

Franchisors – Don't get caught by the Real Estates Agents Act



A franchisor who takes an active role in facilitating the sale of a franchisee's business could be caught by the requirements of the Real Estate Agents Act 2008 ("the Act").

If a franchisor is engaging in "Real Estate Agency Work" and is not licenced under the Real Estate Agents Act 2008 it could be subject to penalties of up to \$100,000.

Real Estate Agency Work

So what is Real Estate Agency Work?

The Act defines it as any work done, in trade, on behalf of another person for the purpose of bringing about a "transaction" but does not include the provision of general advice or materials to assist owners to locate and negotiate with potential buyers.

A "transaction" is defined as including the sale, purchase, or other disposal or acquisition of any business, irrespective of whether it includes an interest in land.

A franchisor who performs work (excluding general advice and provision of materials to assist that franchisee locate and negotiate with potential buyers) for a franchisee to bring about the sale of that franchisees business would therefore be caught by the licensing requirements of the Act.

So it will come down to the actual level of involvement that the franchisor has in the sale process.

If the franchisor is merely putting the franchisee in touch with a third party (i.e. a business broker or a third party who they know is interested in purchasing a franchise) it should not fall under the Act. However, if the franchisor is locating and negotiating with buyers **on behalf** of the current franchisee then they would be in breach of the Act.

Recommendations

With penalties of up to \$100,000 under the Act (for acting without a licence) it is important that franchisors are cautious about the level of involvement they take in facilitating the sale of a franchisee's business. To minimise your risk we would recommend the following:

- If you are contacted by a prospective purchaser then take their details and pass them on to any franchisees that you know are interested in selling or alternatively put them directly in touch with the franchisee – that should be the sum total of your involvement until the sale is negotiated between the parties and the transaction is at a stage where franchisor approval of the purchaser as a franchisee is required;
- If a franchisee comes to you wanting to sell their business then direct them to a business broker;
- Any interaction with the prospective buyer prior to the sale agreement being signed should be limited to providing them with information about the franchise system;
- There is an exemption for lawyers under section 7 of the Act, so, if in doubt, leave what work you can to your lawyer.

Conclusion

As with all new legislation there is always some questions as to where the lines lay. We believe it is better to be cautious, use professionals, such as business brokers and lawyers, where possible and ensure that you merely assist the franchisee with their sale rather than facilitating it.

We can help!



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Important: This information is provided as a guide only and is not intended to be legal advice. You are strongly recommended to consult the services of an experienced franchise lawyer if you are considering purchasing a franchise.

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