

5 KEY TAKEAWAYS

Franchise Resales

[Kilpatrick Townsend](#) Franchise of Counsel [Kitt Shipe](#) recently discussed “Raising the Value of your Franchise Through a Well-Executed Resale Program” at the International Franchise Association’s 2020 Convention in Orlando, Florida.

Key takeaways from the presentation, include:

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Smart franchisors recognize the value of having a resale program, and create a culture in which the “sale” of an existing unit is not a four letter word:

- Traditionally, franchise resales have been viewed negatively because they were seen as detracting from the overall growth of the franchise system and resulted in less compensation for the franchise sales team.
- Frustrated franchisees were often left to sell their business on their own without assistance, resulting in a lower quality transferee or, potentially, a closed unit.
- Resales present a golden opportunity to replace an average or below-average franchisee and boost overall system sales.
- A franchise resale program is particularly important for more mature franchise systems that must address issues of “succession planning”.

Resale programs may take many forms:

- Franchisors may have a dedicated in-house team that specializes in resales and provides listing and other support services.
- Other franchisors provide more limited guidance and refer franchisees to an outside broker or network of brokers to assist in locating a buyer.

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Attributes of well-formulated franchise resale program:

- At the most basic level, franchisors must make sure that the franchisees fully understand the franchisor’s transfer conditions, which typically include approval of the buyer and the buyer signing the franchise agreement.
- Franchisors should have a capital requirements plan for all franchise resales that specifies required upgrades and improvements to occur prior to the transfer.
- Franchisors should warn franchisees that additional requirements for transfer will likely apply under the franchisees’ lease, and that these requirements should be reviewed and handled early in the process to prevent delays.
- Franchisors may provide pricing guidance, but to mitigate risk, franchisors should be clear that they are doing nothing more than providing guidance – the franchisee is free to determine its own pricing.
- The program should also identify potential “triggers” for resales or warning signs, such as renewals, struggling or unhappy franchisees, underperforming units or franchisees that may be interested in retiring.
- Some franchisors provide template sale documents, but should be clear that the documents are a starting point only and should be reviewed by the parties’ attorneys.

“Resales” are different:

- Franchisors should decide whether capital requirements should be the same. Should transferee franchisees be subject to lower capital requirements?
- Selling an existing unit is different and the buyers often have different motivations. Should a franchisor have a separate discovery day for resales?
- Should training be different or at least abbreviated for resale franchisees due the fact that the franchise is already operating?
- More ongoing operational support may be required in a turnaround situation.
- Franchisors should consider implementing a grand reopening requirement and specific public relations and media approach for franchise resales. Does your franchise agreement give you the flexibility to do this?

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Legal considerations:

- Several states that require the licensing of real estate brokers and business brokers may apply depending on the degree that a franchisor is involved in franchisor resales.
- In general, these requirements may be avoided if the franchisor is not accepting a fee for brokerage services, and if the role is limited to providing lead referrals, general information and insight into the transfer process.