

MANAGING YOUR INDEPENDENT CONTRACTOR RELATIONSHIPS

The relationship between brokers and real estate salespeople is unique. This fact has been widely codified in applicable federal and state laws, including many state unemployment insurance and worker's compensation statutes. Under federal law, the Internal Revenue Code specifically carves out real estate salespeople from the definition of employee, provided the IRS' three-factor test is met. Brokers should be aware that compliance with the IRS three-factor test does not necessarily exempt real estate salespeople from a state's definition of employee. Approaches to this issue vary greatly by state, and emerging case law is continuing to shape the liabilities brokers may face when classifying their sales agents. In states where a specific test for properly classifying real estate salespeople as independent contractors has been adopted in a particular statute, brokers should ensure compliance with the applicable test. If no specific test has been adopted, brokers should at a minimum keep in mind the ten tips outlined below.

TEN TIPS FOR MANAGING INDEPENDENT CONTRACTOR RELATIONSHIPS WITH YOUR SALES AGENTS

1. Have written independent contractor agreements with your real estate salespeople.
2. Don't ever refer to real estate salespeople as employees of the broker in any broker written materials or otherwise.
3. Avoid paying for any job-related training or continuing education.
4. Pay your real estate salespeople on a commission-only basis; avoid paying them at regular fixed intervals.
5. Don't require your real estate salespeople to report to the broker's office on certain days or at certain times in order to perform general office administrative duties, such as answering phones.
6. Allow your real estate salespeople to work where, when and how they deem best.
7. Maintain control of broker-employed administrative support. Avoid allowing your real estate salespeople to exercise any authority over the hiring, firing or supervising of such staff.
8. Make attendance at monthly staff or training meetings voluntary.
9. Allow real estate salespeople to choose and purchase equipment, as necessary, to perform their jobs, such as computers or iPads.
10. Issue your real estate salespeople 1099s, rather than W-2s. Do not withhold any federal or state income taxes (including estimated taxes), social security, Medicare or any other applicable federal or state taxes*.

*Unless otherwise required by state law.

WORKER CLASSIFICATION RESOURCES

- REALTOR.org: Resources Compiled at: <http://www.realtor.org/topics/independent-contractor>.
- IRS guidance: <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-Defined>.
- US Small Business Administration resources: <http://www.sba.gov/content/self-employed-independent-contractors>.
- United States Department of Labor initiative: <http://www.dol.gov/whd/workers/misclassification/>.
- Your state's Department of Labor website.