

BUYING ANY FRANCHISE – TIPS FROM AN MBA FRANCHISE ATTORNEY AND FORMER FRANCHISE OWNER

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BUYING A FRANCHISE VERSUS STARTING AN INDEPENDENT BUSINESS

As a [franchise attorney](#) who has owned, operated and sold a very successful franchise, I can say buying a franchise represents a different approach to starting a business. Millions of people dream about owning their own business. Having the independence that being your own boss brings, the security that no one can fire you, hopefully enjoying a good income - and for the most successful - the accumulation of wealth and prosperity.

Unfortunately, the cards are stacked against a new small business making it big - or making it at all. An endless stream of problems makes competition from large, sophisticated chains just too intense. Most new start-ups end as failures.

Buying a franchise business opportunity may help level the playing field. The U.S. Department of Commerce claims a franchise opportunity is "...the best chance to compete with giant companies that dominate the marketplace." Some statistics are impressive: it is said over 40% of all U.S. retail sales are through franchised establishments. Giants like McDonalds, KFC, 7-Eleven, H&R Block and Radio Shack are familiar, household franchise names, and franchises are available in a wide range of industries from thousands of other companies.

A CHANCE TO GET RICH, BUT ALSO A CHANGE TO GET STUNG

Just as franchising represents a chance to get rich, it's also a chance to get stung. Everyone knows the big blue-chip franchise names like McDonalds, KFC, Radio Shack, etc. But they're the exception and not the rule. Many franchise owner wannabes sign on with far smaller, lesser-known or unknown names and companies that may not have a clue about helping operators make money.

Regrettably too many over-eager, first-time franchise buyers leap into buying a franchise without using a franchise attorney who understands the in's and out's of franchise relationships, the viability of the industry or company under consideration, and the long-term legal consequences of the franchise contract they are signing.

FRANCHISE DUE DILIGENCE

Fortunately, with proper planning, research, investigation and sound franchise advice, these risks can be minimized with the proper franchise due diligence and professional advice. Don't wait until you've signed the franchise contract to begin

this process. By then, the window of franchise agreement negotiation has slammed shut and it's usually too late to do anything.

Using a franchise attorney early on is the proper starting point. But don't use any franchise attorney – find one who also has an MBA and you've narrowed the field considerably. You can Google the search term MBA franchise attorney. Now you're dealing with someone who understands both the legal and business issues in buying a franchise. Good job, but don't stop here. You can narrow the field even more by finding a franchise attorney, with an MBA, who has also owned a franchise before. Buying a franchise advice is incredibly more meaningful when it comes from a former, successful franchise owner - as opposed to someone who never operated a franchise before. Try finding another franchise attorney who has owned a successful franchise.

AVOID ILLEGAL DISGUISED FRANCHISES CALLED A LICENSE

An increasing number of unscrupulous companies that don't fly straight or play by the rules are selling licenses that are really disguised, illegal franchises. Instead of providing a comprehensive FDD Franchise Disclosure Document that meets stringent federal and state legal requirements, these companies go a different route. They present a "license agreement" or a distributor agreement" with no disclosures, no audited financial statements, no background of the principals, no investment requirement details, etc. The franchise versus license situation is one that I often consult on as a franchise expert, after clients have lost their life savings, retirement accounts, etc. investing in a license or distributorship that is an illegal disguised franchise. Don't go down this dangerous path.

DEVELOP A FRANCHISE EXIT STRATEGY

Finally, and this applies to franchise investments as well as investing in any business venture, develop a plan to succeed but also an exit plan that minimizes financial risk in case things don't work out. Both plans need to be developed before the investment is made and contracts are signed. Be sure your franchise negotiations reflect this planning aspect. Don't wait until problems develop to begin thinking about a franchise exit strategy, like how can I cancel my franchise agreement or get out of my lease. By then it's usually too little, too late.

Author credentials and background

Kevin B. Murphy, Mr. Franchise, is a franchise attorney and [franchise expert](#) based in San Francisco with a 30-year practice devoted exclusively to franchise law. Since 1993, Mr. Murphy has also been an Approved MCLE (Minimum Continuing Legal Education) Provider by the State Bar of California, teaching franchise law, franchising vs. licensing (franchise vs. license), and intellectual property courses to California attorneys. In 2002 - 2003 he started, operated and sold a very successful franchise. Mr. Franchise holds degrees in business administration and law from the University of San Francisco and an MBA from San Francisco State University. He is the author of over 50 franchise publications, including 4 books on franchising and one book on trade secrets.