

Michigan Realtors®  
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## **PERSONAL ASSISTANTS – EMPLOYEES OR INDEPENDENT CONTRACTORS?**

Hello, Michigan Realtors® and welcome back to the “Letter of the Law”, a monthly video series designed to provide introduction and analysis on various legal issues impacting your industry. I’m Brian Westrin and today’s Letter of the Law is, as promised, a second installment focused on personal assistants.

Realtors® who hire personal assistants should become very familiar with the legal differences between an employee and an independent contractor. All too often, we run across a Realtor® who has attempted to address this issue by simply having her assistant sign something in which the assistant agrees to be paid on a “1099 basis.” This does not work. As a matter of law, a person who works for you is not an independent contractor just because he agrees to be. If, for example, the assistant later tries to collect unemployment or seeks worker’s compensation benefits, the fact that he signed a piece of paper agreeing to be treated as an independent contractor is not going to protect you.

### **Important Distinctions**

First and foremost, Realtors® need to remember that an unlicensed personal assistant will never qualify as an independent contractor and must always be treated as an employee. A licensed personal assistant may qualify as an independent contractor but only if: (a) not less than 75% of the compensation he or she receives is in the form of a commission based upon the volume of real estate sales rather than hours worked; and (b) he signs an independent contractor

agreement in which he agrees that he is not an employee for tax purposes.<sup>1</sup> A licensed personal assistant who is paid on an hourly basis does not qualify as an independent contractor must be treated as an employee.

Remember also that a licensed personal assistant can only receive payment for licensed activities from the broker who holds his or her license.<sup>2</sup> The salesperson who employs the assistant can reimburse the brokerage firm for the cost of the licensed assistant, but the licensed assistant must be paid by the brokerage firm.

### **Important Considerations**

For purposes of understanding the law, it may be helpful to remember that under the Occupational Code, there is no difference between a licensed salesperson and a licensed personal assistant. A real estate licensee may choose to work solely for another licensee rather than on her own, but this does not make a difference for purposes of code compliance, tax laws, unemployment compensation, worker's compensation requirements, etc.

If you, as a broker, hold licenses for people who work as assistants for other licensees in your office, your legal obligations and responsibilities are no different with respect to these licensed assistants than with respect to any other licensee in your office. If, for example, this assistant gets fired and applies for unemployment, the State is likely to look to you for compliance even if you had no role in the hiring or firing of this person. For these reasons, a brokerage firm can and must supervise the personal assistant arrangements in their offices to make certain that they are done correctly. Next up, I'd like to turn it over to our Legal Affairs Manager, Rebecca Gean for some quick insight on the Realtor Dues Formula and how it relates to this personal assistant discussion.

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<sup>1</sup> 26 USC § 3508(a)(1) (Internal Revenue Code); MCL 339.2501(h) (Occupational Code); MCL 418.119 (Worker's Disability Compensation Act); MCL 421.43(h) (Michigan Employment Security Act).

<sup>2</sup> MCL 339.2510(1).

## **REALTOR® DUES FORMULA FOR ASSISTANTS**

Thank you, Brian. One area that generates plenty of questions for brokerages is the treatment of licensed personal assistants relative to the Realtor Dues formula. It is true that licensed personal assistants are treated the same as any other licensee for purposes of the Realtor® dues formula. It is a common misconception that licensed assistants are exempt from the Realtor® dues. Under the NAR dues formula, dues are computed based on the number of licensed individuals within a firm, regardless of the type of work done by the licensees. One Realtor® member of the firm – *i.e.*, the “designated Realtor®” – is required to pay dues based on the total number of licensees in the firm.

All licensed assistants in the firm are counted for purposes of calculating the designated Realtor®’s dues payment, regardless of whether they earn a commission or are paid on an hourly basis. In fact, all licensees are counted regardless of the work performed by the licensee. If, for example, the receptionist is a real estate licensee, he or she is counted for purposes of calculating the dues obligation. The justification for this requirement is that all licensees in the firm benefit from the Realtor® membership.

## **SUMMARY**

Thank you very much, Rebecca. To summarize, a salesperson’s decision to hire a licensed assistant must be well thought out and correctly implemented. It is also important that the brokerage firm be part of the process and make certain that it is done correctly, as the liability potential is significant. If, for example, an assistant is injured while performing her job duties and it is determined that she was an employee, not an independent contractor, the brokerage firm may be liable for the assistant’s worker’s compensation claim. Significant problems may also

arise if the assistant fails to pay his income taxes or seeks unemployment compensation after he is fired.

For these reasons, firms are strongly advised to implement policies and procedures for the use of administrative assistants and make certain that these policies and procedures are strictly followed.

As always, thank you for tuning in and watching this installment. If you have questions or would like to suggest topics for future videos, please send suggestions to the email below. Again, thanks for watching and see you next time.