



Guiding You Through the Legal Maze.™

**FTC INTERIM BUSINESS OPPORTUNITY RULE
APPLIES TO CERTAIN
BUSINESS OPPORTUNITY SELLERS**

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State Business Opportunity Laws

Hopefully, all business opportunity sellers are aware that 25 states have laws regulating the sale of business opportunities. There are several different types of business opportunities covered by these state laws including:

- (i) sellers of vending machines, racks, display cases and currency-operated amusement machines or devices who provide locations or location assistance;
- (ii) sellers who “buy back” the items that the buyer produces, grows, fabricates or assembles;
- (iii) sellers who guarantee in writing that the buyer will derive income;
- (iv) sellers who provide the buyer with a sales or marketing program; and
- (v) sellers who represent to the buyer that there is a market for the goods or services.

These laws generally require, among other things, the preparation of a disclosure document to be given to a prospective buyer for his or her review (2 to 10 business days) before the buyer can sign contracts or give the seller money. A majority of these states also require the registration and approval of the business opportunity offering by a state regulatory body.

FTC Interim Business Opportunity Rule

What you may not know is that certain (but not all) business opportunity sellers are also subject to the Federal Trade Commission Interim Business Opportunity Rule 16 C.F.R. Part 437 (the “FTC Business Opportunity Rule”). The FTC Business Opportunity Rule applies to “business opportunity ventures.” A business opportunity venture has 3 elements:

1. The buyer sells goods or services which are supplied by the business opportunity seller or a person affiliated with the business opportunity seller;
2. The business opportunity seller assists the buyer in any way with respect to securing accounts for the buyer, or securing locations or sites for vending machines or rack displays, or providing the services of a person able to do either; and
3. The buyer is required to make a payment of \$500 or more to the business opportunity seller or person affiliated with the business opportunity seller at any time before or within 6 months after the business opens (including equipment purchases from the seller or affiliate).

If you meet all 3 elements, then you are a business opportunity venture under the FTC Business Opportunity Rule and are subject to its disclosure requirements. You are required to prepare a FTC-formatted disclosure document containing 20 items of information.

This disclosure document must be given to the prospective buyer at the earlier of either:

- (i) the prospective buyer's first personal meeting with the seller; or
- (ii) 10 business days before the execution of any contract or the payment of any money. In addition, the buyer must have the completed contract 5 business days before signing or giving money to the seller.

The FTC-formatted disclosure document is generally far more extensive than required under state business opportunity laws. Therefore, if your disclosure document statement was written to comply with a state business opportunity law, in all likelihood, it does not satisfy the FTC Business Opportunity Rule. Furthermore, the FTC Business Opportunity Rule applies to offers and sales of a business opportunity venture in all 50 states, Puerto Rico and the U.S. Virgin Islands and not just in the states having business opportunity laws. You must give a disclosure statement in connection with all sales in all states and also comply with 10-business day and 5-business day rules, even in a business opportunity state requiring less disclosure or a shorter presale "cooling off" period.

What to do:

If you are a business opportunity seller that does not meet all of the elements of a "business opportunity venture" under FTC Business Opportunity Rule, the FTC Business Opportunity Rule does not apply to you and you need only comply with applicable state business opportunity laws that would be the state where the seller is located, the state where a purchaser is a resident and/or the state where the business opportunity will be located and operated..

If you do not secure outlets or accounts for your buyers, or you do not sell vending machines, rack displays, or similar items or, even if you sell these items, you do not directly or indirectly assist in any way in providing site location assistance, then the FTC Business Opportunity Rule does not apply to you. If you do any of the above, and your disclosure document complies with state business opportunity laws, but is not in the FTC format, you may be in violation of the FTC Business Opportunity Rule. You should consult with an attorney knowledgeable in franchise and business opportunity laws to determine whether the FTC Business Opportunity Rule applies to your program.

If by reading this article, you appear to be a business opportunity venture under the FTC Business Opportunity Rule or a business opportunity seller under state business opportunity laws and you do not give any disclosure document...run, don't walk, to an attorney knowledgeable in franchise and business opportunity laws. You and your attorney will need to determine whether you should eliminate providing location assistance or accounts for your buyers and/or providing any sales or marketing assistance in order to become a true distributorship or "bite the bullet" and comply with the applicable federal and state business opportunity laws.

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