



# NEWS ALERT

June 4, 2004

This is the second in a series of News Alerts that deal with specific language that you will find in the DQ System Bulletins and System Memos that appear to be intended to undermine many of your rights and privileges as a Dairy Queen franchisee. We hope that you will take the time to make note of these matters and join and support the DQOA/DQOC in its effort to secure change that would better protect your interests as a DQ franchisee.

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All DQ franchisees should become thoroughly familiar with System Bulletin #161B "Franchise Transfer Procedures-Important Changes". The DQOA/DQOC has excerpted certain requirements and notices under this System Bulletin for your information, as their provisions could adversely impact your equity in your DQ restaurant. (See below) Please keep in mind that IDQ does not have any authority to unilaterally change the provisions of your franchise agreement(s) as they relate to store transfers.

TO: "Dairy Queen" Direct-Licensed Franchisees and Territory Operators

DATE: November 1, 2002

SUBJECT: Franchise Transfer Procedures - Important Changes

American Dairy Queen Corporation (ADQ) has now put in place procedures for transfer of franchise that closely mirror the requirements and goals set for new "Dairy Queen" Restaurants in the "Dairy Queen" system.

ADQ continues to enforce the language of the Operating Agreement that requires that any change of ownership or change of control of the daily operations of the store is an event requiring compliance with transfer procedures. Consequently, depending on your Operating Agreement, a lease, installment sale, contract for deed, management agreement, sale of stock, or other change of control of the daily operation of the store is deemed a transfer.

*Excerpted Page 1*

**Seller's Initial Obligations in order of occurrence**

1. **Written Notification of Proposed Transfer:** Within a reasonable period of time prior to the proposed effective date, provide ADQ a brief written description of the proposed sale including the name and address of the proposed Buyer and the proposed effective date of transfer
2. **Transfer Fee:** If fee is required by Seller's Franchise/Operating Agreement, ADQ must receive the Transfer Fee before ADQ will consider Buyer's Confidential Application form and Personal Financial statement. Seller and Buyer will determine who pays Transfer Fee, which will cover cost of the Basic Skills Test, Background Check and fee to In-Store Training

location (for one person) described below in paragraphs 3, 4 and 7 under “Buyer's Initial Obligations in order of occurrence.”

3. **Profit and Loss Statement:** Provide ADQ with the latest 12-month Profit and Loss statement for the location to be transferred.
4. **Purchase Agreement:** After Buyer has successfully completed the Basic Skills Test, provide ADQ with a fully signed copy of the Purchase Agreement executed by both Buyer and Seller. The Purchase Agreement must list the required facility improvements and whether the seller or buyer is responsible for completing them. The Purchase Agreement is provided to evidence the proposed sale; however, ADQ is not a party to the Purchase Agreement and does not review it for content or detail but rather to be apprised of whether the transfer requirements are being met.
5. **Changes in Conditions and Terms:** If the terms and conditions of the proposed transfer change from those originally presented to ADQ, the changes must be submitted to ADQ by the Seller in writing for review and approval.

***Buyer's Initial Obligations in order of occurrence***

1. **Application and Financial Statement:** To provide ADQ with the completed Confidential Application form and Personal Financial statement (forms enclosed with ADQ's first letter to Buyer).
  - A. The financial requirements of an applicant are:
    1. Net worth (exclusive of residence and personal items) totaling the greater of: 50% of the total purchase price of the transaction or \$75,000.
    2. Liquid assets totaling the greater of: 20% of the total purchase price of the transaction or \$30,000.
    3. Operating Capital (separate from liquid assets) totaling the greater of: \$25,000 or 33% of fixed and semi-variable expenses, including debt service, and manager salary not to exceed \$100,000. Note: If proposed buyer is an existing Dairy Queen franchisee, ADQ may consider making limited exceptions to the above minimum financial requirements.

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- B. Net worth and liquid assets must be substantiated in a financial statement with verification of each asset by a financial institution. The financial statement must reflect net worth over a period of time as opposed to a point in time, and be verified over that period of time by a financial institution.

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2. **Facility Upgrading:** ADQ will notify Buyer and Seller of any items needed to upgrade the facility to the current system standards, as required by the Franchise Agreement.

Note that certain Operating Agreements, especially those dated 1989 and later, require periodic modernization and replacement, which may cause facility upgrading to be more extensive. ALL of these items must be completed or undertaken satisfactorily to obtain ADQ's final consent to transfer.

5. **Transfer Documents:**

A. **Assignment:** If the Seller's Franchise/Operating Agreement is to be assigned, Assignment and Consent to Assignment documents and, if applicable, Assignment of Sublease and Consent to Assignment of Sublease documents will be sent to the Seller. This method of transfer under the terms of the Assignment and Consent to Assignment document holds the Seller contingently liable for the actions of the Buyer under the terms of the Franchise/Operating Agreement for a period of two years. Also, the Assignment of Sublease holds the Seller contingently liable for the actions of the Buyer under the terms of the Sublease until it expires. These documents will not be executed by ADQ until ALL transfer requirements have been completed.

B. **New Operating Agreement:** If the Buyer is to sign a new *Dairy Queen* Operating Agreement, Termination of Franchise Agreements and, if applicable, Assignment of ADQ Sublease documents will be sent to the Seller and *Dairy Queen* Operating Agreements will be sent to the Buyer. NOTE: The Assignment of Sublease holds the Seller contingently liable for the actions of the Buyer under the terms of the Sublease until it expires. These documents will not be executed by ADQ until ALL transfer requirements have been completed.

*NOTE: Excerpt from IDQ Concept Evolution Bulletin, page 9*

**I like things as they are today, and I really don't want to make any changes. Is that a problem?**

ADQ recognizes that some franchisees, after having carefully considered the alternatives available for their businesses, will determine that doing nothing at the present time is right for them. I encourage franchisees to make sure that decisions not to evolve or re-invest are based on economic and competitive analysis, and not on a mere lack of desire to invest. Accepting a mediocre or below-average facility can result in a steady decline of sales and profitability.

**Please note that ADQ does need to reserve its right to enforce the remodeling or modernization requirements that exist in various franchise agreements. ADQ may in the future implement a modernization program based on these requirements. [Bold for emphasis.]**

*Several DQ franchisees' sellers counsel have advised that Buyer must be made aware of this issue to avoid future sellers liability if this paragraph is enforced.*

DQOA members who find themselves in a contractual dispute or difference of interpretation with IDQ are asked to contact the DQOA office (952) 556-5511. There may be other franchisees in your similar circumstances.

Dear DQ Franchisee,

It's an exciting time to become a part of the Dairy Queen Operators' Association and Cooperative. The DQOA/DQOC is in its 33<sup>rd</sup> year of service as the only independent voice for Dairy Queen Franchisees throughout the United States. Our Cooperative recently distributed a 2003 patronage dividend totaling more than \$2 million to members who purchase DQOC products – our biggest dividend to a single member this year was \$5,094.60. And that's on top of the thousands of dollars of avoided cost through DQOC's competitive pricing. It's savings like this that makes being a member such an easy and important choice for you.

More than ever, your DQOA/DQOC membership is vital to your business success. In addition to enhancing your bottom line, your Association is working diligently to change business practices and strategies of IDQ that threaten your equity in your DQ stores. With your membership, you will receive valuable information and insights that explain, in plain language, what these changes are all about and how they threaten your business. Your Association is committed to constructively negotiating necessary changes with IDQ that will ensure a healthy and growing DQ system, more royalty income for IDQ, and a sound future for all DQ Franchises. Your membership support and involvement is essential to this effort.

When you join the DQOA/DQOC you win, because:

- DQOA/DQOC is your advocate; watching over your franchise interests and helping protect your equity in your DQ store.
- DQOA/DQOC works constructively with IDQ management to negotiate business strategies and practices that are in your best interest.
- The association helps lower your cost of goods by maintaining healthy competition with IDQ's single-source suppliers of DQ products.
- You'll get independent information and insights about issues affecting your franchise.
- Access to additional benefits such as an annual convention with your fellow DQ Franchisees and programs offering business and health insurance, uniforms, equipment and parts at member rates, long distance calling, travel discounts and much more.

Stay tuned this year for a new and improved Bottomline newsletter, offering you valuable insights on how to get the most from your DQOA membership and keep your DQ business booming.

We invite you to return the enclosed form with your annual membership dues. We know you will find that being a DQOA/DQOC member is an invaluable step to keep up the value of your DQ business. For questions please contact us at 952-556-5511.

Sincerely,

*Rick Brandes,*  
President DQOA/DQOC

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