

USING BROKERS AND SALESPERSONS TO SELL FRANCHISES – OH MY!

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Standard Regulator Speaker Disclaimer

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- California Department of Financial Protection and Innovation (DFPI),
- The DFPI commissioner, nor
- the North American Securities Administrators Association, Inc. (NASAA)

Agenda

1. Introduction to Franchise Brokers
2. Legal and Regulatory Framework
3. State-by-State Requirements
4. Legal Risks and Case Studies
5. Best Practices and Reform

Introduction to Franchise Brokers

- Who are franchise brokers?
- What services do they provide?
- How do they influence the franchise sales process?
- Why their role is growing in importance

Historical Context of Broker Use

- Brokers role as a matchmaker between F'ees & F'ors
- Early days
 - Stigmatized by fraud
 - Wild West

CA Broker Registration & Disclosure

California Senate Bill 919

- Annual broker registration
- Broker disclosure

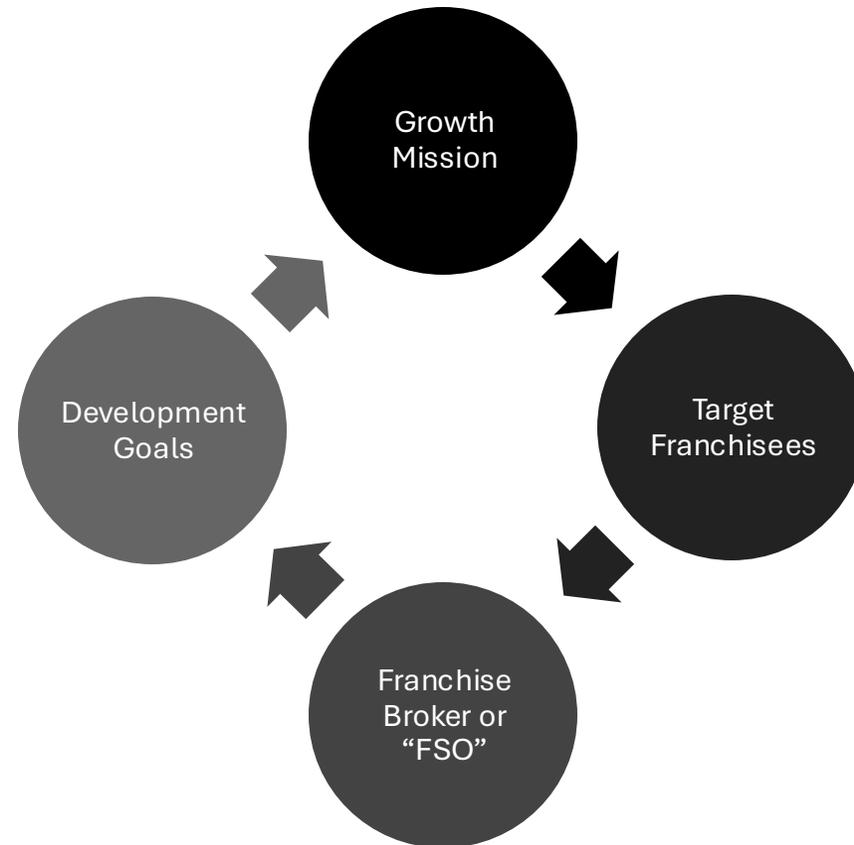
NASAA Model Franchise Broker Registration Act

North American Securities Administrators Association (NASAA)

- NASAA Franchise & Business Opportunities Project Group
- Model Franchise Broker Registration Act
 - ✓ 200 public comments
 - ✓ Based loosely on Investment Advisers

Role of the Franchise Broker and Salesperson

- The role of the franchise broker or franchise salesperson is to carry out the growth mission of the franchise.



Franchise Brokers vs. Franchise Sales Organization

- Franchise Brokers: Commonly referred to as Franchise Consultants, match candidates to franchises; usually compensated by franchisors.
- Franchise Sales Organizations “FSO”: help franchise brands find and recruit potential franchisees; provide a larger scope of service; compensation varies.

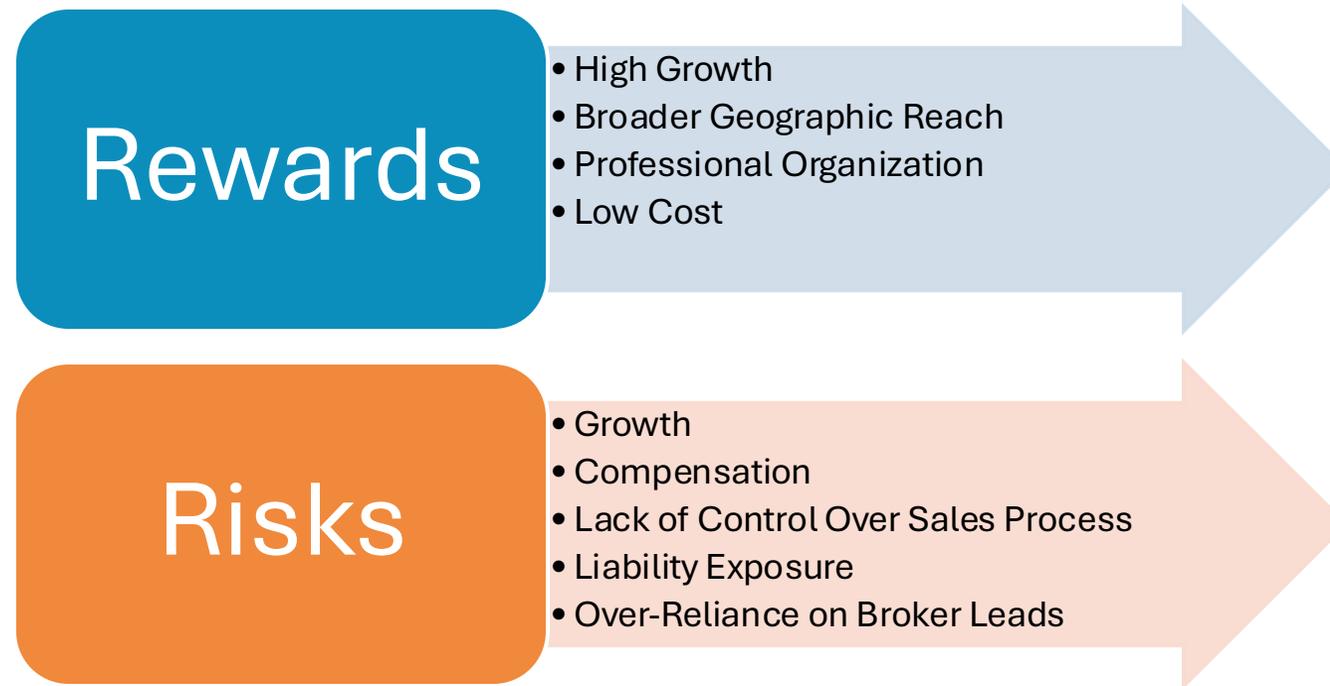
The Franchise Sale Journey

- Awareness → Inquiry → Evaluation → Discovery Day → Decision.
- Brokers typically involved from inquiry through evaluation.

The Do's and Don'ts

DO'S	DONT'S
Third-Party OR In-House	Inadequate Sales and Operations Infrastructure
Due Diligence	The Rogue Broker
Sales Contract	Over Reliance
Compliance Programs	Candidate Screening
Creative Compensations	Growth Mission
Skill Sets	

The Risks and Rewards of Using Franchise Brokers or Franchise Sales Organization



Minimizing Franchisor Liability Exposure

- In-House vs Third Party Franchise Broker
- Broker Due Diligence (i.e. background check, earnings claims, reputation status)
- Marketing Material Review
- Compliance Training
- Franchisor Oversight
- Well-Drafted Contract
 - Scope of Work
 - Development Schedule
 - Exclusivity
 - Indemnification
 - Insurance

Example #1 | Anchored Tiny Homes (ATH)

- F'or located in Northern California
- Builds ADUs (granny units)
- Partnered with Franchise Fastlane
- Fastest-growing custom ADU Builders
- F'ees, customers and contractors left empty handed
 - Where did \$100 million go?
 - F'or abandoned operations
 - Facebook group “Scammed by ATH”

Example #2 | Burgerim

- For located in Southern California
- Fast-casual burger chain
- Sold 1,550 franchises between 2015-2019
 - High pressure sales strategy
 - Most successful early-growth story in franchising history
- FTC issued
 - permanent injunction from selling in America
 - \$56 million in monetary awards

The FTC Franchise Rule: An Overview

- Governs franchise sales and disclosures at the federal level.
- Requires FDD (Franchise Disclosure Document) delivery before sale.
- IFA Foundations of Franchising Bootcamp
 - 6 week program
 - 100% online

Triggers for Legal Liability

- Failure to register | renew | update FDD
- Failure to comply with FDD delivery requirements
- Failure to comply with financial assurances
- Not telling the truth
 - Misrepresentations
 - Omissions
- Unlawful FPR

Disclosure Obligations Under FTC Rule

- Franchise Sellers include anyone who offers for sale or sells a franchise.
 - Brokers must ensure compliance with disclosure timing.
- Failure to comply may void franchise agreements.

State Law Layer: State-Specific Broker Registration Requirements

- Several states have franchise registration and broker regulations.
- Brokers may face additional obligations depending on the state.
- **California**: Brokers must register and disclose relationships.
- **New York & Washington**: Filing requirements for broker activity.

Best Practices for Brokers

- Regular sales trainings and compliance certifications
- Use checklists to ensure uniformity and compliance
- Ensure all documentation is identified and collected
- Ensure proper contracts are in place, that include indemnity clauses
- Ensure franchisor has proper insurance coverages

IFA's Position & Reform Recommendations

- IFA supports clarity and consistency in broker regulation.
- Encourages federal-state coordination.

Future Outlook: Regulatory Trends

- States likely to increase scrutiny of brokers.
- Possible amendments to FTC Rule regarding broker roles.
- NASAA Model Franchise Broker Registration Act

Q&A

- Open for questions and discussion.

Conclusion & Contact Info

- Thank you for attending!
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