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Guidelines for Hiring Licensed or Unlicensed Assistants

It is important for a real estate agent to follow proper procedures when hiring licensed or unlicensed assistants. First, there are two CAR forms that should be used when an agent decides to get an assistant. There is the Personal Assistant Contract as well as the Broker/Associate-Licensee/Assistant Third Party Agreement. It is suggested that both these forms be used.

In addition, CAR has an excellent Q & A entitled "Unlicensed Assistants" that lays out in chart form the activities that unlicensed assistants are legally permitted to do and those that are not permitted. It is suggested that the agent hiring an unlicensed assistant provide the assistant with this form and have the assistant sign it on the last page indicating that they have received this and that they agree to abide by the guidelines set forth in it.

The CAR Personal Assistant Contract assumes an employer/employee relationship between the agent and the assistant. This will most often be the case since the agent will be instructing the assistant on what and how to do the various tasks the agent assigns to the assistant. It is important to note that mislabeling an assistant as an independent contractor when they are really an employee has significant consequences. CAR has put out a Q & A entitled "Independent Contractor or Employee?" to help assist in determining whether an assistant is an employee or an independent contractor. It should be noted, however, that it is often not a simple task to determine the proper classification. In general, the more control the agent has over the assistant in terms of how to do the job, the more likely the assistant will be considered an employee. The IRS has a 20 factor test to determine the classification of a worker as an employee or an independent contractor. This 20 factor test is set forth in the Q & A referenced above. There are many other tests and guidelines, both federal and state, to determine the classification of a worker.

As stated above, the Personal Assistant Contract assumes an employer/employee relationship with the assistant. If the agent wishes to establish an independent contractor relationship with an assistant, he or she is advised to consult with an attorney specializing in Labor Law.