

# An Introduction to Franchising

Terry R. Bynum, II  
**Lanier Ford Shaver & Payne P.C.**  
2101 West Clinton Avenue, Suite 102  
Huntsville, AL 35805  
256-535-1100  
TRB@LanierFord.com

**[www.LanierFord.com](http://www.LanierFord.com)**

© 2014



# History of Franchising in the U.S.

- 1851.
- Turn of 20<sup>th</sup> century – product franchises.
- Baby boom – business format franchising.
- Interstate highways.
- Regulation, oil embargo.
- Rapid expansion.
- BYOB



# Franchise Regulation

- California.
- Federal Trade Commission.
- Little FTCs.
- 17 states.



# What Is a Franchise?

- Payment.
- Trademark.
- Assistance or control.
- All or nothing.



# Exclusions

- Employer-employee.
- Cooperative associations.
- Single-license relationships.
- Certification programs.



# Certification Programs

- Owns registered certification mark.
- Licenses mark exclusively to third parties.
- Does not discriminate between providers.



# Inadvertent Franchises

- Fines.
- Rescission and buyback.
- Punitive and treble damages.
- Felony.
- Joint and several liability.



# Why Franchise?

- Rapid and inexpensive growth.
- Reduced exposure to liability.
- No dilution of management.





# Why Not Franchise?

- Failure to follow rules can lead to FTC and state liability.
- Could lose benefit of trademark exclusivity.
- Damage to brand reputation with failure.
- Distraction to core business.



# What Is Regulated?

- No substance.
  - Securities.
- Disclosure.



# What Do You Have to Provide?

- Franchise disclosure document (UFOC).
  - Plain English.
  - 14 days prior to execution.
- Franchise agreement.
  - Ancillary documents.
- Operations manual.
- Financial statements.



# Franchise Disclosure Document

- Item 1 – Franchisor and Affiliates.
- Item 2 – Business Experience.
- Item 3 – Litigation.
- Item 4 – Bankruptcy.
- Item 5 – Initial Fees.
- Item 6 – Other Fees.

# Franchise Disclosure Document

- Item 7 – Estimated Initial Investment.
- Item 8 – Restrictions on Sources of Products and Services.
- Item 9 – Franchisee’s Obligations.
- Item 10 – Financing.
- Item 11 – Franchisor’s Assistance, Advertising, Computer Systems & Training.

# Franchise Disclosure Document

- Item 12 – Territory.
- Item 13 – Trademarks.
- Item 14 – Patents & Copyrights.
- Item 15 – Obligation to Participate.
- Item 16 – Restrictions on what the Franchisee May Sell.



# Franchise Disclosure Document

- Item 17 – Renewal, Termination, Transfer, and Dispute Resolution.
- Item 18 – Public Figures.
- Item 19 – Financial Performance Representation.
- Item 20 – Outlets and Franchisee Information.

# Franchise Disclosure Document

- Item 21 – Financial Statements.
- Item 22 – Contracts.
- Item 23 – Receipt.
- Exhibits – State Administrators and Agents for Service of Process, Operations Manual TOC, Financial Statements, Multi-State Addendum, Franchise Agreement.



# Franchise Agreement

- Grant of the license:
  - Trademarks.
  - Geographic scope.
  - Exclusivity.
  - Competition by franchisor.
  - Term.
  - Renewal.

# Franchise Agreement

- Franchisee's obligations:
  - Full time and attention vs. absentee ownership.
  - What can you sell? What services can you offer?
  - Advertising rules.
  - Reporting obligations.

# Franchise Agreement

- Franchisor's obligations.
  - Site selection.
  - Training.
  - Operational support.



# Franchise Agreement

- Fees:
  - Initial franchise fee.
  - Royalties.
  - Marketing fund.
- Transfer and assignability.
- Default and termination.



# Other Agreements

- Confidentiality agreement.
- Non-disclosure & non-competition agreement.
- Guaranty & assumption agreement.
- General release.
- Electronic funds transfer agreement.
- Multi-state addendum.

# Operations Manual

- Outline.
- The system.
- Incorporated into FA.
- Franchisor updates.
- Trade secrets.



# Financial Statements

- Audited financial statements.
- Phase-in period.
- Affiliate company.



# Amendments

- Annual.
- Quarterly.
- State requirements.





# Questions?

Terry R. Bynum, II  
**Lanier Ford Shaver & Payne P.C.**  
2101 West Clinton Ave., Suite 102  
Huntsville, Alabama  
256-535-1100  
[www.LanierFord.com](http://www.LanierFord.com)  
[TRB@LanierFord.com](mailto:TRB@LanierFord.com)