

FRANCHISE BROKER AND SELLER COMPLIANCE GUIDE

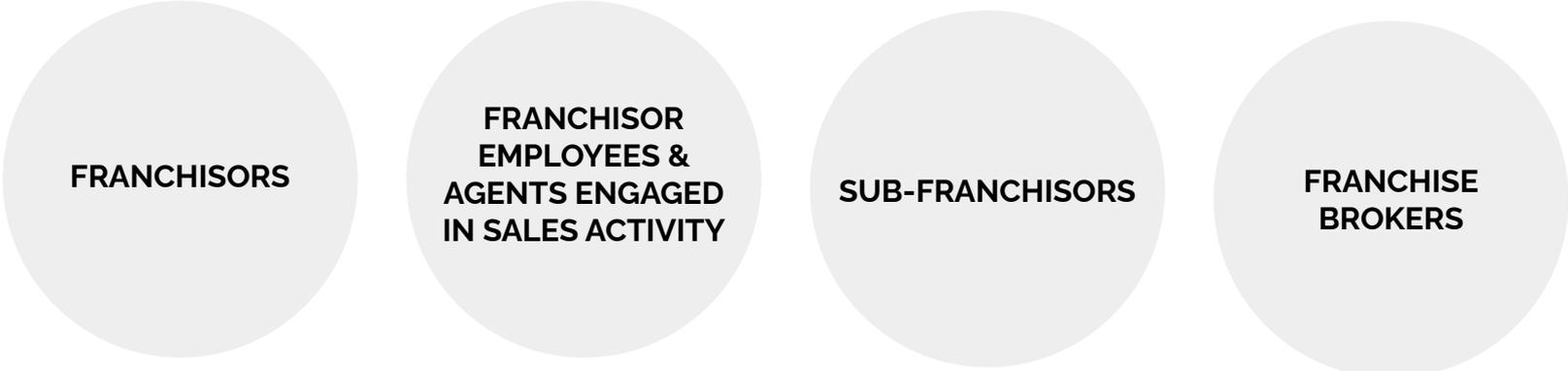


franchiselawsolutions.com/fdd/brokers-sellers
(718) 979-8688

TOPICS:

1. What is a Franchise Seller?
2. Role of Franchise Brokers
3. Franchise Broker vs. Franchise Consultant
4. FDD Disclosure Obligations for Franchise Sellers
5. Franchise Seller & Broker Liability for Sales Violations
6. Recommendations for Brokers

FRANCHISE SELLERS INCLUDE:



FRANCHISORS

FRANCHISOR
EMPLOYEES &
AGENTS ENGAGED
IN SALES ACTIVITY

SUB-FRANCHISORS

FRANCHISE
BROKERS

FRANCHISEES: Does not include franchisees who only sell their individual franchised outlet.

FRANCHISE SELLERS

Legal term defined by federal law:

The Federal Franchise Rule defined a franchise seller as:

“Franchise seller means a person that offers for sale, sells, or arranges for the sale of a franchise. It includes the franchisor and the franchisor’s employees, representatives, agents, subfranchisors, and third-party brokers who are involved in franchise sales activities. It does not include existing franchisees who sell only their own outlet and are otherwise not engaged in franchise sales or on behalf of the franchisor.”

FRANCHISE BROKER REGISTRATIONS

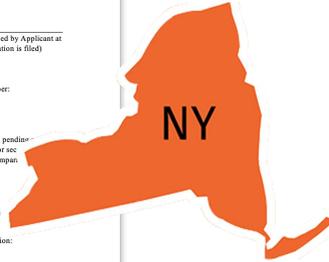
New York and Washington State require Broker Registration

Form I - Franchise Broker Registration Form

FRANCHISE BROKER REGISTRATION FORM

FEE \$150.00
(To be enclosed by Applicant at time application is filed)

- Name of Franchise Broker: _____
- Franchise Broker's principal business address and telephone number: _____
- State whether the Franchise Broker:
 - Has an administrative, criminal or material civil action pending that person alleging a violation of franchise, antitrust or sec alleging fraud, unfair or deceptive practices, or any compan allegations?
Yes ___ No ___
If you answered "yes", please provide:
 - Names of the parties:
 - Forum, nature and current status of the pending action:
 - Case or proceeding identification number:
 - Has ever been convicted of or pleaded into contemndere to a felony charge; or been held liable or enjoined in a civil action by final judgment or been the subject of a material action involving an alleged violation of a franchise, antitrust or securities law, or allegations of fraud, fraudulent conversion or misappropriation of property, unfair or deceptive practices, or comparable allegations?
Yes ___ No ___
If you answered "yes", please provide:
 - Names of the parties:
 - The forum:
 - Case or proceeding identification number:



State of Washington
Dept. of Financial Institutions
Securities Division
P.O. Box 9033
Olympia, WA 98507-9033
(360) 962-4790
<http://dfi.wa.gov>

Pursuant to RCW 19.100.140 and WAC 460-82

APPLICATION FOR FRANCHISE BROKER REGISTRATION

Item 1. Type of Application

Initial Application (\$50) Amendment (No Fee)
 Renewal Application (\$25) Re-Application (\$50)

Application is necessary when an applicant previously received a franchise broker license, but the license is expired at the application is submitted.

Identity of Applicant

Please provide the following information regarding the applicant. If the applicant is an individual, providing as a franchise under the individual's own name or under a DBA name, the name of the applicant is the individual's name. If instead the applicant is a corporation or other legally formed entity, the applicant name is the name of the corporation or other legal entity.

Entity Type (Select one)
 Corporation
 Limited Partnership
 Limited Liability Company
 General Partnership
 Sole Proprietorship
 Other (Specify) _____

Year of Incorporation/Organization: _____
Institution of Incorporation/Organization: _____

Item 3. Principal Place of Business

Street Address Line 1: _____ Street Address Line 2: _____
City: _____ State/Province/Country: _____ ZIP/Postal Code: _____ Phone No.: _____

Item 4. Contact Person

Directions: Provide the name and contact information for the person to contact with questions about the filing of this notice.

Last Name: _____ First Name: _____ Firm Name: _____
Street Address Line 1: _____ Street Address Line 2: _____
City: _____ State/Province/Country: _____ ZIP/Postal Code: _____
Phone: _____ Fax: _____ E-mail: _____

Item 5. Payment Method

Indicate the payment method for this filing: Check Money Order Online

<https://ag.ny.gov/sites/default/files/form-i-franchise-broker-registration.pdf>

<https://dfi.wa.gov/sites/default/files/forms/fba.pdf>

WHAT TRIGGERS THE FDD DISCLOSURE REQUIREMENT?

Discussions Between a
FRANCHISE SELLER
with a **PROSPECTIVE**
FRANCHISEE



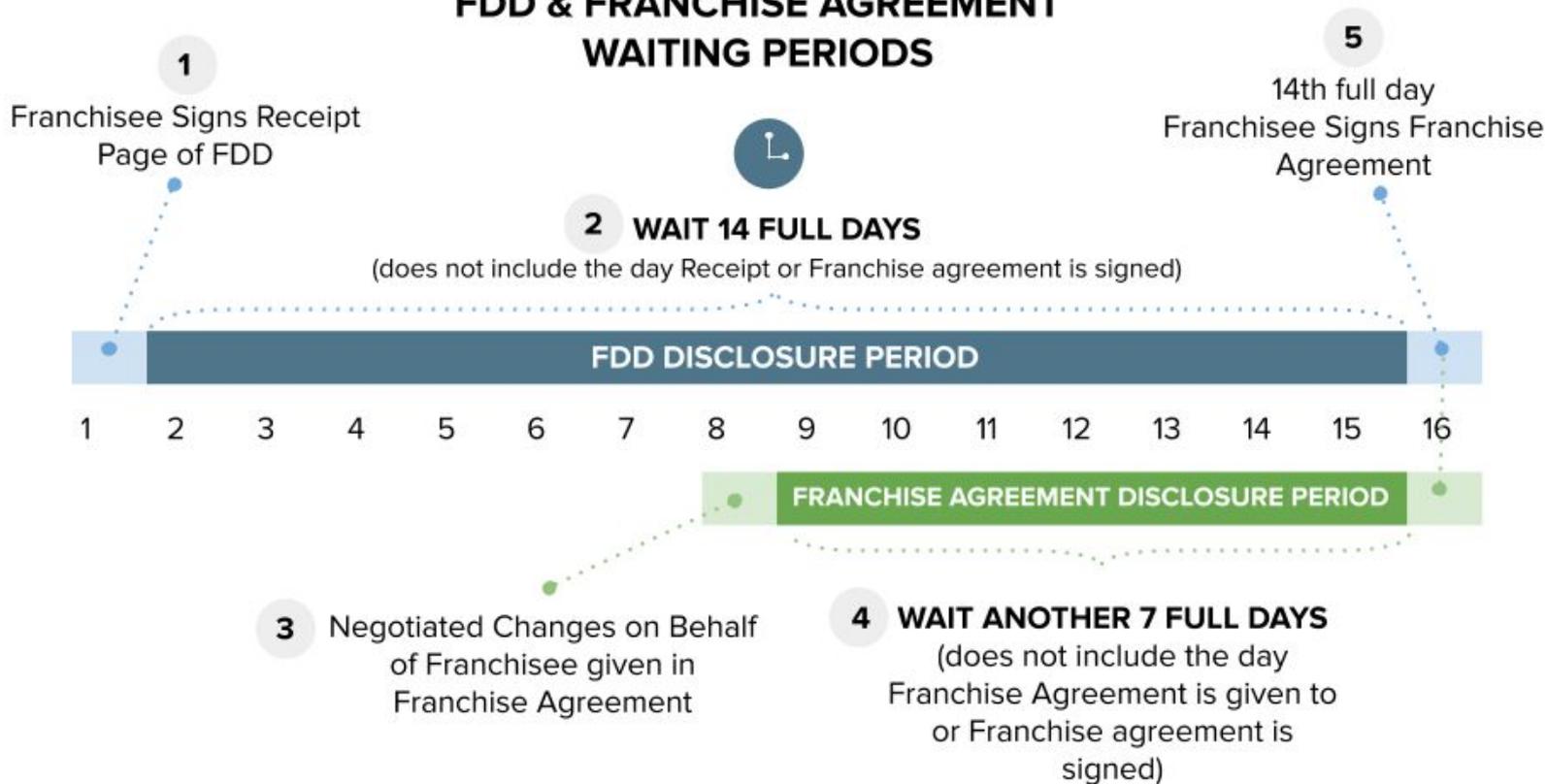
TRIGGERS

FRANCHISOR'S FDD
DISCLOSURE
OBLIGATION

Franchise Seller = Franchisor or Franchise Broker

Prospective Franchisee = "Any person...who approaches or is approached by a franchise seller to discuss the possible establishment of a franchise relationship."

FDD & FRANCHISE AGREEMENT WAITING PERIODS



FDD DISCLOSURE OF FRANCHISE SELLERS

ITEM 2

- Management Team Franchise Sellers

FDD RECEIPT PAGE

- Management Team Franchise Sellers
- Franchise Brokers who worked on particular deal (can be handwritten on Receipt page and redisclosed)

FRANCHISE SELLER DISCLOSURE FORM

1. State requirement where franchisors disclose their “franchise sellers”.
2. Required as part of FDD registration in all Franchise Registration States except Michigan, South Dakota, Virginia, and Washington.
3. Applies to franchisors franchise seller: employees, employees of the franchisors parent or affiliates and independent brokers.
4. Franchisor's can supplement and file additional franchise seller disclosure forms throughout the year in every state except California.

California requires the filing of an FDD post-effective amendment.

***REQUIRED IN:** California, Hawaii, Illinois, Maryland, Minnesota, North Dakota, New York, Rhode Island, and Washington

FRANCHISE SELLER DISCLOSURE FORM

REQUIRED FOR:

Each person who may be engaged in soliciting or offering or selling the franchises...the form should be submitted for the franchisors own employees... and for any independent third-party (*i.e.*, broker) who may be providing sales services on its behalf in each [state]...

FRANCHISE SELLER AND BROKER LIABILITY FOR FRANCHISE VIOLATIONS

Franchise Sellers - including franchise brokers (under the Federal Franchise Rule)

- Duty to Disclose - at time of furnishing FDD any franchise seller must notify a prospective franchisee if the seller knows of any material changes
- Duty to Furnish FDD - Brokers do not have liability for failing to disclose FDD - only franchisors

PROHIBITION AGAINST CONTRADICTIONARY INFORMATION

“The amended Rule prohibits a franchise seller from making any statement that contradicts the information disclosed in the franchisor’s disclosure document...Prohibited contradictory statements include those made orally, visually, or in writing. For example, a franchise broker would be in violation of the amended [Franchise] Rule if it stated that the franchisor has never been sued by a franchisee, when, in fact, the franchisor has been sued and has disclosed the information in Item 3. Of course, franchise sellers are always free to disseminate additional truthful non-contradictory information to a prospective franchisee...”

BROKER RECOMMENDATIONS

1. Work to avoid a potential misunderstanding as to the nature of the relationship between you (as the franchise broker), your franchisee candidates, and ultimately the franchisor that pays you a commission;
2. Focus on transparent relationships between you and the franchisee candidates that you assist and consider implementing a use of a disclosure advising your candidates as to the nature of your services and how you are compensated;
3. Always conduct your actions as an intermediary and not as an advocate – your role should be to make introductions and to leave sales activities to the franchisor;
4. Avoid all actions that would create the impression that you are a fiduciary of the prospective franchisee, i.e., avoid all actions and statements where you create the appearance that you are in a position of trust with the prospective franchisee and you are personally advising and counseling the prospective franchisee;
5. Rely on the new Q&A advisories that are now a mandatory part of the FDD state cover pages as published under the new NASAA Franchise Registration and Disclosure Guidelines. This is especially the case for answering questions like “how much can I earn,” “how much will I need to invest,” and “is the franchise system stable”.

BROKER RECOMMENDATIONS

6. Remember that if you are aware of any inconsistency contained in the franchisor's FDD that you have a duty to disclose;
7. Never misrepresent or misstate the disclosures contained in a franchisor's FDD; (e) never make any financial performance representations other than referring a prospect to a Franchisor's Item 19;
8. Never make statements or representations that conflict with the franchisor's FDD disclosures;
9. Be aware of terminology and the statements, promises, and representations that you make to franchisee candidates;
10. Once a candidate is matched with a franchise opportunity, the candidate should be advised to take the next steps in the due diligence process in investigating and evaluating the opportunity. This diligence process should include validation with existing franchisees, and independent counseling and advice with the candidate's franchise lawyer.

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