2026 Legal Update

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Franchise Post-Term Non-Competes

Virginia Ban (Effective July 1, 2026)

1. Unlawful to "offer or enter into a franchise agreement that restricts the right of a franchisee to engage in the business of offering, selling, or distributing goods or services at retail after termination or expiration of the franchise agreement." Section 13.1-563(A)(4)
2. VA law will govern all Franchise Agreements
3. Prior Agreements are grandfathered, but if those agreements are extended or amended, it would likely trigger application of the new law
4. Carveout for non-competes (up to two years) tied to the sale of a franchise business
5. Violations: revocation of registration, fines up to $25K, felony, etc.

Franchise Post-Term Non-Competes

Virginia Ban (Effective July 1, 2026)

What to do?

1. Amend in VA after July 1, 2026 to add a VA Addendum: "Non-compete is enforceable to the extent permitted under VA law."
   → Allows for enforcement in a non-retail business
   → Allows for changes in the law.
2. Review amendments going forward to make sure they comply.
3. Review and strengthen terms such as non-solicits and confidentiality agreements and other processes that protect confidentiality/proprietary information and trade secrets

Other considerations:

1. Virgina ***Retail*** Franchise Act – only applies to retail franchises.
2. Residual royalties or other payments instead(?)
3. No litigation challenging the law yet.

Franchise Post-Term Non-Competes

NASAA Franchise Guidance (February 2026)

- The NASAA Franchise and Business Opportunities Project Group issued updated guidance stating that post-term franchise non-compete provisions “should be reasonable” and tailored to protect legitimate franchise system interests rather than broadly restrict competition.

- NASAA emphasized that franchise non-competes should be evaluated differently from employment non-competes because franchisees are independent business owners, but cautioned that franchise restrictions still must be narrowly tailored in:
  - duration,
  - geographic scope, and
  - restricted activities.

Cautionary Tales

FTC v. Xponential Fitness (2026)

- FTC brought an enforcement action for Franchise Rule violations and deceptive practices against Xponential Fitness, a multi-brand fitness franchisor
- Settlement requires $17M be paid back to franchisees
- Failure to make proper disclosures in the FDDs across multiple brands
- Failure to adhere to disclosure and waiting periods across multiple brands suggested platform-wide systematic failures

Cautionary Tales

FTC v. Xponential Fitness (2026)

- Core allegations
  - Misrepresented time to open studios (6 months v. 15-17 months)
  - Failure to disclose officers, including the CEO, in Item 2
  - Failure to disclose in Item 3 that then-current CEO was sued for fraud on multiple occasions
  - Failure to disclose in Item 4 that then-current President of Franchise Development had a bankruptcy event
  - Failure to disclose franchisees who left the system, or provided outdated contact information (e.g. using brand-specific email)
  - Failure to deliver FDDs within required 14-day period

Cautionary Tales

FTC v. Xponential Fitness (2026) – Practical Takeaways

- Signals renewed FTC focus on franchising
- “Time to open” and operational expectations were central issues
  - Treat these like financial performance representations
- “Technical” violations led to enforcement triggers
  - Late FDD delivery (14-day rule) = core violation, not foot fault
  - Outdated franchisee lists = material omission

Cautionary Tales

California DFPI v. Xponential Fitness (2024)

- California DFPI and Xponential entered into a Consent Order
- Core Allegations:
  - Understating the Item 7 initial investment and costs
  - Making FPRs to prospects outside of the FDD
  - Failing to disclose the extent to which Xponential would compete directly with franchisees (*i.e.* selling gym passes to consumers)
  - Failures to disclose persons in Item 2 and litigation in Item 3
  - Item 20 disclosure failures (incorrect numbers)
  - Item 18 disclosure failure (using but not disclosing public figure)
  - Misrepresenting time to open

Cautionary Tales

California DFPI v. Xponential Fitness

- Outcome
  - Permanent Consent Order disclosure in Item 3
  - Desist and refrain obligations
  - Administrative penalty of $450,000 (relatively modest vs. FTC)
  - Required franchise law compliance courses for all Item 2 persons, all persons assisting in franchise law compliance (including outside lawyers)

Cautionary Tales

Washington DFI v. Xponential Fitness (2025)

- Washington DFI and Xponential entsered into a Consent Order
- Core Allegations included those in the CA case
- Outcome
  - Permanent Consent Order disclosure in Item 3
  - Desist and refrain obligations
  - Administrative penalty of $5,400

New Fast Track Programs

Maryland's Fast Track for Registrations (January 2026)

- February 1: Submit FDD without issuance date, audited financials, or data related to audited financials (Item 8)
  - Comment letters or pre-clearance notice within 15 days of receipt
  - Respond to comment letters in 15 days

- April 10: Submit final FDD, Audited Financials, Auditor's Consent, and Certification

- Within 10 days of receipt, approved or additional comments.

New Fast Track Programs

New York's Early Review Renewal Program (February 2026)

- March 16: Submit FDD within 75 days after the close of the franchisor's fiscal year end, without audited financials
  - This FDD must be 'nearly finalized'

- April 30: Submit final FDD must be filed within 120 days after the close of the franchisor's fiscal year end.

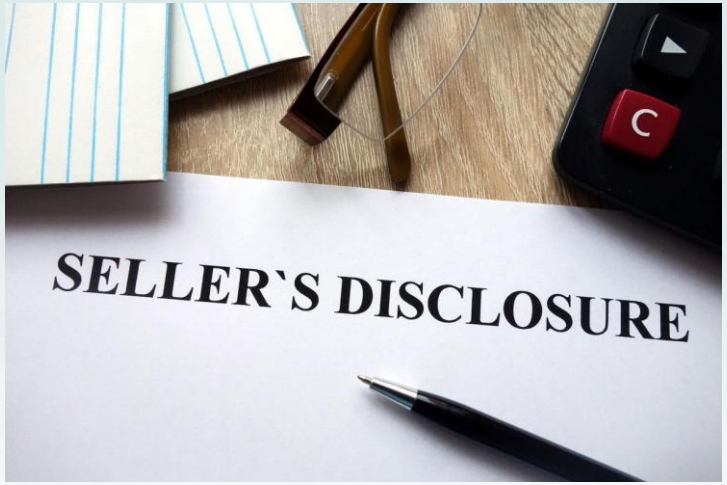
- *No promised turn around time on comment letters or approval.

- New York's Early Review program can:
  - Shorten renewal approval timelines
  - Move you ahead of the spring filing backlog

Franchise Broker Registration Updates

NASAA Model Franchise Broker Registration Act (Adopted May 4, 2026)

- Drafted to be implemented by any state, whether or not a registration state, to close regulatory gaps in franchise sales
- Franchise brokers must register with the state before offering/selling franchises
- Franchisors may only use registered brokers
- Franchise brokers do not include parents of the franchisor
- Competency exams, experience requirements, insurance
- Brokers must provide a separate disclosure statement to prospects that includes:
  - Compensation (how brokers get paid)
  - Litigation history
  - Role in the transaction



Franchise Broker Registration Updates

California SB919 (Signed September 2024 – not yet effective)

- SB919 imposes a registration requirement on franchise brokers, similar to Washington and New York
- Requires franchise brokers to prepare and file a disclosure document, including:
  - Role of the franchise broker
  - Contact information for franchisees sold to in the last year
  - Number of clients in each industry the broker sells franchises
  - Relevant litigation history
  - How the franchise broker is or may be compensated
- Prospective franchisees must receive the broker disclosure document

Franchise Broker Registration Updates

California SB919

- Allows California to revoke a franchise broker's right to sell
- Creates a cause of action for the franchisee both against the franchise broker for damages and against the franchisor for rescission
- Creates a cause of action for the franchisor against the franchise broker if they are in violation of the law
- SB919 becomes operative on the later of: (1) July 1, 2026, or (2) the first anniversary of the date on which the appropriation is made
  - The legislature has not yet funded this requirement, though it may happen this year
  - The delay provides time for California and NASAA to align their efforts

Rapid Fire!

Feedback from Examiners and Frequent Comment Letters

- Item 6: Must disclose max or formula for any increase. Examiners are inconsistent with what they'll accept.
- Item 20 Errors: Dicky's BBQ: $40K fine
- Auditors that are not peer reviewed
- Franchisee Complaints re: unmet training requirements
- Franchisee Complaints re: fees collected in deferral states
- New MN Workers' Compensation requirement
- NASAA Statement concerning market factors affecting time to open

Recent Franchise Litigation

What Actually Wins (and Loses) in 2026

- Being right on the contract is not enough
- Courts are focusing on:
  - Franchisor conduct
  - Evidentiary record
  - Contract structure

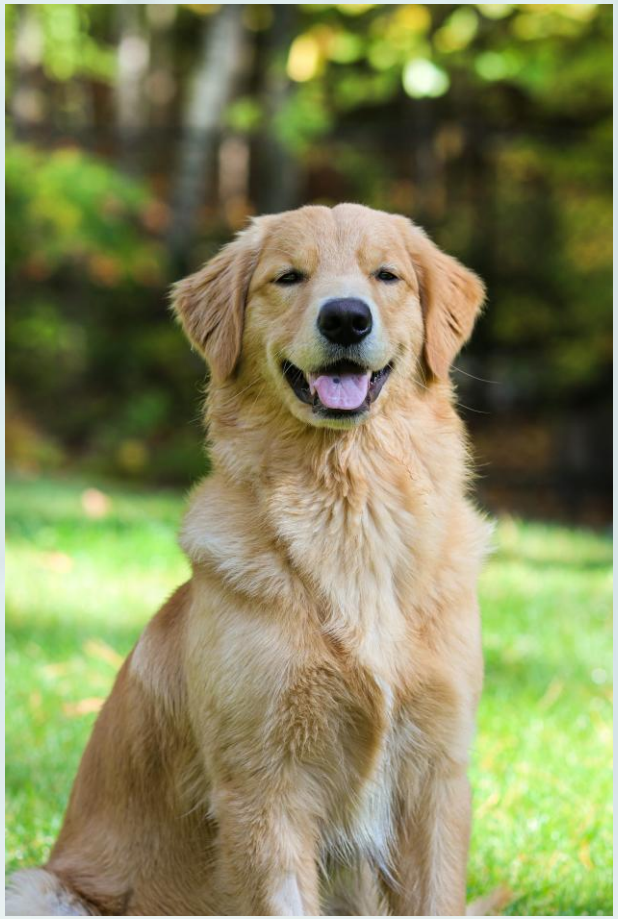
Recent Franchise Litigation

Five Themes from Recent Cases

1. Equity can defeat enforcement
2. Damages remain flexible
3. Proof of harm is critical
4. Courts will enforce—if record supports it
5. Structure determines forum and remedies

Litigation Updates

Fetch! Pet Care, Inc. v. Atomic Pawz Inc.
6th Cir. (Mar. 20, 2026)



Why It Matters

- Injunction Denied—Despite Breach
  - Appellate decision
  - Focus on franchisor conduct
  - Sales and system decisions scrutinized

Litigation Updates

Fetch! Pet Care, Inc. v. Atomic Pawz Inc.
6th Cir. (Mar. 20, 2026)

<u>What Happened</u>

- 31 franchisees challenge system economics
- Franchisor:
    - seeks to enforce noncompetes
    - cuts off system access before breach

Litigation Updates

Fetch! Pet Care, Inc. v. Atomic Pawz Inc.
6th Cir. (Mar. 20, 2026)

Court's Key Move: Unclean Hands

- Earnings / "passive income" positioning
- FDD changes
- Pre-breach termination conduct

Litigation Updates

Fetch! Pet Care, Inc. v. Atomic Pawz Inc.
6th Cir. (Mar. 20, 2026)

Takeaway:

- Sales conduct AND enforcement conduct can independently defeat injunctive relief.

Litigation Updates

- If the relationship breaks down, what can you still recover?

Litigation Updates

Fiesta Ventures Beavercreek, LLC v. Qdoba Restaurant Corp.
S.D. Cal. (2025)

- Lost Future Royalties Still Viable
  - Limits on rigid *Sealy* rule
  - Important damages tool preserved

Litigation Updates

Fiesta Ventures Beavercreek, LLC v. Qdoba Restaurant Corp.
S.D. Cal. (2025)

<u>What Happened</u>

- Franchise never opens
- Extensions granted → continued failure
- Franchisor seeks future royalties

Litigation Updates

Fiesta Ventures Beavercreek, LLC v. Qdoba Restaurant Corp.
S.D. Cal. (2025)

Court's Key Move

- Total vs. Partial Breach
- *Sealy* not categorical
- Focus:
  - Was there a total breach?

Litigation Updates

Fiesta Ventures Beavercreek, LLC v. Qdoba Restaurant Corp.
S.D. Cal. (2025)

Takeaway

- Lost future royalties remain available—if you frame the conduct as a total breach

Litigation Updates

From Damages → Injunctions

- Even with breach, can you prove harm?

Litigation Updates

Showhomes Franchise Co. v. Estes
M.D. Tenn. (2026)

- Clear Breach — No Injunction
- Noncompete violation assumed
- Relief denied due to lack of evidence

Litigation Updates

Showhomes Franchise Co. v. Estes
M.D. Tenn. (2026)

What Happened

- Franchisor alleged:
  - Loss of goodwill
  - Competitive harm
  - Refranchising impact

Litigation Updates

Showhomes Franchise Co. v. Estes
M.D. Tenn. (2026)

<u>Court's Key Move: No Evidence</u>

- Missing:
  - Specific lost customers
  - Confusion evidence
  - Concrete harm

Litigation Updates

Showhomes Franchise Co. v. Estes
M.D. Tenn. (2026)

Takeaway

- Courts require real, specific evidence—not generalized claims

Litigation Updates

What Does Winning Look Like?

Same claim—different execution.

Litigation Updates

BrightStar Franchising, LLC v. Foreside Healthcare, LLC
N.D. Ill. (2025)

What Happened

- Former franchisee competing
- Same territory and relationships
- Use of system knowledge

Litigation Updates

BrightStar Franchising, LLC v. Foreside Healthcare, LLC
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Litigation Updates

BrightStar Franchising, LLC v. Foreside Healthcare, LLC
N.D. Ill. (2025)

<u>Court's Key Move: Detailed Evidence</u>

- Customer overlap
- Competitive activity
- Defined harm

Litigation Updates

BrightStar Franchising, LLC v. Foreside Healthcare, LLC
N.D. Ill. (2025)

Takeaway

- Courts will enforce non-competes—when supported by a concrete factual record

Litigation Updates

Beyond Enforcement → Forum

When does arbitration control the dispute?

Litigation Updates

Zaltsman et al. v. Xponential Fitness, LLC
C.D. Cal. (2026)

Limits on Arbitration

- Multi-entity franchise systems
- Arbitration clauses do not automatically extend

Litigation Updates

Zaltsman et al. v. Xponential Fitness, LLC
C.D. Cal. (2026)

What Happened

- Agreements with franchise entities
- Attempt to compel parent company into arbitration

Litigation Updates

Zaltsman et al. v. Xponential Fitness, LLC
C.D. Cal. (2026)

Court's Key Move: Non-Signatory Not Bound

- No:
  - Agency
  - third-party beneficiary status
  - sufficient control

Litigation Updates

Zaltsman et al. v. Xponential Fitness, LLC
C.D. Cal. (2026)

Takeaway

- Arbitration clauses do not follow your structure—you have to design them to.

Litigation Updates

Key Lessons: What These Cases Show

- Equity matters (*Fetch*)
- Evidence controls outcomes (*Showhomes / BrightStar*)
- Structure defines remedies (*Qdoba / Xponential*)

Litigation Updates

- **It’s not just the agreement—it’s how your conduct, your record, and your structure look in litigation.**
- Questions?