

October 26, 2020

Vince Malta
2020 President

Bob Goldberg
Chief Executive Officer

ADVOCACY GROUP

Shannon McGahn
Chief Advocacy Officer

The Honorable Eugene Scalia
Secretary
Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Dear Secretary Scalia,

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), I submit the following comments in response to the Department of Labor's (Department) Notice of Proposed Rulemaking (NPRM) on *Independent Contractor Status Under the Fair Labor Standards Act (FLSA)*. With increased litigation challenging worker classification, and with businesses seeking greater flexibility in order to modernize and operate their businesses, an authoritative position by the Department on worker classification is necessary. Real estate professionals are classified as independent contractors under many state laws and some federal laws, but continue to face ongoing scrutiny and challenges to their status as independent contractors. NAR supports the Department's efforts to provide a clear and consistent standard for evaluating a worker's status, while preserving existing worker classification authority to allow real estate professionals to continue to provide excellent service to consumers and maintain stability in the housing market.

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,200 local associations or boards, and 54 state and territory associations of REALTORS®. NAR represents a wide variety of housing industry professionals, including approximately 25,000 licensed and certified appraisers, committed to the development and preservation of the nation's housing stock while ensuring its availability to the widest range of potential homebuyers. Of NAR's 1.4 million members, approximately 87 percent are classified as independent contractors.

NAR supports the protection of, and efforts to further secure, the right of real estate salespeople to work as independent contractors and for brokers to choose to classify real estate salespeople as independent contractors. Being classified as an independent contractor is why many individuals are attracted to the real estate sales industry – it empowers entrepreneurship, maximizes flexibility, and promotes autonomy. On average, REALTORS® have nine years of experience in the real estate industry and are remaining with real estate as a career choice for a longer duration. The ability to be classified as an independent contractor is a primary reason the real estate profession is so appealing and preserving the structure is integral to the functioning of the housing market.



Spending within the housing market makes up over 15 percent of the GDP, and it is more critical than ever to minimize disruption this industry that continues to support our country's economic recovery. As litigation and new state legislation continue to threaten the ability of a worker to be classified as an independent contractor, including challenges to the long-established ability to classify real estate agents as independent contractors, an authoritative interpretation that recognizes and incorporates the uniqueness of different industries will offer needed clarity and reduce uncertainty. Subject to a few necessary adjustments suggested below, the proposed rule should help mitigate threats to worker classification, reduce costly litigation, and more broadly provide a wide variety of businesses with confidence when hiring and classifying workers, including within the real estate industry.

Analysis of the Proposed Economic Reality Test

The Department of Labor's proposed rule has adopted the "economic reality" test to determine whether a worker is an independent contractor or if they are economically dependent on a potential employer, and thus requiring classification as an employee. The test incorporates several factors, which when applied to the work of a real estate professional, should result in the independent contractor classification. However, within the proposed rule, NAR recommends several critical adjustments to further provide clarity and consistency to the worker classification analysis.

The two core elements of the economic reality test consider a worker's overall economic dependency, and include: (1) the nature and degree of workers' control over the work; and (2) the workers' opportunity for profit and losses based on the workers' investment. Should additional analysis be needed, the proposed rule includes three additional guideposts: (1) the amount of skill required for work; (2) the degree of permanence of the working relationship between the worker and the potential employer; and, (3) whether the work is part of an integrated unit of production.

A primary issue for the real estate industry in the context of worker classification concerns the first element and the issue of control. The real estate industry is unique in that many state real estate statutes require brokers to exercise a certain degree of supervision, and thus control, over their agents. Thus, a real estate statute may sometimes conflict with an agents' ability to control key aspects of their work. However, the NPRM's recognizes and agrees with courts that have found while there may be some degree of control over an individuals' work, the manner in which that work is completed – at the individuals' broad discretion, for example – is a critical distinction that should not weigh in favor of classification as an employee.

While a broker is statutorily required to supervise its agents, at the same time, a real estate agent sets their own schedule, chooses their workload, exercises business judgement, and conducts transactions at their own pace, subject only to those moderate supervisory protocols imposed by their broker required by statute. For example, such supervision may include details on licensure requirements, allocation of earned fees, and management of incurred business expenses, but do not dictate key aspects of the work itself - namely, the where, when, and how much. Such supervisory controls necessary to ensure statutory compliance, are qualitatively different than the idea of control that defines an employment relationship, where an employee produces the work in the manner directed by the employer. The success of a real estate professional is largely dependent on decisions within their own control.

The proposed rule helps clarify that requiring an individual to comply with specific legal obligations (i.e. such as satisfying health and safety standards, carrying insurance, or meeting contractually agreed-upon deadlines or quality control standards) or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships), does not constitute control under the economic reality test. While the Department indicated such requirements are not absolute proof of classification, depending on the structure of these requirements, such elements may actually be useful to the analysis, especially to the extent they are incorporated and exercised in an independent contractor agreement. In the real estate context, independent contractor agreements are frequently used to outline the nature of the relationship and a broker's legal obligations required to ensure statutory compliance, while clearly defining the relationship within the independent contractor context.

It is also important to note that many state real estate statutes expressly permit a real estate broker to treat their real estate agents as independent contractors, while simultaneously exercising their mandatory supervisory

duties under the statute. (See *Appendix A*.) Similarly, courts have held that real estate license laws control over more general statutory language analyzing independent contractor status, even where some degree of supervision exists within that relationship.¹ While the proposed rule strikes a good balance in analyzing the control element, the rule could be further enhanced to specifically recognize that requirements to follow state statutory and regulatory provisions do not constitute control for purposes of the test.

The second core element of the economic reality test regarding opportunity for profit or loss recognizes that while all workers are economically dependent on others to some degree, it is a workers' ability to create work opportunities for themselves as an entrepreneur that distinguishes them as an independent contractor. This distinction is showcased by real estate professionals, who must demonstrate initiative, managerial expertise, business acumen, and customer service skills in order to be successful and close a real estate transaction. Real estate professionals' success depends on their judgement and foresight, and the proposed rule's combined consideration of these factors helps to better determine economic dependence on an employer.

The NPRM's additional guideposts also offer insight into a worker's role that are more focused on applicable facts and circumstances. For example, the integration factor, when applied to a real estate professional, weighs in favor of classification as an independent contractor, where the individual is able to perform their duties without being necessarily dependent on the potential employer's production process. Consideration of such discrete and personalized services for individual customers bolsters the worker's core control and opportunity for profit and loss elements, further proving the same independent contractor classification. While the guidepost factors are helpful, the emphasis on the primary core elements in the economic realities test analysis is more efficient and more indicative of status, subject to the improvements outlined above.

Application of the Proposed Economic Reality Test

The Department explains how the proposed rule will guide enforcement of the FLSA through the Wage and Hour Division and at the same time is intended to be used by employers, businesses, the public sector, employees, workers, and courts to assess worker classifications under the FLSA. When finalized, the Department's proposed rule should be welcomed by businesses in states and jurisdictions that lack a clear, consistent standard on how to classify workers. Importantly, the proposed rule also does not attempt to erode any of existing protections enacted at the federal or state level, which are of critical importance to the real estate industry.

The U.S. Internal Revenue Code (IRC) specifically provides for the ability to classify real estate professional as independent contractors using three simple and clear factors for all purposes of the Internal Revenue Code.² The rule has been in place since 1982, and NAR strongly opposes any erosion of this protection. According to the IRC, real estate agents are "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. 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 IRC test relates only to the federal tax treatment of real estate agents, it demonstrates the federal government's long-standing recognition of the unique nature of the real estate industry and, as such, the need to treat it differently than other industries. Similarly, the *Affordable Care Act's* "Shared Responsibility for Employers" provision recognizes that "qualified real estate agents" are statutory non-employees under the IRC and thus are also not counted as employees for purposes of the provision that requires certain employers to provide health care coverage to full-time employees.³

As shown in *Appendix A*, there are also a number of state statutes that follow the federal lead and address how real estate salespersons are classified as independent contractors. While these state statutes range from workers' compensation laws to real estate specific statutes, each are explicit in qualifying a licensed real estate agent (or

¹ *E.g.* Monell et al. v. Boston Pads, 471 Mass. 566 (2015).

² 26 U.S.C. §3508.

³ 26 C.F.R. §54.4980H-1(a)(15).

salesperson or licensee) as an independent contractor based on certain criteria and/or are expressly permitting the ability of a real estate broker to treat their real estate sales agents as independent contractors.

For example, in Michigan, the 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 (1) 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 (2) not less than 75 percent 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.⁴ In this case, the employment relationship is defined along with the financial structure of that relationship.

We welcome the Department's efforts to provide more certainty to a business' ability to classify its workers as independent contractors. With the increasing litigation on this issue, the Department's proposal supports small businesses and associations seeking legal clarification. For rising gig economy jobs and freelance work, which often support real estate sales transactions (photographers, website developers, etc.), having a multifaceted test that incorporates sharpened standards and encourages innovative arrangements is overdue. Many of these individuals may lack the resources to advocate for their unique circumstances as an independent contractor, which makes it incredibly important for the Department to adequately address industry nuances to delineate the manner for analyzing a worker's economic dependence.

Conclusion

On behalf of the many REALTORS® that are independent contractors, NAR remains concerned about the recent uptick in litigation and the potential legal liability for misclassification posed by new laws and regulations. Any shifts in the way the real estate industry has historically done business would drastically impact the overall services provided to consumers and the stability of the housing market. If a broker's ability to treat real estate sales agents as independent contractors is limited, then brokers will struggle with the increased costs of employing agents, resulting in a significant reduction in the number of real estate agents, impacting not only their own livelihoods but also the many benefits they provide to American home buyers and sellers.

We appreciate the Department's willingness to provide clarity on worker classification, and its consideration of NAR's suggested enhancements before the rule is made final. If you have any questions, please contact me, or Christie DeSanctis, Director of Business and Conventional Finance Policy, at 202-383-1102 or cdesanctis@nar.realtor.

Sincerely,



Vince Malta
2020 President, National Association of REALTORS®

⁴ Mich. Comp. Laws Ann. §339.2501 (West).

APPENDIX A
SUMMARY TABLE¹

<u>Act Containing Statutory Carve-Out for Real Estate Professionals</u>	<u>State</u>
Workers' Compensation	Alabama Alaska Arizona Arkansas Colorado Connecticut (Through Real Estate Statute) Delaware District of Columbia Florida Georgia Hawaii Idaho Illinois Indiana Iowa Kansas Louisiana Maine Maryland Massachusetts Michigan

¹ Current as of June 2020.

	Missouri 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

	<p>Michigan</p> <p>Minnesota</p> <p>Missouri</p> <p>Montana</p> <p>Nevada</p> <p>Nebraska</p> <p>New Jersey</p> <p>New York</p> <p>Oklahoma</p> <p>Oregon</p> <p>Rhode Island</p> <p>South Carolina</p> <p>Tennessee</p> <p>Utah</p> <p>Virginia</p> <p>Wyoming</p>
<p>Labor: Other/General</p>	<p>Hawaii – Health Care/Prepaid Health Care Act</p> <p>[Montana – Minimum Wage – limited reach.]</p> <p>North Dakota – Social Security</p> <p>South Carolina – Employment and Workforce – General exclusion</p> <p>Texas – Labor Code – General exclusion</p> <p>Washington – Minimum Wage</p> <p>Wisconsin – Income tax withholding AND Minimum wage</p>
<p>Specific presumption of independent contractor relationship in Real Estate Statute</p>	<p>Indiana</p> <p>Louisiana</p>

	Utah
Real Estate Statute language allows for either IC or Employee relationship while specifically maintaining broker oversight duties	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 Ohio 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.)
General reference to federal tax treatment in labor laws	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]
States with NO found statutory carve-outs for broker/salesperson relationship as Independent contractor	Mississippi West Virginia

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	26 U.S.C. § 3508 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	<p>(a) <u>General rule.</u>--For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller--</p> <p>(1) the individual performing such services shall not be treated as an employee, and</p> <p>(2) the person for whom such services are performed shall not be treated as an employer.</p> <p>(b) <u>Definitions.</u>--For purposes of this section--</p> <p>(1) <i>Qualified real estate agent.</i>--The term “qualified real estate agent” means any individual who is a sales person if--</p> <p>(A) such individual is a licensed real estate agent,</p> <p>(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</p> <p>(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.</p>
Alabama	Workers’ Compensation	ALA. CODE § 25-5-50 (West) Title 25 – Industrial Relations and Labor Chapter 5 – Workers’ Comp. Article 3 – Elective Compensation under Contract of Employment	<p>§ 25-5-50 Applicability; exemptions;</p> <p>...</p> <p>(h) A licensed real estate agent operating under a licensed broker shall not be considered an employee for the purposes of this chapter.</p>
	Real Estate Statute	ALA. CODE § 34-27-2 (West) Title 34 – Professions and Businesses Chapter 27 – Real Estate Brokers	<p>§ 34-27-2 Definitions; exemptions from chapter.</p> <p>(a) For purposes of Articles 1 and 2 of this chapter, the following terms shall have the respective meanings ascribed by this section: ...</p>

		Article 1 – General Provisions	(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	ALASKA STAT. ANN. § 23.30.230 (West) Title 23. Labor and Workers' Compensation Chapter 30. Alaska Workers' Compensation Act Article 6. General Provisions § 23.30.230(a)(10) 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	ALASKA STAT. ANN. § 08.88.910 (West) 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	ALASKA STAT. § 23.20.526 Title 23. Labor and Workers' Compensation Chapter 20. Alaska Employment Security Act Article 9. General Provisions § 23.20.526. Exclusions from definition of "employment"	(a) In this chapter, unless the context otherwise requires, "employment" does not include ... (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	ARIZ. REV. STAT. § 23-617(14) Employment Security/Definitions/ Exempt Employment; Definition AND	"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

		ARIZ. REV. STAT. § 23-613.01 Employee; definition; exempt employment	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	ARIZ. REV. STAT. § 23-910 Exemption for licensees	The provisions of this chapter do not apply to a person who performs the services of a licensee as defined in section 32-2101 (Real Estate Department) under the following conditions: 1. Substantially all of the remunerations whether or not paid in cash for services performed by an individual as a real estate licensee are directly related to sales or other output including the performance of services rather than the number of hours worked. 2. The services performed by the licensee are performed pursuant to a written contract between the licensee and the person for whom the services are performed and such contract provides that the licensee will not be treated as an employee with respect to such services for federal tax purposes and for the purposes of this chapter.
Arkansas	Workers’ Compensation Act	2018 ARK. CODE ANN. § 11-9-102 (West) Title 11 – Labor and Industrial Relations Chapter 9 – Workers’ Compensation Subchapter 1 – General Provisions § 11-9-102: Labor and Industrial Relations/Workers’ Comp/General Provisions/Definitions	As used in this chapter: ... (9)(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: ... (viii) 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;

	Real Estate Statute	ARK. CODE ANN. § 17-42-103 (West) 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;
	Real Estate Statute	CAL. BUS. & PROF. CODE § 10032 (West) Division 4. Real Estate Chapter 1. General provisions § 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.
California	Labor – Other/General: Unemployment Insurance	CAL. UNEMP. INS. CODE § 650 (West) Division 1. Unemployment and Disability Compensation Part 1 – Unemployment Compensation Chapter 3 – Scope or coverage Article 2 Excluded Services § 650	§ 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: [(a) the individual is licensed (b) substantially all of the remuneration for services performed is directly related or sales or other output (c) services performed are pursuant to a written contract and the contract provides that the individual will not be treated as an employee.]
Colorado	Workers' Compensation	Colo. Rev. Stat. Ann. § 8-40-301 (West) Title 8. Labor and Industry	(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

		<p>Labor II--Workers' Compensation and Related Provisions</p> <p>Workers' Compensation</p> <p>Article 40. General Provisions</p> <p>Part 3. Scope and Applicability</p> <p>§ 8-40-301. Scope of term "employee"</p>	<p>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.</p> <p>(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:</p> <p>(a) Substantially all of the sales agent's or associated broker's remuneration from real estate brokerage is derived from real estate commissions; and</p> <p>(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</p> <p>(c) Such contract provides that the sales agent or associated broker shall not be treated as an employee for federal income tax purposes.</p>
	Labor – Other/General	<p>COLO. REV. STAT. ANN. § 8-70-136 (West)</p> <p>§ 8-70-136: Labor and Industry/Employment Security/General Provisions/ Employment does not include – brokers.</p>	<p>§ 8-70-136. Employment does not include--brokers</p> <p>(1) "Employment" does not include services performed by an individual as a licensed real estate broker ...</p>
Connecticut	Workers' Compensation		Real Estate carve-out for Workers' Comp in Real Estate Statute - see below
	Real Estate Statute	<p>CONN. GEN. STAT. ANN. § 20-311: § 20-311(2).</p> <p>Volume 7</p> <p>Title 20 – Professional and Occupational Licensing, Certification, Title Protection and Registration.</p> <p>Chapter 392 – Real Estate Brokers and Salespersons</p> <p>§311 – Definitions</p> <p>AND</p> <p>CONN. GEN. STAT ANN. § 20-312(b):</p> <p>Volume 7</p> <p>Title 20 – Professional and Occupational Licensing, Certification, Title Protection and Registration.</p>	<p>§ 20-311. Definitions:</p> <p>...</p> <p>(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 ...</p> <p>AND</p> <p>§ 20-312(b). 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:</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(4) The broker or salesperson shall be permitted to work any hours he chooses;</p> <p>(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;</p> <p>(6) The broker or salesperson shall be free to engage in outside employment;</p>

		Chapter 392 – Real Estate Brokers and Salespersons §312(b) – Licensed real estate broker or real estate salesperson not deemed “employee”	(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	Del. Code Ann. tit. 19, § 2316 (West) 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	DEL. CODE ANN. tit. 19, § 3302 (West) Title 19. Labor Part III. Unemployment Compensation Chapter 33. Unemployment Compensation Subchapter I. General Provisions	(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	D.C. CODE § 32-1501(9) (West) Formerly cited as DC ST 1981 § 36-301 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	FLA. STAT. ANN. § 440.02(15)(d) (West) Labor/Workers’ Comp/Definitions	(15)(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...

	Unemployment Compensation	FLA. STAT. ANN. § 443.1216 (West) Reemployment Assistance	Employment, as defined in s. 443.036, is subject to this chapter under the following conditions: (13) The following are exempt from coverage under this chapter: (n) Service performed by an individual for a person as a real estate salesperson or agent, if all of the service performed by the individual for that person is performed for remuneration solely by way of commission.
	Real Estate Statute	FLA. STAT. ANN. § 475.01 (West) 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.
	Workers' Compensation	GA. CODE ANN. § 34-9-2 (West) 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.
Georgia	Real Estate Statute	GA. CODE ANN. § 43-40-30.1 (West) 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) Title 34. Labor and Industrial Relations Chapter 8. Employment Security	(n) The term "employment" shall not include: ...

		Article 2. Definitions § 34-8-35. Employment	(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	HAW. REV. STAT. § 467-1 (West) 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.
	Workers' Compensation Act	HAW. REV. STAT. § 386-1 (West) Hawaii Workers' Compensation Law	"Employment" does not include: ... (10) Service performed by an individual for another person as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the other person is performed for remuneration solely by way of commission;
	Labor – Other/General: Health Care	HAW. REV. STAT. § 393-5 (West) 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	HAW. REV. STAT. § 383-7(a)(17) (West) Division 1. Government Title 21. Labor and Industrial Relations Chapter 383. Hawaii Employment Security Law Part I. Definitions § 383-7. 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 ANN. § 72-1316A(14) (West) Title 72. Workers’ Compensation and Related Laws Chapter 13 Employment Security Law	§ 72-1316A. 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 ILL. COMP. STAT. 305/1(b) Workers’ Compensation Act	305/1(b)3. 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	225 ILL. COMP. STAT. 454/1-10 IL Real Estate License Act of 2000: Article 1. General provisions § 1-10 Definitions	454/1-10. Definitions "Employee" or other derivative of the word "employee", when used to refer to, describe, or delineate the relationship between a sponsoring broker and a managing broker, broker, or a residential leasing agent, shall be construed to include an independent contractor relationship, provided that a written agreement exists that clearly establishes and states the relationship.
	Labor – Other/General: Unemployment insurance	820 ILL. COMPILED STAT. 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	IND. CODE § 22-3-6-1(b)(6) (West) Title 22. Labor and Safety Article 3. Worker’s Compensation System Chapter 6. Worker’s Compensation: Miscellaneous Provisions	(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	IND. CODE § 25-34.1-4-4 Independent contractor relationship	IND. CODE § 25-34.1-4-4 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.

Iowa	Workers' Compensation	IOWA CODE § 85.61 (West) Title III. Public Services and Regulation Subtitle 2. Employment Services Chapter 85. Workers' Compensation Subchapter 1. General Provisions 85.61. Definitions	<p>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> <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.</p> <p>(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	IOWA CODE ANN. § 96.19 (West) Iowa Code Annotated Title III. Public Services and Regulation Subtitle 2. Employment Services Chapter 96. Employment Security-- Unemployment Compensation § 96.19 Definitions	<p>g. The term "employment" shall not include:</p> <p>(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:</p> <p>(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	KAN. STAT. ANN. § 44-505 (West) Chapter 44. Labor and Industries Article 5. Workers' Compensation 44-505. Application of act	<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	KAN. STAT. ANN. § 58-30,102 (West) Chapter 58. Personal and Real Property Article 30. Real Estate Brokers and Salespersons	<p>58-30,102. Definitions. As used in the brokerage relationships in real estate transactions act, unless the context otherwise requires:</p> <p>(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>

		§ 58-30,102. Definitions	
	Labor – Other/General	KAN. STAT. ANN. § 44-703(4)(Q) (West) Ch. 44 Labor and Industries Art. 7 Employment Security Law 44-703 Definitions	4) The term “employment” shall not include: ... (Q) services performed as a qualified real estate agent. ...
Kentucky	Tax	KY REV. STAT. ANN § 67.750 (West) 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	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;
Louisiana	Workers' Compensation	LA. STAT. ANN. § 23:1047 Title 23. Labor and Workers' Compensation Chapter 10. Workers' Compensation Part I. Scope and Operation Subpart B. Liability of Employers--Election as to Coverage § 1047. Real estate salesmen exempt from coverage	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.
	Real Estate Statute	LA. STAT. ANN § 37:1446 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	LA. STAT. ANN. § 23:1472(12)H.(XVII) Title 23 Labor and Workers’ Comp Chapter 11. Unemployment Compensation Part I. General Provisions § 1472 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	ME. REV. STAT. ANN. tit. 39, § 102(11)(D) Title 39-A: Workers’ Compensation Part 1: Maine Worker’s Compensation Act of 1992 Chapter 1: General Provisions § 102. 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.
	Unemployment Compensation	ME. REV. STAT. ANN. tit. 26 § 1043 Title 26. Labor and Industry Chapter 13. Unemployment Compensation Subchapter 1. General Provisions § 1043 Definitions	F. The term “employment” does not include: ... (15) Service performed by an individual for a person as a real estate broker, a real estate sales representative, an insurance agent or an insurance solicitor, if all such service performed by that individual for that person is performed for remuneration solely by way of commission;
Maryland	Workers’ Compensation	Md. Code Ann., Lab. & Empl. § 9-222 (West) 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	<p>MD. Code Ann., BUS. OCC. & PROF. § 17-320 (West)</p> <p>Employment of and contractual arrangements with salespersons and associate brokers</p>	<p>(a) (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.</p> <p>...</p> <p>(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.</p> <p>(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.</p>
	Unemployment Insurance	<p>MD. CODE ANN., LAB. & EMPL. § 8-209 (West)</p> <p>Title 8. Unemployment Insurance</p> <p>Subtitle 2. Scope of Title</p> <p>§8-209. Commission Sales</p>	<p>[...]</p> <p>(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.</p>
	Wage & Hour	<p>MD. CODE ANN., LAB. & EMPL. § 3-403 (West)</p> <p>Title 3. Employment Standards and Conditions.</p> <p>Subtitle 4. Definitions; General Provisions.</p> <p>§ 3-403. Scope of Subtitle</p>	<p>§ 3-403.</p> <p>This subtitle does not apply to an individual who: [...]</p> <p>(5) is compensated on a commission basis;</p>
Massachusetts	Workers' Compensation	<p>MASS. GEN. LAWS ANN. ch. 152 § 1 (West)</p> <p>Workers' Compensation (4)</p> <p>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".</p>	<p>[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....</p> <p>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]</p>

	Real Estate Statute	<p>MASS. GEN. LAWS ANN. ch. 112 § 87RR (West)</p> <p>Part I. Administration of the Government (Ch. 1-182)</p> <p>Title XVI. Public Health (Ch. 111-114)</p> <p>Chapter 112. Registration of Certain Professions and Occupations</p> <p>§ 87RR. License; completion of transactions; fee or commission; action for compensation</p>	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	<p>MASS. GEN. LAWS ANN. ch. 151A § 6</p> <p>Part I. Administration of the Government</p> <p>Title XXI. Labor and Industries</p> <p>Chapter 151A. Unemployment Insurance</p> <p>§ 6. Service not included in “employment”</p>	<p>The term “employment” shall not include:</p> <p>... (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.</p>
Michigan	Real Estate Statute	<p>MICH. COMP. LAWS ANN. § 339.2501 (West)</p> <p>Chapter 339. Occupational Code</p> <p>Occupational Code</p> <p>Article 25. Real Estate Brokers and Salespersons</p> <p>§ 339.2501. Definitions</p>	<p>(g) "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.</p> <p>(h) "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:</p> <p>(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.</p> <p>(ii) At least 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.</p>
	Workers' Compensation Act	<p>MICH. COMP. LAWS ANN. § 418.119 (West)</p> <p>Ch. 418. Workers' Disability Compensation</p>	<p>§ 119</p> <p>A person who is licensed as a real estate salesperson or associate real estate broker under article 25 of Act No. 299 of the Public Acts of 1980, being sections 339.2501 to 339.2515 of the Michigan Compiled Laws, shall not be considered an employee for purposes of this act if both of the following conditions have been met:</p>

			<p>(a) Not less than 75% of the remuneration of the salesperson or associate real estate broker is directly related to the volume of sales of real estate and not to the number of hours worked.</p> <p>(b) The salesperson or associate real estate broker has a written agreement with the real estate broker who employs the salesperson or associate real estate broker, which states that the salesperson or associate real estate broker, as applicable, is not considered an employee for tax purposes.</p>
	Labor – Other/General	<p>MICH. COMP. LAWS ANN. § 421.43(h)</p> <p>Michigan Employment Security Act</p> <p>§ 421.43 Services excluded from term “employment”</p>	<p>Sec. 43. Except as otherwise provided in section 42(6), the term “employment” does not include any of the following:</p> <p>...</p> <p>(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.</p>
Minnesota	Labor – Other/General: Unemployment Insurance	<p>MINN. STAT. § 268.035 (West)</p> <p>Employment and Economic Development</p> <p>Unemployment Insurance</p> <p>§ 268.035. Definitions</p> <p>Subd. 20 Noncovered Employment</p>	<p>Subd. 20. Noncovered employment. “Noncovered employment” means:</p> <p>...</p> <p>(30) 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;</p>
Mississippi	NONE FOUND		
Missouri	Real Estate Statute	<p>MO. REV. STAT. § 339.010</p> <p>Title XXII - occupations and professions</p> <p>Chapter 339 - Real Estate Agents, Brokers, Appraisers and Escrow Agents</p> <p>339.010. Definitions</p>	<p>§ 339.010 Definitions</p> <p>...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.</p> <p>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.</p> <p>AND</p>

			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.
	Workers' Compensation Act	MO. REV. STAT. § 287.090 Title XVIII – Labor and Industrial Relations Chapter 287 – Workers' Compensation Law Section 287.090 – Exempt employers and occupations	1. This chapter shall not apply to: (2) Qualified real estate agents and direct sellers as those terms are defined in Section 3508 of Title 26 United States Code; ... 2. Any employer exempted from this chapter as to the employer or as to any class of employees of the employer pursuant to the provisions of subdivision (3) of subsection 1 of section 287.030 or pursuant to subsection 1 of this section may elect coverage as to the employer or as to the class of employees of that employer pursuant to this chapter by purchasing and accepting a valid workers' compensation insurance policy or endorsement, or by written notice to the group self-insurer of which the employer is a member. The election shall take effect on the effective date of the workers' compensation insurance policy or endorsement, or by written notice to the group self-insurer of which the employer is a member, and continue while such policy or endorsement remains in effect or until further written notice to the group self-insurer of which the employer is a member. Any such exempt employer or employer with an exempt class of employees may withdraw such election by the cancellation or nonrenewal of the workers' compensation insurance policy or endorsement, or by written notice to the group self-insurer of which the employer is a member. In the event the employer is electing out of coverage as to the employer, the cancellation shall take effect on the later date of the cancellation of the policy or the filing of notice pursuant to subsection 3 of this section.
	Labor – Other/General	MO. ANN. STAT. § 288.034 (West) 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	MONT. CODE ANN. § 39-71-401 Title 39. Labor Chapter 71. Workers' Compensation Part 4. Coverage, Liability and Subrogation	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 guarantee of minimum earnings;

	Real Estate Statute	MONT. CODE ANN. § 37-51-102 (West) Title 37. Professions and Occupations Chapter 51. Real Estate Brokers and Salespersons Part 1. General § 37-51-102. Definitions	(13) "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	MONT. CODE ANN. § 39-51-204(1)(d) Title 39. Labor Chapter 51. Unemployment Insurance Part 2. Definitions	§ 39-51-204 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	MONT. CODE ANN. § 39-3-406 (West) 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. STAT. § 48-604 (West) 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	NEV. REV. STAT. § 645.035 (West) Title 54. Professions, Occupations and Businesses 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	NEV. REV. STAT. ANN. § 612.133 (West) Labor and Industrial Relations Unemployment Compensation General Provisions	§ 612.133 “Employment”: Service by licensed real estate salesperson or broker excluded. “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. ANN. § 281-A:2 Title XXIII. Labor 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. REV. STAT. § 43:21-19 Title 43 Pensions and Retirement and Unemployment Compensation Subtitle 9. Social Security Chapter 21: Unemployment Compensation (Refs & Annotations) Article 1. Unemployment Compensation Law General provisions	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	N.M. STAT. ANN. § 52-1-16(B), § 52-1-16(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	N.Y. WORKERS’ COMP. LAW § 2 (McKinney) Workers’ Compensation Law Chapter 67	5. “Employment” includes employment in a trade, business or occupation carried on by the employer for pecuniary gain, or in connection therewith, ... The term “employment” shall not include the services of a licensed real estate broker or sales associate if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such broker or sales associate 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 broker or sales associate are performed pursuant to a written contract executed between such broker or sales associate and the person for whom the services are performed within the past twelve to fifteen

	<p>Article 1. Short Title; Definitions; Application</p> <p>§ 2 Definitions</p> <p>AND</p> <p>N.Y. WORKERS' COMP. LAW § 201 (McKinney)</p> <p>Chapter 67</p> <p>Article 9. Disability Benefits</p> <p>§ 201 Definitions</p>	<p>months; and (c) the written contract provided for in paragraph (b) herein was not executed under duress and contains the following provisions:</p> <p>(i) that the broker or sales associate is engaged as an independent contractor associated with the person for whom services are performed ...</p> <p>(ii) that the broker or sales associate (A) shall be paid a commission on his or her gross sales, if any, without deduction for taxes, which commission shall be directly related to sales or other output; (B) shall not receive any remuneration related to the number of hours worked; and (C) shall not be treated as an employee with respect to such services for federal and state tax purposes;</p> <p>(iii) that the broker or sales associate shall be permitted to work any hours he or she chooses;</p> <p>(iv) that the broker or sales associate shall be permitted to work out of his or her own home or the office of the person for whom services are performed;</p> <p>(v) that the broker or sales associate shall be free to engage in outside employment;</p> <p>(vi) that the person for whom the services are performed may provide office facilities and supplies for the use of the broker or sales associate, but the broker or sales associate shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;</p> <p>(vii) that the person for whom the services are performed and the broker or sales associate shall comply with the requirements of article twelve-A of the real property law and the regulations pertaining thereto, but such compliance shall not affect the broker or sales associate's status as an independent contractor nor should it be construed as an indication that the broker or sales associate is an employee of the person for whom the services are performed for any purpose whatsoever;</p> <p>(viii) that the contract and the association created thereby may be terminated by either party thereto at any time upon notice given to the other.</p>	
	<p>Real Estate Statute</p>	<p>N.Y. COMP. CODES R. & REGS. tit. 19, § 175.27</p> <p>§ 175.21. Supervision of salesman by broker</p>	<p>Section 175.27. Disclaimer</p> <p>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.</p>
	<p>Labor – Other/General: Unemployment Insurance</p>	<p>N.Y. LAB. LAW § 511 (McKinney)</p> <p>Article 18. Unemployment Insurance Law</p> <p>Title 2. Definitions</p>	<p>...</p> <p>19. Qualified real estate agent.</p> <p>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.]</p>
North Carolina	<p>Real Estate Statute</p>	<p>N.C. GEN. STAT. ANN. § 93A-11 (West)</p> <p>Chapter 93A. Real Estate License Law</p> <p>Article 1. Real Estate Brokers and Salespersons</p>	<p>§ 93A-11. Reimbursement by real estate independent contractor of brokers' workers' compensation</p> <p>(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.</p>

North Dakota	Workers' Compensation Act	N.D. CENT. CODE § 65-01-02 Title 65 Workforce Safety and Insurance Chapter 65-01 General Provisions	§ 64-01-02 Definitions 16. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test. ... b. The term does not include: (4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements: [a] licensed b) compensation c) contract.
	Labor – Other/General: Social Security	N.D. CENT. CODE § 52-01-01(18)(i)(8) Title 51 Social Security Chapter 52-01 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	Real Estate Law	OHIO REV. CODE ANN. § 4735.081 (West 2017) § 4735.081 Designation of principal broker AND OHIO REV. CODE ANN. § 4735.091 (West 2017) § 4735.091 Relationship with brokerage	(F) Nothing in this section shall be considered prima facie evidence of whether an affiliated licensee is an independent contractor or an employee of the brokerage. AND A real estate broker, real estate salesperson, foreign real estate dealer, and foreign real estate salesperson may be associated with a brokerage as either an employee or an independent contractor.
Oklahoma	Workers' Compensation	OKLA. STAT. ANN. tit. 85A, § 2 (West) Title 85A. Workers' Compensation	18.b. 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	OKL. STAT. ANN. tit. 59, § 858-102 (West) 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	OKL. STAT. ANN. tit. 40 § 1-210 Title 40. Labor Employment Security Act	(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	OR. REV. STAT. § 696.363 Title 52. Occupations and Professions Chapter 696. Real Estate and Escrow Activities Real Estate Licensees (Miscellaneous) 696.363. Relationship between licensees	§ 696.363 Relationship between licensees as independent contractors or employer and employee. 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	OR. REV. STAT. § 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	77. PA. STAT. AND CONST. STAT. ANN. § 676(2) (West) 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	28 R.I. GEN. LAWS § 28-29-7.1	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

		<p>Title 28. Labor and Labor Relations</p> <p>Chapter 29. Workers' Compensation-- General Provisions</p> <p>§ 28-29-7.1. Exemption from workers' compensation--Certain real estate persons</p>	<p>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:</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(4) The broker, salesperson, or appraiser shall be permitted to work any hours he or she chooses;</p> <p>(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;</p> <p>(6) The broker, salesperson, or appraiser shall be free to engage in outside employment;</p> <p>(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.</p>
	Real Estate Statute	<p>5 R.I. GEN. LAWS ANN. § 5-20.5-1 (West)</p> <p>Title 5. Businesses and Professions</p> <p>Chapter 20.5. Real Estate Brokers and Salespersons</p> <p>§ 5-20.5-1. Definitions</p>	<p>(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;</p> <p>...</p> <p>(6) "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.</p>
	Labor – Other/General – Employment Security	<p>28 R.I. GEN. LAWS ANN. § 28-42-8 (West)</p>	<p>“Employment” does not include:</p> <p>...</p> <p>(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;</p>
South Carolina	Workers’ Compensation	<p>S.C. CODE ANN. § 42-1-360</p> <p>Title 42. Workers' Compensation</p> <p>Chapter 1. General Provisions</p> <p>Article 3. Application and Effect of Title</p>	<p>This title does not apply to: ...</p> <p>(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;</p>

		§ 42-1-360. Exemption of casual employees and certain other employments from Title.	
	Labor – Other/General	<p>S.C. CODE ANN. § 41-27-260:</p> <p>Title 41. Labor and Employment</p> <p>Chapter 27. Employment and Workforce-- General Provisions</p> <p>Article 3. Definitions</p> <p>§ 41-27-260. Exempted employment.</p>	<p>The term “employment” as used in Chapters 27 through 41 of this title does not include:</p> <p>...</p> <p>(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;</p>
	Real Estate Statute	<p>S.D. CODIFIED LAWS § 36-21A-79</p> <p>Title 36. Professions and Occupations</p> <p>Chapter 36-21A. Real Estate Licensing</p> <p>36-21A-79. Broker's responsibility for activities of affiliated licensees</p>	<p>A responsible broker is responsible for the real estate activities conducted by affiliated licensees, whether as employees or independent contractors.</p>
South Dakota	Real Estate Statute (2)	<p>S.D. CODIFIED LAWS § 36-21A-124</p> <p>Title 36. Professions and Occupations</p> <p>Chapter 36-21A. Real Estate Licensing</p> <p>36-21A-124. Employment status-- Independent contractor</p>	<p>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:</p> <p>(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</p> <p>(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</p> <p>(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</p> <p>(4) Either party to the relationship may terminate it at will and without liability.</p>
Tennessee	Labor – Other/General	<p>TENN. CODE ANN. § 50-7-207 (11) (West)</p> <p>Title 50. Employer and Employee</p> <p>Chapter 7. Tennessee Employment Security Law</p> <p>Part 2. Definitions</p>	<p>(e) “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):</p> <p>...</p> <p>(11) Service performed by a qualified real estate agent if:</p>

		§ 50-7-207. Employment; included, excluded and Tennessee service; definitions	<p>(A) The individual is a licensed real estate agent;</p> <p>(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</p> <p>(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;</p>
Texas	Labor – Other/General	<p>TEX. LAB. CODE ANN. §. 201.072 (West)</p> <p>Labor Code</p> <p>Service as Real Estate Broker</p>	<p>....In this subtitle, "employment" does not include:</p> <p>(1) service performed by an individual as a real estate broker or salesperson if:</p> <p>(A) the individual engages in activity described by the definition of " broker" in Section 1101.002, Occupations Code ;</p> <p>(B) the individual is licensed as a broker or salesperson by the Texas Real Estate Commission;</p> <p>(C) substantially all remuneration for the service, whether in cash or other form of payment, is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and</p> <p>(D) the service is performed under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes; or</p>
Utah	Workers' Compensation	<p>UTAH CODE ANN. § 34A-2-104 (West)</p> <p>Title 34A. Utah Labor Code</p> <p>Chapter 2. Workers' Compensation Act</p> <p>Part 1. General Provisions</p> <p>§ 34A-2-104. "Employee," "worker," and "operative" defined--Specific circumstances--Exemptions</p>	<p>(5) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" do not include:</p> <p>(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:</p> <p>(i) substantially all of the sales agent's or associate broker's income for services is from real estate commissions; and</p> <p>(ii) the sales agent's or associate broker's services are performed under a written contract that provides that:</p> <p>(A) the real estate agent is an independent contractor; and</p> <p>(B) the sales agent or associate broker is not to be treated as an employee for federal income tax purposes;</p>
	Real Estate Statute	<p>UTAH CODE ANN. § 61-2f-102 (West)</p> <p>Title 61. Securities Division--Real Estate Division</p> <p>Chapter 2F. Real Estate Licensing and Practices Act</p> <p>Part 1. General Provisions</p>	<p>61-2f-102. Definitions</p> <p>(1) "Associate broker" means an individual who is:</p> <p>(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</p> <p>(b) licensed under this chapter as an associate broker.</p>

		<p>§ 61-2f-102. Definitions</p> <p>AND</p> <p>UTAH CODE ANN. § 61-2f-303 (West)</p> <p>Licensing and Practices; Operational Requirements</p>	<p>AND</p> <p>§ 61-2f-303. Sales agents or associate broker--Affiliated with principal broker as independent contractors or employees—Presumption.</p> <p>(1) (a) A sales agent or associate broker may be affiliated with a principal broker either as an independent contractor or as an employee.</p> <p>(b) 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.</p>
	Labor – Other/General: Employment Security Act	<p>UTAH CODE ANN. § 35A-4-205 (West)</p> <p>Exempt employment</p>	<p>(3) The following services are exempt employment under the Utah Employment Security Act:</p> <p>(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;</p>
Vermont	Workers' Compensation	<p>VT. STAT. ANN. tit. 21, § 601 (West)</p> <p>Title 21. Labor</p> <p>Chapter 9. Employer's Liability and Workers' Compensation</p> <p>§ 601. Definitions</p>	<p>(14)...The term "worker" or "employee" does not include: ...</p> <p>(G) An individual who performs services as a real estate broker or real estate salesperson, provided:</p> <p>(i) the individual is licensed to broker or sell real estate pursuant to 26 V.S.A. chapter 41;</p> <p>(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;</p> <p>(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</p> <p>(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.</p>
Virginia	Workers' Compensation	<p>VA. CODE ANN. § 65.2-101 (West)</p> <p>Title 65.2 Workers' Compensation Statute</p> <p>Chapter 1. Definitions and General Provisions</p> <p>§ 65.2-101 Definitions</p>	<p>2. "Employee" shall not mean:</p> <p>...</p> <p>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.</p>
	Real Estate Statute	<p>VA CODE ANN. § 54.1-2101 (West)</p> <p>Title 54.1. Professions and Occupations</p>	<p>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</p>

		<p>Subtitle II, Chapter 21. Real Estate Brokers, Sales Persons and Rental Location Agents</p> <p>Article 1. Regulation of Real Estate Brokers, Salespersons and Rental Location Agents</p> <p>§ 54.1-2101. Real estate salesperson defined</p>	<p>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.</p>
	Labor – Other/General	<p>VA. CODE ANN. § 60.2-212 (West)</p> <p>Title 60.2. Unemployment Compensation</p> <p>Chapter 2. Definitions</p> <p>§ 60.2-212. Employment</p>	<p>A. "Employment" means:</p> <p>...</p> <p>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.</p>
Washington	Labor – Other/General: Minimum Wage	<p>WASH. REV. CODE § 49.46.130</p> <p>Title 49. Labor Regulations</p> <p>Chapter 49.46 Minimum Wage Requirements and Labor Standards</p> <p>§ 49.46.130 Minimum rate of compensation for employment in excess of forty hour work week — Exceptions.</p>	<p>(2) This section does not apply to:</p> <p>...</p> <p>(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.</p>
	Labor – Other/General: Unemployment Compensation	<p>WASH. REV. CODE ANN. § 50.04.230 (West)</p> <p>Title 50. Unemployment Compensation</p> <p>Chapter 50.04 Definitions</p> <p>§ 50.04.230. Employment – Services of insurance agent, broker, or solicitor, real estate broker or real estate salesperson, and investment company agent or solicitor</p>	<p>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."</p>
	Real Estate Licensing Law	<p>WASH. REV. CODE § 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]</p>	<p>[...]</p> <p>(13) "Independent contractor relationship" means a relationship between a broker or managing broker and a real estate firm that satisfies both of the following conditions: (a) 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.</p>
West Virginia	NONE FOUND		

Wisconsin	Real Estate Statute: Independent Contractor Relationship	WIS. STAT. § 452.38	<p>(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:</p> <p>(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.</p> <p>(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.</p> <p>(1m) This section does not apply with respect to ch. 108 or any rules promulgated thereunder.</p> <p>(2)</p> <p>(a) Subsection (1) applies notwithstanding the requirements and responsibilities of a firm under s. 452.132 and any rules promulgated by the board.</p> <p>(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.</p> <p>(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).</p>
	Tax	WIS. STAT. ANN. § 71.63 (West) Taxation (Ch. 70 to 79) Chapter 71. Income and Franchise Taxes for State and Local Revenues Subchapter X. Withholding 71.63. Definitions	§ 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	WIS. STAT. ANN. § 104.01 (West) Employment, Compensation and Mining (Ch. 101 to 109) Chapter 104. Minimum Wage Law 104.01. Definitions	(b) “Employee” does not mean... 2. An individual excluded under s. 452.38 (independent contractor relationship, see above).

Wyoming	Labor – Other/General: Unemployment Compensation	WYO. STAT. ANN. § 27-3-108 (West) 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) As real estate activity under W.S. 33-28-102(b)(xiv) by a responsible broker, associate broker or salesperson licensed under the Real Estate License Act, W.S. 33-28-101 through 33-28-401;
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