



## Franchises 101: Do Your Homework Before You Buy

Many Americans desire to become an entrepreneur or business owner; buying a franchise is one way to achieve this goal without the challenges of building from the ground up.

Franchises are the plug-and-play devices of the business world that allow buyers to buy the product idea, the business system and the brand's reputation in one neat package. A franchise typically enables an investor, or "franchisee," to operate an outlet. By paying a fee, a franchisee is given a business format developed by a company, or "franchisor," the right to use the franchisor's trademarks or servicemarks, initial training and on-going support. The right franchise choice can reduce investment risk for the franchisee; but, get all of the facts before buying.

The Federal Trade Commission ("FTC") governs the offer and sale of franchises. It has published "Buying a Franchise: A Consumer Guide," which is available at [www.ftc.gov](http://www.ftc.gov). This publication is one free source of information to study when deciding if it is wise to purchase a franchise.

*The FTC has outlined certain responsibilities of franchise ownership to consider:*

- **Cost.** In exchange for obtaining the rights to use the franchisor's name and assistance, a franchisee pays: an initial franchise fee, sometimes in the thousands; an outlay to rent, build and equip an outlet according to the franchisor's specifications; continuing royalty payments usually on a monthly basis calculated on gross income; and, in some cases, an advertising fee which is generally applied to national or local advertising.
- **Controls.** To ensure uniformity, franchisors typically control how franchisees conduct business. Such control can include the following: site approval for the franchisee's outlet; design or appearance standards to ensure uniformity among franchises; restrictions on goods or services offered for sale; restrictions on the methods of operations utilized by a franchisee; and restrictions as to the territory in which a franchisee may offer its goods or services.
- **Terminations and Renewal.** A franchisor can terminate a franchise if the franchisee fails to pay royalties or abide by the terms of the franchise agreement. Franchise agreements generally run from 10 to 15 years. After that time, a franchisor may decline to renew the franchise. If the franchisor does renew, it may demand a renewal fee, raise the royalty payments, impose new design standards and sales restrictions, and/or change the franchisee's territory.

Before investing in a franchise system, it is important to engage financial and legal counselors to help evaluate the soundness of the company and its offering. These professionals should be chosen by the investor and not recommended by the franchisor. An attorney with business and franchise experience should evaluate all franchise offering documents required by the FTC which will include, at least, a franchise offering circular and a franchise agreement. The attorney will explain legal obligations under the franchise contracts and can help a buyer avoid costly contract loopholes.

Buying a franchise can be a great way to become your own boss and still enjoy the support of a larger organization; but, you must do your homework to find the right fit.

About the Author: Brent Hultquist is an Associate with the firm and his practice areas include Wills; Trusts and Estates; Probate; Asset Protection; Tax Law; Business Law; Corporate Law; Partnership Law; Insurance; Franchise Law; Intellectual Property; and, Real Estate Law.

## ON A PERSONAL NOTE...

Before I was an attorney, I was an historian (still am). Do you know the significance of August 2, 1776?

On July 4, 1776, the members of the second Continental Congress finally agreed to declare independence and John Hancock affixed his signature to memorialize the agreement. Over eighty copies of the declaration were then printed and circulated throughout the colonies. Meanwhile the delegates went home, contemplating what they had just agreed to. Their declaration, from the British point of view, was an act of treason against the British crown, punishable by death.

Once back at home, the delegates must have had discussions with their families and friends about the peril they were all now in. One can imagine them preparing their wives for disaster and looking in on sleeping children and surveying their fine homes and estates, knowing they may lose it all.

The delegates reconvened in Philadelphia on August 2nd. Each man's name was called and soberly, deliberately, each one affixed his signature to the document. From that day forward, they were marked men. The British relentlessly pursued them for five years and many suffered great hardship.

So, let's remember to mark each future August 2nd in honor of these who risked everything for the ideals of liberty so eloquently described in the Declaration.

Best regards,

*Curtis Shortridge*

## Employment Law Update: USERRA and the FMLA

In our Spring, 2007 newsletter edition, we went through the Uniformed Services Employment and Reemployment Act (USERRA) and how it affects employers and employees when the government calls up a member of the Reserves or National Guard into active duty with the military. Earlier this year, the President signed into law amendments to the Family and Medical Leave Act (“FMLA”) that also could affect those employees and employers.

The new law is part of the National Defense Authorization Act for Fiscal Year 2008. It amends the FMLA in two ways. First, it expands the total leave available to 26 weeks for a qualifying employee to take care of a soldier who has a serious illness or injury. An employer who receives a request for such leave should make sure the employee’s request is considered appropriately. Second, the new law expands what qualifies for the regular amount of leave under the FMLA. A qualifying employee may take FMLA leave when a certain family member is called to duty in “any qualifying exigency.” This second part takes effect once the U.S. Department of Labor defines “qualifying exigency.” A recent check of the Department of Labor Web site reveals that the department has not finished that process. Many small to medium-sized companies do not fall under the FMLA. Still, this recent change to the employment law area illustrates the point that employment law is not static.

Another example that affects all employers in Colorado was the addition last year of sexual orientation to Colorado’s Anti-Discrimination Act.

The courts also have made significant changes to how employment cases are treated. These changes emphasize that employers and employees should keep abreast of their rights and responsibilities on a regular basis. Please contact us if you have any questions about this dynamic area of the law.

About the author: Matthew D. Macy received his J.D. from Emory University School of Law. He brings special civil litigation expertise to the firm in the areas of Employment Issues, Trade Secrets, Officer and Director Liability, as well as Unfair Competition.

### DO YOU NEED A SPEAKER?

Are you are responsible for scheduling speakers for business or special interest meetings? Our attorneys are available to speak to your group on relevant legal topics. This service is provided free of charge to our clients and to friends of the firm.

Whether you are planning an informal roundtable discussion with a handful of interested parties, an annual homeowners meeting, a seminar, or an in-house education event, give your attorney or our office administrator, Elise Dickerson, a call at (303) 694-2000, for scheduling and topic suggestions.

This publication provides general information and should not be used or taken as legal advice for specific situations which depend on the evaluation of precise factual circumstances. Use of any information herein does not create an attorney-client relationship. The law is constantly changing and there are exceptions to almost every rule of law. You should not rely on the information provided in this newsletter without seeking legal counsel.

Notice of New Rates: The following hourly rates are in effect for legal services.

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|----------------------|----------|
| Robert R. Stewart    | \$310.00 |
| Curtis W. Shortridge | \$275.00 |
| Barry W. Rothman     | \$235.00 |
| R. Scott Fitzke      | \$215.00 |
| Matthew D. Macy      | \$210.00 |
| Greg S. McLaughlin   | \$210.00 |
| Brent S. Hultquist   | \$200.00 |
| Brian R. Becker      | \$170.00 |
| Paralegal            | \$85.00  |