

How Fast Can I Franchise? Hold On a Minute

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Are you a small business owner who has considered franchising your business?

Franchising can be a great way to expand your company's physical presence, grow your revenue, and increase your brand recognition.

But bear in mind, franchising is a large undertaking, and it is important to prepare fully before starting the process.

So, before you start down the franchising path, make sure you do each of the following:

1. Have numerous locations of your own.

Generally-accepted franchise wisdom says that before franchising your business, you will want to have a number of corporate-owned locations and, ideally, even five to ten locations. You want to be able to show your business model works consistently and that one or two successful locations are not merely a fluke.

When you are ready to franchise, the best first franchisee is often one of your managers or one of your top employees. Someone who is already invested in the company and believes in the mission may be a great candidate for the first franchise.

2. Have a well-developed, consistent system.

You will be responsible for explaining to prospective franchisees in detail how your business works and how to start a new location. Along with your legal team, you will need to produce a lengthy Franchise Disclosure Document ("FDD") that outlines items like start-up costs, necessary equipment and technology, suppliers, royalties, training, operations, and hundreds of other details. It is difficult to create an FDD before you have developed clear and consistent processes for starting and operating a new location.

3. Have strong legal support.

Franchisors are regulated in a number of ways at both the federal and state level, and working alongside a franchise attorney can help you avoid common legal pitfalls.

First, the Federal Trade Commission created the Franchise Rule, which governs exactly what must be (and what cannot be) in your FDD. In addition, there are regulations detailing when a franchisor must share a copy of the FDD with a prospective franchisee-- at least 14 days before allowing them to sign a franchise agreement.

In addition to the FTC's Franchise Rule and accompanying regulations, the following states require that franchisors file their FDD prior to certain franchise-selling activities: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, Virginia, Washington, and Wisconsin.

If the franchisor does **not** have a federally registered trademark with the U.S. Patent and Trademark Office, these states also require FDD registration: Connecticut, North Carolina, South Carolina, and Maine.

Some state registrations are straightforward and fairly quick, while others may take six or nine months to complete.

To further complicate matters, several states have "business opportunity

laws," some of which are *in addition* to the state's franchise laws, including Alabama, Alaska, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Nebraska, New Hampshire, North Carolina, Ohio, South Carolina, South Dakota, Texas, Utah, Virginia, and Washington.

A "business opportunity" differs from a franchise in several respects, depending on each state's statute, and can be much broader than a traditional franchise. So even if you are not planning on franchising or actively wish to *avoid* being seen as a franchisor, it's smart to consult your lawyer to be sure you are not offering a "business opportunity" and to be sure you are not an "inadvertent franchisor" (stay tuned for a later article on these topics).

Finally, while your franchising entity may be incorporated in North Carolina, for example, you will need to register to do business in any additional state prior to selling franchises. This is not a franchise-specific requirement, but a general business requirement, as states consider business entities registered in other states to be "foreign" and want to be aware of any business activities in their state.

You will certainly want to rely on your legal team to help you navigate each of the laws that may apply to you as a franchisor, as well as advise on realistic timelines to achieve registration in each state where you want to sell franchises.

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