Franchise Riders in Retail Leases: What You Need to Know as a Landlord

Article
Lowndes
07.31.2025

Understanding Franchise Riders: Purpose, Content, and Potential Conflicts

When a franchisee signs a retail commercial lease to operate a franchised business, the franchisor may require a *Franchise Rider*, a document that grants the franchisor specific rights and protections. As a landlord, it's important to understand how these riders work, what they typically include, and how they might affect your control over the property.

Purpose of the Franchise Rider

The Franchise Rider serves as a safeguard for the franchisor's brand, business model, and operational continuity in the event the franchisee/tenant defaults under the lease or the franchise agreement. It ensures that the franchisor's standards, operational controls, and brand value are protected throughout the lease term.

Without such protections, the franchisor risks compromising its trademarks and proprietary systems or losing a location to a competitor. These rights are similar to those granted to a tenant's lender in a subordination, non-disturbance, and attornment agreement (SNDA), which protects the lender's interests if the landlord defaults under its mortgage or deed of trust.

Typical Contents of a Franchise Rider

While the specifics vary by franchise system and legal counsel, most Franchise Riders contain some or all of the following provisions:

1. **Right to Cure Defaults**
   The franchisor may have the right (but not the obligation) to cure any lease defaults by the franchisee, particularly non-payment of rent. This helps prevent eviction and keeps the location operational.

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2. **Right of Entry**
   If the franchise agreement is terminated or the franchisee abandons the premises, the franchisor may reserve the right to enter the premises to operate temporarily, remove proprietary property, or transition the location to a new franchisee.
3. **Assignment Rights**
   The rider may allow the franchisor to assume or assign the lease to another franchisee without landlord consent (or with limited landlord approval rights).
4. **Franchisor's Notice Rights**
   Landlords are typically required to send notices of default or other lease-related correspondence to both the franchisee and the franchisor simultaneously, giving the franchisor time to act if the tenant fails to do so.
5. **Option to Take Over the Lease**
   In the event of a franchisee default or termination of the franchise agreement, the franchisor may have the option to assume the lease and step into the franchisee's role.

Potential Conflicts with Landlord Interests

While the Franchise Rider benefit franchisors, they can create tension with landlords. Key areas of conflict include:

1. **Control Over Lease Transfers**
   Landlords typically want to retain control over who occupies their property. A franchisor's unilateral right to assign the lease to another franchisee, or to assume the lease themselves, can limit the landlord's ability to evaluate and approve replacement tenants. Landlords should consider requiring approval rights or setting criteria such as operating history or net worth thresholds for any substitute franchisees.
2. **Priority of Cure Rights**
   The franchisor's right to cure defaults may delay the landlord's enforcement of remedies like eviction, especially if the franchisor takes time to evaluate its options. Landlords should negotiate clear timeframes for cure periods and ensure rent is paid during any delay.
3. **Brand-Specific Restrictions**
   Restrictions favoring the franchise brand (such as prohibiting competing uses) can limit the landlord's flexibility in leasing adjacent units or other areas within the shopping center.
4. **Potential for Subordination**
   Some riders attempt to subordinate landlord rights to those of the franchisor in certain circumstances, which may conflict with financing arrangements or other tenant rights.

Balancing the Interests

To balance these competing interests, landlords and franchisors often negotiate modifications to the Franchise Rider. Common compromises include:

- Requiring franchisors to meet landlord approval standards when assigning the lease to a new franchisee.
- Setting clear notice and cure periods for franchisor intervention.
- Limiting the scope and duration of non-compete or use restrictions.
- Clarifying that franchisor rights do not override lender rights or other senior lease agreements.

Final Takeaway

Franchise riders create a tri-party relationship between you, the franchisee, and the franchisor, each with distinct roles, rights, and responsibilities. Because of the complexity and potential for competing interests, it's essential to have both the lease and the franchise rider carefully reviewed by legal counsel to ensure they align with the franchise agreement, protect your unique interests, and comply with all applicable laws.