COVID-19 and State Franchise Renewals

June 12, 2023
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Originally posted on June 12, 2020, content updated on June 12, 2023.

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The COVID-19 pandemic disrupted the work of state franchise regulators as well as the franchisors they regulate and the franchise buyers who benefit from state regulation. The pandemic also affected accounting firms, sometimes delaying the completion of audited financials, resulting in late renewal filings.

Several states took positive steps to ease their filing rules as a result of COVID-19. It's worthwhile to reflect on these changes so that we can do even better in the face of future calamities, whether that means a recurrence of the pandemic before a vaccine is available or the outbreak of a different pandemic.

Extended deadlines

Some states extended their franchise renewal filing deadlines. As a result, franchisors that missed their renewal deadlines were not required to submit new initial applications for franchise registration. This would have increased their filing fees. At the time, the fee for an initial registration in New York, for example, was $750, while the renewal fee was $150. In the State of Washington, the initial fee was $600, while the renewal fee was $100. Of course, these extensions did not allow franchisors to sell franchises during the period in which the franchise registration had lapsed.

California

On March 22, 2020, the California Commissioner of Business Oversight issued a notice stating that, through June 30, 2020, the *Department of Business Oversight* would waive the additional $225 filing fee for franchise renewals that are filed after the registration has lapsed. At the time, the initial registration fee in California was $675, and the renewal fee was $450.

Hawaii

The Hawaii *Department of Commerce and Consumer Affairs*, which normally requires renewal filings within three months after the end of each year, at that time extended the deadline from March 31, 2020, to April 30, 2020.

Illinois

At that time, the Illinois Attorney General's Office issued a notice stating that a franchisor whose registration was due to expire between April 1, 2020, and June 1, 2020, was automatically granted an extension of 60 days from its anniversary date to file a franchise renewal application without penalty.

Indiana

The Indiana Securities Commissioner announced on April 7, 2020, that "any franchise registration that was set to expire between March 16, 2020, and May 31, 2020, was automatically extended to June 30, 2020."

Maryland

The Securities Commissioner of Maryland issued an order on March 17, 2020, stating that a franchisor whose registration was due to expire during the Coronavirus State of Emergency was granted an extension of that registration "for a period of time equal to 30 days after the date the Governor of Maryland declared the end of the Coronavirus State of Emergency."

Minnesota

The Minnesota Commerce Department issued a Guidance notice on March 30, 2020, stating that the deadline for franchisors whose annual reports were due by April 30, 2020, was extended to June 30, 2020.

New York

New York law normally requires franchisors to file updated Franchise Disclosure Documents (FDDs) no later than four months after the end of each fiscal year. In a notice dated March 24, 2020, as revised on May 12, 2020, the Office of the Attorney General granted a filing deadline extension. Any registration renewal or amendment that was due between March 1, 2020, and June 6, 2020 (the "Relief Period") was extended for 90 days from the end of the Relief Period.

Virginia

On March 17, 2020, the Virginia State Corporation Commission extended the renewal deadline for franchises whose registration was due to expire while the Judicial Emergency Declaration by the Supreme Court of Virginia remained in effect. The initial 21-day extension was extended on April 2, 2020, "to remain in effect during the pendency of the Judicial Emergency Declaration or any similar subsequent declaration, declaration extension or order of the Supreme Court of Virginia or such other time period as may be subsequently ordered by the Commission."

Washington

The Washington Department of Financial Institutions issued a notice on April 8, 2020, stating that "applicants may pay the renewal fee of $100 to complete an application for franchise registration … for any offering that was previously registered and that expired, or that will expire, between March 1, 2020, through June 30, 2020, until further notice."

Electronic filings

Paper and CD ROM filings can be a challenge when filers work from their homes. Online filings are usually the easiest and always the fastest way to file. For some states, franchise filings continue to be accepted electronically. Minnesota, Rhode Island and Wisconsin, for example, offer electronic filing. Indiana required franchise applications to be made electronically since January 1, 2020. California's DocQNet self-service portal existed long before the pandemic, but in its notice of March 22, 2020, the California Commissioner of Business Oversight stated that "the Department is strongly urging" that all franchise filings be submitted electronically during the COVID-19 pandemic. In its notice of April 8, 2020, the Washington Department of Financial Institutions reminded filers that all franchise filings are now required to be submitted online through the Department's electronic filing system. Hawaii also encouraged franchisors to file online using the state's securities portal.

New York never offered electronic franchise filings until New York City became the epicenter of the COVID-19 pandemic. But while New York's COVID-19 notice required that all franchise filings "be submitted by email in addition to the required paper and/or CD filings," the email submission must also contain a copy of the check that must still be mailed to the Department of Law.

Remote Notarization and E-Signatures

A few states required the franchisor's certification to be signed by an officer of the franchisor before a notary public. It may have been impossible during a pandemic to find a notary or an officer willing to sign before a notary when almost everyone was sheltered in place. For this reason, Washington waived notary requirements "while social distancing directives remain in effect."

New York and Hawaii temporarily suspended the requirement that the notary be physically present at the signing. In other words, audio-visual technology was adequate. Of course, this worked only when the signing officer and the notary were present in the same state. California went a step further by announcing that it would accept documents "filed on DocQNet that are signed electronically using e-signature software, such as DocuSign, in which case notarization of signatures will not be required."

Final Thoughts

Extending deadlines is a useful tool when special circumstances affect large numbers of filers. But electronic filings and e-signatures are helpful to everyone with or without a pandemic. We can hope that states that do not offer online filings may now see the need to move quickly and institute online alternatives to paper and CD-ROM requirements, and that more states allow e-signatures as an alternative to in-person notarization requirements.