

STATE OF ARIZONA

DEPARTMENT OF REAL ESTATE

Commissioner's Advisory No. 1

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

Rights and Responsibilities when a Real Estate Firm Closes

This advisory contains information pertaining to the 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 (ADRE) with a Designated Broker, all listings, escrows and other agreements legally entered into by clients with the firm remain valid and enforceable. Agents do not have the authority to cancel or transfer agreements or escrows. Individuals may have additional questions after reviewing this list and are encouraged to contact the ADRE

When a real estate firm closes:

CONSUMERS

Property in escrow

- Buyers and Sellers close per the terms of their purchase agreement.
- As long as the Brokerage is actively licensed with the ADRE with a Designated Broker, the Brokerage may retain and remain responsible for the escrow until closing.
- Prior to the closing of the firm, the escrow may be overseen by the Employing Broker's Designated Broker, or, with the written authorization of the Employing Broker and all parties to the contract, the escrow may be assigned by the Employing Broker to another Brokerage, to another agent, or the agent(s) who participated in originating the contract, as long as the agent(s) are actively licensed under an Employing Broker who agrees to accept the assignment and responsibility of the escrow.
- All compensation agreements remain valid.

Property Listings for Sale

- Listing Employment Agreements are between the brokerage and the seller; usually, in a bilateral listing agreement, and both the broker's and the seller's signatures are required to change the terms. Salespersons and associate brokers may not assign or cancel a listing agreement without written authorization from the Designated Broker. The Designated Broker is not obligated to change the terms of the listing agreement when a brokerage closes [ARS 32-2151.01(E)], [click here](#), but should assign all listings to another brokerage before severing. The listing is effectively cancelled once the firm is no longer licensed by the ADRE. If the reason for closing the brokerage is that the Designated Broker is deceased, ARS § 32-2133 applies, [click here](#).
- If an employing broker has not assigned a listing agreement prior to closing a brokerage, a real estate salesperson or associate broker may, in accordance with ARS § 32-2151.02(C), [click here](#) and the seller's written agreement, transfer a listing only after receiving the seller's signature on the transferring document with wording substantially similar to: "The execution of this additional real estate employment agreement could expose the seller to liability for substantial additional commissions." The salesperson or associate broker should advise the seller to seek legal counsel concerning any residual liability the closed brokerage may have in the contract.
- Upon closing of the firm or release of the listing, the seller may choose to:
 - ✓ Sign a new listing agreement using the same agent at a new brokerage.
 - ✓ Sign a new listing agreement using a new agent at a new brokerage.
 - ✓ Personally market their home or remove it from sale.

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Property Management Agreements

- Management Agreements are effectively cancelled once the firm closes. [NOTE: Management Agreements are contracts between the Employing Broker and the property owner / landlords.] Agents may not cancel or transfer an agreement without written authorization from the Designated Broker and the property owner(s), as long as the real estate firm is actively licensed. The Designated Broker is not obligated to change the terms of the management agreement when a brokerage closes [ARS 32-2151.02(E)], [click here](#), but should assign all management agreements to another brokerage before severing. If the reason for closing the brokerage is that the designated broker is deceased, ARS § 32-2133 applies, [click here](#).
- Prior to the closing of a brokerage, property owners must receive security and other deposits being held by the brokerage and receive a final accounting in accordance with ARS 32-2173, [click here](#).
- Tenants should be advised in writing that their security and other deposits have been transferred to the property owner, including Owner contact information. [ARS 32-2174(E)], [click here](#).
- If an employing broker has not assigned a property management agreement prior to closing the brokerage, a real estate salesperson or associate broker may, in accordance with ARS § 32-2151.02(C), [click here](#) and the property owner's agreement, transfer an agreement only after receiving the Landlord's signature on the transferring document with wording substantially similar to: "The execution of this additional real estate property management agreement could expose the property owner to liability for substantial additional management fees." The salesperson or associate broker should advise the property owner to seek legal counsel concerning any residual liability the closed brokerage may have in the contract.
- Upon the closing of the firm or a release of the agreement, the property owner may choose to:
 - ✓ Sign a new agreement using the same agent at a new brokerage.
 - ✓ Sign a new agreement using a new agent at a new brokerage.
 - ✓ Personally manage their property.
- If the property owner chooses to self-manage the property, the property owner 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.
- Property owner and tenant lease terms remain valid.

Buyer Broker Employment Agreements

- Buyer broker employment agreements are effectively cancelled once there is no Designated Broker, and/or the firm is no longer licensed by the ADRE. (NOTE: Agreements are contracts between the brokerage and the buyer. Agents may not transfer nor cancel an agreement without written authorization of the Designated Broker and the buyer, as long as the real estate firm is actively licensed.) The Designated Broker is not obligated to change the terms of the buyer broker employment agreement when a brokerage closes [ARS 32-2151.01(E)], [click here](#), but should assign all agreements to another brokerage before severing. If closing the brokerage because the Designated Broker is deceased, ARS § 32-2133 applies, [click here](#).

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- If an employing broker has not assigned a buyer broker employment agreement prior to closing the brokerage, a real estate salesperson or associate broker may, in accordance with ARS § 32-2151.02(C), [click here](#) and the buyer's agreement, transfer an agreement only after receiving the buyer's signature on the transferring document with wording substantially similar to: "The execution of this additional real estate employment agreement could expose the buyer to liability for substantial additional management fees." The salesperson or associate broker should advise the Buyer to seek legal counsel concerning any residual liability the closed brokerage may have in the original contract.
- Upon the closing of the firm, or a release of the Agreement, buyers may choose to
 - ✓ Sign a new agreement using the same agent at a new brokerage.
 - ✓ Sign a new agreement using a new agent at a new brokerage.
 - ✓ Work with the same agent or a new agent without an employment agreement.
 - ✓ Seek a home without a real estate agent's professional assistance.

EMPLOYING BROKER / DESIGNATED BROKER (DB)

Considerations in Closing of the Firm

- Will the Corporation, with a DB, remain open for a time in order to oversee and/or close out the business of the Employing Broker (accepting escrow closing funds, etc.)? For how long?
- Will there be another Brokerage opened, while current Brokerage is closing?
- If so, how will the severance and/or transfer of agents occur?
- How will Escrows and Employment Agreements and Property Management be handled? Allowed to be released? Overseen by the remaining or another DB?

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.

Branch Office Closure

- Upon closing a branch office, the DB shall submit a written notification to the Department within 10 days of the closure and severance of the branch office manager. The DB may sever all other licensees and / or transfer licensees to another brokerage office using the Department's online licensing system. R4-28-303(E)(8), [click here](#).

Follow the prescribed steps (above) 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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