

In The News

Akerman Lawyers Dale Alexandra Cohen and Zachary Sell Weigh Conflicting Case Law Regarding Compliance with Franchise Agreement's Notice Provision

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Corporate partner [Dale Alexandra Cohen](#) in New York and associate [Zachary Sell](#) in Denver co-authored an article for the American Bar Association's *Franchise Lawyer* titled, "Must Perfect Be the Enemy of the Good? Compliance with the Franchise Agreement's Notice Provision." They reason that while franchisors routinely communicate with their franchisors on day-to-day operational matters through informal channels, certain types of communications, such as notices of default or termination, typically carry an obligation to formally notify business partners, clients, or franchisees. The authors explain that although strict compliance with these formal notice requirements may seem straightforward, franchisors and franchisees routinely deviate from them, whether unintentionally or by design. They offer pointers to adhere to compliance requirements.

The authors wrote: "Perfect compliance begins at the drafting stage of a franchise agreement. A notice provision should always be clear, reasonable, and consistent with the parties' actual standard practices. It should describe required information for any notice, such as the purpose of the notice, the proper recipient of the notice, and when the sender may deem the notice complete. Parties should also

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draft a notice provision to take modern practical realities into account. While some franchise agreements may still allow notice by facsimile transmission, most people no longer have fax machines. Conversely, with the use of email now ubiquitous in businesses, allowing the delivery of notice via email or electronic transmission may most accurately reflect current business practices. Email transmission has proven especially advantageous during the COVID-19 pandemic and the corresponding rise in remote work, with fewer and fewer people tethered to a physical office.”

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