



The Franchise Lawyer

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Lessons Learned During the 2012 Renewal Season

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By H. Michael Drumm

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I. Introduction

Love it or hate it, state registrations and renewals keep franchise attorneys busy during a large part of the year. Being a father of two, my clients' daily phone calls of "are we registered in state X yet" remind me of my kids' "are we there yet" barrage I receive in the car. The level of review of franchise documents varies state by state and examiner by examiner, just as the level of frustration during dark periods varies from client to client and lawyer to lawyer.



H. MICHAEL DRUMM

The following are ten comments received from state examiners during the 2012 renewal season that practitioners may overlook in the drafting process but that they should consider incorporating into their clients' franchise documents to speed up future registrations, renewals and/or amendments. Most of the comments are self-explanatory and are included in the form received, although a few of them I have modified or paraphrased. Also, in some cases, I have added brief explanatory notes. While I have included the state from which I received the comment, please keep in mind that these comments may vary among state examiners.

1. "Item 17t: Please modify applicant's integration information to state: Only the terms of the franchise agreement are binding (subject to state law). Nothing in the agreement or in any related agreement is intended to disclaim the representations franchisor made in the franchise disclosure document." (California.) Maryland issued a similar comment but with slightly different wording: "Only the terms of the franchise agreement are binding (subject to state law). Any representations or promises outside the disclosure document and franchise agreement may not be enforceable." For practitioners

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- that utilize a multi-state FDD, you should combine the above two comments for the Item 17t disclosure.
2. "In Item 20, the listing of operational franchisees may not be written in print size smaller than 11-point type." (Maryland.) Note that this comment referred only to the list of franchisees in Item 20 and not the tables in Item 20.
 3. "Item 6: Please disclose the range of the following costs. Audit, supplier/product review, and interest expenses." (California.)
 4. "Item 11: For the mandatory continuing national, regional and local workshops and seminars, please disclose the duration, location, frequency, content and range of costs." (California.)
 5. "Item 12: Identify which census will be used." (California.) Note that the original FDD referenced "the current Census report" and was later modified to state "the then-current United States Census Bureau report."
 6. Checks must be made out exactly to New York State Department of Law otherwise the application will not be processed. (New York.)
 7. Item 23: "Applicant needs to make clear that the issue date is not the effective date. Please place a reference to the state effective dates or provide a blank for California's effective date." (California.) This issue was rectified by adding the following to the Receipt after the Issuance Date: "(for registration state effective dates see State Effective Dates page at the beginning of this Disclosure Document)."
 8. "Please amend the Table of Contents back so it is not written in capital letters." (Maryland.)
 9. "In Item 13, please disclose whether the franchisor has filed all required affidavits." (Maryland.)
 10. "In Item 20, do not list all states in the Tables, but rather, only those states for which there is data to disclose." (Maryland.)

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