



Wednesday, October 23, 2019
2:00 PM – 3:15 PM

Seminar 2

Three is a Party:
Understanding the Parties and Key Issues in a Franchise Lease

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Benefits of a Franchise Lease

- Brand recognition and reputation
- Operational efficiencies
- Brand and use continuity



Let's Party!

Who is invited and why?

- Landlord: Premises Owner
- Franchisee: Tenant and Operator
- Franchisor: The Brand and the Support
- Tenant's Lender: The Money

FRANCHISEE / TENANT

- Three Hats – Franchisee, Business operator, and Tenant
- Two Masters – Franchisor and Landlord

LANDLORD

- Who are they dealing with?
- Who is the true decision maker?
- What consents are required?
- Can we use a template / conforming lease?

FRANCHISOR

- How involved will they be?
- When will they be involved?
- What are its main concerns?
- In what manner are the concerns addressed in the Lease?

TENANT'S LENDER

- Timing their involvement
- Priority of their lien on Tenant's equipment and improvements
- Landlord waiving or subordinating its lien rights



KEY ISSUES

- Timing
- Ways to Address Franchisor Concerns
- Franchisor Rider
- Assignment and Subletting
- Collateral Assignment
- Branding and Signage
- Notices
- Chance to Cure Defaults
- Access and De-Identification
- Third Party Beneficiary
- Lease Modifications
- Other Provisions

TIMING

- Franchisee: Which document to sign first
- Franchisee: When to involve Franchisor
- Franchisee: When to involve lender

TIMING

- Franchisor: When will they review the lease
- Tenant's Lender: When will Landlord sign the subordination or waiver agreement

WAYS TO ADDRESS FRANCHISOR CONCERNS

- Directly in the Lease
- Franchisor Rider
- Collateral Assignment
- Franchisor as Tenant

THE FRANCHISOR RIDER

- Franchisor: Preferred method of ensuring most important concerns are addressed
- Franchisee: Required by the franchise agreement

THE FRANCHISOR RIDER

- Landlord: Franchisor trying to be the tenant without actually being the tenant
- Landlord: Franchisor trying to rewrite the Lease
- Landlord: Can address concerns in the Lease and not in a rider

ASSIGNMENT AND SUBLETTING

- Franchisee: Exit strategy for underperforming store
- Franchisee: Selling the business
- Franchisee: Release of liability of Tenant and Guarantor
- Franchisee: No Landlord consent

ASSIGNMENT AND SUBLETTING

- Landlord: Net worth, operational experience
- Landlord: Consent should be required
- Landlord: Additional credit or security

ASSIGNMENT AND SUBLETTING

- Franchisor: Brand continuity
- Franchisor: Replace underperforming operator
- Franchisor: No Landlord consent

COLLATERAL ASSIGNMENT

- Assignment of property as collateral security for loans (Black's Law Dictionary, 6th Ed.)
- Right of franchisor to occupy the premises to operate the business from the premises, assign the Lease, or sublet the premises
- A springing right

COLLATERAL ASSIGNMENT

- Franchisor: Required so it can assume the lease from a franchisee who defaulted under the Lease, Franchise Agreement, or both
- Franchisor: Required because a standard assignment/subletting provision permitting a transfer to the franchisor may not work because franchisee may not be around or cooperative

COLLATERAL ASSIGNMENT

- Landlord: Reluctant to agree because Landlord has to rely on information and/or documentation from a third party (Franchisor) that is not a party to the lease
- Landlord: Reluctant to agree because Landlord is exposed to potential liability when a Tenant disputes the Franchisor taking over

BRANDING AND SIGNAGE

- Franchisee: Wants Landlord to pre-approve use of standard franchise marks, logos, colors, and signage
- Franchisor: Needs Landlord to permit Tenant the right to install and use standard franchise marks, logos, colors, and signage

BRANDING AND SIGNAGE

- Landlord: Generally ok with standard franchise marks, logos, colors, and signage, but will want approval rights on specific signs
- Landlord: Signs still required to comply with code and sign criteria

NOTICES

- Franchisee: Lease, franchise agreement, and loan notices
- Franchisor: Lease, franchise agreement, and loan notices
- Landlord: Lease and franchise agreement notices
- Tenant's Lender: Lease and franchise agreement notices

CHANCE TO CURE DEFAULTS

- Franchisor: Wants notice of default
- Franchisor: Wants additional time to cure
- Landlord: May require Franchisor to assume Lease

ACCESS AND DE-IDENTIFICATION

- Franchisor: Needed to protect brand
- Franchisor: Right to remove proprietary property and marks
- Franchisor: Right to prepare space for replacement operator

ACCESS AND DE-IDENTIFICATION

- Tenant's Lender: Right to remove/secure collateral
- Landlord: Needs indemnity and repair of any damage

THIRD PARTY BENEFICIARY

One for whose benefit a promise is made in a contract but who is not a party to the contract (Black's Law Dictionary, 6th Ed.)

- Franchisor: Benefits from lease between Landlord and Tenant
- Franchisor: Right to enforce the lease even though it is not a party to the lease

THIRD PARTY BENEFICIARY

One for whose benefit a promise is made in a contract but who is not a party to the contract (Black's Law Dictionary, 6th Ed.)

- Landlord: Specifically disclaim third party beneficiary status in lease
- Landlord: Fallback - try to limit third party beneficiary rights to certain concepts (providing notice of default to Franchisor, for example)

LEASE MODIFICATIONS

- Franchisor: Wants right to consent to all lease modifications and extensions
- Landlord: Unwilling to agree as Franchisor not a party to the Lease and administratively challenging
- Landlord: Fallback – limit right to material modifications (use, rent, term, etc.) and specifically list the types of modifications where consent is required



OTHER PROVISIONS

- Use
- Exclusive
- Radius
- Relocation



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