

2018 IFA

LEGAL SYMPOSIUM

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Basics Track: Handling Defaults and Terminations

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NOTHING BASIC ABOUT DEFAULTS AND TERMINATIONS

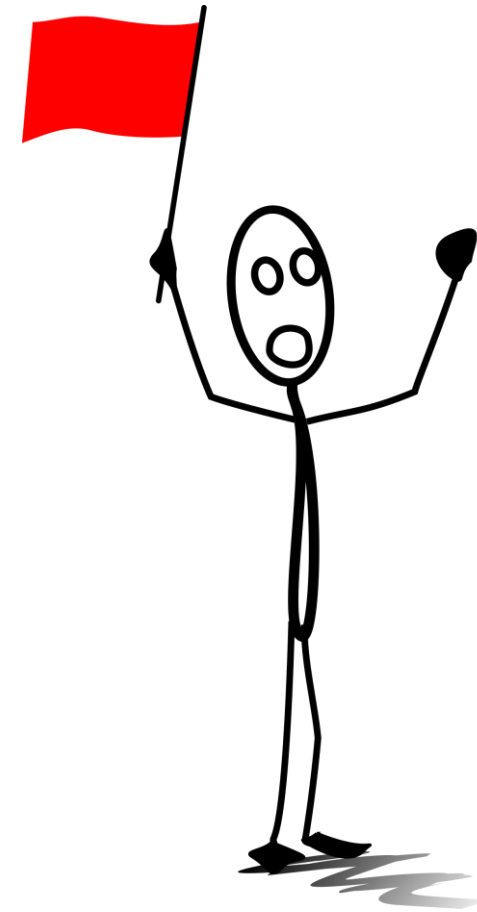
Identifying Potential Problems Before they Arise

- Common Early Warning Signs of a Troubled Franchisee
 - Financially Related Red Flags
 - Non-Financial Red Flags
- Monitoring Early Warning Signs



Identifying Potential Problems Before they Arise

- Financially Related Red Flags
- Non-Financial Red Flags



Identifying Potential Problems Before they Arise

- Addressing Early Warning Signs
 - Reaching out to Franchisees in Distress
 - Sending Pre-Default Warnings
 - Modifications to Franchise Agreement/Workout Agreements

Default/Termination

- Immediately Issue Default and/or Termination Letter?
- Due Diligence?
- Does the Type of Default Matter?

Steps for Issuing Default/Termination Notice

- Due Diligence/Gathering Facts
- Review Franchise Agreement
- Review All Potential State Relationship Laws
- Conflict between Various State Relationship Laws and Various Types of Default



State Relationship Laws

- Common Issues:
 - Notice
 - Good Cause
 - Cure and Termination Periods
- Mandated Modification to the Franchise Agreement
- Waiver?

States with Termination-Related Laws

Arkansas	Iowa	New Jersey
California	Kansas	Rhode Island
Connecticut	Maryland	Virginia
Delaware	Michigan	Washington
Hawaii	Minnesota	Wisconsin
Idaho	Mississippi	Puerto Rico
Illinois	Missouri	Virgin Islands
Indiana	Nebraska	

State Relationship Laws

- What Laws Apply:
 - Franchisor's State of Citizenship and/or Incorporation
 - Franchisee's State of Citizenship and/or Incorporation
 - Location of Each Unit Owned by Franchisee
 - Choice of Law Provision in Franchise Agreement
- Handling Incurable Defaults
- Buyback Provisions

Steps for Issuing Default/Termination Notice

- Subjective vs. Objective Defaults
 - Different Steps?
 - Is it Worth it?
 - Proof Necessary and Will it Prevail?



Steps for Issuing Default/Termination Notice

- Notice Requirements: Combination of Franchise Agreement Requirements
 - Hand Delivery/Courier, Certified Mail, Email, etc.
 - Address/Timing of Notice
- AND State Relationship Notice Requirements
 - Primarily Timing?

Dealing with Other Franchisees

- Selective Enforcement
- Impact of Termination on Other Franchisees
- Information Provided to Other Franchisees about a Termination



Examples of Default/Termination Quandaries

- Immediate Termination of Franchise for Owner's Criminal Conviction
- Termination for Franchisee's Failure to Pay Disputed Amounts
- Notice and Cure Requirements



Enforcement

- Proper Notice Issued?
- Proper Time Period for Cure and Termination?
- “Good Cause” – Whose Definition Applies?
- Review Rights/Options under Franchise Agreement and State Relationship Laws
 - Is There a Buyback Provision?

Enforcement

- What Court to File in?
- What Action to Take?
 - Injunctive Relief/TRO?
- Prepare for Unit Closure and Possible Brand Image Issues



Possible Enforcement Problems

- What if We Didn't Comply with Franchise Agreement or State Relationship Laws?
 - Franchisor Could be Worse Off
- Anti-Discrimination Provisions – Selective Enforcement?
- “New Day” Letter – Course of Conduct

Franchisee Defenses

- Good Faith and Fair Dealing/Good Cause
- Discrimination
- Waiver
- Tortious Interference
- Compliance with Local Law



QUESTIONS?

THANK YOU!