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## Understand Relevant State Law When Starting a Franchise

By John E. MacDonald

Many people make the mistake of assuming that uniform legal principles apply to franchising and that state laws applying to franchising are essentially the same no matter where you go. This assumption could not be more wrong. In fact, the differences in state law from state to state can have a substantial effect on the outcome of disputes between franchisee and franchisor.

A recent case highlights a significant advantage one state, New Jersey, gives its franchisees over its sister state, Pennsylvania. In New Jersey, all contracts (including Franchise Agreements) are subject to implied covenants of "good faith" and "fair dealing." This means that a franchisor's conduct in performing its duties under the franchise agreements (such as training, advertising, representations relating to build-out costs, etc.) are subject to a higher standard than simply what is actually written in the agreements. For example, if a New Jersey franchisor states that it will use its "best efforts" to obtain an appropriate location for a franchisee, those "best efforts" will be judged on a "good faith and fair dealing" standard. In contrast, many Pennsylvania franchisees may be surprised that there is no "good faith and fair dealing" requirement in Pennsylvania regarding a franchisor's performance of its

obligations under the franchise agreement. This fact has been confirmed recently in *Keshock v. Carousel Sys., Inc.*, No. 04-758, 2005 WL 1198867, which specifically addresses the good faith and fair dealing concepts as they apply to franchisees.

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In addition to differences in state case law, the statutes of the various states also vary widely. Franchisors know that some states are "registration" or "business opportunity" states (which often require UFOCs to be reviewed by the state prior to use) and require prior approval by a state agency. Of more interest to franchisees, however, are the substantive differences in the rights accorded to both franchisees and franchisors in the individual state statutes relating to franchising. The differences in these statutes may be determinative in the outcome of various disputes concerning important

issues such as termination, renewal, and transfer rights.

The choice of where to franchise is (and should be) driven by business interests. But before franchising in a particular state, the careful franchisor should consult with a knowledgeable attorney as to whether there are any franchise registration or business opportunity filing requirements. The franchisor should make sure that it is informed about state statutes that govern franchise disputes, which may result in different outcomes from state to state.

**John E. MacDonald** is an attorney at Stark & Stark in Princeton, NJ. He can be reached at 609-896-9060 or by e-mail at [jmacdonald@stark-stark.com](mailto:jmacdonald@stark-stark.com).



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