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STATE OF NEBRASKA
OFFICIAL
MAR 3 1992
DEPT. OF JUSTICE

DATE: February 28, 1992

SUBJECT: Real Estate Appraiser Board's Obligation to Issue Certificate of Registration Under the Nebraska Professional Corporation Act

REQUESTED BY: Marilyn Hasselbalch, Director
Nebraska Real Estate Appraiser Board

WRITTEN BY: Don Stenberg, Attorney General
Jan E. Rempe, Assistant Attorney General

You have asked us to advise you regarding whether the Real Estate Appraiser Board (Board) is obligated to issue certificates of registration to real estate appraisers who wish to form a professional corporation under the Nebraska Professional Corporation Act (NPCA), Neb. Rev. Stat. §§ 21-2201 to 21-2222 (Reissue 1987). Based on the following analysis, we conclude that the Board is required to provide such certificates of registration.

The NPCA allows individuals who reside in Nebraska and are licensed or otherwise legally authorized to render a professional service to form professional corporations. Neb. Rev. Stat. § 21-2204(1) (Reissue 1987). Under the NPCA, a professional corporation must be organized for the specific purpose of rendering professional service and must have as its shareholders only individuals who are licensed or legally authorized within the state to provide the same professional service as the corporation. Neb. Rev. Stat. § 21-2202(3) (Cum. Supp. 1990).

Neb. Rev. Stat. § 21-2216 (Reissue 1987) requires that before corporations formed under the NPCA open, operate, or maintain an establishment or do business, they must file with the Secretary of State "a certificate of registration from the regulating board of the particular profession for which the professional corporation is

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organized to do business." Neb. Rev. Stat. §§ 21-2216 and 21-2217 outline the procedure for obtaining a certificate of registration, the contents of a certificate, and the frequency with which professional corporations must apply to their regulating boards for a certificate.

To determine whether the Board is obligated to issue certificates of registration, as described in § 21-2216, to real estate appraisers who wish to form a professional corporation, it is necessary to analyze whether the NPCA applies to real estate appraisers. This analysis turns upon whether real estate appraisers offer "professional service" and whether the Board is a "regulating board" within the meaning of the NPCA.

A. "PROFESSIONAL SERVICE"

Section 21-2202(1) defines "professional service" as:

> any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which, except for the services of a real estate broker, prior to the passage of the act and by reason of law could not be performed by a corporation, including, but not limited to, personal services rendered by a certified public accountant, public accountant, dentist, osteopathic physician, physician and surgeon, veterinarian, real estate broker, associate real estate broker, real estate salesperson, or attorney at law.

Thus, real estate appraisal would fall under the definition of "professional service" if (1) a license or other legal authorization is required before real estate appraisal services may be rendered, and (2) real estate appraisal services could not be performed by a corporation prior to passage of the NPCA.

1. **License Requirement.**

The Nebraska Real Estate Appraiser Act provides that "it shall be unlawful for anyone to act as a real estate appraiser in this state without first registering or obtaining a license or certificate as provided in the Real Estate Appraiser Act." Neb. Rev. Stat. § 76-2220 (Supp. 1991). The Act exempts certain individuals from this general rule. Neb. Rev. Stat. § 76-2221 (Supp. 1991).

Because individuals not exempt under § 76-2221 must obtain a registration, license, or certificate before rendering real estate appraisal services, the practice of real estate appraisal fits within the first part of the "professional service" definition in the NPCA.

2. **Services a Corporation Could Not Perform Before Passage of the NPCA.**

In the absence of statutes like the NPCA that allow licensed professionals to form corporations for the practice of that profession, the general rule has been that corporations cannot practice a profession. State Electro-Medical Institute v. State, 74 Neb. 40, 103 N.W. 1078 (1905); H. Henn & J. Alexander, Laws of Corporations § 77 at 139 (3d ed. 1983); 18 Am. Jur. 2d Corporations § 37 (1985); 18B Am. Jur. 2d Corporations §2120 (1985).

In State Electro-Medical Institute, supra, the Nebraska Supreme Court explained that a corporate entity is incapable of practicing medicine, which involves judging the nature, character, and symptoms of disease; determining proper remedies; and prescribing those remedies. "Members of the corporation, or persons in its employ, might do these things, but the corporation itself is incapable to do them. The qualification of a medical practitioner is personal to himself." Id. at 1079. Similarly, real estate appraisal involves judgment and determination of the value of real estate--a personal service which a corporate entity could not itself provide before passage of the NPCA.

Although real estate appraisal is not expressly listed in § 21-2202(1) as a type of personal service which could not be performed by a corporation prior to enactment of the NPCA, real estate appraisal is analogous to other personal services listed in the statute such as real estate brokerage and real estate sales. Further, the statute provides that the personal services encompassed by § 21-2202(1) are not exclusive--that is, the services "includ[e], but [are] not limited to" the specific personal services listed.

Where general words (like "including, but not limited to") are followed by specific words (like the listing of personal services in § 21-2202(1)), the general words will be construed to mean things of the same general kind as those enumerated. Hamilton v. City of Urbandale, 291 N.W.2d 15 (Iowa 1980); Belanger v. Warren Consol. School Dist., 432 Mich. 575, 443 N.W.2d 372 (1989); Grievance of O'Neill, 347 N.W.2d 887 (S.D. 1984). This rule of statutory construction gives "'effect to both the particular and the general words, by treating the particular words as indicating

the class, and the general words as extending the provisions of the statute to everything embraced in that class, though not specifically named by particular words.'" Belanger, supra, at 583, 443 N.W.2d at 376.

Therefore, because real estate appraisal is a type of personal service that could not be performed by a corporation before passage of the NPCA and because real estate appraisal is similar in nature to real estate brokerage and real estate sales, both listed in § 21-2202(1), appraisal services would meet the second part of the "professional service" definition in the NPCA.

B. "REGULATING BOARD"

Having determined that real estate appraisal services are "professional services" within the meaning of the NPCA, the only remaining inquiry in order to determine the NPCA's applicability to real estate appraisers is whether the Real Estate Appraiser Board is a "regulating board" within the meaning of NPCA.

Section 21-2202(2) defines "regulating board" as "a board which is charged with the licensing and regulating of the practice or profession which the professional corporation is organized to render." The Real Estate Appraiser Act clearly makes the Board responsible for the licensing and regulation of real estate appraisers. Neb. Rev. Stat. § 76-2223 (Supp. 1991). Therefore, the Real Estate Appraiser Board is a "regulating board," as defined by the NPCA.

C. CONCLUSION

For the above reasons, we conclude that the NPCA applies to real estate appraisers. Further, the Real Estate Appraiser Act does not prohibit the applicability of the NPCA to real estate appraisers. See Neb. Rev. Stat. § 76-2243 (Supp. 1991).

Because real estate appraisers may form professional corporations for the purpose of rendering such appraisal services, the Real Estate Appraiser Board must provide certificates of registration, described in §§ 21-2216 and 21-2217, to appraisers who are covered by the Real Estate Appraiser Act and wish to form a professional corporation.

Sincerely,

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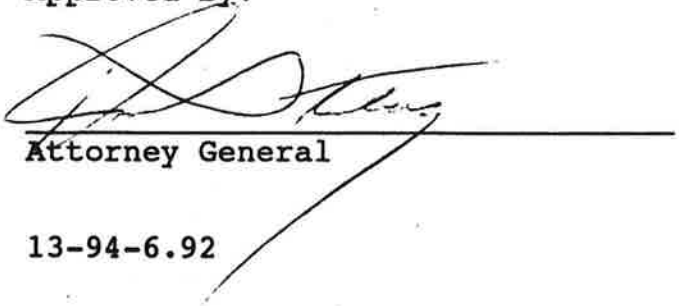
Approved By:



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