

# Know Before you Go – Non-Compete Provisions in Franchise Agreements



Most [franchise agreements](#) contain non-competition provisions that apply both during and *following the end of* the franchise relationship. These are important provisions that need to be identified and understood before entering into a franchise agreement. While often a reasonable commitment in exchange for the benefits of operating under a franchise system, competitive restrictions are still well worthy of independent consideration before you sign on the dotted line.

## Post-Term Non-competes

In general, non-compete provisions state that the franchisee will not, during the term of the franchise agreement and for a reasonable period thereafter (typically two or three years), own or be involved in any “competitive business.” What constitutes a “competitive business” will vary from franchise system to franchise

system, but most franchisees can generally expect to be prohibited from taking part in any business that offers goods/services that are either identical to or competitive with the goods/services offered under the franchise system. Non-compete provisions must be limited in geographic scope, and generally cover a set radius (usually somewhere around 5 to 25 miles) around the former franchised outlet, and possibly also the outlets of other existing franchisees.

With the notable exception of California, the courts in most states favor the enforcement of valid non-competition covenants. Georgia used to disfavor these provisions, but has recently enacted legislation that bolsters the enforceability of non-competition agreements. In addition, many states adhere to what is known as the “blue pencil” rule, which allows them to limit the scope of otherwise unenforceable non-competition covenants to make them enforceable. As a result, even if a franchise agreement’s non-competition covenant looks unenforceable (e.g., “you can’t do anything anywhere ever without our consent”), in many states franchisees can still expect to be bound by some competitive restrictions following termination of the franchise agreement.

## **Negotiable Terms**

Importantly, non-competition provisions can be negotiated under appropriate circumstances. For example, if the [franchisee](#) comes into the system already with considerable experience and connections in the industry, it may be reasonable to expect the franchisor

to concede on the non-compete in certain respects. Likewise, if the standard non-compete covers a 20-mile radius and your franchised unit will be located in Manhattan, a reduction in geographic scope might be acceptable.

## **Non-Disclosure and Non-Solicitation**

Finally, franchisees also must understand that non-competition provisions are separate and distinct from non-solicitation and non-disclosure obligations. Non-solicitation means that you cannot contact the specified group of people (usually customers and employees) for purposes of trying to steer them away from the franchised system. Non-disclosure covenants prohibit use of the franchisor's system standards and confidential information for competitive purposes. These are additional important post-termination restrictions that franchisees must understand and honor, and that franchisors are generally going to consider non-negotiable.

This article is provided for informational purposes only, and does not constitute legal advice.

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