

Who's in charge?

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I don't know why this comes to a surprise, but did you know that some agents actually think that their 'independent contractor' status means that they have no obligation to the Broker? Did you know that some agents think that it is the 'privilege' of the Broker to have the agent working for them? Did you know that some agents actually think that they are in charge of their listings and their buyer clients? Hmmmmmmmmm! Where did they ever get that idea?

As I do more consulting work with brokerage companies, I find that the Brokers have forgotten who is in charge! Independent simply means, for IRS purposes, that the person is not an employee of the Broker. There is a simple list of test measures as to whether a person qualifies as an independent contractor. Look at the definition from the IRS:

Independent Contractor

The general rule is that an individual is an **independent contractor** if (the person for whom the services are performed) has the right to control or direct only the result of the work, *and not what will be done and how it will be done or method of accomplishing the result.*

<http://www.irs.gov/businesses/small/article/0,,id=115041,00.html>

What is important to note is that it references that you do have control over how things are done and the method by which things can be accomplished! The result of their work is in their hands...and those that don't produce results should be re-evaluated on a yearly basis. Maybe they should be re-introduced into the workplace for another broker to select.

So why do you want to be in charge? Because your state law says that you are! The article that I wrote back in 1999 for the Buyer's Rep Newsletter entitled "Broker, do you know where your agents are?" caused quite a stir. On a daily basis do you know what your agents are doing, what they are saying, and to whom are they saying it? In a recent real estate commission hearing the Broker had to appear because their agent was in trouble. When asked by one of the commissioners if the Broker was aware of the actions of their agent, they had to admit that they had no idea that they had been pursuing this behavior...and for an extended time! What can a Broker regulate?

Your Policy and Procedures Manual should clearly outline those points that are and aren't negotiable between the Brokerage and the Agent. Below is a short list of those policies that should be addressed.

- Company agency policies and practices
- Commission schedules and splitting policies
- Listing procedures/selling procedures
- Exceptions to the listing process
- Purchases/sale made personally by the licensees
- Open house rules/regulations
- Obtaining, presenting, and negotiating offers and counter offers

- Closing procedures
- Organizational and administrative procedures, phone calls, phone duty, and expenses paid for by the office and the agent
- Handling of other people's money
- Advertising guidelines, templates, Brokerage company name
- Relocation and referrals
- Errors and Omissions insurance requirements
- Yearly earning brackets and transaction requirements in order to stay with the company
- Federal and state laws such as Do Not Call, RESPA, etc. which will keep the Brokerage out of trouble.

Your company policy manual should also include all required forms with detailed instructions on how to complete them. All new agents should meet with the broker and review the manual to assure compliance. Your manual is a valuable risk management tool for you as a broker. Remember, YOU are in charge!