

INDEPENDENT CONTRACTOR/EMPLOYEE AGREEMENT

(NOTE: A company should choose the type of legal relationship it desires between its sales agents and the company or broker. The North Carolina Association of REALTORS® does NOT recommend any particular type of relationship. The sample policy below is based on an independent contractor relationship. If a company chooses an employer-employee relationship, appropriate revisions should be made.)

S.S. SMITH, INC., REALTORS®, has a policy of associating with its licensees as independent contractors. Each agent will be required to sign a written agreement setting out the relationship as an independent contractor. While the exact terms of the relationship are covered in the contract, a few reminders about being an independent contractor follow.

1. **Income Taxes:** All income taxes, federal and state, are the responsibility of the agent. The company does not withhold or pay Social Security taxes on commission earnings. Self employment tax must be paid by the agent.
2. **Unemployment Taxes:** As an independent contractor, the agent is not covered under state or federal unemployment laws. Independent contractor real estate agents are exempt from the unemployment laws by North Carolina statute. Accordingly, S.S. SMITH, INC., REALTORS®, does not pay unemployment taxes on the earnings of its agents.
3. **Worker's Compensation:**

[NOTE: It is not clear under current North Carolina law whether real estate agents are independent contractors or employees for purposes of workers' compensation benefits. The North Carolina Industrial Commission (the State regulatory agency responsible for the administration of the workers' compensation laws) takes the position that real estate agents are employees for purposes of workers' compensation benefits. North Carolina law does allow a real estate firm to enter into an agreement with a real estate agent to reimburse the firm for the cost of covering that agent under the firm's workers' compensation coverage, if the agent is recognized as an independent contractor for federal income tax purposes (see General Statute Section 93A-11). The North Carolina Association of REALTORS® has taken the position that the only safe way to protect a real estate firm and its agents is to secure workers' compensation insurance. The following model language assumes that the firm carries workers' compensation insurance on its agents, and that the firm does have agreements with its agents to reimburse the firm for the cost of covering them under its workers' compensation policy.]

Although real estate agents may be recognized as independent contractors for income tax purposes, it is not clear under current North Carolina law whether real estate agents are independent contractors or employees for purposes of workers' compensation benefits. It is the policy of S.S. SMITH, INC., REALTORS®, to cover its agents under its workers' compensation insurance policy in order to insure that the firm and its agents are protected in the event of an on-the-job injury to an agent sustained by accident. It is also the policy of S.S. Smith, INC., REALTORS®, that each agent reimburse the firm for the cost of covering that agent under the firm's workers' compensation insurance policy, as permitted by North Carolina law.

4. **Automobile Insurance:** Each agent should carry adequate automobile insurance to protect not only the agent but also the customer or client. In today's legal climate, liability coverage of \$_____per person/\$_____ per accident should be obtained [**insert amount of minimum required coverage**]. Any lesser amounts could cause unnecessary exposure of personal assets. Consult carefully with your insurance agent. The agent must name S.S. SMITH, INC., REALTORS®, as an additional insured and provide the company with a certificate reflecting that status.

Each agent is reminded that State law requires each person in the front seat of an automobile wear a seat belt. In addition, state law requires that any child of less than sixteen years of age wear a seat belt regardless of where they are seated in the automobile, and that children of less than eight years of age and less than 80 pounds in weight must be secured in a weight-appropriate child passenger restraint system. S.S. SMITH, INC., REALTORS®, has an approved car safety seat in each office for your use when transporting customers or clients with young children. To reduce risk, we strongly recommend that you insist that all occupants of your vehicle wear safety belts. You should also note that any infant's car seat (children approximately one year or younger) should not face forward, but should face the rear of the vehicle. In addition, children and small adults should not sit in the front passenger seat. Airbags are known to release with such force that injury or death is possible for children and small adults. State law requires that in vehicles equipped with an active passenger-side front air bag, a child less than five years old and less than 40 pounds in weight shall be properly secured in a rear seat (if the vehicle has a rear seat), unless the child restraint system is designed for use with air bags.

5. **Expenses:** As an independent contractor, each agent is expected to be in business for herself/himself. Generally, the expenses of that business will be the responsibility of the agent. S.S. SMITH, INC., REALTORS®, will provide the following items and/or pay for the following expenses:

(NOTE: The company or broker should determine the expenses which it is willing to provide or pay and delineate the major items here. Some of these expenses may include office space, newspaper advertising, business cards, yard signs, telephone expense, stationery, etc.). The agent will be expected to pay for all other expenses, including these particular items:

(NOTE: Here, the company should list the typical expenses borne by agents. Some of these expenses may be things such as business cards, personal car or yard signs or personal advertising. The North Carolina Association of REALTORS® makes no recommendations as to what should or should not be on either the broker or agent list of expenses.)

This list of expenses paid by company or agent may be amended by the company from time to time by appropriate publication to all agents.