



## Amendments to Dealer Sales and Service Agreements

You may be receiving from your franchisor an amendment or form constituting an amendment to your dealer sales and service agreement (DSSA). For franchised dealer groups with over 500 employees, the CARES Act provides for waiver of SBA's affiliation rule to allow each dealership to obtain an SBA loan if each of its franchisors has a Franchise Identifier Code (FIC). Obtaining this may require that a franchisor not enforce rights under the DSSA. The amendments or forms constituting amendments you may be seeing are designed to make your DSSA with your franchisor consistent with the requirements on a franchisor by the SBA. Each franchisor is working to permit its dealers to take advantage of the SBA loans under the CARES Act according to the advice of its attorneys, and the actions by franchisors may differ.

These amendments may reference the right of first refusal under the DSSA with your franchisor. This is a reminder that Virginia Code protects a transferring dealer from exercise of a right of first refusal when the transfer is being made to a dealer licensed anywhere in the United States with a franchise issued by a manufacturer or distributor that is licensed by the Commonwealth of Virginia. Virginia Code 46.2-1569.1(B) provides as follows:

B. A manufacturer or distributor shall not exercise or enforce a right of first refusal if (i) the proposed sale or transfer is to a dealer licensed in the United States as a dealer holding a franchise from any manufacturer or distributor licensed as a manufacturer or distributor in the Commonwealth unless the manufacturer or distributor has a formal written program to increase the number of minority dealers and a minority dealer will obtain at least 51 percent ownership and control of the dealership's assets after the exercise of the right of first refusal consistent with subdivision 2 of § 46.2-1572 or (ii) the proposed sale or transfer of the dealership's assets involves the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership, limited liability company, corporation, or other entity controlled by such persons.

Dealers have expressed concern that execution of an SBA-driven amendment or form constituting an amendment to the DSSA will eliminate protections under the Virginia Code. Please do not forget that the Virginia Code requires that a franchisor include in a DSSA language that conforms the provisions of the DSSA to Virginia law and protects the right of Virginia dealers to use Virginia proceedings to construe the DSSA. Virginia Code 46.2-1569(9) makes it unlawful for a franchisor:

9. To fail to include in any franchise with a motor vehicle dealer the following language: "If any provision herein contravenes the laws or regulations of any state or other jurisdiction wherein this agreement is to be performed, or denies access to the procedures, forums, or remedies provided for by such laws or regulations, such provision shall be deemed to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force," or words to that effect.

To obtain approval to issue a DSSA to a Virginia dealer, a franchisor must file the agreement with the Virginia DMV. The DMV has been diligent in requiring that franchisors include this or similar language. Even though a DSSA may be amended, the entire DSSA, including the amendment, is subject to this language. An amendment or addendum to your dealer sales and service agreement must still be construed in accordance with Virginia law.

The communications you are receiving from your manufacturer with a request that you sign an amendment are likely to allow dealers to take full advantage of the opportunities under the federal CARES Act. Any amendment or addendum to the DSSA will still be subject to Virginia law and will be construed in an administrative or judicial proceeding under the Virginia Code.

If you have concerns about a franchise document tendered to you, you should consult a knowledgeable attorney.