



Dear NASAA Team,

My name is Anita Best. I bought my first Franchise in 2001, a Keller Williams office, and still own it to this day, as well as have personally owned three other franchises. I am a licensed Real Estate Broker in the state of Georgia for over 30 years, and have been working as a franchise consultant/Broker for the last 15 years and have been recognized with many awards including Broker of the Year and Visionary of the year . Currently my business is all referral, as a testament to my ethical business practices. I am writing to provide feedback on the NASAA Model Franchise Broker Registration Act. Thank you for allowing me to share my insights based on years of involvement in the franchise industry.

While the intention to ensure ethical practices in franchise brokering is commendable, the current draft of the Model Act introduces complexities that might inadvertently hinder the franchise sales process. Here are my observations and suggestions:

I think it is also important to differentiate that franchise brokers do not sell anything. We are strictly referring agents and compensated with a referral fee. We cannot award franchises. We have no power to close deals. A franchise brokers' role in the franchise sales process is to make introductions between prospective franchisees and franchisors. We do not decide if a candidate is awarded a franchise and are only compensated if a franchisor decides to award a territory like recruiters for employment. Additionally, any franchise broker aligned with a reputable franchise broker organization will have been educated on the important fact that all prospective franchisees should be encouraged to retain legal counsel as they review relevant franchisor documents to ensure their interests are represented adequately. Their legal counsel will help them identify any issues, and the franchisor will also have the ultimate say in awarding certain individuals a franchise territory and/or the correct amount of territories to each individual.

The Role of Franchise Brokers

Franchise brokers play a vital role in matching prospective franchisees with the right franchisors. Ethical brokers prioritize their clients' best interests, helping them find suitable franchise opportunities. Brokers are akin to employment recruiters; they facilitate introductions without making final decisions on franchise awards and are compensated only when a franchisor awards a franchise.

Impact on Prospective Franchisees

The current draft of the Model Act may unintentionally complicate the franchise discovery process for prospective franchisees. Requiring multiple disclosure documents can create unnecessary confusion and anxiety, potentially deterring individuals from pursuing franchise opportunities.

Key Concerns and Suggestions

Section 2: Definitions

The distinction between a "franchise broker" and a "franchise broker representative" requires clearer definitions. Licensing for brokers, including specified training hours similar to the Certified Franchise Executive (CFE) program, would be beneficial. However, the term "representatives" is too vague and will be misinterpreted.

Section 3: Prohibited Practices

While it is sensible to prevent unregistered / aka untrained brokers from engaging with prospective franchisees, imposing the responsibility on franchisors to verify broker registration adds unnecessary administrative burden. A centralized, government-maintained database would be essential for this, though it might be impractical to implement.

Section 4: Registration

The term "material change" needs a precise definition. Significant changes, such as criminal history or new litigation, should be considered material. However, frequent updates for minor changes would be burdensome and unnecessary.

Section 5: Disclosure Obligation

The mandate to disclose "all compensation" is challenging. Referral fees often change, necessitating frequent updates to disclosure documents, which can lead to confusion. Disclosing a "typical referral fee range" would be a more practical approach, balancing transparency with administrative feasibility. This disclosure should be within the franchisor's FDD, not additional paperwork passed to the franchise broker.

Client List Disclosure

Requiring brokers to disclose their client lists raises significant confidentiality concerns and could undermine trust between brokers and clients. Many clients looking at potential franchise ownership still have jobs and are reluctant to have their names shared. This requirement might also lead to misuse of information and does not clearly benefit prospective franchisees. The rationale for this requirement is not well-defined in the proposed act.

Record Retention

The proposed requirement to retain records for 10 years, even after business closure, is excessive. The statute of limitations for fraud and misrepresentation ranges from 5-7 years. Even

the IRS only requires record retention for 7 years. A 10-year requirement is overly burdensome and should be reconsidered.

Education and Licensing Requirements

To promote integrity among franchise brokers, national education and licensing requirements should be implemented. Mandatory training programs, similar to the CFE, would ensure brokers adhere to ethical standards and industry best practices. National licensing would create a consistent standard of professionalism and accountability, benefiting the franchise sector. Breaking this down to a state by state level will be burdensome and financially prohibitive. Also yearly licensing is prohibitive. Even Real Estate Licenses in most states only renew every 4 years.

Conclusion

The Model Act should protect prospective franchisees while fostering an environment conducive to ethical franchise brokering. The current draft introduces complexities that could discourage potential franchisees and impose undue burdens on brokers and franchisors. I urge the NASAA to consider these suggestions to develop a more balanced and effective regulatory framework.

Thank you for considering my comments. I am open to further discussions and clarifications. Please feel free to contact me at your convenience.

Sincerely,

Anita Best
President
Find Your Franchise, Inc.