

Practice Directive 1-1-3 (A)

Real Estate Salespersons

Effective March 1, 2003

Reference *Workers Compensation Act* (the “Act”) section 1, in part:

“worker” includes

(a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise;

Reference *Assessment Policy Manual AP 1-1-6*:

The term “independent operator” is referred to in section 2(2) of the *Act* as being an individual “who is neither an employer nor a worker” and to whom the Board may direct that Part 1 applies as though the independent operator was a worker. An independent operator performs work under a contract, but has a business existence independent of the person or entity for whom that work is performed. An independent operator is an “independent firm” for purposes of Item AP1-1-2.

Practice

OVERVIEW

The real estate salesperson–agency relationship can vary between a clear employment relationship and a clear relationship of independence. A Board officer must therefore use discretion in determining and weighing the relevant factors to decide whether this relationship is one of employment or independence.

If the relevant factors are evenly balanced a Board officer must decide in favour of an individual being a worker and therefore entitled to benefits under the *Act*, rather than being an independent operator having no right to benefits unless Personal Optional Protection has been purchased.

REAL ESTATE SALESPERSONS

The status of a real estate salesperson as a worker or independent operator is, in part, dependent on the contractual relationship between the real estate salesperson and the agency. A Board officer¹ is, therefore, obliged to examine the particular status indicators of the relationship. While the Board officer may request a copy of an existing

¹ As at 1 January 2003, the *President’s Assignment of Authority under Part 1 of the Workers Compensation Act* authorizes an Employer Service Representative, Assessment Officer, Office Assessor, or Collection Officer to determine status.

written contract to assist in this process, the Board's jurisdiction will not be excluded by a private agreement.²

A real estate salesperson will be considered an independent operator only if it is determined that the real estate salesperson:

- (1) must pay a fixed amount of not less than \$100 per month to the agency for administrative and operating costs regardless of whether any sales are made or commissions are earned,
- (2) is responsible for his or her own expenses (such as spending on personal promotion or advertising or travel/vehicle expenses), and
- (3) is entitled to the full amount of the gross commissions earned.³

² As per policy AP1-1-3, "The Board, for the purposes of the Act, has the exclusive power under section 96(1) to determine status. The Board's jurisdiction cannot be excluded by private agreement between two parties, whether the agreement does this expressly, or indirectly by labelling the parties as independent operators (who would therefore be independent firms). The Board makes its own judgment of their status, having regard to the terms of the contract and the operational routines of the relationship. However, decisions made by the Board are for workers' compensation purposes only and have no binding authority under other statutes."

³ The Director Assessments 31 October 1995 letter to the British Columbia Real Estate Association and the 9 November 1995 clarification thereto.