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NO.
STATE OF NEBRASKA
OFFICIAL
AUG 4 1992
DEPT. OF JUSTICE

DATE: July 30, 1992

SUBJECT: Applicability of Neb. Rev. Stat. § 76-2233(2) (Supp. 1991) to Nonresidents

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

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

Neb. Rev. Stat. § 76-2233(1) (Supp. 1991) provides that a "nonresident may register or obtain a license or certificate as a real estate appraiser" by meeting three requirements. Following this phrase, the statute describes these requirements and refers to the "nonresident" mentioned above as an "applicant." See § 76-2233(1)(c) (one requirement is submitting an irrevocable consent regarding service of process in case personal service cannot be made "upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities as a real estate appraiser in this state") (emphasis added).

The next section of this statute, § 76-2233(2), allows "an applicant" who is authorized to appraise real estate in another state, territory, or the District of Columbia to become, by reciprocity, a registered, licensed, or certified real estate appraiser in Nebraska under certain circumstances. Section 76-2233(2) then lists the requirements "the applicant" must meet in order to qualify for reciprocity.

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You have requested our opinion regarding whether § 76-2233(2) applies only to nonresidents. You are concerned that, if § 76-2233(2) is not limited to nonresidents, an uncertified appraiser residing in Nebraska could become certified in Iowa, and then claim reciprocity in Nebraska. As noted above, § 76-2233(1) uses the terms "nonresident" and "applicant" interchangeably, while § 76-2233(2) refers only to "applicants." Therefore, the structure of, and word usage within, § 76-2233 create ambiguity concerning the meaning of "applicant" in § 76-2233(2).

When a statute is ambiguous, and therefore open to construction, the principal objective is to ascertain legislative intent and give effect to that intent. Pump & Pantry, Inc. v. City of Grand Island, 233 Neb. 191, 444 N.W.2d 312 (1989); Spence v. Terry, 215 Neb. 810, 340 N.W.2d 884 (1983); State ex rel. Bouc v. School Dist. of Lincoln, 211 Neb. 731, 320 N.W.2d 472 (1982). To determine the intent of the Legislature, a court may examine the legislative history of the act in question. Pump & Pantry, supra; Spence, supra; Bouc, supra.

In its most recent amendment to § 76-2233, the Legislature clarified the language in § 76-2233(1); added to § 76-2233(2) the requirements which must be met in order to qualify for reciprocal registration, licensure, or certification; and moved provisions pertaining to temporary registration, licensure, and certification from § 76-2233 to another statutory section. Laws 1991, LB 203, sec. 35 & 36. The clarification of § 76-2233(1) and the additions to § 76-2233(2) were amendments proposed by the Committee on Banking, Commerce and Insurance. See Committee Amendments to LB 203: AM0383, 92nd Legis., 1st Sess. 20-22. These committee amendments were incorporated, almost verbatim, into the final version of LB 203. Compare Committee Amendments to LB 203: AM0383, 92nd Legis., 1st Sess. 20-22 with Laws 1991, LB 203, sec. 35. See also Legislative Journal, 92nd Legis., 1st Sess., vol. 1, at 1477 (Apr. 3, 1991) (adoption of committee amendments).

Senator Landis, Chairperson of the Committee on Banking, Commerce and Insurance, explained to the Legislature the committee amendment that added to § 76-2233(2) the requirements which must be met in order to qualify for reciprocal registration, licensure, or certification as a real estate appraiser in Nebraska. "[W]ith respect to nonresident appraisers they could come into Nebraska, they could do their work so long as there was reciprocal registration[,] licensure[,] or certification available for our appraisers in other states." Floor Debate on LB 203, 92nd Legis., 1st Sess. 2673-2675 (Apr. 3, 1991) (emphasis added). Further, the Committee Statement on LB 203 explained this amendment to § 76-2233(2) as providing "requirements for nonresidents to qualify for 'reciprocal' registration, licensure, or certification." Statement

from Committee on Banking, Commerce and Insurance on LB 203, 92nd Legis., 1st Sess. (1991) (emphasis added).

The legislative history on § 76-2233 clearly demonstrates the Legislature's intent to limit the reciprocity option provided in § 76-2233(2) to nonresidents. In order to give effect to that intent, we must conclude that the references in § 76-2233(2) to "applicants" mean nonresident applicants. This conclusion is consistent with the interchangeable use of "nonresident" and "applicant" in § 76-2233(1). Therefore, it does not appear that under § 76-2233(2) a person residing in Nebraska who is not a registered, licensed, or certified appraiser could become registered, licensed, or certified in Iowa, and then claim reciprocity in Nebraska, the state of residence.

Sincerely,

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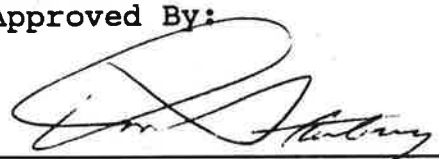
Approved By:



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