

Commissioner's Advisory No. 1

The Department of Real Estate is a resource for consumers and industry practitioners.

Released December 31, 2007

Rights and Responsibilities when a Real Estate Firm Closes

This advisory is a partial list of rights and responsibilities of parties impacted by a real estate company closing. While a real estate firm continues to be licensed by the Arizona Department of Real Estate, all listings, escrows and other agreements legally entered into by clients with this firm remain valid and enforceable. Agents do not have the authority to cancel or transfer agreements or escrows between clients and the brokerage. Individuals may have additional questions after reviewing this list and are encouraged to contact the ADRE Customer Assistance Team at CAT@azre.gov or (602) 771-7730. This Commissioner's Advisory is informational only and is not intended as legal advice.

When a real estate firm closes:

Consumers

Property in escrow

- Buyers and Sellers close per the terms of their purchase agreement.
- Buyers and Sellers may continue to use their Agents to assist in the closing as long as their Agents are hired by a new brokerage and avoid practicing unlicensed activity.
- Listing, commission and co-broke agreements are still valid.

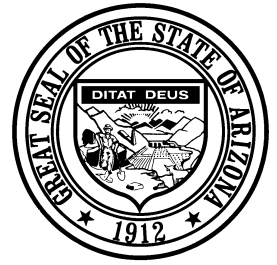
Property Listings for Sale

- Listing agreements are effectively cancelled once the firm closes. (NOTE: Listing Agreements are contracts between the brokerage and property owners. Agents may not transfer or cancel a listing without authorization from the designated broker as long as the real estate firm is actively licensed.)
- Sellers may choose to sign a new listing agreement using the same agent at a new brokerage.
- Sellers may choose to sign a new listing agreement using a new agent at a new brokerage.
- Sellers may choose to personally market their home or remove it for sale

Property Management Agreements

- Management Agreements are effectively cancelled once the firm closes. (NOTE: Management Agreements are contracts between the brokerage and landlord. Agents may not cancel a listing without authorization from the designated broker as long as the real estate firm is actively licensed.)
- Landlords should receive security and other deposits being held in trust accounts and receive a final accounting in accordance with [ARS 32-2173 \(C\) & \(D\)](#).
- Landlords may choose to sign a new agreement using the same agent at a new brokerage.
- Landlords may choose to sign a new agreement using a new agent at a new brokerage.
- Landlords may choose to personally manage their properties.
- Landlords should notify tenants in writing of all changes in the property management to include new contact or mailing instructions for rent payments and communication needs.
- Landlord and tenant lease terms remain valid.

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When a real estate firm closes:

Consumers (continued from page 1)

Buyer Broker Employment Agreements

- Buyer broker employment agreements are effectively cancelled once the firm closes. (NOTE: Agreements are contracts between the brokerage and buyer. Agents may not cancel an agreement without authorization from the designated broker as long as the real estate firm is actively licensed.)
- Buyers may choose to sign a new agreement using the same agent at a new brokerage.
- Buyers may choose to sign a new agreement using a new agent at a new brokerage.
- Buyers may choose to work with the same agent or a new agent without an employment agreement.
- Buyers may choose to seek a home without a real estate agent's professional help.

Designated Brokers

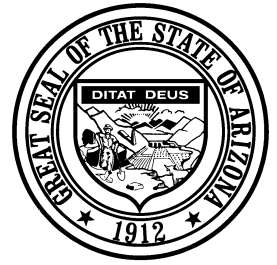
Property Management and Trust Accounts

- Use the 30-day cancellation clause in property management agreements to notify property owners that the agreement will cease.
- Pay property owners what is due them from the management trust accounts including tenant security and other deposits if the broker is holding them. Only broker funds should remain in the trust accounts.
- Escrow trust accounts should be properly liquidated with funds accounted for and distributed to appropriate escrow accounts at escrow companies closing the relevant transaction. Receipts for the transfer of funds should be placed in each transaction file for future auditing.

Follow the prescribed steps for closing a branch or corporate office. Refer to the Licensing Division [Frequently Asked Questions \(FAQ's\)](#) for closing an office.

Notify agents prior to the effective date of closure so they may have time to transfer their license to a new brokerage.

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When a real estate firm closes:

Designated Brokers (continued from page 2)

Provide written commission instructions to escrow companies that are closing transactions for the brokerage so that commissions can be paid directly to seller and buyer agents less any fees or commission splits agreed to in an agent's independent contractor's agreement.

Associate Brokers/Sales Agents

Notify your clients of the brokerage closure and their rights and responsibilities as noted on Page 1 of this Commissioner's Advisory.

Transfer your license to a new brokerage if you wish to remain active. Avoid conducting any unlicensed activity if your firm closes without notice. Once a firm closes, all agents at the firm automatically go inactive. Determine your license status by visiting the ADRE Public Database at www.azre.gov and view your [electronic license certificate](#).

If you wish to remain inactive but have clients in escrow, you should advise your former client to seek an active agent to advise them during the escrow.

Commissions earned while being employed by the broker may still be received whether an agent is active or inactive per commission instructions and independent contractor agreements. In the absence of commission instructions and when the closed brokerage has also closed its operational bank accounts from which commissions would be paid, agents are authorized to receive funds directly from escrow companies should the escrow company decide to disperse these commissions at closing.

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