

# Thinking Ahead Before Terminating: Buyback Rights and Rights of the Franchisor When the Franchisee is Not Successful

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# Today's Panel:



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# Overview

- Identifying struggling franchisees
- Addressing underperformance
- Sale, buyback & step-in strategies
- Valuation and rights of first refusal
- Legal considerations & case law



# Identifying Struggling Franchisees



- Importance of early detection and trust
- Red flags: debt, personal hardship, performance metrics
- Minimum performance standards in franchise agreements
- Forbearance agreements as a temporary remedy

# Addressing Defaults & Legal Considerations

- Curable (e.g., late payment) vs. incurable defaults (e.g., fraud)
- Procedural compliance is critical
- Use mediation, coaching, graduated enforcement
- Dispute documentation and pre-litigation strategies
- Risk of claims: discrimination, bad faith, inconsistent enforcement



# Selling the Business

- Buyers: existing franchisees, brokers, external parties
- Key issues: buyer incentives, liabilities, pricing, confidentiality
- Tough-love talks & managing emotional ties to the business



# Handling Underperformance

- Franchisee defenses: unfair standards, market conditions
- Importance of objective and realistic performance criteria
- Consideration of substantial compliance under state laws
- Litigation vs. alternative solutions



# Sale as an Exit Strategy



- Franchisor support: candidate pools, internal interest
- Challenges: limited buyer pool, emotional hurdles
- Importance of realism: timelines (6–18 months), pricing, readiness
- Use of brokers for validation and process management

# Buyback & Step-In Rights

- When to consider franchisor buyback
- Step-in rights allow temporary operation control
- Legal backing for step-in rights (e.g., *Sunni v. Edible Arrangements*)
- Risk of liability, logistical challenges for franchisors



# Lease Assignment Considerations

- Critical for location-based businesses
- Use lease riders and collateral lease assignments
- Ensure landlord consent
- Protect against successor liability



# Valuation & Fair Market Value



- Focus on asset-based valuations for distressed units
- Strategies: “quick win” fixes, transparency, documentation
- Right of first refusal can define exit options

# Right of First Refusal (ROFR)

- Allows franchisors to match third-party sale offers
- Must meet contract standards (e.g., fixed price)
- ROFR scope matters – limited to franchise assets



# Legal & Business Considerations

Review franchise agreement & state franchise laws

Disclosure obligations (e.g., FDD Item 20 impacts)

Strategic alternatives to termination can minimize losses



# Conclusion

- No one-size-fits-all solution
- Planning ahead is critical for both parties
- The goal: fair, efficient resolution that avoids litigation

