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ATTORNEY GENERAL

ATTORNEY GENERAL OPINION  
2022-6

The Honorable Ajay Pittman  
Oklahoma House of Representatives, District 99  
2300 N. Lincoln Blvd., Room 544  
Oklahoma City, OK 73105

November 16, 2022

Dear Representative Pittman:

This office has received your request for an official Attorney General Opinion addressing the following question:

**Does Oklahoma law allow a company (via its employees) to sell its own real estate without having to obtain a real estate license (i.e., is there an exemption for this type of transaction/person)?**

I.  
BACKGROUND

A business entity, such as a corporation or limited liability company, is an artificial person created by law. *Kenkel v. Parker*, 2015 OK 81, ¶ 12, 362 P.3d 1145, 1148 (“A corporation is an artificial person, a creature of statutory law.”) (footnotes omitted); 18 O.S.2001(12) (defining a “[l]imited liability company” as an entity formed under Oklahoma law). As legally created artificial beings, business entities act by and through natural persons like boards of directors, officers, or employees. *Tyree v. Cornman*, 2019 OK CIV APP 66, ¶ 13, 453 P.3d 497 (“The only way a corporation can act is through its officers, directors and employees.”) (quoting *Seitsinger v. Dockum Pontiac Inc.*, 1995 OK 29, ¶ 10, 894 P.2d 1077, 1080). See also 18 O.S.2021, § 1022(D) (requiring every corporation formed under Oklahoma law or qualified to operate in Oklahoma to “provide to its registered agent, . . . the name, business address and business telephone number of a natural person who is an officer, director, employee or designated agent of the corporation, who is then authorized to receive communications from the registered agent.”).

II.  
DISCUSSION

You ask whether a company (via its employees<sup>1</sup>) is authorized to sell real estate owned by the company. Based on further communications with you, we have determined that you are asking

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<sup>1</sup> This question presumes that the company employee(s) involved in the transaction does not possess an Oklahoma real estate license.

whether an employee of a corporation or a limited liability company (“LLC”) is permitted to sell the employing entity’s real estate without possessing an Oklahoma real estate license. Your question arises from a common practice of homebuilders, organized as a corporation or an LLC, selling real estate owned by the corporation or LLC.

Real estate licensure in Oklahoma is governed by the Oklahoma Real Estate License Code (the “License Code”), 59 O.S.2021, §§ 858-101 through 858-605. Unless otherwise exempt, a person<sup>2</sup> must hold an Oklahoma real estate license before acting as a real estate licensee or holding himself or herself out as a licensee.<sup>3</sup> 59 O.S.2021, § 858-301.

Central to our analysis is the following real estate licensure exemption:

It shall be unlawful for any person to act as a real estate licensee, or to hold himself or herself out as such, unless the person shall have been licensed to do so under the Oklahoma Real Estate License Code . . . However, nothing in this section shall:

**[P]revent any person, partnership, trust, association or corporation, or the partners, officers or employees of any partnership, trustees or beneficiaries of any trust, association or corporation, from acquiring real estate for its own use, nor shall anything in this section prevent any person, partnership, trust, association or corporation, or the partners, officers or employees of any partnership, trustees or beneficiaries of any trust, association or corporation, as owner, lessor or lessee of real estate, from selling, renting, leasing, exchanging, or offering to sell, rent, lease or exchange, any real estate so owned or leased, or from performing any acts with respect to such real estate when such acts are performed in the regular course of, or as an incident to, the management, ownership or sales of such real estate and the investment therein . . . .**

59 O.S.2021, § 858-301-(1) (emphasis added).

This provision addresses two key points relevant to our analysis: (1) who is exempt from the licensure requirement, and (2) when is an exempt entity or person authorized to act without an Oklahoma real estate license.

As to the first point, the licensing exemption outlined in Section 858-301 expressly applies to “employees of any partnership.” However, the grammatical arrangement of the provision

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<sup>2</sup> A person is defined as “every individual, partnership, association, or corporation, foreign or domestic[.]” 59 O.S.2021, § 858-102(13).

<sup>3</sup> A real estate licensee is defined as “any person who performs any act, acts or transactions set out in the definition of a broker and licensed under the Oklahoma Real Estate Code.” 59 O.S.2021, § 858-102(11).

renders it unclear whether the exemption extends to employees of an “association or corporation.” To resolve this ambiguity, we must resort to the canons of statutory construction, including the last antecedent rule, which provides:

By what is known as the doctrine of the ‘last antecedent,’ relative and qualifying words, phrases, and clauses are to be applied to the words or phrases immediately preceding, and are not to be construed as extending to or including others more remote. This rule is, however, merely an aid to construction and will not be adhered to where extension to a more remote antecedent is clearly required by consideration of the entire act. Slight indication of legislative intent so to extend the relative term is sufficient. Where several words are followed by a clause as much applicable to the first and other words as to the last, the clause should be read as applicable to all.

*Bd. of Trs. of Firemen’s Relief & Pension Fund v. Templeton*, 1939 OK 53, 86 P.2d 1000, 1003–04.

Applying the latter part of the last antecedent rule to the text at issue, the isolated mention of “association or corporation” should be read to apply to the class of employees exempt from licensing requirements. Failing to extend the class of exempt employees to include employees of an “association or corporation” renders the isolated terms “association or corporation” meaningless. *Estes v. ConocoPhillips Co.*, 2008 OK 21, ¶ 16, 184 P.3d 518, 525 (“A statute will be given a construction, if possible, which renders every word operative, rather than one which makes some words idle and meaningless.”). This construction is also consistent with the introductory clause of Section 858-301, which outlines the general licensure requirement for “employees of any partnership, trust, association or corporation,” unless otherwise exempt. 59 O.S.2021, § 858-301. Thus, under the rules of statutory construction, employees of a partnership, association, or corporation selling or exchanging property owned by the entity are exempt from the general licensing requirement in certain circumstances.

Your question, however, concerns corporations, LLCs, and their employees. Yet the text of Section 858-301 only exempts employees of a partnership, corporation, or association from the licensing requirement and does not reference LLCs. Indeed, the License Code does not once reference LLCs. Nevertheless, where a statute is silent as to an LLC but addresses other business entities, the Oklahoma Court of Civil Appeals has read LLCs into the otherwise silent statute where such an interpretation was reasonable and consistent with the Legislature’s intent. *See Meyer v. Okla. Alcoholic Beverage Laws Enforcement Comm’n*, 890 P.2d 1361, 1362-64 (Okla. Ct. App. 1995) (construing state constitutional provision prohibiting corporations, business trusts, and secret partnerships from obtaining a liquor license to include LLCs because an LLC “has as its most important feature the limitation of liability[,] . . . a shield from the very responsibility and accountability that the constitutional provisions . . . sought to impose”).

Here, it is reasonable and consistent with legislative intent to read LLCs into the exemption language of Section 858-301. Based on the language of Section 858-301, the Legislature intended to exempt from the licensure requirement any person or business entity that owns the property

which is the subject of a transaction. *See* 2006 OK AG 1, ¶ 5. (“Under the unambiguous language of [Section 858-301], . . . a person may sell his or her own real estate.”).

Broadly construing the exemption comports with the well-recognized principle “that absent an exclusive right granted to a broker to sell real property, a property owner has the right to sell property independently of a broker.” *Id.* (citing *Kennedy & Kennedy v. Vance*, 202 P.2d 214, 214-15). The same principle applies here. LLCs are authorized to own real property, and thus, the LLC can sell the property. 18 O.S.2021, § 2003(4)-(5) (authorizing LLCs to “sell, convey, lease, transfer, mortgage, pledge and otherwise dispose of all or any of its property” and “acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located.”). Therefore, although an LLC is not expressly exempted in Section 858-301, it is reasonable to read the provision as implicitly exempting LLCs from the licensure requirement.

Additionally, when we examine the Oklahoma Real Estate Commission’s rules regarding the licensing procedures and requirements of a partnership, corporation, and association, we observe that “[a] limited liability company shall be considered as an association.” OAC 605:10-7-8(e). Thus, for purposes of Oklahoma real estate law, it is reasonable to construe Section 858-301 to include an LLC, and employees of an LLC, being considered employees of an association, as exempt from the licensure requirement.

The licensure exemption, however, is not boundless. As indicated above, Section 858-301(1) addresses two points: (1) who is exempt from the licensure requirement, and (2) when is an exempt entity or person authorized to act without an Oklahoma real estate license.

As to the second point, entities and their employees are only exempt from the real estate licensure requirement when they are: (1) acquiring real estate for use by the partnership, association, or corporation; (2) selling, exchanging, or offering to sell or exchange, real estate owned by the partnership, association, or corporation; or (3) “performing any acts with respect to such real estate when such acts are performed in the regular course of, or as an incident to, the . . . sales of such real estate and the investment therein . . . .” 59 O.S.2021, § 858-301(1). Beyond these circumstances, employees who do not hold an Oklahoma real estate license are not authorized to sell real estate owned by any person or entity other than his or her employer or perform other activities for which such license is required on behalf of another entity, unless another exemption applies. *See* 59 O.S.2021, § 858-301.

**It is, therefore, the official Opinion of the Attorney General that:**

**Employees of a partnership, corporation, or association (including a limited liability company) are not required to hold an Oklahoma real estate license to engage, as an employee of the owning entity, in the activities enumerated in 59 O.S.2021, § 858-301(1).**



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