

# Publications

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## NASAA Supports Reasonable Post-Term Non-Competes in Franchise Agreements

Last year saw non-compete agreements come under repeated scrutiny from the Federal Trade Commission. On April 23, 2024, the FTC issued a final rule banning non-compete agreements in most employment contracts. That rule, which did not apply to non-compete provisions in franchise agreements between franchisors and franchisees, was subsequently struck down by a federal court in August 2024 and is now on appeal to the Fifth Circuit. Separately, on July 12, 2024, the FTC released an Issue Spotlight identifying post-term covenants not to compete in franchise agreements as one of the top 12 concerns of US franchisees. In the wake of the FTC’s various statements and actions, the North American Securities Administrators Association (NASAA)’s Franchise and Business Opportunities Project Group—a group of state franchise regulators—announced on January 27, 2025, its guidance on post-term non-compete clauses in the context of the franchise business model. The full text of the guidance can be found [here](#).

NASAA’s guidance expressly recognizes that “[w]here authorized under applicable law, post-termination non-competes can serve useful purposes in the franchising context” and that “[s]ystem goodwill, customer relationships and protection of other franchisees” are legitimate business interests that may reasonably require protection through non-compete provisions. According to the guidance, a reasonable post-term non-compete in a franchise agreement requires a balancing of scope, territorial or market reach, duration and effect on the departing franchisee, weighing the interests of the franchisor, the existing franchisees in the system and the franchisee exiting the system.” NASAA concluded:

“Post-term non-competes should be narrowly drawn and reasonable in scope, duration and territory. In the current climate of increased judicial and legislative scrutiny of non-competes, the reasonableness inquiry becomes critical. When drafting or enforcing a post-term non-compete, a franchisor should consider both its position and the positions of existing franchisees and the franchisee leaving the system. Consistent with legal authority, franchisors should prepare a non-compete that reasonably protects the interests of the franchisor and existing franchisees yet allows the former franchisee to realize the value of its investment and experience in the franchised business.”

While largely summarizing the state of current non-compete law in many states, NASAA’s

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guidance may signal a new interest by state franchise examiners in scrutinizing post-term non-compete provisions in franchise agreements during the registration process. The guidance is thus a good reminder for franchisors to evaluate the reasonableness and compliance with applicable law of any non-compete provisions in their franchise agreements. This time of year, when many franchisors are in the process of updating their franchise disclosure documents and forms of agreement, is a good time for such review. Polsinelli's Global Franchise and Supply Network team frequently assists franchisors with such evaluations. If you have questions about the NASAA Project Group's guidance, the current status of non-compete law, revising your agreements or updating your franchise disclosure documents, please reach out to us.