



NEW COMMISSION LAW NOT APPLICABLE TO REALTORS THAT ARE INDEPENDENT CONTRACTORS

A new section of New York State Labor Law is not applicable to Realtors that are independent contractors. There has been some degree of confusion regarding a new requirement under New York State Labor Law §191(1)(c) that requires “commission salespersons” to be paid commissions within a certain timeframe and the agreed terms of employment of how wages, salary, drawing account, commissions and all other monies earned and payable shall be calculated and must be reduced to writing. **FOR THE REASONS SET FORTH BELOW, THIS SECTION IS NOT APPLICABLE TO INDEPENDENT CONTRACTORS AND BROKERS SHOULD NOT BE FOLLOWING THIS SECTION UNLESS LICENCEES WITH THE BROKERAGE ARE EMPLOYEES.**

Labor Law § 190(6) defines “Commission Salesperson” as “an employee whose principal activity is the selling of any goods, wares, merchandise, services, real estate, securities, insurance or any article or thing and whose earnings are based in whole or in part on commissions.” Labor Law § 190(2) states ““Employee” means any person employed for hire by an employer in any employment.” Furthermore, the particular section in question is found under Article 6 of the Labor Law. In order to state a claim under Article 6, a plaintiff must first demonstrate that he or she is an employee entitled to its protections. Although the definition of employee is broad, independent contractors are not included (*see*, Labor Law § 190(2); *Di Lorenzo v Sbarra*, 124 AD2d 446, 1986). Since many brokerages utilize independent contractors as licensees rather than employees, the statute is entirely inapplicable to real estate licensees that are independent contractors.

Questions concerning this or any other legal issue should be forwarded to the NYSAR Legal Hotline. The hotline is available Monday-Thursday from 9:00a.m.-1:00p.m at 518-436-9727.