LEGAL ADVICE

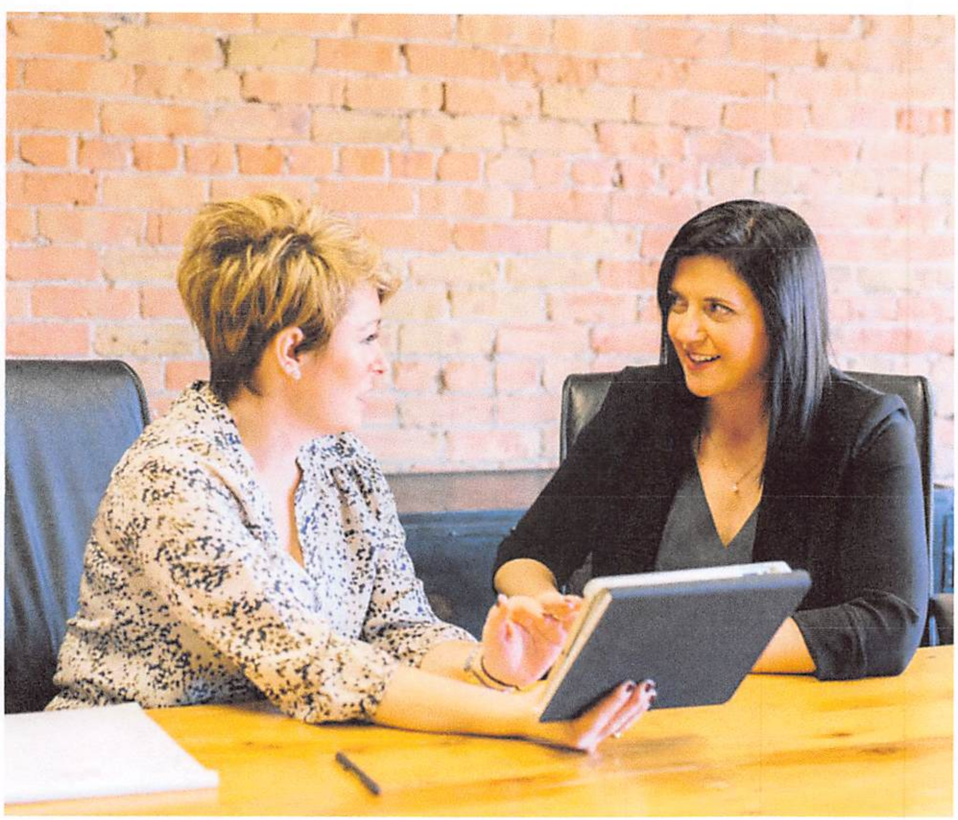
# What Can a Franchise Attorney Do For You?

**by Nancy Lanard,** *Esq. Founder Lanard & Associates*

You are considering acquiring a franchise. You have received the Franchise Disclosure Document (FDD) and have thumbed through the pages of information.

## WHAT DO YOU DO NOW!

Franchisors are required to disclose 23 items of information that are intended to assist you in deciding if the investment is one that you should consider. A prospective franchisee should carefully review the FDD. In reviewing these 23 required items, a great deal of information is uncovered. You will learn about the history of the company, whether there are affiliates or predecessors, how long the company has been in business and how long the company has been selling franchises. Additionally you will learn about litigation brought by and against the company involving the franchise. You will learn the backgrounds of the various principals involved in the company and whether any have been involved in bankruptcy. There is a great deal of financial information included in the 23 items which indicate franchisees' financial obligations to the company and to others and the estimated initial costs involved, as well as the financial strength of the franchisor.



Once you have reviewed the FDD, you should perform due diligence by contacting existing and former franchisees in the franchise system. Ask many questions about their experiences. In addition to the obvious financial questions, you should inquire about the support they receive from the franchisor, their positive and negative feedback on owning the franchise and whether, if they knew what they now know, they would buy the franchise today.

Your next step should be to show the franchisor's financial statements (contained in the FDD as an exhibit) to an experienced business accountant. The accountant should advise you on whether he or she believes that the franchisor has sufficient financial strength to support your business and the franchise system for the duration of the franchise term. Additionally, the accountant should advise you on whether he or she believes that this business appears likely to be able to financially support you and your family.

The last step in determining if you should acquire a franchise is to consult an experienced franchisee attorney. As a law firm that primarily focuses on representing franchisees, our attorneys review of the documents begins with checking the status of the trademark(s) to make sure they are federally registered trademarks.

After all, when you are buying a franchised business, you are acquiring a business that operates under a trademark. It is important to be sure that the trademark is federally protected. We then check the state in which the territory or business will be located to ensure that there isn't an independent business (not part of the franchise system) with a similar name that will cause confusion to the public. If there is such a business, that independent business may be able to sue you for trademark infringement if their use of the name predates the franchisor's federal trademark registration.

Our review continues with a thorough review of the franchise agreement. While reviewing the agreement we make note of obligations (financial, reporting and others) that the franchisee will have to the franchisor. Although some agreements are not negotiable, some agreements are. Therefore, I suggest revisions to the agreement which would make the document fairer to the franchisee. Some of the modifications involve providing a standard of reasonableness when franchisor approval is required, providing more notice prior to the franchisor's exercise of its remedies upon default, insuring that any required indemnification by the franchisee to the franchisor is limited, and requiring that the franchisor provide indemnification to the franchisee for any trademark infringement actions or claims. These are just a sampling of some of the modifications that can often be negotiated with the franchisor.

Once the franchise agreement is reviewed and negotiations are completed, the franchise attorney should discuss the type of legal entity under which the franchisee should operate the franchised business. In conjunction with the franchisee's accountant, a decision should be made whether the business should be an S-corporation or a limited liability company.

The last piece in representing a franchisee is reviewing and negotiating the retail shopping center lease. Often franchises are retail businesses. Reviewing the leases for the retail location requires an expertise. As a franchise law firm that dedicates most of our practice to franchise law, we handle a great deal of commercial shopping center leases. These documents are highly negotiable, from the business terms, to the legal nuances. The attorneys at Lanard and Associates know the many legal issues and types of business terms that the less experienced attorney, general practitioner and the real estate broker won't know to negotiate. In addition, we have found that any review performed by the franchisor is not a substitute for an independent legal review.

It is clear that even when a franchise agreement is not negotiable, it is important to retain experienced franchise counsel to assist you with this process. You are undertaking a large financial obligation and it is important to know that someone is on your team assisting you in being in the best legal position you can be. Lanard and Associates looks forward to being your teammate.

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 *Contact information: Nancy Lanard, Esquire, 600 W. Germantown Pike, Suite 400, Plymouth Meeting PA 19462; 215-392-0030 x101, nlanard@lanardandassociates.com.*

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