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2013 President

Dale A. Stinton
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GOVERNMENT AFFAIRS DIVISION

Jerry Giovaniello, Senior Vice President
Gary Weaver, Vice President
Joe Ventrone, Vice President
Jamie Gregory, Deputy Chief Lobbyist

500 New Jersey Ave., NW
Washington, DC 20001-2020
Ph. 202-383-1194 Fax 202-3837580
www.REALTOR.org

September 18, 2013

The Honorable Carol Galante
Assistant Secretary for Housing - Federal Housing Commissioner
US Department of Housing and Urban Development
Washington, DC 20410

Dear Commissioner Galante:

I am writing on behalf of the one million members of the National Association of REALTORS® (NAR) to express our concern about a new policy in Mortgagee Letter 2013-23 restricting certain real estate agents from working on pre-foreclosure sales.

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

HUD's new pre-foreclosure policy states, "no party that is a signatory on the sales contract, including addenda, can serve in more than one capacity. To meet the PFS Addendum requirements, brokers and their agents may only represent the seller, but not both parties." In other words, HUD will no longer allow "dual agency" agreements in short sale transactions. Dual agency includes transactions in which two agents are working for the same broker and one agent represents the seller and the other agent represents the buyer. Dual agency also applies to a single agent who represents both the buyer and the seller in a short sale transaction. In either case, the dual representation must be disclosed in writing and accepted by both parties before the dual agency representation can commence.

NAR has been told that the policy was implemented because the HUD Inspector General detected fraud and abuse in the pre-foreclosure sales process; however, no statistics or reports were provided to NAR detailing short sale fraud by real estate agents. NAR takes fraud very seriously. Our members adhere to a strict code of ethics. As REALTORS®, our success is measured by the trust of our clients and customers and the esteem in which we're held by our colleagues and competitors. The National Association was founded with the goal of uniting the real estate profession through high standards to protect buyers and sellers. One-hundred years after its adoption, the Code of Ethics continues to be what sets us apart as REALTORS®. If there is evidence of fraud by our membership, we would like to be part of an effort to develop policies that effectively address these issues.



REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.

The FHA pre-foreclosure sales reports available on HUD Inspector General's website state that "pre-foreclosure sales are not meeting minimum net sales proceeds requirements." Restricting real estate agents from representing buyers or sellers in the short sales process is only going to make this problem worse. More homeowners are at risk of falling into foreclosure if they cannot find a real estate agent, especially one who is knowledgeable about the short sale process, to list their homes.

Some real estate brokers have hundreds of agents across multiple offices. If one of those offices chooses to list a short sale, under HUD's new policy, none of the other agents can bring a buyer to that property. Members have told me that they will no longer list short sales because they do not want to restrict agents from representing their buyers, many of whom have been loyal customers for years. This would have a significant impact on real estate brokerages. One broker noted that in his market center, there are over 2000 agents across multiple offices. His firm has buyer's agents and listing agents work on the same transaction in over 30% of their sales. In rural areas, where there are fewer real estate firms and agents to choose from, the percentages are even higher. Brokers have also expressed concerns that in order to list a short sale in the multiple listing service (MLS), they would have to provide a disclaimer that none of their agents could represent a buyer on that listing. This is potentially in non-compliance with certain MLS guidelines. This policy also conflicts with state license law in every state, except CO, that allows dual agency as long as it is disclosed in writing to the parties involved in the real estate transaction and accepted by them. Most state licensing laws have standards for how to function as a dual agent and there is a formal complaint process through the respective real estate commissions in the event of suspected fraud in a transaction.

NAR feels there are other ways that HUD could address concerns about the short sale process without restricting such a significant number of real estate agents from participating in pre-foreclosure transactions. For instance, Fannie Mae allows dual agency on short sales. To combat fraud and maximize profits, Fannie implemented a recent policy that requires all properties being considered for a standard short sale/HAFA II to be listed with an active status on an MLS for a minimum of five consecutive calendar days, including one weekend (i.e., Saturday and Sunday), prior to the servicer submitting the standard short sale/HAFA II recommendation to Fannie Mae for review, or approving the standard short sale/HAFA II. The property must be listed on the applicable MLS which covers the geographic area in which the property is located and a printed copy of the property's MLS listing must be kept on file. If a property is located in an area that is not covered by an MLS, the property must be advertised in a manner customary for that real estate market for at least five consecutive calendar days, including one weekend. Fannie Mae also provides an Anti-Fraud Partnership Training series as well as a contact number and email for anyone to report potential short sale fraud.

We strongly urge you to reconsider the implementation of this policy and consider other options that could more positively impact the pre-foreclosure program. Thank you for your time and consideration. If I may be of any assistance to you, please do not hesitate to contact me or our Associate Regulatory Policy Representative, Sarah Young, at (202) 383-1233 or scyung@realtors.org.

Sincerely,



Gary Thomas
2013 President, National
Association of REALTORS®