



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>April 12, 2018</p>	<p>No. I18-002 (R16-023)</p> <p>Re: whether certain activities of unlicensed assistants are exempt from real estate licensing requirements</p>
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To: Judy Lowe, Commissioner
State of Arizona, Department of Real Estate

Questions Presented

You have requested an opinion concerning whether an Arizona real estate license is required for the following activities:

1. Persons located in a call center outside of Arizona receiving calls from Arizona property owners and property management companies handling maintenance calls from residential renters. The extent of this activity includes: (a) fielding in-bound calls from residents with maintenance issues; (b) collecting personal contact information from the resident callers; (c) creating a work order to be sent to the property manager; and (d) if the situation described is designated an emergency, dispatching the designated repair person or company under the property management company.

2. Persons located in a call center outside of Arizona that: (a) field in-bound calls from potential renters of a property and answer basic questions about the property based on

information provided by the owner or property management company; (b) confirm details such as the number of bedrooms of units; (c) if requested, provide the pre-determined range of prices; and (d) set an appointment for the caller to visit the property and meet with a rental agent.

3. To what extent may unlicensed natural persons perform duties under the employ of an Arizona licensed real estate entity, real estate team, or within an unlicensed entity within or outside of Arizona without obtaining an Arizona real estate license.

Summary Answer

1. Persons engaged in handling property maintenance calls, as described above, are exempt from Arizona real estate licensing requirements because they are providing administrative and support duties and are not engaged in any other acts requiring a license.

2. Persons engaged in the activities described above, which involve communications with prospective renters of residential properties, are exempt from Arizona real estate licensing requirements because they are providing administrative and support duties and are not engaged in any other acts requiring a license.

3. Given the broad nature of this inquiry, the Attorney General is unable to answer this question as a matter of law. The various statutory exemptions available under Arizona Revised Statutes (“A.R.S.”) § 32–2121(A)—which exempt unlicensed persons from real estate licensing requirements—should be consulted to determine whether unlicensed activity qualifies within any particular exemption.

Background

“The [L]egislature has enacted comprehensive legislation to regulate the licensing and conduct of real estate salesmen and brokers.” *Realty Execs., Inc. v. Northrup, King & Co.*, 24 Ariz. App. 400, 402 (1975) (citing A.R.S. § 32–2101 *et seq.*). “Real estate” encompasses

“leasehold-interests and any estates in land as defined in title 33, chapter 2, articles 1 and 2,[] regardless of whether located in this state.” A.R.S. § 32–2101(47).

Although “the real estate activities requiring a license are very broad,” *Mousa v. Saba*, 222 Ariz. 581, 586, ¶ 20 (Ct. App. 2009), the Legislature has provided for numerous statutory exemptions from the real estate licensing requirements in A.R.S. § 32–2121. If a person engages in activity that falls within one of these exemptions, the person is not required to obtain a real estate license.

As relevant here, “any person acting in the capacity of” a real estate broker or a real estate salesperson is required to have a real estate license. A.R.S. § 32–2122(A)(1), (2); *see also* A.R.S. §§ 32–2101(48) (defining activities of a “real estate broker”), –2101(50) (defining activities of a “real estate salesperson”). A person engages in activities of real estate brokers when, “for another and for compensation[,]” he:

- (a) [R]ents ... real estate ...
- (b) Offers to ... rent ... real estate ...
- (c) Negotiates or offers, attempts or agrees to negotiate the ... rental ... of real estate...
- ...
- (g) Collects or offers, attempts or agrees to collect rent for the use of real estate ...
- (h) Advertises or holds himself out as being engaged in the business of ... renting ... real estate ...
- (i) Assists or directs in the procuring of prospects, calculated to result in the ... rental of real estate ...
- (j) Assists or directs in the negotiation of any transaction calculated or intended to result in the ... rental of real estate ...

A.R.S. § 32–2101(48).

“Real estate salesperson[s],” in turn, are “engaged by or on behalf of” licensed real estate brokers “to perform any act or participate in any transaction” that a real estate broker would perform, including the above-listed activities pertaining to the rental of real estate. *Id.* § 32-2101(50). Licensed real estate brokers are also permitted to “employ [unlicensed] residential leasing agents or managers of residential rental properties” as authorized by A.R.S. § 32-2121(A)(6), and must “exercise reasonable supervision over these leasing agents or managers.” A.R.S. § 32-2155(D).

Nonresidents are subject to Arizona’s licensing statutes if they engage in activities affecting real estate interests in Arizona that would require a real estate license. *See* A.R.S. §§ 32-2122(C) (“A person, corporation, partnership or limited liability company ... that is engaging in any work for which a license is required under this article is subject to the requirements of this chapter in the performance of any acts included in the definition of a broker unless otherwise provided in this chapter.”); 32-2125.02 (establishing requirements for nonresident licensees); 32-2163(B) (stating that a licensed broker is permitted to “pay to and receive compensation from an out-of-state broker, [but] this authority shall not be construed to permit an out-of-state broker to conduct activity in this state that would otherwise require a broker’s license issued by the department”); 32-2163(E) (prohibiting “an out-of-state broker who is not licensed in this state to list, market or advertise in this state real property located in this state for sale, lease or exchange”).

It is unlawful for a person to “engage in any business, occupation or activity” of a real estate broker or real estate salesperson without a license. A.R.S. § 32-2122(B); *see also* A.R.S. § 32-2165 (A) (“A person who acts as a broker or salesperson within the meaning of this

chapter, or who advertises in a manner that indicates that the person is licensed as a broker or salesperson, without being licensed as prescribed by this chapter is guilty of a class 6 felony.”).

Analysis

Arizona law provides an exemption from licensing requirements for unlicensed persons who are employed by either a licensed person or an exempt person or entity, provided that certain statutory conditions are satisfied. This exemption provides:

Natural persons who are in the employ of an employing broker, of a person otherwise licensed under this chapter or of a person or entity exempt under this section, who are unlicensed and perform clerical, bookkeeping, accounting and other administrative and support duties, who are not engaged in any other acts requiring a license under this chapter and whose employment is not conditioned on or designed to perform duties requiring a license under this chapter.

A.R.S. § 32–2121(A)(9) (hereafter “(A)(9) exemption”).

Notably, the Legislature amended the (A)(9) exemption in 2017, after this opinion request was made. The prior version exempted only natural persons “who [we]re in the employ of an employing broker” or “of a person or entity exempt under this section.” See A.R.S. § 32-2121(A)(9) (2016). The amended statute broadened the exemption to encompass unlicensed persons who are in the employ “of a person otherwise licensed under this chapter” as reflected above. This Opinion interprets the amended 2017 statute.¹

In interpreting statutes, courts first look at the plain language of the statute. *Farris v. Advantage Capital Corp.*, 217 Ariz. 1, 2, ¶ 5 (2007); see also *Mousa*, 222 Ariz. at 586, ¶ 21 (holding that real estate consultant’s services qualified as activities of a real estate broker “under

¹ The opinion request notes that the Arizona Department of Real Estate relies on the licensing and exemption statutes and “Substantive Policy Statement No. 2005.04” in determining “the duties that can be completed by an unlicensed assistant.” This Substantive Policy Statement, entitled “Unlicensed Assistants,” was revised in 2017 and renumbered as No. 2017.01. It sets forth additional duties that an unlicensed assistant may perform “under the direct supervision of an Arizona licensee.” “A substantive policy statement is advisory only” and “informs the general public of an agency’s current approach to, or opinion of, the requirements of ... [a] state statute[.]” A.R.S. § 41-1001(22) (2014). Consequently, this opinion takes no position on Substantive Policy Statement No. 2017.01.

the plain meaning” of the statutory definition of “real estate broker” and reasoning that licensing statutes “do not exempt a ‘middleman’ whose conduct otherwise falls within the tasks that one must have a real estate license to perform”). Courts “seek to harmonize statutory provisions and avoid interpretations that result in contradictory provisions.” *Premier Physicians Grp., PLLC v. Navarro*, 240 Ariz. 193, 195, ¶ 9 (2016).

Accordingly, the plain language of the (A)(9) exemption affords an unlicensed person an exemption from licensing requirements if the person: (1) is “in the employ of an employing broker [or] a person otherwise licensed under this chapter or of a person or entity exempt under [A.R.S. § 32–2121(A)]”; (2) “perform[s] clerical, bookkeeping, accounting and other administrative and support duties”; (3) is not “engaged in any other acts requiring a license”; and (4) has not been employed to “perform duties requiring a license” under Arizona law. A.R.S. § 32–2121(A)(9).

In determining whether certain conduct requires a real estate license, Arizona courts “look at the actual tasks [the person] perform[s], not [the person’s] characterization of them.” *Mousa*, 222 Ariz. at 586, ¶ 18. Application of these principles to the activities described in the questions presented demonstrates that the persons engaged in such activities are exempt from licensing requirements, as discussed below.

A. Property maintenance activities.

The first question relates to activities performed by “[p]ersons located in a call center outside of Arizona,” which consist of “fielding in-bound calls” from residential renters regarding property maintenance issues and requested repairs, collecting personal information associated with those calls, submitting work orders to property managers, and contacting designated repair persons or companies in situations described as emergencies.

The first statutory requirement for the (A)(9) exemption—which requires the unlicensed persons to be “in the employ of an employing broker [or] a person otherwise licensed under this chapter or of a person or entity exempt under [A.R.S. § 32–2121(A)]”—appears to be satisfied because the question suggests the unlicensed persons are employed by “Arizona property owners” or “property management companies.” Such employers must be either licensed real estate brokers or exempt from licensing requirements. *See* A.R.S. §§ 32–2121(A)(1) (providing exemption for a natural person or company that rents or manages the person’s or entity’s own property); 32–2121(A)(6) (providing exemption for natural persons “who are acting as residential leasing agents or on-site managers of residential rental property”); 32–2125 (describing requirements for issuing broker’s licenses to entities); 32–2155(D) (authorizing licensed brokers to “employ [unlicensed] residential leasing agents or managers of residential rental properties”).

The second requirement—that the unlicensed persons “perform clerical, bookkeeping, accounting and other administrative and support duties”—is also satisfied. Because these terms are not further defined by statute, they are given their ordinary meanings. *See Circle K Stores, Inc. v. Apache Cty.*, 199 Ariz. 402, 408, ¶ 18 (Ct. App. 2001) (“By declining to define a statutory term, the [L]egislature generally intends to give the ordinary meaning to the word.”); A.R.S. § 1-213 (“Words and phrases shall be construed according to the common and approved use of the language.”). “Clerical” is defined as “[c]oncerned with or relating to work in an office, especially routine documentation and administrative tasks.” *Oxford English Dictionary Online*, <https://en.oxforddictionaries.com/definition/clerical> (last visited Mar. 28, 2018); *see Simpson v. Owens*, 207 Ariz. 261, 273, ¶ 35 (Ct. App. 2004) (noting that courts may reference well-known and reputable dictionaries in construing statutes). In turn, “administrative” means “relating to

the running of a business, organization, etc.” *Oxford English Dictionary Online*, <https://en.oxforddictionaries.com/definition/administrative> (last visited Mar. 28, 2018). “Support” is defined as “[g]ive assistance to[.]” *Oxford English Dictionary Online*, <https://en.oxforddictionaries.com/definition/support> (last visited Mar. 28, 2018). Finally, “duties” is a term commonly understood in this context as “task[s] or action[s] that one is required to perform as part of one’s job.” *Oxford English Dictionary Online*, <https://en.oxforddictionaries.com/definition/duty> (last visited Mar. 28, 2018). Here, the persons fielding in-bound calls from residents in the call center outside of Arizona are performing duties that are clerical, administrative, and supportive in nature—*i.e.*, duties that assist Arizona property owners and property management companies with the day-to-day maintenance of residential rental property.

The third statutory requirement—that the persons are not “engaged in any other acts requiring a license”—is also satisfied. A.R.S. § 32–2121(A)(9); *see also* § 32–2101(48) (listing activities of a “real estate broker”). As noted above, a real estate broker’s activities include renting or offering to rent real estate, negotiating the rental of real estate, collecting rent, advertising the rental of real estate, and assisting or directing in the negotiation of any transaction calculated to result in the rental of real estate. *Id.* § 32–2101(48). Persons located in a call center communicating with renters about property maintenance issues are not engaging in activities of a real estate broker or any other acts requiring a license.

The fourth statutory requirement also appears to be satisfied, because the question presented does not suggest that the persons in the call center have been employed to “perform duties requiring a license” under Arizona law. A.R.S. § 32–2121(A)(9).

B. Communications with prospective renters.

Likewise, the unlicensed persons' activities in the second question presented qualify under the (A)(9) exemption. In this scenario, persons located in a call center outside of Arizona “field in-bound calls from potential renters of a property and answer basic questions about the property based on information provided by the owner or property management company” and confirm property details, which may include a “pre-determined range of prices.” Additionally, these persons may schedule appointments for callers to “visit the property and meet with a rental agent.”

Application of the foregoing analysis illustrates that the four statutory requirements are satisfied. First, this Opinion assumes that the unlicensed persons engaging in these activities within the call center are employed by a licensed person or by an exempt entity or person. *See* A.R.S. § 32-2121(A)(9). Second, the communications with prospective renters confirming property details and pre-arranged prices and scheduling appointments for prospective renters to meet with a rental agent, constitute “clerical” and “administrative and support duties,” because these activities assist Arizona property owners, rental agents, and property management companies with the day-to-day administration and operation of their businesses. *Id.*

Third, the call center persons are not “engaged in any other acts requiring a license” because they are merely sharing information with prospective renters (as opposed to negotiating with prospective renters). *Id.* Because this specific type of communication with prospective renters “[a]ssists ... in the procuring of prospects, calculated to result in the ... leasing or rental of real estate[,]” it could be argued that it is an activity requiring a real estate broker’s license under A.R.S. § 32–2101(48)(i). But the statutory language of the (A)(9) exemption contemporaneously authorizes unlicensed persons to engage in “clerical ... administrative and support duties” for

persons who are licensed or otherwise exempt from licensing requirements. As discussed above, the commonly understood meaning of “support” is to “[g]ive assistance to.” *Oxford English Dictionary Online*, <https://en.oxforddictionaries.com/definition/support> (last visited Mar. 28, 2018).

Although these statutes may appear to conflict because they both address activity that assists in the procuring of prospects intended to result in the rental of real estate, they can be harmonized. *See Chaparral Development v. RMED Int’l, Inc.*, 170 Ariz. 309, 313 (Ct. App. 1991) (“We must harmonize apparently conflicting language of different parts of the statute so as to give effect to both.”). Indeed, the introductory statement in the definitions section of the licensing statute explains that the definitions provided control “unless the context otherwise requires[.]” A.R.S. § 32–2101. The general definition listing this activity as one of a “real estate broker” can be harmonized with the (A)(9) exemption authorizing this conduct as a permissible non-licensed activity because the (A)(9) exemption only applies when an unlicensed person has satisfied all four statutory requirements. For example, an unlicensed person who is *not* employed by a licensed broker or by an exempt entity or person, as required to satisfy the first part of A.R.S. § 32–2121(A)(9), does not qualify for the (A)(9) exemption. Therefore, if such a person engages in activities that assist in the procuring of prospects intended to result in the rental of real estate—and does not qualify under any other statutory exemption in A.R.S. § 32–2121—such conduct would require a real estate license under A.R.S. § 32–2101(48)(i). *See Mousa*, 222 Ariz. at 585, ¶¶ 18–21 (concluding an unlicensed person who described himself as a “real estate consultant” was required to have a real estate license for “procuring prospects calculated to result in the sale of the [p]roperty” because the statutes “do not except a ‘middleman’ whose conduct otherwise falls within the tasks that one must have a real estate license to perform”). This

construction gives effect to both statutes and “protect[s] the public from unscrupulous and unqualified persons” in real estate transactions. *Mousa*, 222 Ariz. at 585, ¶ 17; *see also State v. Thomas*, 196 Ariz. 312, 315, ¶¶ 10–11 (Ct. App. 1999) (harmonizing a general provision with “a subsequently enacted, more specific provision relating only to persons placed on probation under the very limited circumstances outlined by the statute” and reasoning this interpretation furthered legislative intent).

Fourth, the question presented does not suggest that the unlicensed persons have been employed to “perform duties otherwise requiring a license” under Arizona law. A.R.S. § 32-2121(A)(9).

Conclusion

The unlicensed natural persons located in call centers outside of Arizona who are employed by licensed or exempt persons or entities to conduct property maintenance activities for residential renters and provide prospective residential renters with property information are exempt from licensing requirements, assuming they satisfy the foregoing conditions under A.R.S. § 32–2121(A)(9).

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