Franchise Registration Guide

14 REGISTRATION STATES

FRANCHISENOW

Table of Contents

Intro

These 14 states require a franchisor to register its FDD and maintain a registration with the state agency indicated. If the company is authorized to sell franchises in one of these states, the company will be registered with the agencies listed here.

Helpful links:

- http://www.ftc.gov/
- http://www.nasaa.org/
- http://www.aafd.org/
- http://www.franchisee.org/
- http://www.franchise.org/
- http://www.nationalfranchisecouncil.org/

California

Key Websites:

- http://www.corp.ca.gov/SRD/ufdd.asp
- http://www.corp.ca.gov/srd/franchise.asp
- http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=corp&codebody=&hits=20

Primary contact:

- Call (866) 275-2677
- Department of Corporations: 916-445-7205

Franchise Division
Department of Corporations
1515 K Street
Sacramento, CA 95814
(916) 445-7205

Registration Fee:

- Registration of an offer or sales of franchise: $675.00
- Registration renewal statement or annual report: $450.00

List of Documents for Franchise Registration/Renewal

The applicant should make every effort to utilize the following naming conventions to facilitate our electronic processing and the documents should be listed in the following order. The exhibits may be renumbered and documents may be added or deleted from the list below.

Document index

CD #1

- Application Transmittal Letter
- Application Facing Page
- Certification Page
- Consent to Service of Process (not required for a CA corporation, limited partnership or limited liability
- company)
- Corporate Acknowledgement
- Supplemental Information
- Sales Agent Disclosure Forms (redacted)

- Guarantee of Performance (if any)
- Auditor's Consent
- Franchise Offering Circular/Disclosure Document (clean/marked copy)
- Receipt

Exhibits:

- Franchise Agreement (clean/marked copy)
- Financial Statements
- Area Development Agreement (if any)
- List of Administrators
- Agents for Service of Process
- List of Franchisees
- List of Former Franchisees
- State Specific Appendix
- Other Exhibits

CD #2

- Customer Authorization of Disclosure of Financial Records
- Sales Agent Disclosure Forms (un-redacted)

Franchise Registration Application Instructions

COVER LETTER:

Please acknowledge in your cover letter of the application whether any documents or exhibits will be submitted at a later time.
The cover letter should tell the Department the date of the franchisor's fiscal year end, and acknowledge that the registration (normally) will end 110 days after the date of its next fiscal year. This will coordinate registration renewal with the required fiscal year end audited financial statements, and will reduce the need to submit interim statements.
If the franchisor offered or sold securities in California under the California Corporate Securities Law of 1968, the franchisor must describe these transactions in the cover letter and indicate whether the securities were qualified or exempt and/or make any required filings.

4. FORMS FOR THE FRANCHISOR'S APPLICATION:

A. Application Cover Page. See attached page 48.
B. An authorized officer, manager or general partner should sign the application. See Form C on attached pages 49 and 50. A person holding a power of attorney may sign if the authorizing corporate resolution is included.

C. Supplemental Information Page. See Form B on attached page 49.

D. Sales Agent Disclosure Form. Complete a form only for each person offering and selling the franchise in California, unless the person is named in Item 2 of the Offering Circular. See Form E on attached page 52. Send a clean copy (marked CONFIDENTIAL) and one that redacts (blacks out) home address and telephone number, SSN and birth date.

E. One copy of the Offering Circular in the Uniform Franchise Offering Circular (UFOC) format in this packet (UFOC as adopted by NASAA on April 25, 1993). See the attached pages 1 through 53. Note the Mandatory Disclosure Requirements outlined in Rule 310.114.1 that make some changes to the format (attached for your convenience).

F. Consent to Service (not required for a California corporation but is required for all other California entities such as an CA LP or CA LLC and foreign entities). Use Form D on attached page 51.

G. Customer Authorization Form [QR 500.265, see also Corporations Code §31111(b)] is attached and follows page vii.

H. Send only one set of all documents.

5. REQUIRED FINANCIAL STATEMENTS FOR REGISTRATION:

Normally the application must include the franchisor's financial statement audited by an independent certified public accountant (CPA) in accordance with generally accepted accounting principles (GAAP) (See Rule 310.111.2 for requirements). With your application, you must include a manually signed consent of the independent public accountant for the use of the audited financial statements in the UFOC. The Department will not accept "Compilation" report financial statements unless they are interim financials, submitted with "Audited" report financials. The use of audited financial statements does not relieve the applicant or any person from liability for false and misleading statements contained in the financial statements.

The Department may accept a current "Review" report balance sheet instead of an audit if:

A. It is the franchisor's first registration application in California and the franchisor has no prior audited financial statements;

B. The "Review" report balance sheet is as of a date within 90 days of the application filing date;

C. The financials include profit and loss statements covering the prior three years, or from inception of the business; a Statement of Cash Flow, and appropriate footnotes;

D. The "Review" report conforms to American Institute of Certified Public Accountants standards.

6. IMPOUND:

The franchisor must demonstrate its present financial ability to meet its obligations to the franchisee stated in the UFOC and Franchise Agreement, without relying on the proposed franchisee's funds. Otherwise, the Commissioner will impound all initial fees paid by the franchisee to the franchisor. If an impound is required, you must submit a copy of the form of Purchase receipt, and the written consent of the Depositary. (See Rules 310.113 though 310.113.2).

The franchisor may avoid an impound if an increase in franchisor's capitalization shows financial ability to meet its proposed obligations or by posting a surety bond (see attached form) as per Rule 310.113.5. An impound may also be avoided by an adequate Guarantee of Performance, coupled with the Guarantor's audited financial statements which shall be included along with the Guarantee in the UFOC. These financials must show the Guarantor's financial ability to meet the franchisor's obligations. Use Form F on attached page 53.

7. <u>PRE-EFFECTIVE AMENDMENT:</u>

A <u>PRE</u>-effective amendment changes a pending application. The application must include a facing page and a verification page. Underline or mark documents to show changes from the previous filing. Send only the marked copy. Do not send an unmarked copy. <u>Do not highlight changes in color</u>. There is no fee to file a pre- effective amendment, unless a balance fee is owed on the previous filing.

A pre-effective amendment may also be filed within 6 months of an abandonment of the application only if all the outstanding comments at the time of the abandonment are addressed and the applicant must file an application facing page marked as a pre-effective amendment/RE-INSTATEMENT, with a certification page. The cover letter must specifically mention that the applicant is seeking the reinstatement of an application that was abandoned on a specified date.

8. <u>POST-EFFECTIVE AMENDMENT:</u>

A <u>POST</u>-effective amendment is submitted <u>after</u> a registration is effective. A <u>POST</u>-effective amendment application includes a completed application cover page, and a verification page. Mark the documents to reflect changes from the prior filing. Send only this one marked copy of the document being changed. Do not send an unmarked copy and do not send documents that are not being changed. There is a $50 fee for filing a post-effective amendment application.

After the franchisor is registered, it must file an application for post-effective amendment when a material change occurs or <u>to add sales agents. A post-effective amendment application is effective as of the date an order is issued indicating the effectiveness of the post-effective amendment.</u>

9.<u>RENEWAL:</u>

Submit a renewal application in the same format as the original application. Include all documents required for an initial registration. Please acknowledge in your cover letter of the application whether any documents or exhibits will be submitted at a later time and state the fiscal year.
The franchisor's financial statement for the most recent fiscal year must be certified as an audit by an independent CPA. Submit a manually executed auditor's consent for use of the financial statement in the UFOC.
Send one complete, updated, clean copy of the UFOC and exhibits. If a document is revised, send one copy of the changed pages only with the changes marked. Mark changes from the previous filing (but not highlighted in color). Do NOT send extra copies.

2007/2008 Changes in California Franchise Registration Requirements

Please note that the North American Securities Administrators Association, Inc.'s ("NASAA") Uniform Franchise Offering Circular (UFOC) disclosure document format is valid until June 30, 2008, regardless of when the registration was approved in California. The Federal Trade Commission has withdrawn permission from all franchisors to use the UFOC disclosure document prepared under the current NASAA UFOC Guidelines after June 30, 2008.

On and after July 1, 2008, all franchisors must use a franchise disclosure document that complies with the FTC Franchise Rule, 16 CFR 436, as amended, 72 FR 15444 (March 30, 2007), (the "FTC Franchise Rule"). In its June 22, 2007 Interim Franchise Statement of Policy, NASAA incorporated the disclosures required under the FTC Franchise Rule for the Uniform Franchise Disclosure Document ("UFDD"). The California Department of Corporations announced in its June 28, 2007 Release 17-F that the Department would begin accepting the UFDD as of July 1, 2007 and that on/after July 1, 2008, only the UFDD can be used to offer and sell franchises in California regardless of when a UFOC may have been registered. All registered franchisors wanting to offer or sell franchises on and after July 1, 2008 must file the UFDD as a part of its 2007/2008 application process or file and have approved a post-effective amendment application with the UFDD before any franchises can be offered or sold on or after July 1, 2008. Therefore, be advised that no UFOC may be distributed to prospective franchisees after July 1, 2008 under any circumstances.

In addition, the following new items are being added to the California Special Instructions of the soon to be released 310.111 UFDD Packet (10/07), which will include fillable franchise forms available from our website. See http://www.corp.ca.gov/forms/securities.asp

7. NOTE: Civil Code §1189 requires that any notary's certificate of acknowledgment taken within this state must be in the form attached. Any certificate of acknowledgment taken in another state shall be sufficient in California if it is taken in accordance with the laws of the state where the acknowledgment is made. In that instance only, the current NASAA form would be acceptable in California.

8. As of January 1, 2008, California Corporations Code Section 31119 requires that the offering circular together with all proposed agreements relating to the sale of the franchise be delivered to prospective franchisees at least 14 days prior to execution by the prospective franchisee of any binding franchise or other agreement, or at least 14 days prior to the receipt of any consideration, whichever occurs first.

9. As of January 1, 2008, California Corporations Code Section 31155 requires that all applicants for registration, except for California corporations, California limited partnerships, or California limited liability companies, file an irrevocable consent appointing the Commissioner to be the applicant's attorney to receive service of any lawful process in any non-criminal suit, action, or proceeding against the applicant which arises under the Franchise Investment Law.

10. As of July 1, 2008, only the UFDD can be used as the offering document to offer and sell registered franchises in California, regardless of when the franchisor registered its franchise system and regardless of any prior registration involving a UFOC

Hawaii

Key Websites:

- http://hawaii.gov/dcca/sec/registration_forms
- http://www.ftc.gov/bcp/franchise/netdiscl.shtm

Primary contact:

- Call (808) 587-7400.
- Department of Commerce, Franchise and Securities Division: 808-586-2722

  STATE OF WASHINGTON
  DEPARTMENT OF FINANCIAL INSTITUTIONS
  SECURITIES DIVISION
  PO Box 9033
  Olympia, WA 98501-9033
  (360) 902-8760

Registration Fee:

- Registration of an offer or sales of franchise: $250.00
- Registration renewal statement or annual report: $250.00

Franchise Registration Application Instructions

ATTACHMENT TO APPLICATION FOR FILING OF FRANCHISE OFFERING CIRCULAR

(Information required by the Act together with information prescribed by the Director)

The following information shall be contained in the offering circular:

1. Identity and business experience of persons affiliated with the franchisor. List by name and position held, the directors, trustees and/or general partners, as the case may be, and the principal officers (including the chief executive, and chief operating officer, financial, franchise marketing, training and service officers) and other executives or subfranchisors who will have management responsibility in connection with the operation of the franchisor's business relating to the franchises offered by this offering circular. With regard to each person listed, state their principal occupations and employers during the past five years.
2. Information on franchisor and persons affiliated with franchisor. A statement stating whether any person identified in question 5 above has within 10 years:

A. Been found guilty of a felony or held liable in a civil action by final judgement if the civil action involved a fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

B. Is subject to any currently effective order of the Securities and Exchange Commission or the securities administrator of any state denying registration to or revoking or suspending the registration of such person as a securities broker or dealer or investment advisor or is subject to any currently effective order of any national security association or national securities exchanges (as defined in the Securities and Exchange Act of 1934) suspending or expelling such person from membership of such association or exchange; or

C. Is subject to any currently effective order or ruling of the Federal Trade Commission or is subject to any currently effective order relating to business activity as a result of an action brought by any public agency or department. Such statement shall set forth the court, the date of conviction or judgement, any penalty imposed or damages assessed, or the date, nature and issue of such order.

7. A statement of when, where, and how long the franchisor has:

   A. Conducted a business of the type to be operated by the franchisees;
   B. Has granted franchises for such business; and
   C. Has granted franchises in other lines of business.

1. Attach financial statements of the franchisor as prescribed by Rule 2.1.C or the Rules and Regulations.
2. A copy of the typical franchise contract or agreement proposed for use in this state.
3. A statement of the franchise fee charged, the proposed application of the proceeds of the fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases.
4. A statement describing a payment of fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.
5. A statement of the conditions under which the franchise agreement may be terminated or renewed or renewal refused, or repurchased at the option of the franchisor.
6. A statement of the conditions under which the franchise may be sold, transferred, or assigned.
7. A statement of the conditions imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee or subfranchisor is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or his designee.

Rev. 03/04 (OVER)

1. A statement of any restriction or condition imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is limited or required in the goods and services offered by him.
2. A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or his agent or affiliate.

3. A statement of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee in whole or in part.
4. A copy of any financial statement prepared for presentation to prospective franchisees or other persons together with a statement setting forth the basis for such statements.
5. A statement of the number of franchise businesses in each of the following categories which within the three-year period preceding the date of the offering circular have:

A. Been canceled or terminated by either the franchisor or franchisee;
  B. Not been renewed by either the franchisor or franchisee;
  C. Been reacquired through purchase by the franchisor;
  D. Been otherwise reacquired by the franchisor; and
  E. Been transferred or sold by the franchisee to persons other than a corporation or other business entity controlled by the transferring or selling franchisee.

1. A statement describing the training program, supervision, and assistance the franchisor has and will provide the franchisee.
2. A statement as to whether franchisees or subfranchisors receive an exclusive area or territory.
3. A statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from (A) the use of the public figure in the name or symbol of the franchise or (B) the endorsement or recommendation of the franchise by the public figure in advertisements.
4. Registration of franchises in other states. List the following:

  A. The states in which this filing is effective.
  B. The states in which this filing is or will be shortly on file.
  C. The states, if any, which have refused, by order or otherwise, to register these franchises.
  D. The states, if any, which have revoked or suspended the right to offer these franchises.

E. The states, if any, in which the filing of these franchises has been withdrawn.

1. Other franchises sold. (Describe in summary form the number of franchises presently operating, names, and addresses of such franchises operating in Hawaii.)
2. Performance by franchisor. Describe succinctly the obligations required to be performed by the franchisor prior to the opening of the franchised business. Indicate whether such obligations must be completed within a specified time period and the right of franchisees, if any, to any refund of fees paid if such obligations are not complete within the prescribed time.
3. When the person selling the franchise is a subfranchisor, the offering circular shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this subsection.
4. Attach the Consent to Service of Process if applicant is not a Hawaii corporation.