

Talking Points

REAL ESTATE PROFESSIONALS CLASSIFIED AS INDEPENDENT CONTRACTORS

March 2021

- **Of the 1.4 million members of the National Association of REALTORS® (NAR), approximately 87 percent are classified as independent contractors.**
 - This classification is essential to the industry and is recognized and protected under many state and some federal laws.
- **The ability to work as an independent contractor is why many individuals are attracted to the real estate sales industry – it empowers entrepreneurship, maximizes flexibility, and promotes autonomy within a dynamic and flourishing field.**
 - With spending in the housing market making up over 15 percent of the GDP, policymakers must minimize disruption to the housing industry that is vital to our country's economic health and recovery.
- **Real estate professionals as independent contractors are protected in the Internal Revenue Code, [26 U.S.C. §3508](#), which classifies them as statutory non-employees for federal tax purposes.**
 - The rule has been in place since 1982, and NAR strongly opposes any erosion of this protection.
- Litigation and new federal and state legislation continue to threaten many workers' ability to be classified as an independent contractor, including many real estate professionals, despite existing federal and state laws.
- There are two primary tests used to classify workers as independent contractors: the ABC test and the Common Law test.
 - Under **the ABC test**, the state statutory supervisory and control requirements imposed on brokers over agents make it challenging to classify a real estate professional as an independent contractor and a broker's legal obligations under the real estate license laws.
 - Under the **Common Law test**, a multi-factor analysis is used that favors the ability to classify real estate professionals as independent contractors because the totality of the working relationship is considered rather than a single disqualifying factor.
- **There have been several bills introduced that include the ABC test that would set the stage for increased litigation challenging real estate professionals' ability to be classified as independent contractors and potentially influence more states to adopt this problematic classification method.**
 - While none of the current bills directly impact the Internal Revenue Code exemption for real estate professionals, a new federal standard could increase the likelihood of changes to existing federal and state laws that ensure the ability to classify real estate professionals as statutory non-employees.
- **In California, the ABC test was adopted under state labor codes but an important exemption was included for real estate professionals that recognized the unique business structure of this industry and protected their ability to be classified as independent contractors.**
 - Other states considering adopting the ABC test are also including exemptions for real estate professionals and federal efforts should follow suit where necessary.
- **NAR will resist efforts at the federal level that may weaken the ability of real estate professionals to be classified as independent contractors while also supporting actions at the state and federal level to strengthen the rights of brokers to make these determinations themselves.**

