



WHO WE ARE

Agents



Agents Status: **Independent Contractor**



KEEP ACTIVE STATUS
PROTECT AGENTS FROM ERROR (E&O INSURANCE)
ADVISE LAWFUL AD. AND CONTRACT
DISTRIBUTION OF COMMISSION



Brokerage Office

Sale & Contract
Collect Commission

Deposit Commission

BILL

Sep.12.2023

H.R. 5419



..Real Estate Agents ...
?



1

118TH CONGRESS
1ST SESSION

H. R. 5419

To amend the Fair Labor Standards Act of 1938 to clarify the definition of employee as it relates to direct sellers and real estate agents, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2023

Mr. WALBERG (for himself, Mr. CÁRDENAS, Mr. MOORE of Utah, and Mr. CUELLAR) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Fair Labor Standards Act of 1938 to clarify the definition of employee as it relates to direct sellers and real estate agents, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Direct Seller and Real
5 Estate Agent Harmonization Act”.

6 SEC. 2. DEFINITIONS.

7 Section 3(e) of the Fair Labor Standards Act of 1938
8 (29 U.S.C. 203(e)) is amended by inserting after para-
9 graph (5) the following:

2

1 “(6) The term ‘employee’ does not include any direct
2 seller or qualified real estate agent (as such terms are de-
3 fined in section 3508(b) of the Internal Revenue Code of
4 1986).”.

○


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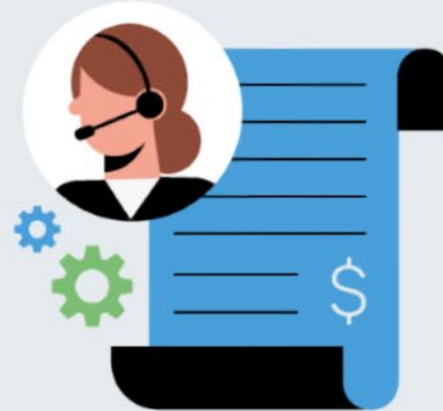
“The term ‘employee’ does not include any direct seller or qualified real estate agent”

•HR 5419 IH

Being an Independent Contractor Means:



You are **solely responsible** for your business.




Your clients hire you to **perform a service** under a contract.



You work without the guidance or **control of an employer.**


For Agents



INDEPENDENT CONTRACTOR STATUS

FOR REAL ESTATE SALESPERSONS

A new U.S. Department of Labor regulation modifies how the agency will analyze whether workers are classified as employees or independent contractors under the Fair Labor Standards Act. The agency now primarily considers six factors when evaluating worker classification, with no one factor being dispositive. Each of the factors identified here are designed to reduce the risk of misclassification for brokerages and salespersons in independent contractor relationships.



...continued on next page.

SALESPERSON'S OPPORTUNITY FOR PROFIT OR LOSS DEPENDING ON MANAGERIAL SKILL

- A majority of a real estate salesperson's compensation should come from commissions, not salary.
- Brokerages should exercise as little control as possible over which homes an individual real estate salesperson is allowed to sell, and avoid limiting where and how a realtor sells.
- Real estate salespersons should make independent investments in developing their own business, including investing in advertising/marketing, rather than relying primarily on the brokerage to do so.
- Real estate salespersons should be free to work as many or as few hours as they want, on whatever days they want, and to hire employees and make other investments in its business without first seeking approval from the brokerage.

DEGREE OF PERMANENCE OF THE WORK RELATIONSHIP

- Brokerages should enter into written independent contractor agreements with real estate salespersons, which should be for limited duration (even if later extended) and not have automatic-renewal clauses.
- To the extent permissible, brokerages should reduce or limit non-competition and exclusivity agreements that real estate salespersons must sign.

INVESTMENTS BY THE SALESPERSON AND THE BROKERAGE/EMPLOYER

- Real estate salespersons, not their brokerages, should have responsibility for advertising and marketing their services, staging, and photographing homes.
- Real estate salespersons should be responsible for their own business expenses, such as those associated with vehicles, computers, cell phones, and real estate licenses, as well as their legal and professional expenses, office expenses, and travel expenses.
- Brokerages should be mindful that when brokerages provide "office space, paperwork, including contracts, procedures, training, and use of its platform and confidential information to generate leads," courts have found this is indicative of an employer-employee relationship.



NATURE AND DEGREE OF CONTROL THE BROKERAGE/EMPLOYER HAS OVER THE SALESPERSON

- Brokerages should allow salespersons to set their own work schedule.
- Brokerages should not limit or choose which homes a real estate salesperson can sell or the salesperson's clients.
- Brokerages should exercise minimal control over real estate salespersons beyond what is necessary to comply with existing law.

EXTENT TO WHICH THE WORK PERFORMED BY THE SALESPERSON IS INTEGRAL TO THE BUSINESS

- Brokerages should ensure that they do not have salespersons that are classified as employees and others classified as independent contractors.

SKILL AND INITIATIVE OF THE SALESPERSON

- Real estate salespersons should work independently to promote and market their skills rather than relying solely on brokerages to develop business.
- Real estate salespersons should avoid requiring lengthy training to real estate salespersons unless required by law.



For Broker

MANAGING YOUR INDEPENDENT CONTRACTOR RELATIONSHIPS

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


TEN TIPS FOR MANAGING INDEPENDENT CONTRACTOR RELATIONSHIPS WITH YOUR SALES AGENTS

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

*Unless otherwise required by state law.

WORKER CLASSIFICATION RESOURCES

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




NATIONAL ASSOCIATION of REALTORS®

DISCLAIMER: The information provided herein is necessarily of a general nature and should be augmented with the advice of local counsel, particularly in addressing specific needs and in conforming with state and local laws.

For Agents

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 **Agent can hire a personal secretary
without broker's approval !!**

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For Agents

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- » Real estate salespersons should make independent investments in developing their own business.
- 에이전트는 개인 개발, 비즈니스를 위해서 스스로 투자하고, 광고, 마케팅 해야 할 책임이 있습니다.
- 에이전트는 브로커의 동의가 없어도 자유로이 개인비서를 채용할 수 있습니다.
- » Real estate salespersons should not hire employees and make other investments in its business without first seeking approval from the brokerage.

INDEPENDENT BROKER

- 에이전트는 광고, 마케팅, 집 전시 및 사진 광고를 수행할 책임과 의무가 있습니다. 브로커는 광고, 마케팅에 대한 책무가 없습니다. (브로커는 광고에 대한 법적규정을 감독할 의무를 가짐)
- 에이전트는 모든 비즈니스 비용, 자가용, 컴퓨터, 전화기, 라이선스 및 기타 법적 비용, 프로페셔널에 투자하는 비용 및 오피스 비용, 여행 비용에 대한 책임이 있습니다.
- 브로커가 항상 신중하고 주의해야할 내용은: 오피스 제공 및 회사 문서작업 지시, 계약 문서작업 수행, 계약 절차 및 트레이닝 강제, 회사 플랫폼 사용이 있습니다. 법정에서 이러한 행위는 Independent Contractor를 유지하는지 판결하는데 중요 요소가 됩니다.

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- 절대 에이전트를 회사 직원으로 소개하면 안됩니다.
- 에이전트의 Training, CE 비용을 대신 지불하면 안됩니다.
- 에이전트가 회사에 나오는 시간, 일하는 시간을 강제하면 안됩니다.
- 회사일은 Admin을 채용해 수행하며, 에이전트에게 회사 일을 하도록 할수없습니다.
(에이전트는 문서 및 계약 업무를 Admin에게 지시/부탁 할 수 없습니다)
- 에이전트가 회사의 Administrative 일에 관여하거나, 직원채용 관여, 업무 Supervising 하지 않도록 해야 합니다.
(법적으로 Independent Contractor 인지 결정하는 중요 요소가 됩니다)
- 에이전트가 업무 수행에 필요한 비품은 에이전트 스스로 선택하도록 해야 합니다.
- 에이전트는 Tax 보고에 1099 를 사용해야 합니다
(1099는 개인의 모든 업무관련 비용처리가 가능합니다)

Education

Online Courses

Learn at your own pace and on your own schedule with our online courses

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Courses from the Center for REALTOR Development

Take [online courses](#) from NAR and its Affiliates to earn continuing education credits.

Check out exciting, on-demand microcourses to learn about real estate topics and expand your know-how with new skills.

NAR Affiliate Education Pages

- CCIM Institute
- Institute of Real Estate Management (IREM)
- Real Estate Business Institute (REBI)



Search

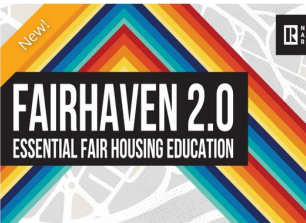
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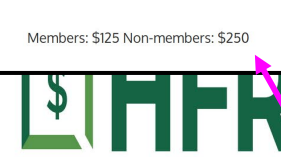


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Registration Fee \$267

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<p>Planning and Zoning Resource</p> <p>Members: \$130 Non-member: \$260</p> <p>View Details</p> <p>Buy Now</p>	<p>Accredited Buyer's Representative (ABR®) Designation Course - Update</p> <p>Members: \$310; Non-members: \$620</p> <p>View Details</p> <p>Buy Now</p>	<p>Advanced REALTOR® Association Management (ARAM) Self-Study Course</p> <p>Cost: \$125</p> <p>View Details</p> <p>Buy Now</p>	<p>Marketing Strategy and Lead Generation</p> <p>Members: \$125 Non-members: \$250</p> <p>View Details</p> <p>Buy Now</p>
<p>REALTOR® Association Management (RAM) Self-Study Course</p> <p>1 Year Subscription (\$0.00)</p> <p>View Details</p> <p>Buy Now</p>	<p>Corporate Relocation: The Next Move</p> <p>Members: \$125 Non-members: \$250</p> <p>View Details</p> <p>Buy Now</p>	<p>New-Home Construction and Buyer Representation: Professionals, Product, Process</p> <p>Members: \$125 Non-members: \$250</p> <p>View Details</p> <p>Buy Now</p>	<p>Intro to Sustainability & Finance: What REALTORS® Need to Know</p> <p>View Details</p> <p>Buy Now</p>

**YES !
ALL COST YOU \$\$\$\$\$**

Agents:

Protected by a status:
“Independent Contractor”

KEEP ACTIVE STATUS
PROTECT AGENTS FROM ERROR (E&O INSURANCE)
ADVISE LAWFUL AD. AND CONTRACT
DISTRIBUTION OF COMMISSION



Brokerage Office

**Sale & Contract
Collect Commission**

Compensation ONLY by Commission

→ 절대 노사관계가 아닙니다 !

NAR은 커미션 이외에, 에이전트에게 서비스 제공은 금지하거나 매우 신중하도록 명시하고 있습니다.

If a real estate agent attempts to control the brokerage staff employees,

→ It could lead to issues like low morale, conflict among colleagues, potential legal repercussions for the agent, and even complaints to the licensing board depending on the severity and nature of the controlling behavior.

H.R.5419 Bill

“The term ‘employee’ does not include any direct seller or qualified real estate agent”

NAR Recommendation to Broker

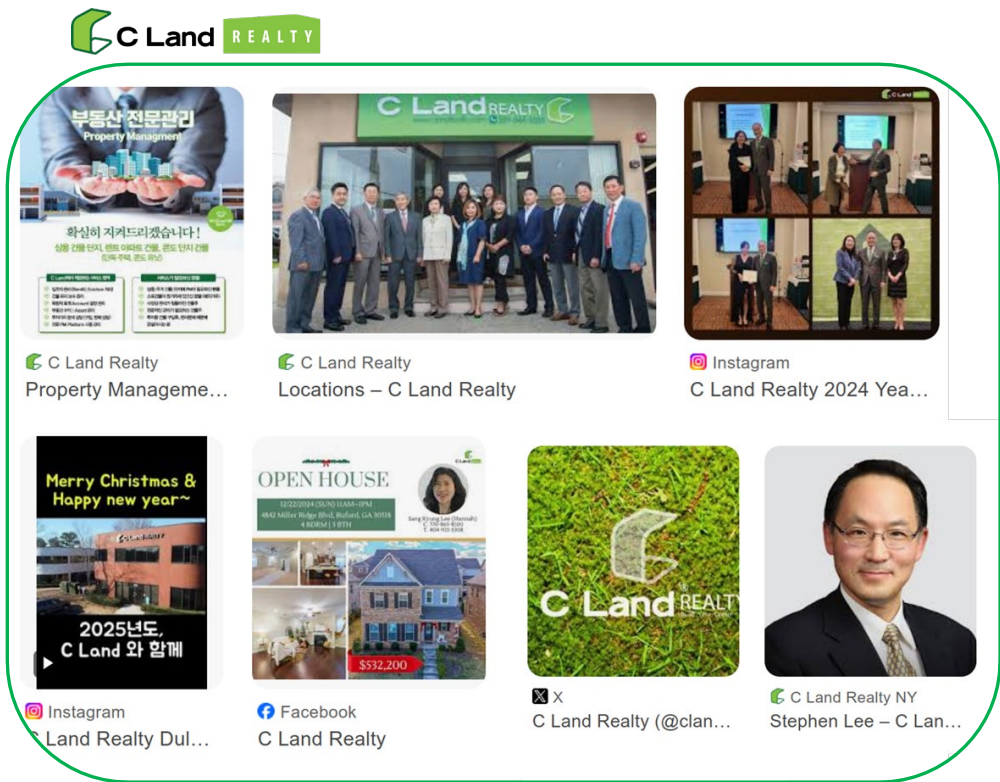
7. Maintain control of broker-employed administrative support, Avoid allowing your real estate salespeople to exercise **any authority over the hiring, firing or supervising of such staff.**

Summary

- Agent와 Broker의 계약은 “**Commission**”에 대한 두 회사간의 계약입니다.
Agent는 NAR 규정에 따라
 - 회사에 일(광고)을 요청하거나, 회사 업무에 참여 할 수 없는 **Independent Contractor** 입니다.
 - 위법 및 고객에 피해를 주는 계약 내용에 대해, Broker의 조언을 구하며,
 - Real Estate 계약에 대해 **교육, 광고, 계약수행, 고객 보호**의 책임과 의무를 집니다.
 - 계약과 관련한 일에 필요한 모든 **비품, 비용, 계약서**는 모두 Agent에게 책임이 있습니다.
 - Commission은 받는대로 즉시 회사에 입금해야만 합니다.
- **Broker는 NAR규정에 따라**
 - 고객을 보호하도록, Agent의 광고 감독 및 계약 내용을 살펴볼 책임이 있습니다.
 - Agent가 회사일에 참여하거나, Supervising, 비서업무 요청를 못하게 막아야 합니다.
 - Commission은 Agent와 계약한 내용대로, 정해진 기간내에 반드시 지급할 책임이



Thank you for your attention



Address: 2385 Satellite Blvd. Duluth GA



Google Image Keyword: C Land Realty

NAR Rule Summary by Q&A

이내용은 NAR규정에 따라,
요약된 Agent Jay Choi의
가상 시나리오입니다.
절대 회사 입장이 아닙니다.

Q) 회사가 이런저런 내용을 교육하거나, 나는 모르니까 대신 처리해주면 안되나요? → 안됩니다.
→ Agent는 Independent Contractor이며, NAR 규정입니다. 스스로 교육을 받아야 합니다.
NAR등 많은 웹사이트에서 모든 절차에 대한 교육이 있습니다. 유료입니다.

Q) 회사가 광고 규정을 왜 감독하나요? → 안됩니다. 고객을 위한 NAR 규정입니다.
Client가 오면 회사에서 광고 해주나요? → 규정에 따라 회사가 광고 할수 없습니다.
→ Independent Contractor 로, 에이전트는 광고 마케팅에 직접적인 책임과 의무가 있습니다.

Q) 계약중인데 이것 빠지면 안되요 급해요! → 준비는 직접!. NAR은 모든건 Agent 개인 능력, 책임이라고 명시합니다.
→ Agent는 Independent Contractor로, NAR 규정에 따라 회사 업무관여, 비서업무지시, Supervising을 금합니다.

만일 상대 에이전트에게 급한 요구를 받았을때 → 고객을 위한것인지 먼저 생각해 보시고,
"회사 절차에 관여할 수 없으므로 기다리도록 해야 합니다"

Q) 내 광고가 규정에 맞는지 봐주세요. → 예 감사합니다. 언제든지 환영합니다
내 광고 수정/교정 좀 해주세요. → 안됩니다. 회사는 규정에 맞는 광고이지만 감독하도록 되어있습니다.
→ Independent Contractor로, 모든 광고는 전적으로 에이전트 책임,의무이며, 회사는 관여하지 않습니다.

→ 법령에서 모든 비서 업무 및, 광고 개입은 Independent Contractor 결정여부에 중요한 요소로 작용하기 때문에
Confidential. Internal Use Only!

C LAND Rule Summary by Q&A

Q) 회사가 이런저런 내용을 교육하거나, 나는 모르니까 대신 처리해주면 안되나요?

답변) 교육은 자발적 참여로만 이루어 집니다. 필요하시면, CBT, CWM, GA FORM REVIEW는 무료입니다.
업무는 힘드셔도 직접 처리 부탁드립니다. Broker나 훌륭한 에이전트 선생님들께 연락도 해 보십시오.

Q) 회사가 광고 규정을 왜 감독하나요? → 고객을 보호하기위한 NAR 규정입니다.

유튜브나 Social Media모르는데 대신 광고도 해주나요?

→ 원하시는 분의 모든 리스팅에 대해서, 무료로 Social Media 광고를 도와 드리며,
원하시는 분에 한해서, 회사 광고 사이트에 무료로 등록 시켜 드리고 있습니다. 단 등록된 사진은 회사
소유입니다.
원하시는 개인 광고문건에 대한 문의는 환영하지만, 광고 작성 및 Social Media 노출은 개인 책임입니다.

Q) 계약중데 급하니 '내것 먼저 빨리 해줘요'? Admin은 주어진 일을 순서대로, 최대한 빨리 하려 노력합니다.

급한 내용은 회사 Broker이신 사장님께 먼저 알리세요.

→ Agent의 지시 요구는 , NAR 및 회사의 절차 및 규정을 어기면서, 모두의 사기를 저하시키고 계십니다.

Q) 내 광고가 규정에 맞는지 봐주세요. → 예 감사합니다. 언제든지 환영합니다

내 광고 수정/교정 좀 해주세요.

→ 광고에 대한 규정 및, 전문가의 의견이 필요하시면 안내해 드립니다.
먼저, 개인비서를 채용하시길 권합니다. 회사 사장님의

지시가 있을때만 가능합니다.

Q) 대신 전화나 이메일 보내 주세요 → 직접하십시오 !. → 규정에 따라, 비서 업무에 대해 요구/지시/부탁 하시면 절대
안됩니다.