



Guiding You Through the Legal Maze.™

E-MAILING THE FRANCHISE DISCLOSURE DOCUMENT TO PROSPECTIVE FRANCHISEES

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For nearly 30 years the traditional way to disclose to a prospective franchisee was to hand-deliver or mail (usually by overnight courier) the Franchise Offering Circular. This had to be done “on or before the first personal meeting” and at least 14 Business Days before the franchisor could have the franchisee sign any agreement or give the franchisor any money.

Under the new FTC Franchise Rule, which became mandatory on July 1, 2008, a franchisor can deliver the Franchise Disclosure Document (“FDD”) electronically by e-mailing the FDD in a pdf form or mailing a FDD copied on to a CD-ROM to a prospective franchisee. The first personal meeting requirement has been eliminated. The prospective franchisee must have the FDD and Exhibits at least 14 calendar days before the franchisee signs any agreement with the franchisor or gives the franchisor any money. Electronic delivery of the FDD disclosure will save the franchisor substantial time and money as the cost of copying and mailing a Franchise Disclosure Document and Exhibits, let alone personnel cost, really adds up. The FTC estimates that the cost to copy and mail a disclosure document is about \$35.00 each. The states having franchise registration and disclosures laws also permit e-mail delivery of the FDD.

There are specific requirements on e-mailing the FDD that must be followed. Before you can e-mail an FDD, you must notify the prospective franchisee how you will deliver it, the formats in which you make it available, any prerequisites for obtaining it in a particular format, and any conditions (such as specific software applications) necessary to review it in a particular format. If you intend to deliver the FDD by e-mail you should give the following notice to the prospective franchisee:

"We will send you our Franchise Disclosure Document by e-mail. Your computer must be capable of reading PDF files, which requires a free Adobe® Reader® program. You may need a broadband connection to download the disclosure document."

You must provide the notice separately from the FDD and it must be delivered before you e-mail the FDD. The FTC suggests that you include the notice in your franchise application. The application should include a space for each applicant to include the applicant’s e-mail address.

Even if you e-mail the FDD, you should have the prospective franchisee print out the Receipt page, sign and date it, and return it to you, either by conventional mail, by delivery service, by fax (which has the advantage of an additional date and time stamp), or by scanning it and attaching it to a return e-mail. While a manual signature on a paper receipt is not required by the new rule, as security codes, passwords, and electronic signatures are explicitly permitted, a manually signed Receipt serves a number of useful purposes especially in proving that you delivered the FDD, that the prospective franchisee was able to retain the FDD on the franchisee’s computer, that it was compatible with the prospective franchisee's computer system and that the Receipt included all the required instructions regarding how the signed Receipt should be returned to the franchisor.

The franchise sales laws are complex and easy to violate even inadvertently. This article discusses just one portion of your obligations to comply with federal and state laws. It is the obligation of the franchisor to prove compliance with these franchise laws. There may be personal liability for the franchisor's principals for violation of the federal and state franchise registration and disclosure laws.

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