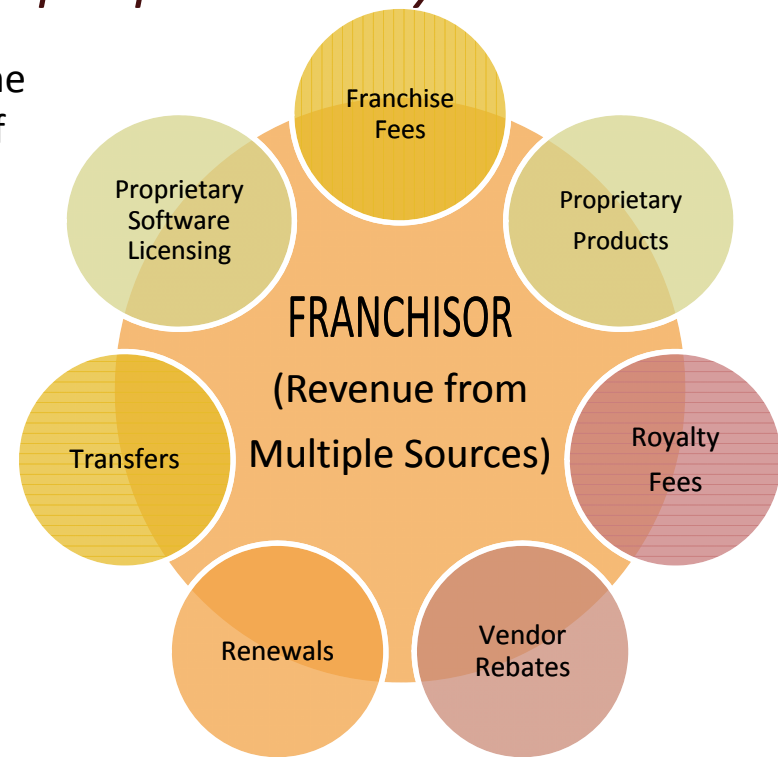
- Have I worked out all the **Procedural Bugs**?
- Is the **Business Profitable**?
- Have I developed all possible **Revenue Streams**?
- If you require a store front, do I have **Trade Dress** completed?
- Is this something I can **Teach** others to do?
- Have I determined the **Start-up Costs** a prospective franchise will need to open a location?
- Do I have a **Trademark**?
- Can the business model succeed in **Other Areas** of the county
- Return on **Investment**
- **Market** trends and conditions
- Strength of **Management**



# Advantages of Franchising

*Growing your business with other people's money*

- Raising capital to expand your business is time consuming and will dilute your percentage of ownership
- Limits your need to investment capital
- Maintain control
- Franchisees are owners. They have a vested interest in the success
- Potential to expand more rapidly
- Ability to generate revenue from multiple sources
- Return on investment
- Limited contingent liability
- Reduced role in day-to-day operations
- Reduced vicarious liability
- Advertising
- Brand building
- Highly motivated management



# Franchise Process - Overview

**TIME FRAME** – One to two years from initial decision to franchise.

## **THINGS TO CONSIDER:**

- What rights will be granted and what rights will be reserved by franchisor?
- What geographic limitations if any will be imposed?
- What types of agreement should I prepare?
- What assistance will franchisor provide?
- What types of control will franchisor exercise?
- How much should you charge for royalty payments?
- Should you charge a minimum royalty?
- What is the term of the franchise agreement?
- How will franchisor protect its system?
- Who will be authorized suppliers?





# Steps to Franchise your BUSINESS

- **TRADEMARK** – File a trademark with the United States Patent and Trademark Office (“USPTO”). Trademark process takes 8 to 12 months  
*(You can sell franchises with a pending trademark)*
- **FRANCHISE DISCLOSURE DOCUMENTS** – Draft a Franchise Disclosure Document, which includes the franchise agreement, schedules and exhibits. The FDD is format for disclosing franchisor information to prospective franchisees. The intent of the FDD is to protect the public by providing information about the franchisor and the company.
- **AUDITED FINANCIAL STATEMENTS**
- **ADVERTISING AND MARKETING**
- **FRANCHISE SALES TRAINING**
- **OPERATING MANUAL** – Preparation of an operations manual which includes how to operate the franchise, training, required forms. This is a proprietary product of the franchisor and considered by most franchisors as a trade secret.
- **STATE REGISTRATION** – Some states require you to register the FDD, some are non-registration states and some are filing states, which only require a fee to be paid.



# FRANCHISE REGISTRATION STATES

These States require registration and approval of Franchise Documents prior to selling in the State or from the state.

State	Office of Oversight	Fee
California	Department of Business Oversight	\$675
Hawaii	Commissioner of Securities Department of Commerce & Consumer Affairs Business Registration Division Securities Compliance	\$125
Illinois	Office of Attorney General Franchise Division	\$500
Indiana	Office of Secretary of State Franchise Division	\$500
Maryland	Office of Attorney General Division of Securities	\$500
Michigan	Consumer Protection Division Franchise Section	\$250
Minnesota	Minnesota Department of Commerce	\$400

State	Office of Oversight	Fee
North Dakota	Office of Securities Commission Franchise Division	\$250
New York	State Department of Law Franchise & Securities Division	\$750
Rhode Island	Franchise Office Division of Securities	\$500
South Dakota	Department of Revenue and Regulation Division of Securities	\$250
Virginia	State Corporation Commission Division of Securities & Retail Franchising	\$500
Washington	The Department of Financial Institutions Securities Division	\$600
Wisconsin	Department of Financial Institutions Division of Securities	\$400

# NON-REGISTRATION STATES

These States do not require filing or registration to be able to sell Franchises in the State. They only require that the Franchisor follow Fair Trade Commission (“FTC”) Trade Regulation Guidelines.

Alabama	Kansas	New Mexico
Alaska	Kansas	Ohio
Arizona	Louisiana	Oklahoma
Arkansas	Massachusetts	Oregon
Colorado	Mississippi	Pennsylvania
Delaware	Missouri	Tennessee
District of Columbia	Montana	Vermont
Georgia	Nevada	West Virginia
Idaho	New Hampshire	Wyoming
	New Jersey	

*Franchisor is required to issue the Franchise Disclosure Document required by the FTC, 14 days prior to accepting any money or commitment from a potential franchisee.*

# FILING STATES

A Filing State is one that requires the Franchisor to file and pay a fee, but does not require the Franchisor to submit documents and seek approval to sell Franchises, like a registration State.

Connecticut	\$400
Florida	\$100
Kentucky	No Fee
Maine	\$25
Nebraska	\$100
North Carolina	\$250
South Carolina	\$100
Texas	\$25
Utah	\$100

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# MANDATORY DISCLOSURES

## FRANCHISE DISCLOSURE DOCUMENT

### EACH FDD HAS 23 SEPARATE CATEGORIES

1) The Franchisor, Its Predecessors & Affiliates

2) Business Experience

3) Litigation

4) Bankruptcy

5) Initial Franchise Fee

6) Other Fees

7) Initial Investment

8) Restrictions on Sources of Products

9) Franchisee's Obligations

10) Financing

11) Franchisor's Obligations

12) Territory

13) Trademarks

14) Patents, Copyrights, & Proprietary Information

15) Obligation to Participate in the Actual Operation of the Franchised Business

16) Restrictions of What Franchisee May Sell

17) Renewal, Termination, Transfer, and Dispute Resolution

18) Public Figures

19) Earnings Claims

20) List of Franchise Outlets

21) Financial Statements

22) Contracts

23) Receipt