

5224.0230 REAL ESTATE AND SECURITIES SALESPEOPLE.

Subpart 1. **Definition.** Real estate salespeople are persons licensed as real estate salespersons under Minnesota Statutes, chapter 82. Securities salespeople are persons licensed as agents under Minnesota Statutes, chapter 80A.

Subp. 2. **Independent contractor, real estate.** A real estate salesperson who is a qualified real estate agent under the Internal Revenue Code of 1954, section 3508(b)(1) is an independent contractor. The Internal Revenue Code of 1954, section 3508(b)(1) is incorporated by reference as the standard to be used under this chapter. A real estate salesperson who is not a qualified real estate agent under that standard is nonetheless an independent contractor if all the following conditions are substantially met.

A. The salesperson is licensed to one broker and the cost of the license is paid by the salesperson.

B. The broker makes available to the salesperson office facilities and property listing, and assists the salesperson by giving advice and by cooperating in his or her endeavors.

C. The broker furnishes the salesperson with necessary business forms, stationery, cards, and instructs him or her in office procedures and business policies either verbally or by means of written instructions, such as sales manuals.

D. The salesperson agrees to work diligently for the broker and to conduct his or her business and regulate his or her habits so as to maintain and increase the good will and reputation of the broker.

E. The salesperson agrees not to sell for other brokers.

F. The salesperson provides his or her own transportation and pays all expenses incurred in the solicitation of business.

G. The salesperson generally reports to work daily but works no fixed number of hours.

H. Meetings are held in the broker's office on a regular basis, usually weekly, but attendance at these meetings is voluntary.

I. Sales are closed in the name of the broker.

J. The money is turned over to the broker who pays the salesperson commissions at periodic intervals.

K. The salesperson's success is primarily dependent on his or her own initiative and effort.

Subp. 3. **Independent contractor, securities.** A securities salesperson is an independent contractor if all the following conditions are substantially met.

A. The securities dealer engages the salesperson in the furtherance of the business.

B. The salesperson is licensed to a particular dealer.

C. The dealer furnishes the salesperson with desk space, telephone and telegraph facilities, market quotations, statistical and bookkeeping services, and clerical assistance.

D. The salesperson agrees to work diligently for the dealer and to abide by all laws, rules, and regulations under which the dealer operates the business.

E. The salesperson is not required to work fixed hours.

F. The salesperson concludes sales in the name of the dealer and pays over the money to the dealer.

G. The salesperson is paid on a commission basis at periodic intervals.

H. Under certain circumstances, the salesperson may bear a part of the losses resulting from a transaction.

I. Sales meetings are held regularly, but attendance is voluntary.

J. The salesperson's income is primarily dependent on his or her own initiative and effort.

Subp. 4. **Employee.** A salesperson is an employee when all of the following criteria are substantially met:

A. the salesperson is paid a salary or guaranteed minimum wage;

B. the employer requires fixed hours of work;

C. the employer requires that nearly all work be done on the broker's or dealer's premises;

D. the employer requires attendance at employer's office at specific times;

E. the broker or dealer has the right to interrupt or set the order of services;

F. the employer provides instruction or training in how the salesperson approaches prospects, closes sales, and works on particular problems; and

G. the employer requires the salesperson to report on activities.

Statutory Authority: *MS s 176.041; 176.83*

History: *10 SR 1852*

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