



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>THOMAS C. HORNE ATTORNEY GENERAL</p> <p>February 28, 2014</p>	<p>No. I14-002 (R14-002)</p> <p>Re: Interpretation of Arizona Law dealing with real estate broker's licensure as it relates to managing properties.</p>
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To: The Honorable Steve Pierce
Arizona State Senate

Question Presented

You asked for an opinion regarding real estate broker license exemptions under Arizona Revised Statutes ("A.R.S.") §§ 32-2101(48) and 2121(A)(1). Specifically, you asked the following:

1. Is a real estate broker's license required when a company that owns a property is a different legal entity from the company that manages the property, for compensation, but the same individuals control both companies?
2. Is an individual or an entity that is otherwise required to be licensed as a real estate broker exempt from licensure under A.R.S. § 32-2121(A)(1) if the individual or entity is managing his or her own property without receiving any special compensation?

Summary Answer

1. Yes. Pursuant to A.R.S. § 32-2101(48), a real estate broker license is required whenever a person or entity engages in real estate activity for another and for compensation¹.
2. Yes. Under A.R.S. § 32-2121(A)(1), an individual or entity is exempt from licensure when conducting real estate activity for the person's or entity's own property without receiving any special compensation.

Background

An Arizona Department of Real Estate ("Department") statute defines real estate broker activities involving property management. That definition includes a list of several real estate activities and defines a real estate broker as "a person, other than a salesperson, who for another and for compensation" manages property. A.R.S. § 32-2101(48). A second statute further clarifies that a limited exemption from the license requirement exists for a natural person or an entity that is managing the person's or the entity's own property. A.R.S. § 32-2121(A)(1).

Analysis

The question presented is based on the premise that the company that owns the property is a different legal entity than the company that manages the property. Arizona Revised Statutes §§ 32-2121(A)(1) and 2101(48) both clearly limit exemptions for licensure to situations where individuals or entities are managing their own property. As explained below, because the company that manages the property does not own the property, these exemptions would not apply.

In interpreting a statute, the primary goal is to ascertain and implement legislative intent. *E.g., Harris Corp. v. Ariz. Dep't of Revenue*, 233 Ariz. 377, 381, ¶ 13, 312 P.3d 1143, 1147

¹ Compensation is any fee, commission, salary, money or other valuable consideration for services rendered or to be rendered as well as the promise of consideration whether contingent or not. A.R.S. § 32-2101(16). The Arizona Department of Real Estate construes compensation broadly.

(App. 2013). The statute's plain language is the most reliable indicator of its meaning. *Id.* Unless the statutory language is ambiguous, the statute's plain meaning governs. *Id.*

Pursuant to A.R.S. § 32-2101(48), "real estate broker means a person, other than a salesperson, who *for another* and for compensation" manages property. (Emphasis added.)

A narrow exemption from licensure exists under A.R.S. § 32-2121(A)(1) for individuals or entities that manage the *person's or the entity's own property* and do not receive special compensation or other consideration. Section 32-2121(A)(1) provides:

A. The provisions of this article do not apply to:

1. A natural person, a corporation through its officers, a partnership through its partners or a limited liability company through its members or managers that deals in selling, exchanging, purchasing, renting, leasing, managing or pledging *the person's or entity's own property*, including cemetery property and membership camping contracts, and that does not receive special compensation for a sales transaction or does not receive special compensation or other consideration including property management fees or consulting fees for any property management services performed, if the majority of an officer's, partner's, member's or manager's activities do not involve the acts of a real estate broker, cemetery broker or membership camping broker as defined in section 32-2101.

(Emphasis added.)

Consequently, the exemption is limited to the property owner. These statutes provide a bright-line rule and create a narrow exemption. The Department does not have discretion to make a case-by-case determination, considering the relationship of the two companies or the individuals controlling them or each company's structure and membership.

A 1963 Attorney General Letter Opinion also analyzed the A.R.S. § 32-2121(A)(1) exemption. Ariz. Op. Att'y. Gen. Op. 63-22-L. In the Letter Opinion, Attorney General Pickrell considered whether a person who was a corporate officer needed a real estate license to sell

property that the corporation owned when that person's only compensation was based on a set fee per unit. The Letter Opinion also considered whether a corporate officer needed a real estate license to sell property that the corporation owned when that person was on a salary and his only duties involved real estate sales. In both instances, the Attorney General concluded that the exemption did not apply and that the statute required a real estate license for those individuals. Although the statute's language has changed, the Letter Opinion's analysis is still relevant and provides further support for the conclusion that the exemption is narrow.

Conclusion

Arizona law regarding license exemptions for real estate brokers is clear and limited. The law requires a real estate broker's license when a company that owns the property is a different legal entity from the company that manages the property, regardless of company ownership or control. Furthermore, an individual or an entity is exempt from licensure under A.R.S. § 32-2121(A)(1) only if the individual or the entity is managing the *individual's or entity's own property* and does not receive special compensation or other consideration. In the question presented, one company owns the property and another company manages the property. Given those facts, the statute clearly requires the company managing the property to be licensed.

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