

Contacting Current and Former Franchisees

A Practical Guidance® Article by Julie Lusthaus, Lusthaus Law P.C.



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One of the benefits to buying a franchise is that there are other franchisees in the system, as well as other franchisees who have recently left the system. These individuals are operating (or have operated) the very type of business that the prospective franchisee will be operating for the same franchisor. These franchisees are often excellent sources of information for prospective franchisees and can share information with them about the franchise, franchisor, and industry.

Item 20 of the Federal Trade Commission (FTC) Franchise Rule ("FTC Rule"), as well as various state franchise sales laws, require franchisors to disclose certain contact information for current and former franchisees in the Franchise Disclosure Document (FDD). 16 CFR 436 (2008) This information is provided with the hope and expectation that prospective franchisees will reach out to current and former franchisees to learn more about their contemplated investment prior to making the commitment to develop and operate the franchise.

Disclosures required by the FTC Rule

The FTC Rule requires franchisors to disclose the following information about current and former franchisees:

- The names of all current franchisees and the address and telephone number of each of their outlets. Alternatively, franchisors can disclose this information for all franchised outlets in the state, but if these franchised outlets total fewer than 100, the franchisor must also disclose this information for franchised outlets from contiguous states and then the next closest states until at least 100 franchised outlets are listed.
- The name, city and state, and current business telephone number, or if unknown, the last known home telephone number of every franchisee who had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year or who has not communicated with the franchisor within 10 weeks of the disclosure document issuance date. Franchisors may substitute alternative contact information at the request of the former franchisee, such as a home address, post office address, or a personal or business email address. 16 CFR 436 (2008).

To protect franchisee privacy, only the name of the franchisee and the address, and telephone number of their outlet must be disclosed. In the case of a franchise that may be operated from the franchisee's home, such as an Internet franchise, franchisors may substitute a post office box or current email address for the home address for the same reasons. In that situation, franchisors should list only the telephone number of the franchisee's business, if there is a separate line for the business. If not, a listing of a valid email address will suffice. Further guidance can be found in the North American Securities Administrators Association (NASAA) 2008 Franchise Registration and Disclosure Guidelines which can be found on the NASAA [website](#).

Counsel for prospective franchisees should encourage their clients to reach out to as many current and former franchisees as reasonably possible.

Contacting Current and Former Franchisees

Prospective franchisees should be encouraged to contact as many current and former franchisees as possible. Any information received from former and current franchisees is valuable information and the opportunity to speak with current franchisees creates an opportunity to meet future fellow franchisees.

While not all current and former franchisees will be responsive or even honest in their answers, their silence can also be informative. For example, current franchisees may not want to disclose problems in the franchise system. Perhaps they are not attaining the success they hoped to achieve. Such silence may be a red flag for underlying problems that may exist with respect to the franchise system and/or with the franchisor. However, former franchisees can tell the prospect why they left the system and issues and concerns that management and current franchisees would not want to share with a prospective franchisee.

Prospects should be aware that some former (and current) franchisees may be bound by a confidentiality agreement entered into with the franchisor as a result of a settlement or otherwise, and therefore may be precluded from speaking about the franchisor. Still, speaking with both groups can provide the prospect with insider knowledge not otherwise attainable about the franchise system, the franchisor, or other franchisees.

For those prospects considering investment in a new or emerging franchise brand, they should contact all of the current and former franchisees. Alternatively, for those prospective franchisees considering investment in a larger franchise system, the scope of the reference list may be in the hundreds, and it may not be feasible to reach out to everyone. In that event, franchisees can consider dividing the reference list into two categories:

- **Experiential:** All franchisees can speak to their history with the franchisor and the industry. This category can be further subdivided into (i) current franchisees and (ii) former franchisees, who will also be able to discuss the reasons why they left the system.

- **Geographic:** Franchisees located in the proposed area for the prospect's franchise can also answer questions specifically about the geographic region in which the prospective franchisee will operate.

Experiential Questions

There is an unlimited number of questions that prospects can ask franchisees about their career and experience with the franchisor. Prospects can consider starting the dialogue with open-ended questions, such as "What inspired you to join this franchise?"

Once it is clear that the franchisee is willing to share information and is comfortable engaging in the conversation, the prospect can ask more direct questions such as those related to specific issues. These questions may include:

- Was the initial training sufficient?
- Does the franchisor provide adequate ongoing support?
- Did your investment costs match those described in Item 7 of the FDD?
- Did you make as much money as you expected?"
- Are you glad you bought the franchise?
- Did you consider any other franchises before you bought this one? If so, why did you choose this opportunity?
- Has the franchisor provided you with all of the assistance it agreed to provide?
- Does the franchisor seem interested in helping you achieve success or is it more interested in selling franchises or profiting from the operation of your franchise?
- Is your business successful?
- How long did it take you to break even?

For more information, see Andrew Selden & Rupert Barkoff, *Fundamentals of Franchising* at 298 (3d ed. 2008).

Geographic Questions

In addition to obtaining information about general franchise operations, the benefit of speaking with other franchisees who are in the same state, county, and/or city as the prospect is that they have insight about required permits, licenses, the local market for the franchise, and other issues

that may be unique for the relevant geographic area. These franchisees already have their boots on the ground and can provide answers to specific questions a prospective franchisee may have about the territory.

Those questions might include:

- What permits, if any, were required by the local/state governments?
- How long did it take to get those permits?
- How long did it take to build-out the location?
- Were there any unexpected obstacles?
- Were there any new or unexpected costs associated with developing the location or operating in the geographic area?

Speaking with these franchisees will give the prospect street-level information about the pros and cons of developing the franchise in the proposed territory. One caveat of reaching out to a franchisee near the prospect's preferred territory/location is that the franchisee may not want the competition that the prospect's unit would bring. Such franchisees may even seek to acquire the proposed territory for itself if they know another party is considering opening a franchise in their area. Barring that, prospective franchisees should feel confident calling anyone on the list.

Among all of the questions to ask, if the prospect has to limit it to, or close with, one question, it should be all-encompassing, such as:

Knowing what you know now, would you buy this franchise if you had the opportunity to do it over and why?

Asking this same question to numerous current and/or former franchisees will provide the prospective franchisee

with a broad perspective on the health and happiness of the franchise system and its franchisees.

It is easy to get lost amid the avalanche of information that will be derived from speaking to multiple franchisees. But by being strategic and creating a list of questions in advance, thereby asking everyone the same questions and receiving multiple perspectives from existing and former franchisees, the prospect will be in a position to make a more informed decision about whether to make an investment and join that franchise system. These franchisees can also provide useful information about the process for developing and operating the franchise. Moreover, as the current franchisees are fellow members of the system that the prospect will be joining, it can be helpful to meet these franchisees in advance to ensure that it will be a good fit. By speaking with current and former franchisees, prospective franchisees will receive pragmatic and honest information about the franchisor and the industry.

Related Content

Practice Notes

- [Franchisees and Prospective Franchisees Considerations](#)
- [The Federal Trade Commission Franchise Rule](#)
- [A Guide to the Franchise Disclosure Document](#)
- [State Websites for Franchises and Business Opportunities](#)
- [Franchising under State Franchise Laws](#)
- [Franchising under the Federal Trade Commission Franchise Rule](#)

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Julie Lusthaus is a franchise attorney based in Westchester, New York whose practice focuses on franchise and general business matters. Julie represents a broad spectrum of franchised and independently owned businesses and their owners in all stages of growth. Julie's clients operate businesses in various industries including restaurants (full-service, bakeries, cafés, delis, QSRs and juice bars), retail, hospitality, real estate, fitness, recreation and family entertainment, business services, household and home improvement services, health care, education, childcare, pet services, printing, used clothing, senior care, residential and commercial cleaning, staffing services and disaster restoration.

Julie is also a skilled litigator with many years' experience representing business clients in state and federal courts as well as in arbitration and mediation.

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