

Independent Contractor Status in Real Estate

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A recent wave of litigation is challenging the longstanding practice within the real estate industry of brokers choosing to classifying real estate agents as independent contractors, as opposed to employees. The outcome of these cases could potentially have a wide-reaching impact on the manner in which brokers have traditionally done business, and as a result, the issue of worker classification has garnered the attention and interest of NAR's membership. However, the real estate industry is not alone, as the issue of worker classification has been raised in several industries in various jurisdictions throughout the country, and the Department of Labor has made it clear that it will aggressively pursue worker misclassification as a top priority.

This memo outlines the present independent contractor classification issue facing the real estate industry and discusses the various ways state and federal laws approach the issue. A state law chart is included at the end of the memo, which compiles relevant language from state labor laws and state real estate statutes that address the issue of real estate salespeople as independent contractors. The state law chart is intended to serve as a good starting point for states to review and understand the manner in which their states approach the independent contractor classification of real estate salespeople. In addition, this memo highlights the recent and ongoing litigation that has given rise to the recent interest in and attention to the issue of real estate agents' status as independent contractors.

ISSUE:

While the issue of worker classification has been challenged in a variety of industries, the real estate industry's regulatory structure presents a unique framework within which to operate when it comes to worker classification. The hallmark characteristic of an independent contractor relationship is one where the worker is generally free of control. However, state real estate statutes specifically require brokers to exercise supervision over their agents. Since the requirement of a broker to exercise supervision over agents is in direct conflict with one of the basic tenants of an independent contractor relationship, it is difficult for a broker to both comply with labor laws in order to establish an independent contractor relationship, while also fulfilling their supervisory duties under state real estate laws.

Fortunately, both federal and state legislatures have recognized the unique aspects presented by the real estate industry by addressing the independent contractor issue directly through statutory carve outs. Many state workers' compensation acts specifically exempt real estate agents from the definition of "employee" under the statute. For example, the Alabama Worker's Compensation Statute states "a licensed real estate agent operating under a licensed broker shall not be considered an employee for the purposes of this chapter." In Pennsylvania, the workers' compensation statute does not apply to "any person who is a licensed real estate salesperson or associate real estate broker affiliated with a licensed real estate broker", and Louisiana's workers' compensation statute exempts any real estate broker or salesperson licensed to do business in the state of Louisiana and operating under the auspices of a licensed broker in the state of Louisiana from

application of the act. Alabama, Pennsylvania and Louisiana are not alone. There are approximately twenty-nine states that exempt real estate agents from the application of the workers' compensation statute. See attached state law chart.

The issue of independent contractor status of real estate salespeople is also addressed in several state real estate statutes. There are roughly twenty-two state real estate statutes that contain language expressly permitting a real estate broker to treat their real estate salespeople as independent contractors while simultaneously exercising their mandatory supervisory duties under the statute. Utah's real estate statute creates a presumption that an independent contractor relationship exists unless there is "clear and convincing evidence that the relationship was intended by the parties to be an employer employee relationship". Louisiana's real estate statute outlines a three-prong test for establishing a real estate salesperson or associate as an independent contractor of their affiliated broker. Under the statute, an independent contractor relationship has been successfully established if: 1) the real estate salesperson or associate broker is a licensee, 2) substantially all remuneration for services performed is directly related to sales output rather than number of hours worked, and 3) there is a written agreement specifying that the real estate salesperson or associate broker will not be treated as an employee.

There are several other states, including Indiana, Michigan, and South Dakota, that have also addressed this issue head on and legislatively helped eliminate a conflict between the labor laws and the real estate statute. Indiana's workers' compensation statute provides a similar test to that outlined in Louisiana's

real estate statute to determine the independent contractor status of a real estate professional, and Indiana's real estate statute presumes an independent contractor relationship, unless otherwise specified in a written contract between the principal broker and the associated salesperson or broker. Michigan's labor laws exclude from the definition of "employment" the services performed by real estate salespeople if the real estate salesperson is compensated principally or wholly by way of commission. Further, Michigan's real estate statute defines an "independent contractor relationship" as a relationship between a real estate broker and an associate broker or real estate salesperson where there is both a written agreement between the parties stating that the associate broker or real estate salesperson is not considered an employee for federal and state income tax purposes and not less than 75% of the annual compensation paid by the broker to the associate broker or real estate salesperson is from commissions from the sale of real estate.

Effective July 1, 2016, the Wisconsin worker's compensation statute will be amended to include a safe harbor similar to the IRS safe harbor for the treatment of real estate licensees as independent contractors. The amended statute also includes the ability for brokers to exclude real estate agents from workers' compensation coverage. And, in order to remove any suggestion of a default employer/employee relationship between a real estate company or sole proprietor broker and a licensee, the Wisconsin real estate license law was also amended to remove all employer and employee references, and instead make reference to firm and agent.

State legislatures are not alone in recognizing the unique nature of the real estate industry and the corresponding need to carve out real estate professionals

from general application of particular statutes. The United States Internal Revenue Service (“IRS”) considers real estate agents to be “statutory nonemployees” if three factors are met. First, the real estate agent must be licensed. Second, substantially all payments for the licensed real estate agent’s services must be directly related to their sales or other output rather than based on number of hours worked, and lastly, the real estate agent’s services must be performed pursuant to an agreement that states the real estate agent will not be treated as an employee for federal tax purposes. While satisfaction of the aforementioned IRS test relates only to the federal tax treatment of real estate agents, it demonstrates the federal government’s recognition of the unique nature of the real estate industry and, as such, the need to treat it differently than other industries.

Even more recently, the passage of the final regulations under the Affordable Care Act (“ACA”) demonstrated recognition on behalf of the federal government that different treatment of the real estate industry is needed. The ACA requires large employers (defined under the ACA as those with fifty or more employees) to offer their full-time employees health care coverage that is affordable and has a minimum standard of value. This requirement is known as the “Shared Responsibility for Employers”. However, the ACA recognizes that those real estate agents that are recognized as “qualified real estate agents” and thus statutory non-employees under the IRS code, will similarly be non-employees for purposes of the “Shared Responsibility for Employers”. Here again, the federal government acknowledged the unique independent contractor relationship between real estate salespeople and brokers.

LITIGATION MATTERS:

Despite recognition on both the federal and state levels as an acceptable practice by real estate brokers, plaintiffs have challenged whether real estate agents can properly be classified as independent contractors under various state laws. The recent uptick in litigation has generated concern among brokers across the country. Brokers are worried about what this litigation means to their businesses and whether they are exposing themselves to legal liability by classifying their real estate salespeople as independent contractors.

In a California lawsuit, *Bararsani v. Coldwell Banker*, the plaintiff filed a class action lawsuit against Coldwell Banker Residential Brokerage (“Coldwell Banker”) alleging that Coldwell Banker improperly classified affiliated sales associates as independent contractors when they were actually employees of the broker. In addition, the plaintiff alleged that Coldwell Banker violated the California Labor Code by failing to reimburse certain business expenses and maintain proper records.

In July 2013, the defendants filed a Demurrer seeking to dismiss the plaintiffs’ amended complaint, asserting that the amended complaint was without basis because the California Business & Professions Code Section 10032 (“Code”) sets out the relevant three-part test for classification of real estate professionals as independent contractors, which defendants alleged were satisfied. Plaintiffs filed an opposition to the defendants’ Demurrer. While the language in the Code cited by defendants expressly permits real estate professionals to be treated as independent contractors or as employees, the Code does not *require* that real estate professionals

be treated as independent contractors. The court denied defendants' Demurrer, asserting that California law permits a worker to be classified as an independent contractor for some purposes, but not all, and stating that the court would apply a multi-factor common law test to determine whether plaintiffs were properly classified as independent contractors for purposes of this case.

In addition, the court also denied plaintiffs' motion to invalidate mandatory arbitration and class action waiver clauses contained in independent contractor agreements executed by class members. Therefore, individuals who executed such agreements would be bound by such clauses, and therefore, ineligible as class members.

The parties later entered into settlement discussions, and on January 13, 2016, the court granted final approval of a class action settlement and entry of order and judgement in the case. The settlement order contained no finding or admission of wrongdoing by Coldwell Banker, however, likely due to the considerable expense and time it takes to defend a class action lawsuit, Coldwell Banker agreed to pay the sum of \$4,500,000 which was distributed among the certified class members. The settlement order certified the class for settlement purposes, which Coldwell Banker was able to successfully limit to only those agents who had not signed an agreement to arbitrate.

In a Massachusetts case, *Monell et al. v. Boston Pads*, the plaintiffs alleged that their former broker misclassified them as independent contractors rather than employees, thereby violating the Massachusetts independent contractor statute. Plaintiffs alleged that, among other things, the defendants required plaintiffs to own

day planners, pay desk fees each month, have cell phones with a “617” area code, complete office hours duty in some cases, and were subject to disciplinary action if productivity goals were not met. The court denied the plaintiffs’ motion for summary judgment, which argued that the defendants could not establish the plaintiffs as independent contractors under Massachusetts’s independent contractor statute. Instead, the court ordered summary judgment in favor of the defendants, finding that the Massachusetts real estate statute required the broker to exercise some degree of supervision over the plaintiffs in order to comply with real estate license laws and acknowledging that it was impossible to read the real estate statute and the independent contractor statute in harmony. The Massachusetts independent contractor statute contains a presumption that an individual is an employee unless three specific factors are met, which is commonly referred to as the “ABC test”. However, given the real estate statute’s supervision requirement, it would be difficult, if not impossible, for brokers to meet the independent contractor statute’s three-factor test. Recognizing the inherent conflict, the court turned to the rules of statutory construction, under which the court determined the real estate statute, as the more specific statute, must control. The plaintiffs’ appealed the trial court’s decision and the Massachusetts Supreme Court granted direct review of the case.

In a positive win for the real estate industry, the Massachusetts Supreme Court affirmed the lower court’s ruling, holding that the Massachusetts independent contractor statute does not apply to real estate salespersons. Instead, the

Massachusetts Supreme Court held that, as the more specific statute, the real estate license law controls.

In reaching its decision, the court noted that despite the level of supervision and control brokers are required to exercise over their salespeople under the real estate license laws, the real estate statute expressly permits a broker to classify their salespeople as employees or independent contractors. The court observed that compliance with the various controls set forth in the real estate licensing statute makes it difficult for a real estate salesperson to meet the “ABC Test” in the independent contractor statute, but that it could not have been the legislature’s intent to exclude real estate salespersons from independent contractor status. In construing both the independent contractor statute and the real estate licensing laws together, and taking into consideration the legislative purpose behind these laws, the court determined that the real state licensing laws control. This decision preserves Massachusetts brokers’ longstanding practice and ability to continue to choose to classify their salespeople as independent contractors.

In another California case, *Cruz et. al. v. Redfin*, the plaintiffs alleged that Redfin’s field agents were misclassified as independent contractors when in reality the field agents were employees. Plaintiffs alleged this misclassification denied them various wages and benefits they were otherwise entitled to as employees. The plaintiffs also alleged that in addition to requiring them to obtain a smartphone, laptop and GPS, Redfin maintained complete control over the plaintiffs and provided the plaintiffs with training and supervision as to how they were to perform their duties. Similar facts are alleged in another case filed against Redfin Corporation,

Galen v. Redfin Corporation. In this case, the plaintiff alleged that he was also improperly classified as an independent contractor, rather than as an employee. While Galen attempted to pursue this action in state court, Galen had signed an independent contractor agreement with Redfin, which contained a mandatory arbitration clause. While the trial court denied the defendant's motion to compel arbitration, the Court of Appeals reversed the ruling, holding that the parties had entered into an independent contractor agreement containing a mandatory arbitration clause, whereby the parties agreed that any claims not settled by mediation would be resolved by binding arbitration. The plaintiff appealed, and the Supreme Court of California granted review of the Court of Appeals decision in order to determine, in part, whether the plaintiff's statutory misclassification claims are covered by the mandatory arbitration clause in the independent contractor agreement.

An unfavorable outcome in these cases could lead to a drastic shift in the way the real estate industry has historically done business in those states. For decades, the industry has primarily relied on the independent contractor model for conducting its business. If a broker's ability to treat real estate salespeople as independent contractors is limited, then brokers will be forced to take on more costs and responsibilities, such as the provision of employee benefits and payment of various employment taxes, than previously accounted for within a broker's business model. A resulting shift away from the independent contractor model may result in a significant reduction in the number of real estate agents, as brokers struggle with the increased costs of employing agents. In addition, brokers would

have to assume heightened control over real estate salespeople, resulting in significant decrease in the freedom and flexibility that real estate agents currently enjoy in an independent contractor relationship.

CONCLUSION:

The independent contractor relationship between brokers and their salespeople is a longstanding tradition in the real estate industry. NAR supports the protection of, and efforts to further secure, the right of brokers to choose whether to classify their real estate salespeople as employees or as independent contractors. As a means of achieving protection of this practice, NAR encourages states to review their existing labor and employment statutes, along with their real estate statute, and determine if those laws sufficiently secure brokers' ability to classify real estate agents as independent contractors. In some states, it may be appropriate to urge legislatures to make a direct and unequivocal carve out for the treatment of real estate salespeople as independent contractors. This will help solidify the status of real estate salespeople as independent contractors and avoid future litigation challenging this practice. As discussed, many states, along with the federal government, already recognize real estate salespeople as nonemployees, but in light of the recent litigation regarding this matter, NAR and its membership are taking proactive measures to gain increased clarity of a real estate broker's ability to classify real estate salespeople as independent contractors.

For additional information, questions, or assistance regarding this issue, you may contact Lesley Muchow, NAR Deputy General Counsel (lmuchow@nar.realtor).

SUMMARY TABLE

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Act Containing Statutory Carve-Out for Real Estate Professionals	State
Workers Compensation	Alabama Alaska Arizona Arkansas Colorado Connecticut (Through Real Estate Statute) Delaware District of Columbia Florida Georgia Illinois Indiana Iowa Kansas Louisiana Maine Maryland Massachusetts Montana New Hampshire New Mexico New York Oklahoma Pennsylvania Rhode Island South Carolina Utah Vermont Virginia Wisconsin
Employment Security/Unemployment Insurance	Alaska California Delaware Colorado Georgia Hawaii Idaho Illinois Iowa Kansas Louisiana Massachusetts Michigan Minnesota Missouri Montana Nevada Nebraska New Jersey

	<p>New York Oklahoma Oregon Rhode Island South Carolina Tennessee Utah Virginia Wyoming</p>
Labor: Other/General	<p>Hawaii – Health Care/Prepaid Health Care Act [Montana – Minimum Wage – limited reach.] North Dakota – Social Security South Carolina – Employment and Workforce – General exclusion Texas – Labor Code – General exclusion Washington – Minimum Wage Wisconsin – Income tax withholding AND Minimum wage</p>
Specific presumption of independent contractor relationship in Real Estate Statute	<p>Indiana Louisiana Utah</p>
Real Estate Statute language allows for either IC or Employee relationship while specifically maintaining broker oversight duties	<p>Alabama Alaska Arkansas California Connecticut Florida (Intent of parties governs) Georgia (Intent of parties governs) Hawaii Illinois (Written agreement governs) Kansas Maryland Massachusetts Michigan Missouri Montana Nevada New York Oklahoma Oregon Rhode Island South Dakota Virginia Washington (Presumes IC status unless written agreement provides for employee status. Substantially all compensation must be related to real estate brokerage services, as defined by real estate license law statute.)</p>
General reference to federal tax treatment in labor laws	<p>Kentucky [Has tax carve-out generally for individuals classified as “independent contractors” by federal tax law, but no provisions specific to real estate broker/salesperson relationship in legislation]</p>
States with NO found statutory carve-outs for broker/salesperson relationship as Independent contractor	<p>Mississippi Ohio West Virginia</p>

NOTE: The below is a general sampling of various state laws addressing the independent contractor/employee relationship between brokers and salespeople, and should not be read as a comprehensive analysis of the states' approaches to this topic.

State/Entity	Statute Type	Statute	Relevant statutory content
Federal – Internal Revenue	Tax	United States Code Annotated Title 26. Internal Revenue Code Subtitle C. Employment Taxes Chapter 25. General Provisions Relating to Employment Taxes § 3508. Treatment of real estate agents and direct sellers	(a) General rule.--For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller-- (1) the individual performing such services shall not be treated as an employee, and (2) the person for whom such services are performed shall not be treated as an employer. (b) Definitions.--For purposes of this section-- (1) Qualified real estate agent.--The term "qualified real estate agent" means any individual who is a sales person if-- (A) such individual is a licensed real estate agent, (B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and (C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.
Alabama	Workers' Compensation	Ala.Code 1975 s. 25-5-50: Industrial Relations and Labor/Workers' Comp. /Applicability	... (g) A licensed real estate agent operating under a licensed broker shall not be considered an employee for the purposes of this chapter.
	Real Estate Statute	Ala.Code 1975 § 34-27-2: Definitions	(6) Engage. Contractual relationships between a qualifying broker and an associate broker or salesperson licensed under him or her whether the relationship is employer-employee, independent contractor, or otherwise.
Alaska	Workers' Compensation	West's Alaska Statutes Annotated: Title 23: 23.30.230(a)(10). Labor & Workers' Comp/General Provisions: Persons not Covered	(a) The following persons are not covered by this chapter: ... (10) a person working as a qualified real estate licensee who performs services under a written contract that provides that the person will not be treated as an employee for federal income tax or workers' compensation purposes; in this paragraph, "qualified real estate licensee" means a person who is required to be licensed under AS 08.88.161 and whose payment for services is directly related to sales or other output rather than the number of hours worked
	Real Estate Statute	AS § 08.88.910 West's Alaska Statutes Annotations Title 8. Business and Professions Chapter 88 Real Estate Brokers and Other Licensees Article 6. General Provisions § 08.88.910. Application to Independent contractors	The provisions of this chapter that apply to employment relationships and employees also apply to contracting relationships and independent contractors.
	Labor – Other/General: Employment Security	AS § 23.20.52: Title 23. Labor and Workers' Compensation Chapter 20. Alaska Employment Security Act Article 9. General Provisions § 23.20.526. Exclusions from definition of "employment"	(8) service performed by an insurance agent, insurance solicitor, real estate broker, real estate salesperson, or securities salesperson to the extent the person is compensated by commission, unless the service is required to be covered under the Federal Unemployment Tax Act, as amended;
Arizona	Employment Security	A.R.S s. 23-617(14): Employment Security/Definitions/ Exempt Employment; Definition AND A.R.S. § 23-613.01	"Exempt employment" means employment not considered in determining whether an employing unit constitutes an "employer" under this chapter and includes: ... 14. Service performed by an individual for an employing unit as a licensed real estate broker or a licensed cemetery broker or a licensed real estate salesman or licensed cemetery salesman, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission, except that any service performed as a real estate broker, a cemetery broker, a real estate salesman or a cemetery salesman for an employing unit to which the provisions of § 23-750
			AND

			A.R.S. § 23-613.01 exempts "An individual subject to the direction, rule or control or subject to the right of direction, rule or control of an employing unit solely because of a provision of law regulating the organization, trade or business of the employing unit."
	Workers' Compensation Act	A.R.S. § 23-910.	Arizona's Workers' Compensation Act exempts real estate salespeople from its provisions when: (1) substantially all income received for services is directly related to sales rather than the number of hours worked, (2) the services performed by the salesperson are performed pursuant to a written contract between the salesperson and broker and, (3) the contract specifically provides that the salesperson is not treated as an employee for federal tax purposes or for the purposes of the Workers' Compensation chapter. A.R.S. § 23-910.
Arkansas	Workers' Compensation	A.C.A. s. 11-9-102(B): Labor and Industrial Relations/Workers' Comp/General Provisions/Definitions	As used in this chapter: (B) The term "employee" shall not include any individual who is both a licensee as defined in § 17-42-103(7) and a qualified real estate agent as that term is defined in section 3508(b)(1) of the Internal Revenue Code of 1986, including all regulations thereunder. (11) "Employment" means: (A) Every employment in the state in which three (3) or more employees are regularly employed by the same employer in the course of business except:... ...a qualified real estate agent as that term is defined in section 3508(b)(1) of the Internal Revenue Code of 1986, including all regulations thereunder;
	Real Estate Statute	A.C.A. § 17-42-103 West's Arkansas Code Annotated Title 17. Professions, Occupations, and Businesses Subtitle 2. Nonmedical Professions (Chapters 10 to 79) Chapter 42. Real Estate License Law Subchapter 1. Real Estate License Law-- General Provisions § 17-42-103. Definitions	As used in this chapter: (1)(A) "Associate broker" means an individual who has a broker's license and who is employed by a principal broker, or is associated with a principal broker as an independent contractor, and who participates in any activity described in subdivision (9) of this section while under the supervision of a principal broker or executive broker. ... (6)(A) "Executive broker" means an individual who: (i) Has a broker's license; (ii) Is employed by a principal broker or associated with a principal broker as an independent contractor; ... (11) "Salesperson" means an individual who: (A) Has a salesperson's license; (B) Is employed by a principal broker or is associated with a principal broker as an independent contractor;
California	Real Estate Statute	West's Ann.Cal.Bus. & Prof.Code § 10032	(b) A real estate broker and a real estate salesperson licensed under that broker may contract between themselves as independent contractors or as employer and employee, for purposes of their legal relationship with and obligations to each other. Characterization of a relationship as either "employer and employee" or "independent contractor" for statutory purposes, including, but not limited to, withholding taxes on wages and for purposes of unemployment compensation, shall be governed by Section 650 and Sections 13000 to 13054, inclusive, of the Unemployment Insurance Code. For purposes of workers compensation the characterization of the relationship shall be governed by Section 3200, and following, of the Labor Code.
	Labor – Other/General: Unemployment Insurance	West's Ann.Ca.Un.Ins.Code s. 650: Unemployment Insurance Code/Excluded Services/Real estate, mineral, oil, and gas, or cemetery brokers. Or real estate, cemetery, or direct salespersons; rebuttable presumption	§ 650. Real estate, mineral, oil and gas, or cemetery brokers, or real estate, cemetery, or direct salespersons; rebuttable presumption: "Employment" does not include services performed as a real estate, mineral, oil and gas, or cemetery broker or as a real estate, cemetery or direct sales salesperson, or a yacht broker or salesman, by an individual if all of the following conditions are met:[licensed; commission; independent contractor written contract]
Colorado	Workers' Compensation	C.R.S.A. § 8-40-301 West's Colorado Revised Statutes Annotated Title 8. Labor and Industry Labor II--Workers' Compensation and Related Provisions Workers' Compensation Article 40. General Provisions Part 3. Scope and Applicability § 8-40-301. Scope of term "employee"	(1) "Employee" excludes any person employed by a passenger tramway area operator, as defined in section 25-5-702(1), C.R.S., or other employer, while participating in recreational activity, who at such time is relieved of and is not performing any duties of employment, regardless of whether such person is utilizing, by discount or otherwise, a pass, ticket, license, permit, or other device as an emolument of employment. (2) "Employee" excludes any person who is a licensed real estate sales agent or a licensed real estate broker associated with another real estate broker if: (a) Substantially all of the sales agent's or associated broker's remuneration from real estate brokerage is derived from real estate commissions; and (b) The services of the sales agent or associated broker are performed under a written contract specifying that the

			sales agent or associated broker is an independent contractor; and (c) Such contract provides that the sales agent or associated broker shall not be treated as an employee for federal income tax purposes.
	Labor – Other/General	C.R.S.A s. 8-70-136: Labor and Industry/Employment Security/General Provisions/ Employment does not include – brokers.	§ 8-70-136. Employment does not include--brokers
Connecticut	Workers' Compensation		Real Estate carve-out for Workers' Comp in Real Estate Statute - see below
	Real Estate Statute	C.G.S.A. § 20-311: § 20-311. Definitions AND C.G.S.A. § 20-312b: Professional And Occupational Licensing/Real Estate Brokers and Salespersons	§ 20-311. Definitions:... (2) "Real estate salesperson" or "salesperson" means a person affiliated with any real estate broker as an independent contractor or employed by a real estate broker AND Sec. 20-312b. Licensed real estate broker or real estate salesperson not deemed "employee" under section 31-275. A licensed real estate broker or real estate salesperson shall not be considered an employee under the provisions of section 31-275 [Workers Compensation Act] if substantially all of the remuneration for the services performed by such broker or salesperson, whether paid in cash or otherwise, is directly related to sales or other output rather than to the number of hours worked, and such services are performed by the broker or salesperson pursuant to a written contract that contains the following provisions: (1) The broker or salesperson, for purposes of workers' compensation, is engaged as an independent contractor associated with the person for whom services are performed; (2) The broker or salesperson shall be paid a commission based on his gross sales, if any, without deduction for taxes, which commission shall be directly related to sales or other output; (3) The broker or salesperson shall not receive any remuneration related to the number of hours worked and shall not be treated as an employee with respect to such services for purposes of workers' compensation; (4) The broker or salesperson shall be permitted to work any hours he chooses; (5) The broker or salesperson shall be permitted to work out of his own home or the office of the person for whom services are performed; (6) The broker or salesperson shall be free to engage in outside employment; (7) The person for whom the services are performed may provide office facilities and supplies for the use of the broker or salesperson, but the broker or salesperson shall otherwise pay his own expenses, including, but not limited to, automobile, travel and entertainment expenses; and (8) The contract may be terminated by either party at any time upon notice given to the other.
Delaware	Workers' Compensation	19 Del.C. § 2316 West's Delaware Code Annotated Title 19. Labor Part II. Workers' Compensation Chapter 23. Workers' Compensation Subchapter I. General Provisions	§ 2316. Licensed real estate salespersons and licensed associate real estate brokers who are independent contractors. (a) This chapter shall not apply to licensed real estate salespersons or licensed associate real estate brokers who are affiliated with a licensed real estate broker under a written contract pursuant to which they are remunerated on a commission only basis and are designated as independent contractors and who qualify as independent contractors for federal tax purposes, except that a licensed real estate broker with whom they have such contracts shall have the right to elect to carry insurance to insure the payment of workers' compensation to them or their dependents for part or all of the period of such affiliation.
	Labor – Other/General: Unemployment Compensation	19 Del. C. s. 3302: Labor/Unemployment Compensation/General Provisions/Definitions	(11) "Employment" does not include: ... (H) Service performed by an individual for an employer as an insurance agent or real estate agent, or as an insurance solicitor or real estate solicitor, if all such service performed by such individual for such employer is performed for remuneration solely by way of commissions. ... (N) Service performed as a direct seller as defined in § 3508 of the Internal Revenue Code of 1954 [26 U.S.C. § 3508], as amended.

District of Columbia	Workers' Compensation	DC ST § 32-1501 Formerly cited as DC ST 1981 § 36-301 West's District of Columbia Code Annotated 2001 Edition Division V. Local Business Affairs Title 32. Labor. Chapter 15. Workers' Compensation. § 32-1501. Definitions.	(9) "Employee" includes every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, in the District of Columbia, except:... (F) Any person who is a licensed real estate salesperson, or a licensed real estate broker associated with a real estate broker, if: (i) Substantially all of the salesperson's or associated broker's remuneration is derived from real estate commissions; (ii) The services of the salesperson or associated broker are performed under a written contract specifying that the salesperson or associated broker is an independent contractor; and (iii) Such contract includes a provision that the salesperson or associated broker will not be treated as an employee for federal income tax purposes.
Florida	Workers' Compensation	West's F.S.A. s. 440.02(d) Labor/Workers' Comp/Definitions	(d) "Employee" does not include: ...2. A real estate licensee, if that person agrees, in writing, to perform for remuneration solely by way of commission...
	Real Estate Statute	West's F.S.A. § 475.01 Title XXXII. Regulation of Professions and Occupations (Chapters 454-493) Chapter 475. Real Estate Brokers, Sales Associates, Schools, and Appraisers Part I. Real Estate Brokers, Sales Associates, and Schools 475.01. Definitions	(2) The terms "employ," "employment," "employer," and "employee," when used in this chapter and in rules adopted pursuant thereto to describe the relationship between a broker and a sales associate, include an independent contractor relationship when such relationship is intended by and established between a broker and a sales associate. The existence of such relationship shall not relieve either the broker or the sales associate of her or his duties, obligations, or responsibilities under this chapter.
Georgia	Workers' Compensation	Ga. Code Ann., § 34-9-2, Title 34. Labor and Industrial Relations Chapter 9. Workers' Compensation Article 1. General Provisions § 34-9-2. Employers and employees to whom law is inapplicable	(2) This chapter shall not apply to...any person performing services as a licensed real estate salesperson or associate broker who has a written contract of employment providing that he or she shall perform all services as an independent contractor.
	Real Estate Statute	Ga. Code Ann., § 43-40-30.1 Title 43. Professions and Businesses Chapter 40. Real Estate Brokers and Salespersons § 43-40-30.1. Employer-employee or broker-independent contractor relationship discretionary	Nothing contained in this chapter shall be construed as establishing an employer-employee or broker-independent contractor relationship between licensees. Whether brokers and their affiliated licensees establish employer-employee or broker-independent contractor relationships shall be at the discretion of the licensees.
	Labor – Other/General	Ga. Code Ann., § 34-8-35 West's Code of Georgia Annotated Title 34. Labor and Industrial Relations Chapter 8. Employment Security Article 2. Definitions § 34-8-35. Employment	(n) The term "employment" shall not include: ... (9) Service performed by an individual for an employer as an insurance agent or as an insurance solicitor or as a licensed real estate salesperson, if all such service performed by such individual for such employer is performed for remuneration solely by way of commission;
Hawaii	Real Estate Statute	HRS § 467-1 West's Hawai'i Revised Statutes Annotated Division 2. Business Title 25. Professions and Occupations Chapter 467. Real Estate Brokers and Salespersons § 467-1. Definitions	"Real estate salesperson" means any individual who, for a compensation or valuable consideration, is employed either directly or indirectly by a real estate broker, or is an independent contractor in association with a real estate broker, to sell or offer to sell, buy or offer to buy, or list, or solicit for prospective purchasers, or who leases or offers to lease, or rents or offers to rent, or manages or offers to manage, any real estate, or the improvements thereon, for others as a whole or partial vocation; or who secures, receives, takes, or accepts, and sells or offers to sell, any option on real estate without the exercise by the individual of the option and for the purpose or as a means of evading the licensing requirements of this chapter. Every real estate salesperson shall be under the direction of a real estate broker for all real estate transactions.
	Labor – Other/General: Health Care	HRS § 393-5 West's Hawai'i Revised Statutes Annotated Division 1. Government Title 21. Labor and Industrial Relations Chapter 393. Prepaid Health Care Act Part I. Short Title; Purpose; Definitions § 393-5. Excluded services	"Employment" as defined in section 393-3 does not include:... (5) Service performed by an individual for an employer as a real estate salesperson or as a real estate broker if all service performed by the individual for the employer is performed for remuneration by way of commission;

	Labor – Other/General: Employment Security	HRS s. 383-7(a)(17) Labor and Industrial Relations/Employment Security Law/Excluded Services	Excluded service: (a) “Employment” shall not include: ... 17) Service performed by an individual for an employing unit as a real estate salesperson, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission; ... 21) Service performed by a direct seller as defined in section 3508 of the Internal Revenue Code of 1986;
Idaho	Labor – Other/General	Idaho Code s. 72-1316A(14) Employment Security Law/Exempt Employment	“Exempt employment” means service performed... (14) By an individual for a real estate broker as an associate real estate broker or as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.
Illinois	Workers’ Compensation	820 ILCS 305/1(b) Workers’ Compensation Act	The term “employee” does not include persons performing services as real estate broker, broker-salesman, or salesman when such persons are paid by commission only.
	Real Estate Statute	IL Real Estate License Act: 225 ILCS 454/1-10	454/1-10. Definitions “Employee” or other derivative of the word “employee”, when used to refer to, describe, or delineate the relationship between a real estate broker and a real estate salesperson, another real estate broker, or a leasing agent, shall be construed to include an independent contractor relationship, provided that a written agreement exists that clearly establishes and states the relationship. All responsibilities of a broker shall remain. [Emphasis added.] AND "Salesperson" means any individual, other than a real estate broker or leasing agent, who is employed by a real estate broker or is associated by written agreement with a real estate broker as an independent contractor and participates in any activity described in the definition of "broker" under this Section.
	Labor – Other/General: Unemployment insurance	820 ILCS 405/217 Unemployment Insurance Act: 405/217. Real estate salesmen; sellers of consumer products	§ 217. (a) The term "employment" shall not include services performed as a real estate salesman to the extent that such services are compensated for by commission.
Indiana	Workers’ Compensation	Workers Comp. Ind. Code §22-3-6-1(b)(6)	(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if: (A) they are licensed real estate agents; (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.
	Real Estate Statute	IC 25-34.1-4-4 Version b Independent contractor relationship	Sec. 4. Notwithstanding IC 23-1.5, the association of a broker with a managing broker, as provided by this article, creates an independent contractor relationship unless otherwise specified by a written contract entered into by the managing broker and the broker. As added by Acts 1979, P.L.248, SEC.1. Amended by P.L.229-1995, SEC.8; P.L.127-2012, SEC.23.
Iowa	Workers’ Compensation	I.C.A. § 85.61 Iowa Code Annotated Title III. Public Services and Regulation [Chs. 80-122C]	a. “Worker” or “employee” includes the following: ... (3) A real estate agent who does not provide the services of an independent contractor. For the purposes of this subparagraph, a real estate agent is an independent contractor if the real estate agent is licensed by the Iowa real estate commission as a salesperson and both of the following apply:

		<p>Subtitle 2. Employment Services [Chs. 84-96A] Chapter 85. Workers' Compensation General Provisions 85.61. Definitions <[Text subject to final changes by the Iowa Code Editor for Code Supp. 2013.]></p>	<p>(a) Seventy-five percent or more of the remuneration, whether or not paid in cash, for the services performed by the individual as a real estate salesperson is derived from one company and is directly related to sales or other output, including the performance of services, rather than to the number of hours worked. (b) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with respect to the services for state tax purposes.</p>
	Labor – Other/General: Unemployment Compensation	<p>I.C.A. § 96.19 Iowa Code Annotated Title III. Public Services and Regulation [Chs. 80-122C] Subtitle 2. Employment Services [Chs. 84-96A] Chapter 96. Employment Security-- Unemployment Compensation Definitions 96.19. Definitions <[Text subject to final changes by the Iowa Code Editor for Code Supp. 2013.]></p>	<p>g. The term "employment" shall not include: (9) Services performed by an individual, who is not treated as an employee, for a person who is not treated as an employer, under either of the following conditions: (a) The services are performed by the individual as a salesperson and as a licensed real estate agent; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.</p>
Kansas	Workers' Compensation	<p>K.S.A. 44-505 West's Kansas Statutes Annotated Chapter 44. Labor and Industries Article 5. Workers Compensation 44-505. Application of act</p>	<p>(a) Subject to the provisions of K.S.A. 44-506 and amendments thereto, the workers compensation act shall apply to all employments wherein employers employ employees within this state except that such act shall not apply to:...</p> <p>(5) services performed by a qualified real estate agent as an independent contractor. For the purposes of this act a qualified real estate agent shall be deemed to be an independent contractor if such qualified real estate agent is licensed by the Kansas real estate commission as a salesperson under the real estate brokers' and salespersons' license act and for whom: (A) Substantially all of the remuneration, whether or not paid in cash, for the services performed by such individual as a real estate salesperson is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and (B) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for state tax purposes.</p>
	Real Estate Statute	<p>K.S.A. 58-30,102 West's Kansas Statutes Chapter 58. Personal and Real Property Article 30. Real Estate Brokers and Salespersons Brokerage Relationships 58-30,102. Definitions</p>	<p>As used in the brokerage relationships in real estate transactions act, unless the context otherwise requires: (a) "Affiliated licensee" means any individual licensed as a salesperson or broker under the Kansas real estate brokers' and salespersons' license act who is employed by a broker or affiliated with a broker as an independent contractor.</p>
	Labor – Other/General	<p>K.S.A. 44-703(4)(Q): Labor and Industries/Employment Security Law/Definitions</p>	<p>4) The term "employment" shall not include: ... (Q) services performed as a qualified real estate agent....</p>
Kentucky	Tax	<p>KRS § 67.750 Baldwin's Kentucky Revised Statutes Annotated Title IX. Counties, Cities, and Other Local Units Chapter 67. County Government (Fiscal Courts and County Commissioners) Taxation of Business 67.750 Definitions for KRS 67.750 to 67.790</p>	<p>As used in KRS 67.750 to 67.790, unless the context requires otherwise: ... 4) "Employee" means any person who renders services to another person or business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency or instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee;</p>
Louisiana	Workers' Compensation	<p>LSA-R.S. 23:1047 Title 23. Labor and Workers' Compensation Chapter 10. Workers' Compensation Part I. Scope and Operation Subpart B. Liability of Employers--Election</p>	<p>A. This Chapter shall not apply to and there is specifically excluded from the operation thereof, any real estate broker or salesman licensed to do business in the state of Louisiana and operating under the auspices of a licensed broker in the state of Louisiana and is working in the course and scope of his real estate business.</p>

		as to Coverage § 1047. Real estate salesmen exempt from coverage	
	Real Estate Statute	LSA-R.S. 37:1446 West's Louisiana Statutes Annotated Louisiana Revised Statutes Title 37. Professions and Occupations Chapter 17. Louisiana Real Estate License Law § 1446. Compensation; independent contractor status of salespersons and associate brokers	H. A real estate salesperson or associate shall be an independent contractor of the broker with whom he is affiliated for all purposes and shall not be an employee of the broker if all of the following conditions are met: (1) The real estate salesperson or associate broker is a licensee. (2) Substantially all of the real estate salesperson's or associate broker's remuneration for the services performed is directly related to sales or other output rather than the number of hours worked. (3) There is a written agreement between the real estate salesperson or associate broker and the broker that specifies that the real estate salesperson or associate broker will not be treated as an employee.
	Labor – Other/General: Unemployment Comp	s.1472(h)(XVII) West's Louisiana Statutes Annotated/Title 23 Labor and Workers' Comp/Unemployment Compensation/General Provisions/Definitions	H. The term "employment" shall not include: ... XVII. service performed by an individual as a real estate salesman, if all such service performed by such individual for his employing unit is performed for remuneration solely by way of commission;
Maine	Workers' Compensation Labor – Other/General	39-A.M.R.S.A. s. 102(11)(D) Workers' Comp/General Provisions/Definitions	11. Employee. The term "employee" is defined as follows. ... D. "Employee" does not include a real estate broker or salesperson whose services are performed for remuneration solely by way of commission if the broker or salesperson has signed a contract with the agency indicating the existence of an independent contractor relationship.
	Workers' Compensation	MD Code, Labor and Employment, § 9-222 Labor and Employment Title 9. Workers' Compensation Subtitle 2. Covered Employees and Employers § 9-222. Real estate salesperson or associate real estate broker	An individual is not a covered employee if the individual: (1) is a licensed real estate salesperson or a licensed associate real estate broker; (2) is affiliated with a licensed real estate broker under a written agreement; (3) is compensated solely on a commission basis; and (4) for federal tax purposes, qualifies as an independent contractor.
	Real Estate Statute	§ 17-320. Employment of and contractual arrangements with salespersons and associate brokers	(a) In general.- (1) Subject to the provisions of this section, a licensed real estate broker may utilize as an independent contractor, employ, or otherwise contract with a licensed real estate salesperson or a licensed associate real estate broker to provide real estate brokerage services on behalf of the licensed real estate broker. ... (c)(1) A real estate broker shall exercise reasonable and adequate supervision over the provision of real estate brokerage services by any other individual, including an independent contractor, on behalf of the broker. (2) The requirement of paragraph (1) of this subsection applies regardless of the manner in which the individual who provides the services is affiliated with the real estate broker on whose behalf the services are provided.
Maryland	Unemployment Insurance	MD Code, Labor & Employment Title 8. Unemployment Insurance Subtitle 2. Scope of Title §8-209. Commission Sales	[...] (b) To the extent that work is exempted under federal law, the work that an associate real estate broker or real estate salesperson performs for a licensed real estate broker for payment by commission is not covered employment.

	Wage & Hour	MD Code, Labor & Employment Title 3. Employment Standards and Conditions. Subtitle 4. Definitions; General Provisions. §3-403. Scope of Subtitle.	§3-403. This subtitle does not apply to an individual who: [...] (5) is compensated on a commission basis;
Massachusetts	Workers' Compensation	M.G.L.A. 152 s. 1: Workers' Compensation (4) LEG. HISTORY: St.1983, c. 447, approved Oct. 27, 1983, in the first paragraph of par. (4), inserted "a salesperson affiliated with a real estate broker pursuant to an agreement which specifically provides for compensation only in the form of commissions earned from the sale or rental of real property," and deleted "for" preceding "liability" and deleted "of this chapter" following "twenty-six".]Definitions] – (4) "Employee", every person in the service of another under any contract of hire, express or implied, oral or written, excepting... (c) a salesperson affiliated with a real estate broker pursuant to an agreement which specifically provides for compensation only in the form of commissions earned from the sale or rental of real property.... SEE ALSO: Official Website of the Executive Office of Labor and Workforce Development: Commentary – "Who Needs Workers' Compensation Insurance in Massachusetts" ... Under specific conditions outlined in Chapter 152, section 1(4), the following are not considered employees and therefore not required to be covered by workers' compensation insurance: ... real estate agents ... [Emphasis added]
	Real Estate Statute	M.G.L.A. 112 § 87RR Massachusetts General Laws Annotated Part I. Administration of the Government (Ch. 1-182) Title XVI. Public Health (Ch. 111-114) Chapter 112. Registration of Certain Professions and Occupations § 87RR. License; completion of transactions; fee or commission; action for compensation	No salesman may conduct or operate his own real estate business nor act except as the representative of a real estate broker who shall be responsible for the salesman and who must approve the negotiation and completion by the salesman of any transaction or agreement which results or is intended to result in the sale, exchange, purchase, renting or leasing of any real estate or in a loan secured or to be secured by mortgage or other encumbrance upon real estate. No salesman shall be affiliated with more than one broker at the same time nor shall any salesman be entitled to any fee, commission or other valuable consideration or solicit or accept the same from any person except his licensed broker in connection with any such agreement or transaction. A salesman may be affiliated with a broker either as an employee or as an independent contractor and may, by agreement, be paid as an outside salesperson on a commission- only basis but shall be under such supervision of said broker as to ensure compliance with this section and said broker shall be responsible with the salesman for any violation of section eighty-seven AAA committed by said salesman.
	Labor – Other/General: Unemployment Insurance	M.G.L.A. 151A § 6 Massachusetts General Laws Part I. Administration of the Government Title XXI. Labor and Industries Chapter 151A. Unemployment Insurance § 6. Service not included in "employment"	The term "employment" shall not include: ... (p) Services performed by an individual as a real estate broker or salesman if he is licensed by the state as a real estate broker or salesman, and if he is remunerated solely by way of commission; provided, however, that the term "employment" shall include service performed by a real estate broker or a salesman, if such service is performed for a governmental employer as defined in subsection (i) of section one.
Michigan	Real Estate Statute	M.C.L.A. 339.2501 Michigan Compiled Laws Annotated Chapter 339. Occupational Code Occupational Code Article 25. Real Estate Brokers and Salespersons 339.2501. Definitions	a) "Employ" or "employment" means the relationship between a real estate broker and an associate broker or a real estate salesperson which may include an independent contractor relationship. The existence of an independent contractor relationship between a real estate broker and an individual licensed to the real estate broker shall not relieve the real estate broker of the responsibility to supervise acts of the licensee regulated by this article. (b) "Independent contractor relationship" means a relationship between a real estate broker and an associate broker or real estate salesperson that satisfies both of the following conditions: (i) A written agreement exists in which the real estate broker does not consider the associate broker or real estate salesperson as an employee for federal and state income tax purposes. (ii) Not less than 75% of the annual compensation paid by the real estate broker to the associate broker or real estate salesperson is from commissions from the sale of real estate.
	Labor – Other/General	M.C.L.A. 421.43(h): Employment Security/Services excluded from term "employment"	Sec. 43. Except as otherwise provided in section 42(6), the term "employment" does not include any of the following: ... (h) Service performed by real estate salespersons, sales representatives of investment companies, and agents or solicitors of insurance companies who are compensated principally or wholly on a commission basis.

Minnesota	Labor – Other/General: Unemployment Insurance	268.035(Subd.20 Sec. (31): Employment and Economic Development/Unemployment Insurance/Noncovered Employment 268.035. Definitions	Subd. 20. Noncovered employment. “Noncovered employment” means: ... (31) employment as a real estate salesperson, by other than a corporate officer, if all the wages from the employment is solely by way of commission;
Mississippi	NONE FOUND		
Missouri	Real Estate Statute	Chapter 339	...2. A "real estate salesperson" is any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, domestic or foreign who for a compensation or valuable consideration becomes associated, either as an independent contractor or employee, either directly or indirectly, with a real estate broker to do any of the things above mentioned. The provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860 [FN1] shall not be construed to deny a real estate salesperson who is compensated solely by commission the right to be associated with a broker as an independent contractor. 3. A "real estate broker-salesperson" is any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, domestic or foreign, who has a real estate broker license in good standing, who for a compensation or valuable consideration becomes associated, either as an independent contractor or employee, either directly or indirectly, with a real estate broker to do any of the things above mentioned. A real estate broker-salesperson may not also operate as a real estate broker. The provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860 shall not be construed to deny a real estate salesperson who is compensated solely by commission the right to be associated with a broker as an independent contractor. AND The provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860* shall not be construed to deny a real estate salesperson who is compensated solely by commission the right to be associated with a broker as an independent contractor.
	Labor – Other/General	V.A.M.S. 288.034 Vernon's Annotated Missouri Statutes Title XVIII. Labor and Industrial Relations Chapter 288. Employment Security 288.034. Employment defined	12. The term "employment" shall not include: ... (16) Services performed by a licensed real estate salesperson or licensed real estate broker if substantially all of the remuneration, whether or not paid in cash, for the services performed, rather than to the number of hours worked, is directly related to sales or other output, including the performance of services, performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for federal tax purposes;
Montana	Workers' Compensation	MCA 39-71-401	Employments covered and exemptions-- (2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following: ... (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a <u>guarantee of minimum earnings</u> ;
	Real Estate Statute	MCA 37-51-102 West's Montana Code Annotated Title 37. Professions and Occupations Chapter 51. Real Estate Brokers and Salespersons Part 1. General37-51-102. Definitions	(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction. (13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.
	Labor – Other/General: Unemployment Insurance	MCA 39-51-204(1)(d): Labor/Unemployment Insurance/Definitions/Exclusions from definition of Employment	(1) The term “employment” does not include: ... (d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;
	Labor – Other/General: Minimum Wage	MCA 39-3-406 West's Montana Code Annotated Title 39. Labor Chapter 3. Wages and Wage Protection Part 4. Minimum Wage and Overtime Compensation	39-3-406. Exclusions (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to: ... (j) ... an individual employed in an outside sales capacity pursuant to 29 CFR 541.500; ... (m) a direct seller as defined in 26 U.S.C. 3508;

Nebraska	Labor – Other/General: Employment Security	Neb.Rev.St. § 48-604 West's Revised Statutes of Nebraska Chapter 48. Labor Article 6. Employment Security 48-604. Employment, defined	(6) The term employment shall not include: ... (l) Service performed by an individual as a real estate salesperson, as an insurance agent, or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission;
Nevada	Real Estate Statute	N.R.S. 645.035 West's Nevada Revised Statutes Annotated Title 54. Professions, Occupations and Businesses (Chapters 622-656A) Chapter 645. Real Estate Brokers and Salespersons General Provisions 645.035. "Real estate broker-salesperson" defined	1. Within the meaning of this chapter, a "real estate broker-salesperson" is any person who holds a real estate broker's license, or who has passed the real estate broker's examination, but who, as an employee or as an independent contractor, for compensation or otherwise, is associated with: (a) A licensed real estate broker in the capacity of a salesperson, to do or to deal in any act, acts or transactions included within the definition of a real estate broker in NRS 645.030; or (b) A registered owner-developer in the capacity of a sales manager in accordance with NRS 645.283 and 645.289.
	Labor – Other/General: Unemployment Insurance	West's Nevada Revised Statutes Annotated 612.133: Labor and Industrial relations/Unemployment Compensation/General Provisions	"Employment" shall not include services performed by a licensed real estate salesperson or licensed real estate broker who is employed as a salesperson or associate broker by another licensed real estate broker, whether such services are performed for such employer or for a third person, if such services are performed for remuneration solely by way of commission.
New Hampshire	Workers' Compensation	N.H. Rev. Stat. § 281-A:2 Revised Statutes Annotated of the State of New Hampshire Title XXIII. Labor (Ch. 273 to 283) Chapter 281-A. Workers' Compensation 281-A:2 Definitions.	VI. (a) "Employee", with respect to private employment, means any person in the service of an employer subject to the provisions of this chapter under any express or implied, oral or written contract of hire ... If they elect to be personally covered by this chapter, "employee" includes persons who regularly operate businesses or practice their trades, professions, or occupations, whether individually, or in partnership, or association with other persons, whether or not they hire others as employees. (b)(1) Subject to the preceding subparagraph, any person, other than a direct seller or qualified real estate broker or agent or real estate appraiser, or person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, who performs services for pay for an employer, is presumed to be an employee.
New Jersey	Labor – Other/General: Unemployment Compensation	N.J.S.A. 43:21-19	43:21-19. Definitions ...(7) Provided that such services are also exempt under the Federal Unemployment Tax Act, as amended, or that contributions with respect to such services are not required to be paid into a state unemployment fund as a condition for a tax offset credit against the tax imposed by the Federal Unemployment Tax Act, as amended, the term "employment" shall not include: ... (K) Services performed by real estate salesmen or brokers who are compensated wholly on a commission basis;
New Mexico	Workers' Compensation	West's New Mexico Statutes Annotated s. 52-1-16(B) and (C): Workers' Compensation/Real estate salesperson excepted	B. For the purposes of the Workers' Compensation Act, an individual who performs services as a qualified real estate salesperson shall not be treated as an employee and the person for whom the services are performed shall not be treated as an employer.
New York	Workers' Compensation	McKinney's Workers Compensation Law s. 2 Chapter 67, Art. 1 s. 2 Application/Definitions AND McKinney's Workers Compensation Laws Chapter 67, Art. 9 sec. 201 Disability/Definitions	"Employment." A. "Employment" ... The term "employment" shall not include the services of a licensed real estate broker or sales associate if it be proven that ... [commission basis, contract provision requirements, hours must be at salesperson's discretion; etc.]
	Real Estate Statute	Section 175.21. Supervision of salesman by broker	Section 175.27. Disclaimer Nothing in this Part is intended to be, or should be construed as, an indication that a salesperson is either an independent contractor or employee of a broker.
	Labor – Other/General: Unemployment Insurance	McKinney's Labor Law s. 511 Art. 18 Title 2: Employment/Definitions (Unemployment Insurance law)	"Employment." A. "Employment" ... The term "employment" shall not include the services of a licensed real estate broker or sales associate if it be proven that ... [commission basis, contract provision requirements, hours must be at salesperson's discretion; etc.]

North Carolina	Real Estate Statute	N.C.G.S.A. § 93A-11 West's North Carolina General Statutes Annotated Chapter 93A. Real Estate License Law Article 1. Real Estate Brokers and Salespersons § 93A-11. Reimbursement by real estate independent contractor of brokers' workers' compensation	(a) Notwithstanding the provisions of G.S. 97-21 or any other provision of law, a real estate broker may include in the governing contract with a real estate broker on provisional status whose nonemployee status is recognized pursuant to section 3508 of the United States Internal Revenue Code, 26 U.S.C. § 3508, an agreement for the broker on provisional status to reimburse the broker for the cost of covering that broker on provisional status under the broker's workers' compensation coverage of the broker's business.
North Dakota	Labor – Other/General: Social Security	NDCC 52-01-01(18)(i)(8): Social Security/Definitions and General Provisions	18. "Employment" does not include: ... i. Service performed: ... (8) By an individual for a person as an insurance agent, as an insurance solicitor, as a real estate salesman, or as a securities salesman, if all such services performed by such individual for such persons is performed for remuneration solely by way of commission.
Ohio	NONE FOUND		
Oklahoma	Workers' Compensation	85A Okl.St. Ann. § 2	The term "employee" shall not include: ... 3) any person who is a licensed real estate sales associate or broker, paid on a commission basis, ...
	Real Estate Statute	59 Okl.St. Ann. § 858-102 Oklahoma Statutes Annotated Title 59. Professions and Occupations Chapter 20. Oklahoma Real Estate License Code Article I. General Provisions § 858-102. Definitions	3. The term "broker associate" shall include any person who has qualified for a license as a broker and who is employed or engaged by, associated as an independent contractor with, or on behalf of, a broker to do or deal in any act, acts or transaction set out in the definition of a broker; 4. The term "real estate sales associate" shall include any person having a renewable license and employed or engaged by, or associated as an independent contractor with, or on behalf of, a real estate broker to do or deal in any act, acts or transactions set out in the definition of a real estate broker; 5. "Provisional sales associate" shall include any person who has been licensed after June 30, 1993, employed or engaged by, or associated as an independent contractor with, or on behalf of, a real estate broker to do or deal in any act, acts or transactions set out in the definition of a real estate broker and subject to an additional forty-five-hour postlicensing educational requirement to be completed within the first twelve-month license term..
	Labor – Other/General	Employment Security Act – General Provisions 40 Okl.St. Ann. § 1-210	(15) The term "employment" shall not include: ... (j) service performed by an individual for a person, firm, association, trust, partnership or corporation as an insurance agent, or as an insurance solicitor or as a licensed real estate agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commissions or fees;
Oregon	Real Estate Statute	O.R.S. § 696.363 West's Oregon Revised Statutes Title 52. Occupations and Professions Chapter 696. Real Estate and Escrow Activities Real Estate Licensees (Miscellaneous) 696.363. Relationship between licensees	Nothing contained in ORS 696.010 to 696.495, 696.600 to 696.785, 696.800 to 696.870, 696.990 and 696.995 prevents the establishment of an independent contractor relationship between real estate licensees or requires the establishment of an employer-employee relationship.
	Labor – Other/General	O.R.S. s. 657.085 Labor and Employment/Unlawful Discrimination/Unemployment Insurance/Definitions/Exclusion for certain real estate personnel	"Employment" does not include service performed by any person as a newspaper advertising salesperson, real estate broker, principal real estate broker, insurance producer or securities salesperson or agent to the extent that the person is compensated by commission.
Pennsylvania	Workers' Compensation	Purdon's Pennsylvania Statutes Title 77 P.S. Ch.5 s. 676(2): Workers' Compensation/Domestic Workers/Persons engaged in domestic service; election by employer	Nothing contained in this act shall apply to or in any way affect: ... (2) Any person who is a licensed real estate salesperson or an associate real estate broker affiliated with a licensed real estate broker or a licensed insurance agent affiliated with a licensed insurance agency, under a written agreement, remunerated on a commission-only basis and who qualifies as an independent contractor for State tax purposes or for Federal tax purposes under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).
Rhode Island	Workers' Compensation	Gen.Laws 1956, § 28-29-7.1 Title 28. Labor and Labor Relations Chapter 29. Workers' Compensation--	A licensed real estate broker or real estate salesperson or a licensed or certified real estate appraiser shall not be considered an employee under the provisions of this chapter if substantially all of the remuneration for the services performed by the broker, salesperson, or appraiser, whether paid in cash or otherwise, is directly related

		General Provisions § 28-29-7.1. Exemption from workers' compensation--Certain real estate persons	to sales or other output rather than to the number of hours worked, and the services are performed by the broker, salesperson, or appraiser pursuant to a written contract that contains the following provisions: (1) The broker, salesperson, or appraiser, for purposes of workers' compensation, is engaged as an independent contractor associated with the person for whom services are performed; (2) The broker or salesperson shall be paid a commission based on his or her gross sales, if any, without deduction for taxes, which commission shall be directly related to sales or other output; (3) The broker, salesperson, or appraiser shall not receive any remuneration related to the number of hours worked, and shall not be treated as an employee with respect to the services for the purposes of this chapter; (4) The broker, salesperson, or appraiser shall be permitted to work any hours he or she chooses; (5) The broker, salesperson, or appraiser shall be permitted to work out of his or her own home or the office of the person for whom services are performed; (6) The broker, salesperson, or appraiser shall be free to engage in outside employment; (7) The person for whom the services are performed may provide office facilities and supplies for the use of the broker, salesperson, or appraiser, but the broker, salesperson, or appraiser shall otherwise pay his or her own expenses.
	Real Estate Statute	West's General Laws of Rhode Island Annotated Title 5. Businesses and Professions Chapter 20.5. Real Estate Brokers and Salespersons § 5-20.5-1. Definitions	(1) "Associate broker" means any licensed real estate broker who is employed or engaged as an independent contractor by or in behalf of a licensed real estate broker to do or deal in any activity as included or comprehended by the definitions of a real estate broker in subdivision (4) of this section, for compensation or otherwise; ... (5) "Real estate salesperson" means and includes any person employed or engaged as an independent contractor by or on behalf of a licensed real estate broker to do or deal in any activity as included or comprehended by the definitions of a real estate broker in subdivision (4) of this section, for compensation or otherwise.
	Labor – Other/General – Employment Security	Gen.Laws 1956, § 28-42-8	"Employment" does not include: ... (10) Notwithstanding any provisions of titles 5 and 27, service performed by an individual as a real estate salesperson if all the service performed by that individual is performed for remuneration solely by way of commission;
South Carolina	Workers' Compensation	Code 1976 § 42-1-360 Code of Laws of South Carolina 1976 Title 42. Workers' Compensation Chapter 1. General Provisions Article 3. Application and Effect of Title § 42-1-360. Exemption of casual employees and certain other employments from Title.	This title does not apply to: ... (7) a licensed real estate sales person engaged in the sale, leasing, or rental of real estate for a licensed real estate broker on a straight commission basis and who has signed a valid independent contractor agreement with the broker;
	Labor – Other/General	Code 1976 § 41-27-260: Title 41. Labor and Employment Chapter 27. Employment and Workforce-- General Provisions Article 3. Definitions § 41-27-260. Exempted employment.	The term "employment" as used in Chapters 27 through 41 of this title does not include: ... (14) service performed by an individual for an employer as a real estate salesman or agent, if this service is performed by the individual for his employer for remuneration solely by way of commission;
South Dakota	Real Estate Statute	SDCL § 36-21A-79 Title 36. Professions and Occupations Chapter 36-21A. Real Estate Licensing 36-21A-79. Broker's responsibility for activities of affiliated licensees	A responsible broker is responsible for the real estate activities conducted by affiliated licensees, whether as employees or independent contractors.
	Real Estate Statute (2)	SDCL § 36-21A-124 South Dakota Codified Laws Title 36. Professions and Occupations Chapter 36-21A. Real Estate Licensing 36-21A-124. Employment status-- Independent contractor	For purposes of determining employment status, any broker, broker associate, and salesperson who is a natural person and licensed under this chapter is engaged in an independently established profession. Any such licensee is an independent contractor if: 1) The licensed broker with whom the licensee is affiliated does not specify by other than general policy the time, method, and location of the licensee's services; and 2) The licensed broker with whom the licensee is affiliated compensates the licensee on the basis of work performed without withholding and remitting federal income and social security taxes; and 3) The licensed broker with whom the licensee is affiliated provides only incidental supplies, equipment, and

			facilities, while the licensee assumes responsibility for vehicular, educational, and other significant professionally related expenses; and 4) Either party to the relationship may terminate it at will and without liability.
Tennessee	Labor – Other/General	T. C. A. § 50-7-207 (11) West's Tennessee Code Annotated Title 50. Employer and Employee Chapter 7. Tennessee Employment Security Law Part 2. Definitions § 50-7-207. Employment; included, excluded and Tennessee service; definitions	(c) "Excluded Service." For purposes of this section, "excluded service" means any of the following, unless the employing unit for which the service is performed is liable for a federal tax on the remuneration paid for the service against which credit may be taken for premiums paid under this chapter, or unless the employing unit has elected that the service shall be deemed to constitute employment subject to this chapter pursuant to § 50-7-405, in which cases the service shall be "included service" as provided in subsection (b): ... (11) Service performed by a qualified real estate agent if: (A) The individual is a licensed real estate agent; (B) Substantially all of the remuneration for the services performed as a real estate agent is directly related to sales or other output, including the performance of services, rather than the number of hours worked; and (C) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with respect to the services for federal tax (FUTA) purposes;
Texas	Labor – Other/General	V.T.C.A. Labor Code s. 201.072: Labor Code/Service as Real Estate BrokerIn this subtitle, "employment" does not include: (1) service performed by an individual as a real estate broker or salesperson if: [commission; contract provisions/requirements]
Utah	Workers' Compensation	U.C.A. 1953 § 34A-2-104 West's Utah Code Annotated Title 34A. Utah Labor Code Chapter 2. Workers' Compensation Act Part 1. General Provisions § 34A-2-104. "Employee," "worker," and "operative" defined--Specific circumstances-- Exemptions	(5) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" do not include: (a) a sales agent or associate broker, as defined in Section 61-2f-102, [Real Estate Licensing Act] who performs services in that capacity for a principal broker if: (i) substantially all of the sales agent's or associate broker's income for services is from real estate commissions; and (ii) the sales agent's or associate broker's services are performed under a written contract that provides that: (A) the real estate agent is an independent contractor; and (B) the sales agent or associate broker is not to be treated as an employee for federal income tax purposes;
	Real Estate Statute	U.C.A. 1953 § 61-2f-102 Title 61. Securities Division--Real Estate Division Chapter 2F. Real Estate Licensing and Practices Act Part 1. General Provisions § 61-2f-102. Definitions AND U.C.A. 1953 § 61-2f-303: Licensing and Practices; Operational Requirements	61-2f-102. Definitions (1) "Associate broker" means an individual who is: (a) employed or engaged as an independent contractor by or on behalf of a principal broker to perform an act set out in Subsection (18) for valuable consideration; and (b) licensed under this chapter as an associate broker. AND § 61-2f-303. Sales agents or associate broker--Affiliated with principal broker as independent contractors or employees--Presumption A sales agent or associate broker may be affiliated with a principal broker either as an independent contractor or as an employee. The relationship between sales agent or associate broker and principal broker is presumed to be an independent contractor relationship unless there is clear and convincing evidence that the relationship was intended by the parties to be an employer employee relationship.
	Labor – Other/General: Employment Security Act	§ 35A-4-205. Exempt employment	(3) The following services are exempt employment under the Utah Employment Security Act: (a) service performed by an individual as a licensed real estate agent or salesman, if all the service performed by the individual is performed for remuneration solely by way of commission;

Vermont	Workers' Compensation	21 V.S.A. § 601 West's Vermont Statutes Annotated Title Twenty-One. Labor Chapter 9. Employer's Liability and Workers' Compensation § 601. Definitions	(14)...The term "worker" or "employee" does not include: ... (G) An individual who performs services as a real estate broker or real estate salesperson, provided: (i) the individual is licensed to broker or sell real estate pursuant to 26 V.S.A. chapter 41; (ii) all the individual's compensation from performing real estate broker or sales services is based on commissions from sales production or results and is not based on time worked or an hourly wage; (iii) the services are performed pursuant to a written agreement or contract between the individual and the real estate sales or broker business or another person with whom the individual is affiliated or associated and the written agreement or contract explicitly states that the individual is not considered to be an employee under this chapter and is not eligible for coverage under this chapter; and (iv) the individual is not treated as an employee for the purposes of federal income and employment taxation with regard to the real estate broker or sales services performed.
Virginia	Workers' Compensation	Workers Comp Statute - VA Code Ann. § 65.2-101 § 65.2-101. Definitions	2. "Employee" shall not mean: ... c. Any person who is a licensed real estate salesperson, or a licensed real estate broker associated with a real estate broker, if (i) substantially all of the salesperson's or associated broker's remuneration is derived from real estate commissions, (ii) the services of the salesperson or associated broker are performed under a written contract specifying that the salesperson is an independent contractor, and (iii) such contract includes a provision that the salesperson or associated broker will not be treated as an employee for federal income tax purposes.
	Real Estate Statute	VA Code Ann. § 54.1-2101 West's Annotated Code of Virginia Title 54.1. Professions and Occupations Subtitle II, Chapter 21. Real Estate Brokers, Sales Persons and Rental Location Agents Article 1. Regulation of Real Estate Brokers, Salespersons and Rental Location Agents § 54.1-2101. Real estate salesperson defined	For the purposes of this chapter, "real estate salesperson" means any person, or business entity of not more than two persons unless related by blood or marriage, who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a real estate broker, to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale or exchange of real estate, or to lease, rent or offer for rent any real estate, or to negotiate leases thereof, or of the improvements thereon.
	Labor – Other/General	VA Code Ann. § 60.2-212 West's Annotated Code of Virginia Title 60.2. Unemployment Compensation Chapter 2. Definitions § 60.2-212. Employment	A. "Employment" means:... D. Notwithstanding the provisions of subsection C, an individual who performs services as a real estate salesperson, under direction of a real estate broker under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, or as a real estate appraiser under Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1 pursuant to an executed independent contractor agreement and for remuneration solely by way of commission or fee, shall not be an employee for purposes of this chapter.
Washington	Labor – Other/General: Minimum Wage	RCW 49.46.130 Minimum rate of compensation for employment in excess of forty hour work week — Exceptions.	(2) This section does not apply to: ... (j) Any individual licensed under chapter 18.85 RCW unless the individual is providing real estate brokerage services under a written contract with a real estate firm which provides that the individual is an employee. For purposes of this subsection (2)(j), "real estate brokerage services" and "real estate firm" mean the same as defined in RCW 18.85.011.
	Labor – Other/General: Unemployment Compensation	West's RCWA 50.04.230 Title 50. Unemployment Compensation Chapter 50.04. Definitions 50.04.230. Employment--Services of insurance agent, broker, or solicitor, real estate broker or real estate salesperson, and investment company agent or solicitor	The term "employment" shall not include service performed by an insurance agent, insurance broker, or insurance solicitor or a real estate broker or a real estate salesperson to the extent he or she is compensated by commission and service performed by an investment company agent or solicitor to the extent he or she is compensated by commission. The term "investment company", as used in this section is to be construed as meaning an investment company as defined in the act of congress entitled "Investment Company Act of 1940."
	Real Estate Licensing Law	RCW 18.85.011 and 2015 c 133 1: Real Estate Licensing – Independent Contractor Relationships – Definition [AMENDED by Senate Bill 5125, became effective 7/23/17]	[...] "Independent contractor relationship" means a relationship between a broker or managing broker and a real estate firm that satisfies both of the following conditions: (1) No written agreement with the broker or managing broker is an employee of the firm; and (b) substantially all of the broker's or managing broker's compensation is for services related to real estate brokerage services provided by the firm. Nothing in this subsection is intended to relieve the managing broker or real estate firm of the supervisory duties identified in this chapter.
West Virginia	NONE FOUND		
Wisconsin			

	Real Estate Statute: Independent Contractor Relationship	Wis. Stat. 452-38	(1) Except as otherwise provided in s. 102.078, a licensee shall not, under ch. 102, 103, 104, or 109, under subch. X of ch. 71 or subch. II of ch. 111, under any other law or rule other than those specified under sub. (1m), or in any action or proceeding under the common law, be considered an employee of a firm if all of the following are satisfied: (a) A written agreement has been entered into with the firm that provides that the licensee shall not be treated as an employee for federal and state tax purposes. (b) Seventy-five percent or more of the compensation related to sales or other output, as measured on a calendar year basis, paid to the licensee pursuant to the written agreement referenced under par. (a) is directly related to the brokerage services performed by the licensee on behalf of the firm. (1m) This section does not apply with respect to ch. 108 or any rules promulgated thereunder. (2) (a) Subsection (1) applies notwithstanding the requirements and responsibilities of a firm under s. 452.132 and any rules promulgated by the board. (b) Subsection (1) applies regardless of the licensee's status as a supervising broker under s. 452.132 and any actions taken by the licensee as a supervising broker under s. 452.132. (3) In the case of an individual who is engaged as both an independent contractor and an employee for the same firm, sub. (1) applies only with respect to activities covered under the written agreement referenced under sub. (1) (a).
	Tax	W.S.A. 71.63 West's Wisconsin Statutes Annotated Taxation (Ch. 70 to 79) Chapter 71. Income and Franchise Taxes for State and Local Revenues Subchapter X. Withholding 71.63. Definitions	In this subchapter, unless the context clearly indicates otherwise: ... (2) "Employee" ...does not include a qualified real estate agent or a direct seller who is not treated as an employee under section 3508 of the Internal Revenue Code.
	Labor – Other/General: Minimum Wage Law	W.S.A. 104.01 West's Wisconsin Statutes Annotated Employment, Compensation and Mining (Ch. 101 to 109) Chapter 104. Minimum Wage Law 104.01. Definitions	(b) "Employee" does not mean... 2. Any individual engaged in performing services for a person as a real estate agent or as a real estate salesperson, if all of those services are performed for remuneration solely by commission.
Wyoming	Labor – Other/General: Unemployment Compensation	W.S.1977 § 27-3-108 West's Wyoming Statutes Annotated Title 27. Labor and Employment Chapter 3. Unemployment Compensation Article 1. In General § 27-3-108. Services excluded from scope of employment	(a) Employment under this act does not include service performed: ... (v) By a licensed real estate broker or salesman receiving as sole compensation a commission based on the sale or rental of real estate;