

Salespersons Must Be Employees

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The Code of Virginia defines a salesperson as follows:

“ .. (i) any person who is hired as an employee by a motor vehicle dealer to sell or exchange motor vehicles and who receives or expects to receive a commission, fee, or any other consideration from the dealer; (ii) any person who supervises salespersons employed by a motor vehicle dealer, whether compensated by salary or by commission; (iii) any person, compensated by salary or commission by a motor vehicle dealer, who negotiates with or induces a customer to enter into a security agreement on behalf of a dealer; or (iv) any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles. For purposes of this section, any person who is an independent contractor as defined by the United States Internal Revenue Code shall be deemed not to be a motor vehicle salesperson.”

Please be sure that anyone who performs any of the functions listed in the above definition is properly licensed. In addition, anyone licensed as a salesperson must be an employee of the dealership. Licensed salespersons may not be “independent contractors” and paid via IRS form “1099”

Form K-1 is used by members of an LLC to report their share of the Corporation’s earnings (or loss). If a member of an LLC is also a licensed salesperson, then by definition, they are also an employee of the LLC and the LLC must issue that employee an IRS Form W-2 at the end of the tax year. Therefore, a member of an LLC who is also a licensed salesperson will receive both a “K-1” and a “W-2” at the end of the tax year.