

## **Working Inside the Box – Establishing the Box**

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What is your agreement with your broker? A recurring question to the Hotline is “what is my broker’s obligation to pay me when I have pending transactions at the time I affiliate with a new broker?” There are many similar questions relating to fees after termination and whether a salesperson can take her clients and transactions to her new brokerage.

The answer is always the same: what does your independent contractor agreement provide? If there are provisions regarding payment following termination, voluntary or otherwise, those provisions will prevail. Where the agreement is silent, there is little certainty. One might look to an invariable custom or practice of the broker in dealing with commissions post-termination, but rarely is there an invariable practice that the court would accept as binding. It is more likely that the salesperson will lose out. The best practice is to endeavor to work out a resolution and if one cannot be achieved, consult counsel.

An even better practice is to establish terms for separation at the outset. When a salesperson affiliates with a broker, everyone should have high expectations. This is the best time to establish what happens at the end of the relationship. We know licenses are very portable and the odds are that the salesperson will not finish their career where they started. Neither the broker nor a salesperson benefit from uncertainty and suits that can follow termination.

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