

Franchise Act Policy Statement FPS-06

RE: Franchise Broker

RCW 19.100.010(11)

Questions Presented:

Under what circumstances must a person offering or selling franchises register as a "franchise broker" as that term is defined in RCW 19.100.010(11)?

Statute

RCW 19.100.010(11) defines "franchise broker" as "a person who directly or indirectly engages in the business of the offer or sale of franchises. The term does not include a franchisor, subfranchisor, or their officers, directors, or employees." (Emphasis added)

Discussion

Under prior law, the Franchise Investment Protection Act required registration of both franchise brokers and selling agents. Most franchises were sold by registered selling agents directly employed by franchisors. Selling agents, contractors, or consultants who set up independent businesses to represent several franchisors were required to register as franchise brokers.

The 1991 legislature eliminated the registration requirement for franchise selling agents and expanded upon the definition of "franchise broker." While franchise brokers are still subject to registration, the legislature statutorily excepted from the definition of "franchise broker" the franchisor or subfranchisor, and their officers, directors and employees. If the person engaged in sales activities is not the franchisor, subfranchisor, or a bona fide officer, director or employee of the franchisor or subfranchisor, then the answer to the question presented turns on whether the person is "in the business of the offer or sale of franchises." Considerations in determining whether a person or company is in the business of the offer or sale of franchises include, without limitation:

Independent Contractors. A person who is an independent agent, contractor or consultant representing one or more franchisors would generally be deemed to be a franchise broker;
Commissions. A person who receives a commission or other transactional-based compensation in connection with the offer or sale of a franchise would generally be considered a franchise broker;
The level of recurrence. A person who offers or sells two or more franchises is generally presumed to be a franchise broker;
Employees - A person who is an employee of a franchise broker is not "in the business" of offering or selling franchises.

Conclusion

A person who engages "in the business" of offering or selling franchises is a franchise broker pursuant to RCW 19.100.010(11) unless the person is the franchisor, subfranchisor, or one of its officers, directors, or employees, or is employed by a franchise broker.

Adopted July 28, 1991

Replaces N/A

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