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# San Diego Housing Commission (SDHC)

## Administrative Regulation Regarding Real Estate Brokers

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# SDHC – Administrative Regulation Regarding Real Estate Brokers

## Introduction

- Housing Authority-approved SDHC Policy for Acquisition and/or Purchase of Real Estate (PO-RED-374.02)
  - Authorizes SDHC to contract or cooperate with brokers for property acquisitions and to create Administrative Regulations to implement the policy.
- November 12, 2021: SDHC Board approved a partial-year contract with Marcus & Millichap to provide on-call real estate broker services to SDHC (Report No. HCR21-106).
  - SDHC Board directed staff to return with an action that makes the practices set forth within the Marcus & Millichap agreement a requirement for all future SDHC real estate acquisition transactions.
  - After SDHC Board action, City Council President Sean Elo-Rivera requested that the new requirements for future SDHC real estate acquisition transactions also be presented to the Housing Authority for consideration.





# SDHC – Administrative Regulation Regarding Real Estate Brokers

## Introduction

- January 7, 2022: Staff presented the proposed Administrative Regulation to the SDHC Board
  - SDHC Board returned the item to staff for further revision to address issues discussed at the meeting:
    - Most prudent option for fraud protection that meets SDHC’s needs
    - Chain of title
    - Dual agency



# SDHC – Administrative Regulation Regarding Real Estate Brokers

## Updated Provisions

- **Dual Agency**

- No dual agency arrangement shall be permitted unless and until a full and complete legal analysis by SDHC’s General Counsel, the City Attorney’s Office and/or the City of San Diego Ethics Commission shows there would be no conflict of interest under all applicable law.
- Even if legally permissible, such arrangement will NOT be allowed unless and until SDHC’s President & CEO, or designee, SDHC’s Board, and, if it considers the matter, the Housing Authority each approve of the dual agency relationship.
- If a broker retained by SDHC also has listed a property, the retained broker shall not represent SDHC without the express written consent of SDHC’s President & CEO, SDHC’s Board, and the Housing Authority, if the Housing Authority considers the matter, and shall not be entitled to any commission from SDHC arising out of the transaction.
  - SDHC may either represent itself or may use an alternative broker



# SDHC – Administrative Regulation Regarding Real Estate Brokers

## Updated Provisions (Continued)

- **Conflict/Fraud Detection Software and Professional Services**
  - SDHC shall procure, pursuant to its Procurement Policy, software and professional services to analyze potential conflicts of interest involved in any purchase transaction in which SDHC is a purchaser or seller.
    - Examples of potential vendors: Companies determined to be most qualified to evaluate conflict and/or potential fraud, in connection with each transaction



# SDHC – Administrative Regulation Regarding Real Estate Brokers Additional Requirements

- The proposed Administrative Regulation includes, but is not limited to, the following requirements:
  - **Conflicts of Interest**
    - Compliance with All Applicable Conflicts Laws
    - Statement of Economic Interest Disclosure Form (Form 700)
    - Updated Conflict Attestations
    - Abstention in the Event of a Conflict
    - Confidential Information
  - **Qualifications**
    - Real estate agent licensed by the State
    - Exercise standard of care used by brokers in the City of San Diego





# SDHC – Administrative Regulation Regarding Real Estate Brokers Additional Requirements (Continued)

- **Retained Brokers**
  - Non-exclusive representation; SDHC may retain several brokers
  - SDHC will determine broker/agent entitled to compensation for the property acquisition.
- **Process Based on Property Status**
  - SDHC agreement with broker will include specified processes each for Listed Properties, Unlisted Properties and Off-Market Properties
- **Compensation**
  - Different compensation structures for Listed Properties, Unlisted Properties, and Off-Market Properties
  - Broker/agent who obtains fees from a seller or co-operating brokers will disclose all fees obtained and to be obtained prior to the execution of the purchase and sale agreement for each transaction.
- **Approval**
  - SDHC will seek appropriate approvals from the President and CEO, SDHC Board, or the Housing Authority, as required by the Procurement Policy and San Diego Municipal Code Section 98.0301 **prior to the payment of any funds under the agreement.**



# SDHC – Administrative Regulation Regarding Real Estate Brokers Staff Recommendations

## **That the SDHC Board of Commissioners recommend that the Housing Authority:**

- 1) Approve the proposed SDHC Administrative Regulation regarding Retention of Real Estate Brokers and Operating Procedures for Brokers;
- 2) Authorize SDHC's President & Chief Executive Officer (President & CEO), or designee, to execute all documents and instruments that are necessary and/or appropriate to implement these approvals, in a form and format approved by General Counsel, and to take such actions necessary and/or appropriate to implement these approvals; and
- 3) Approve a resolution to forward the proposed Administrative Regulation regarding Retention of Real Estate Brokers and Operating Procedures for Brokers to the Housing Authority for consideration pursuant to San Diego Municipal Code 98.0301(e)(2)(A).





## Questions & Comments

