



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TOM HORNE ATTORNEY GENERAL</p> <p>June 8, 2011</p>	<p>No. I11-002 (R08-035)</p> <p>Re: Scope of Authority Under A.R.S. § 32-3612 With Respect to Appraisals of Nonfederally Related Transactions</p>
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To: Daniel Pietropaulo, Executive Director
Arizona Board of Appraisal

Question Presented

Does state law permit state certified and state licensed real estate appraisers to appraise real property in a nonfederally related transaction, regardless of the property's value or the transaction's complexity?

Summary Answer

Section 32-3612(C), Arizona Revised Statutes ("A.R.S."), authorizes both state certified and state licensed real estate appraisers to conduct appraisals of any real property that is not related to a federal transaction regardless of the value of the property or the complexity of the transaction, so long as the appraiser meets the applicable ethical and practice standards.¹

¹ All Arizona appraisers, whether licensed or certified, must complete an assignment in compliance with the Competency Rule, Ethics Rules and all Uniform Standards of Professional Appraisal Practice ("USPAP"), regardless of whether the transaction is federally related or nonfederally related. *See* A.R.S. § 32-3635; A.A.C. R4-46-401.

Background

In 1989, Congress enacted Public Law 101-73, the Financial Institutions Reform, Recovery and Enforcement Act (“the Act”) “to reform, recapitalize, and consolidate the Federal deposit insurance system to enhance the regulatory and enforcement powers of Federal financial institutions’ regulatory agencies.” H.R. Rep. No. 101-222, at 1 (Aug. 4, 1989). Title XI of the Act (sections 1101 through 1122) comprises the Real Estate Appraisal Reform Amendments.

Section 1101 of Title XI states as follows:

The purpose of this title is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, § 1101, 103 Stat. 183, 511 (1989).

In section 1119(a)(1) of Title XI, Congress established that “[n]ot later than July 1, 1991, all appraisals performed in connection with federally related transactions shall be performed only by individuals certified or licensed in accordance with the requirements of [Title XI].”² *Id.* § 1119, 103 Stat. 183, 516. Section 1113 of Title XI established which federally related real estate transactions would require the services of a state certified appraiser, and section 1114 established that “[a]ll federally related transactions not requiring the services of a State certified appraiser shall be performed by either a State certified or licensed appraiser.” *Id.* § 1114, 103 Stat. 183, 502.

² Under Title XI, a federally related transaction “means any real estate-related financial transaction which (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and (B) requires the services of an appraiser.” *Id.* § 1121(f), 103 Stat. 183, 517; *see also* A.R.S. § 32-3601(13).

Prior to the Act's enactment, Arizona did not regulate real estate appraisers. In response to the Act's federal mandate regarding who would be permitted to appraise real property in federally related real estate transactions, the Legislature established the State Board of Appraisal ("Board") for the purpose of "implement[ing] the provisions of title XI of the congressional financial institution reform, recovery and enforcement act of 1989." 1990 Ariz. Sess. Laws, ch. 313, § 1 (H.B. 2333).

Analysis

Section 32-3612, which establishes the parameters of the Board's certification and licensure classifications, states as follows:

- A. The following classifications of state licensed real estate appraisers and state certified real estate appraisers are established.
 - 1. State certified general real estate appraisers consisting of those persons meeting the requirements for certification relating to the appraisal or appraisal review of all types of real property.
 - 2. State certified residential real estate appraisers consisting of those persons meeting the requirements for certification relating to the appraisal or appraisal review of one to four residential units without regard to value or complexity.
 - 3. State licensed real estate appraisers consisting of those persons meeting the requirements for licensing relating to appraisal or appraisal review of noncomplex one to four residential units having a value of less than one million dollars and complex one to four residential units having a value of less than two hundred fifty thousand dollars.

- B. Notwithstanding § 32-3602:³
 - 1. All federally related transactions involving property with a value equal to or greater than one million dollars and complex one to four family residential real property shall be appraised by a state certified appraiser.

³ The Board's license and certificate exemption statute.

2. All federally related transactions not requiring a state certified appraiser may be appraised by either a state certified or state licensed appraiser.

C. All nonfederally related transactions may be appraised either by a state certified or a state licensed appraiser.

Subsection (A) of A.R.S. § 32-3612 establishes the classifications and practice parameters of the state certified and licensed appraisers required under the Act. Subsection (B) of the statute mirrors the federal requirements of sections 1113 and 1114 of Title XI by setting forth the practice parameters for appraisals involving federally related transactions. In subsection (C), which has no counterpart in Title XI, the Legislature established who may conduct appraisals in Arizona for nonfederally related real property transactions. The Board's historical interpretation of subsection (C) has been that either a state licensed or state certified appraiser may appraise real property in nonfederally related transactions, so long as they do so within the parameters of their state classification as set forth in subsection (A). The Board has relied on the license and certification classifications established in A.R.S. § 32-3612(A) and on A.A.C. R4-46-201(B) to impose disciplinary sanctions against certified and licensed appraisers who performed appraisals in nonfederally related transactions of real property that fell outside their statutory license or certificate classification.⁴

In construing statutes, the goal is to fulfill the intent of the Legislature. *State v. Skiba*, 199 Ariz. 539, ¶8, 541, 19 P.3d 1255, 1257 (App. 2001). To do so, a statute's context and

⁴ A.A.C. R4-46-201(B) states as follows:

- B. Regardless of whether a transaction is federally related:
1. A State Licensed Residential Appraiser is limited to the scope of practice in A.R.S. § 32-3612(A)(3), and
 2. A State Certified Residential Appraiser is limited to the scope of practice in A.R.S. § 32-3612(A)(2).

overall place in the statutory scheme is considered. *Oaks v. McQuiller*, 191 Ariz. 333, 334, ¶5, 955 P.2d 971, 972 (App. 1998). Where the statutory language is plain and unambiguous, the statute is followed as written. *State ex rel. Thomas v. Duncan*, 216 Ariz. 260, 262, ¶7, 165 P.3d 238, 240 (App. 2007). A statute is read to give “each word, phrase, clause, and sentence . . . meaning so that no part of the statute will be void, inert, redundant, or trivial.” *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 204, ¶17, 150 P.3d 773, 777 (App. 2007) (internal quotations omitted).

Subsection (C) of A.R.S. § 32-3612 provides that: “All nonfederally related transactions may be appraised either by a state certified or a state licensed appraiser.” The plain, unambiguous language of the subsection indicates that either state certified or state licensed appraisers may appraise nonfederally related real property transactions, regardless of value or complexity. This interpretation gives meaning to subsection (C). Conversely, reading subsection (C) to say that state certified or state licensed appraisers may appraise nonfederally related transactions only within the parameters of their subsection (A) state classifications renders subsection (C) redundant and, therefore, meaningless. Subsection (A) already provides for and limits the scope of practice for state certified and state licensed appraisers. Thus, there would be no need for subsection (C) because whether a transaction is federally or nonfederally related, the license and certificate restrictions set forth in subsection (A) would control.

Further clarification of a statute’s meaning may be found by looking at the Legislature’s intent in enacting the provision. *See Dugan v. Fujitsu Bus. Comm’ns Sys., Inc.*, 188 Ariz. 516, 519, 937 P.2d 706, 709 (App. 1997) (stating that if a statute’s language is unclear, courts “may look to other indicia of legislative intent, including subject matter, consequences, and the reason and spirit of the statute”). The House Bill Summary for HB 2333 states that: “State licensed real estate appraisers shall only appraise one to four [unit] family residential real property valued at

less than \$1 million and not involving complex one to four family residential real property [units] *and all nonfederally related property.*” Ariz. H.R. Bill Summary for HB 2333m 39th Leg., 2d Reg. Sess., at 2 (Mar. 6, 1990) (emphasis added). Accordingly, as originally proposed, HB 2333 allowed state licensed appraisers to appraise all nonfederally related transactions without regard to value or complexity. This is consistent with and lends support to the interpretation of A.R.S. § 32-3612 as stated above. Prior to its final passage, the Legislature amended HB 2333 to include state certified appraisers, who have higher qualifications than state licensed appraisers, as also having the authority to appraise real property in any nonfederally related transaction.

Additionally, a February 16, 1990, House of Representatives Memo to the Tourism, Professional and Occupations Subcommittee explains that the purpose of HB 2333 “is to provide that federal and public policy interests in real estate-related transactions are protected by requiring that real estate appraisals in federally related transactions are written, and are performed by people whose competency has been demonstrated and who are subject to effective supervision.” Ariz. H.R. Memo to the Tourism, Professions and Occupations Subcommittee on HB 2333, 39th Leg., 2d Reg. Sess., at 1 (Feb. 16, 1990). This statement reinforces the conclusion that in establishing the Board’s appraiser classifications in subsection (A), the Legislature intended to meet the requirements Title XI placed on federally related transactions and that it set the scope of practice for state certified and state licensed appraisers in subsection (B) to comply with the Act. In enacting subsection (C), the Legislature did not mandate those same restrictions for nonfederally related real property transactions.

Under A.R.S. § 32-3612(C), both state certified and state licensed appraisers may perform appraisals in any nonfederally related transaction regardless of value or complexity.

Conclusion

Section 32-3612(C) allows either a state certified or state licensed appraiser to appraise real property in the State of Arizona without regard to value or complexity for any nonfederally related transaction.

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