

# Membership Agreement Review is a

✓ **Must Do**



Perhaps the single most important contract used in the operation of a Planet Fitness® franchise is the membership agreement. Indeed, the membership agreement defines not only the rights and obligations of the operator of the gym, but also the rights and obligations of the member. How often do franchisees review their membership agreements to ensure compliance with local laws? How often do franchisees review their member agreements to ensure the agreements have the most up-to-date and desirable terms for the benefit of the operator? How often do franchisees confer with legal counsel on these issues? Some recent encounters conclude that the answer is not often enough. Review of your membership agreement is something franchisees should do on a consistent basis and, at the very least, as a part of their ordinary annual (or more frequent) business reviews and analysis.

The regulation of gym memberships by state and local governments is not new. In fact, many of the numerous statutes that govern what can be included in a membership agreement, the duration of such agreements and even the manner in which those agreements become effective or can be terminated have existed for decades. And, those laws are constantly being updated, and additional laws that relate to fitness facility operations are routinely being introduced and enacted. Without interjecting any personal opinions as to why this type of legislation continues to be adopted throughout the United States, one thing clear from reading the various laws is that the main focus is to curb “bad actors” in the industry from duping unsuspecting gym members and to create a framework of responsibility to the member on those offering fitness facility services.

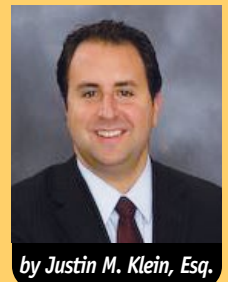
Notably, and considering that there are so many different laws impacting the operation of a fitness facility like Planet Fitness, it is critical to not only know those laws but, of course, to comply. Failure to comply with any laws may in fact be a violation of your Franchise Agreement, which is a topic this author has addressed in other related articles for this publication. As such, it is not only important to make sure your membership agreement complies with the law to avoid lawsuits – but, also to make sure you are complying with your Franchise Agreement. (See, e.g., 2019 Franchise Agreement Section 9.7 COMPLIANCE WITH

LAWS. You must maintain in force in your name all required licenses, permits and certificates relating to the operation of your business. You must operate your business in full compliance with all applicable laws, ordinances and regulations.)

Beyond complying with your Franchise Agreement, which, of course, is required and necessary, compliance with the law may help to stave off lawsuits relating to the membership agreement, especially in states that have statutes protecting gym members. These statutes often appear in the form of consumer protection statutes. And, because historically, as mentioned above, there have been bad actors in the fitness industry, those statutes typically contain harsh penalties. As such, gyms are often targeted by plaintiffs’ lawyers seeking to capitalize on those harsh statutory penalties for those gyms that do not comply with the law.

This guidance is not merely advisory because there have, in fact, been cases brought against Planet Fitness and its franchisees directly relating to the membership agreement. For example, in a case dating back to 2015, a gym member filed a class action lawsuit alleging that the Planet Fitness membership agreement violated New Jersey state law, including the Truth in Consumer Contract, Warranty and Notice Act, the Health Club Services Act and the Consumer Fraud Act because it contained an unlawful liability disclaimer that did not allow gym members to sue the company. Notably, in late 2019, the court in that case ultimately dismissed all the claims brought against Planet Fitness.

In yet another case that targeted Planet Fitness, also in New Jersey, a group of plaintiffs alleged that the Planet Fitness membership agreement violated the same statutes referenced above, but for different reasons. In that case filed in 2016, the allegations centered around wording in the membership agreement that allegedly violated the law because members had to pay at least one additional monthly payment following the cancellation of their contract. The court in that case also dismissed the complaint at the pleading stage (the beginning of the case) on the basis that the plaintiff suffered no compensable harm. Anecdotally, and notwithstanding the



dismissal of both cases, the mere fact that those cases were filed highlights the very real potential for litigation directed at the terms of membership agreement. As such, it is imperative to ensure your membership agreement complies with the law in the event you ever find yourself in a similar type of lawsuit to make sure you are in the best possible position to defend those claims.

The terms of your membership agreement will also come into play when or if you decide to sell any of your locations. Indeed, you may not have reviewed the terms of the membership agreement in years if there was no extenuating circumstance resulting in the need to review. And, a prospective buyer will be very interested in what your membership agreement says. For example, does it include a favorable dispute resolution provision, and does it include a liability waiver that is broad and still complies with the law? How about a provision that permits assignment of the agreement? An example of this appears below:

### 3. Membership

A) General: Your membership permits you to use Planet Fitness' premises, facilities, equipment and services and your dues are in exchange for such access whether you use the facilities or not. Your membership is subject to all current company policies, rules, terms, conditions and limitations including, but not limited to, PF Black Card® benefit rules, transferability rules, guest privilege rules, and dress code. Your membership gives you no rights in Planet Fitness, PF Corporate, its management, ownership, property or operation. Planet Fitness may assign or transfer your membership in its sole discretion. You have no right to assign your membership or this agreement. Planet Fitness can sell memberships at different rates and terms than yours. Any special promotional membership or rate regarding privileges, usage, hours, benefits or facilities is valid only at your home club, unless otherwise provided by Planet Fitness in a signed writing.

This type of a provision will be helpful in ensuring that a prospective buyer can freely assume the membership agreements in connection with an acquisition of the gym. However, if your agreement is not compliant with the law, or does not include procedural safeguards like a well-crafted and enforceable liability waiver, you may likely be required to indemnify a buyer of your gym from any claims arising out of or relating to the membership agreement. Again, and as stated above, these claims can be costly and can also carry heavy penalties so you can be sure that a buyer will require considerable assurance that any potential claims would be adequately covered by the seller.

Whether it be to comply with your Franchise Agreement, to avoid litigation or to put yourself in a strong place to defend against litigation or in connection with maximizing value from a sale, ensuring your membership agreement is as tight as it can be is a good business practice. Doing so can not only help you steer clear of lawsuits but also make a sale of your business considerably smoother and enhance value. ⚙️

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