

## 7 Items Every Independent Contractor Agreement Should Have

1. A statement that the salesperson's compensation will be solely in the form of commissions
2. A place where the salesperson can acknowledge licensure and agree to be responsible for all licensing fees and requirements, such as continuing education
3. A statement that all documents and correspondence relating to transactions or prospects remains the property of the brokerage company
4. A description of what expenses—insurance, association dues, Internet connection—each of the parties will pay
5. A statement that the salesperson is not an employee
6. A description of how the agreement can be terminated and what the responsibilities of each party are at that time
7. A statement that the salesperson will conduct business in accordance with the state's license law and regulations

**TIP:** Many state and local associations of REALTORS® have created model independent contractor agreements that you can customize to meet your needs.

**TIP:** Have your associates sign an affidavit each year restating their responsibilities for paying such expenses as mileage and car expenses, client entertainment costs, and all self-employment taxes. —*Leo Chervenik, Geneva Chervenik Realty, Stow, Ohio, in Real Estate Broker's Inside, Alexander Communications, February 15, 1997*

## The Pluses and Minuses of Independent-Contractor Status

Laurene Janik, NAR general counsel, shares her views on different employment options for salespeople.

**Q:** What are the advantages of independent-contractor status from the broker's point of view?

**Janik:** Independent contractor status is good for brokers in two respects: It's less expensive than hiring employees because brokers don't have the financial burden of making FICA contributions or the administrative burden of withholding taxes for their independent contractors. The upside for salespeople is that they can set their own hours.

**Q:** What's the downside?

**Janik:** The biggest downside is that brokers can't exercise as much control over independent contractors as they can over employees, yet they are still liable for everything their salespeople do in the field.

**Q:** What problems do brokers run into with independent-contractor status?

**Janik:** It's easy to comply with the three-part test for statutory independent contractor status under the federal tax code, but a lot of brokers trip over their state laws. Most states use the 20 common-law control factors. Some courts apply an "economic realities" test, which considers the relationship of the services to the principal business of the company, the opportunities for profit or loss, and the degree of independence of the business's operation. Just because your relationship with your sales associates meet federal requirements doesn't mean you are in compliance with state laws.

**Q:** What do you suggest?

**Janik:** Comply with federal law as your baseline, and then investigate what you need to do for state compliance.