

RCW 46.96.220 Right of first refusal. (1) In the event of a proposed sale or transfer of a new motor vehicle dealership involving the transfer or sale of more than fifty percent of the ownership interest in, or more than fifty percent of the assets of, the dealership at the time of the transfer or sale, where the franchise agreement for the dealership contains a right of first refusal in favor of the manufacturer or distributor, then notwithstanding the terms of the franchise agreement, the manufacturer or distributor must be permitted to exercise a right of first refusal to acquire the dealership only if all of the following requirements are met:

(a) The manufacturer or distributor sends by certified mail, return receipt requested, or delivers by personal service, notice of its intent to exercise its right of first refusal within the lesser of (i) forty-five days of receipt of the completed proposal for the proposed sale or transfer, or (ii) the time period specified in the dealership's franchise agreement; and

(b) The exercise of the right of first refusal will result in the motor vehicle dealer receiving consideration, terms, and conditions that are equal to or better than that for which the dealer has contracted in connection with the proposed transaction.

(2) Notwithstanding subsection (1) of this section, the manufacturer's or distributor's right of first refusal does not apply to transfer of a dealership under RCW 46.96.110, and does not apply to a proposed transaction involving any of the following purchasers or transferees:

(a) A purchaser or transferee who has been preapproved by the manufacturer or distributor with respect to the transaction;

(b) A family member or members, including the spouse, biological or adopted child, stepchild, grandchild, spouse of a child or grandchild, brother, sister, or parent of the dealer-operator, or one or more of the dealership's owners;

(c) A manager continuously employed by the motor vehicle dealer in the dealership during the previous three years who is otherwise qualified as a dealer-operator by meeting the reasonable and uniformly applied standards for approval of an application as a new motor vehicle dealer-operator by the manufacturer;

(d) A partnership, corporation, limited liability company, or other entity controlled by any of the family members, identified in (b) of this subsection, of the dealer-operator; or

(e) A trust established or to be established for the purpose of allowing the new motor vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards, or provides for the succession of the franchise agreement to designated family members identified in (b) of this subsection, or qualified management identified in (c) of this subsection, in the event of the death or incapacity of the dealer-operator or its principal owner or owners.

(3) As a condition to the manufacturer or distributor exercising its right of first refusal, the manufacturer or distributor shall pay the reasonable expenses, including attorneys' fees, incurred by the dealer's proposed purchaser or transferee in negotiating, and undertaking any action to consummate, the contract for the proposed sale of the dealership up to the time of the manufacturer's or distributor's exercise of that right. In addition, the manufacturer or distributor shall pay any fees and expenses of the motor vehicle dealer arising on and after the date the manufacturer or distributor gives notice of the exercise of its right of first refusal, and incurred by the motor vehicle dealer as a result of alterations to

documents, or additional appraisals, valuations, or financial analyses caused or required of the dealer by the manufacturer or distributor to consummate the contract for the sale of the dealership to the manufacturer's or distributor's proposed transferee, that would not have been incurred but for the manufacturer's or distributor's exercise of its right of first refusal. These expenses and fees must be paid by the manufacturer or distributor to the dealer and to the dealer's proposed purchaser or transferee on or before the closing date of the sale of the dealership to the manufacturer or distributor if the party entitled to reimbursement has submitted or caused to be submitted to the manufacturer or distributor, an accounting of these expenses and fees within thirty days after receipt of the manufacturer's or distributor's written request for the accounting. A manufacturer or distributor may request the accounting before exercising its right of first refusal.

(4) As a further condition to the exercise of its right of first refusal, a manufacturer or distributor shall assume and guarantee the lease or shall acquire the real property on which the motor vehicle franchise is conducted. Unless otherwise agreed to by the dealer and manufacturer or distributor, the lease terms or the real property acquisition terms must be the same as those on which the lease or property was to be transferred or sold to the dealer's proposed purchaser or transferee.

(5) If the selling dealer has disclosed to the proposed purchaser or transferee, in writing, the existence of the manufacturer's or distributor's right of first refusal, then the selling dealer has no liability to the proposed purchaser or transferee for a claim for damages resulting from the manufacturer or distributor exercising its right of first refusal. If the existence of the manufacturer's or distributor's right of first refusal was disclosed by the selling dealer to the proposed purchaser or transferee, in writing, before or at the time of execution of the purchase and sale or transfer agreement, the manufacturer or distributor shall indemnify, hold harmless, and defend the selling dealer from and against any and all claims, damages, losses, actions, or causes of action asserted by the dealer's proposed purchaser or transferee against the selling dealer arising from the manufacturer's or distributor's exercise of its right of first refusal, and has the right, under this section, to file a motion on behalf of the dealer to dismiss the actions or causes of action asserted by the dealer's proposed purchaser or transferee. [2003 c 21 § 4.]

Captions not law—2003 c 21: See note following RCW 46.96.020.