

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

Revised March 17, 2010

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 (602) 771-7799 or email auditing@azre.gov.

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 between the brokerage and the Seller; in a bilateral listing agreement 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 authorization from the designated broker. The designated broker is not obligated to change the terms of the listing agreement when a brokerage closes (AAC § R4-28-1101(D)), but should assign all listings to another brokerage before severing. If the reason for closing the brokerage is that the designated broker is deceased, then ARS § 32-2133 applies.
- 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) and the Seller's 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; and thereafter:
 - 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 from sale.

Property Management Agreements

- Management agreements are between the brokerage and the property owner ("Landlord"). Salespersons and associate brokers may not assign or cancel a property management agreement without authorization from the designated broker. The designated broker is not obligated to change the terms of the management agreement when a brokerage closes (AAC § R4-28-1101(D)), 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, then ARS § 32-2133 applies.
- 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).

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- 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) and the Landlord'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 Landlord to seek legal counsel concerning any residual liability the closed brokerage may have in the contract; and thereafter:
 - 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.

Buyer Broker Employment Agreements

- Buyer broker employment agreements are between the brokerage and the Buyer. Salespersons and associate brokers may not assign or cancel a buyer broker employment agreement without authorization from the designated broker. The designated broker is not obligated to change the terms of the buyer broker employment agreement when a brokerage closes (AAC § R4-28-1101(D)), but should assign all agreements to another brokerage before severing. If the reason for closing the brokerage is that the designated broker is deceased, then ARS § 32-2133 applies.
- 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) 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 contract; and thereafter:
 - 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

A licensee owes a fiduciary duty to the client and must expeditiously perform all acts required by holding a license (AAC § R4-28-1101(A)(C)). The employing broker is responsible for all licensed activity; the designated broker is responsible for supervising the licensed activity (AAC § R4-28-1103). A designated broker should lawfully disburse all trust monies before closing the brokerage and its trust accounts.

- Use the 30-day cancellation clause in property management contracts to notify property owners of the date the agreement will terminate.
- 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.

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- 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 in writing stating the date of closure, prior to the effective date of closure, so they may have time to transfer their license to a new brokerage.
- 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 / SALESPERSONS

- Notify your clients of the brokerage closure and their rights and responsibilities as noted above.
- Transfer your license to a new brokerage if you wish to remain active. Avoid conducting unlicensed activity after your firm closes; after it closes, all agents 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.

Commission Disputes: A.R.S. § 32-2152 (B) precludes the Department from entertaining complaints regarding purely civil disputes between licensees concerning the earning, splitting or nonpayment of compensation.

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