



REPORT TO THE HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

DATE ISSUED: January 31, 2022

REPORT NO: HAR22-001

ATTENTION: Chair and Members of the Housing Authority of the City of San Diego
For the Agenda of March 15, 2022

SUBJECT: Approval of a San Diego Housing Commission Administrative Regulation Regarding Retention of Real Estate Brokers, Operating Procedures for Brokers, and Peer or Desk Review of Appraisals

COUNCIL DISTRICT: Citywide

REQUESTED ACTION

Approve the proposed San Diego Housing Commission Administrative Regulation regarding Retention of Real Estate Brokers, Operating Procedures for Brokers, and Peer or Desk Review of Appraisals.

STAFF RECOMMENDATION

That the Housing Authority of the City of San Diego (Housing Authority) take the following actions:

- 1) Authorize the San Diego Housing Commission (Housing Commission) to approve the Housing Commission Administrative Regulation regarding Retention of Real Estate Brokers; Operating Procedures for Brokers; and Peer or Desk Review of Appraisals, (Attachment 1), which is attached to the proposed Housing Authority resolution; and
- 2) Authorize the Housing Commission's President & Chief Executive Officer (President & CEO), or designee, to alter the Housing Commission Administrative Regulation regarding Retention of Real Estate Brokers; Operating Procedures for Brokers; and Peer or Desk Review of Appraisals only to correct a typographical or clerical error or omission, with the written approval and concurrence of Housing Commission General Counsel, without further action by the Housing Commission Board or the Housing Authority. Housing Commission staff will notify the Housing Authority and the City Attorney's Office about any subsequent amendments or modifications to the Housing Commission Administrative Regulation regarding Retention of Real Estate Brokers; Operating Procedures for Brokers; and Peer or Desk Review of Appraisals.

SUMMARY

Housing Commission Policy PO-RED-374.02 (Attachment 2), "Policy for Acquisition and or Purchase of Real Estate," authorizes the Housing Commission to contract or cooperate with brokers for property acquisitions and to create Administrative Regulations to implement the policy. The Housing Authority approved the policy on March 24, 2009 (Report No. HAR09-016; Resolution No. HA-1410). The Housing Authority approved revisions to the policy, including renumbering it as PO-RED-374.02 on November 15, 2016 (Report No. HAR16-029; Resolution No. HA-1705) to comply with current federal, state, local laws and/or current Housing Commission practice and as a result of the amendment to San

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Diego Municipal Code section 98.0301, which the City Council approved October 18, 2016 (Agenda Item No. 330) and November 15, 2016 (Agenda Item No. 63; Ordinance No. O-20746).

On November 12, 2021, the Housing Commission Board of Commissioners (Board) approved a partial-year contract with Marcus & Millichap to provide on-call real estate broker services to the Housing Commission, as described in Report No. HCR21-106. On a motion by Commissioner Eugene “Mitch” Mitchell, seconded by Vice Chair Ryan Clumpner and passed 4-0, the Housing Commission Board also directed Housing Commission staff to return to the Housing Commission Board with an action that makes the practices set forth within the Marcus & Millichap agreement a requirement for all future Housing Commission real estate acquisition transactions. The Housing Commission Board’s November 12, 2021, action occurred pursuant to San Diego Municipal Code section 98.0301(e)(4)(A)(ii), pursuant to which the Housing Commission provided Housing Authority members seven-day advance notice of the Housing Commission’s hearing of the matter. After the Housing Commission Board’s approval and direction to staff, City Council President Sean Elo-Rivera requested that the new requirements for future Housing Commission real estate acquisition transactions be presented to the Housing Authority for consideration.

On February 4, 2022, the Housing Commission Board of Commissioners (Housing Commission Board) unanimously approved recommending that the Housing Authority approve the proposed Administrative Regulation with three exceptions:

- There will be no dual agency.
- The Housing Commission will seek recommendations from other governmental entities that have worked with the broker, three if possible.
- There will be a desk review/peer review of the appraisal the Housing Commission obtains independently for any property acquisition.

The requirements for brokers for Housing Commission real estate acquisition transactions are detailed in the proposed Administrative Regulation (Attachment 1) and include the following but are not limited to:

Conflicts of Interest:

- **Compliance with all applicable conflict laws.** Brokers and agents shall comply with any and all local, state, and federal conflict of interest laws, rules and regulations, as they shall hereafter be amended from time to time.
- **Statement of Economic Interest Disclosure Form (Form 700).** Any real estate brokers or agents representing the Housing Commission which are defined by the FPPA as “consultants” of the Housing Commission shall be required to file a Form 700 disclosure form at all times required by the state and local law, and in addition, prior to the execution of any contract the “consultant” shall provide an executed paper Form 700 for Housing Commission review to ensure that at the date of execution of the contract that no known conflicts of interest exist.
- **Updated Conflict Attestations.** Prior to Housing Commission entering into any Letters of Intent, Purchase and Sale Agreements or other instrument with the intent to acquire real estate, and prior to closing escrow to purchase real estate, brokers and agents shall update prior written disclosures in writing and deliver the same to Housing Commission so that Housing Commission may verify that the broker/agent has no conflicts of interest that would preclude the Housing Commission from working with the broker/agent and purchasing the real estate.
- **Dual Agency.** In the event the broker/agent represents the owner or owners of property

which the broker/agent believes may be suitable for the Housing Commission's consideration, the broker/agent shall provide the Housing Commission with a written disclosure notice stating the address of the property, the owner of the property and the names of all persons employed or otherwise working for the broker/agent with respect to the property, and any and all prior and current business or personal relationships between the broker/agent and the sellers.

No dual agency arrangement shall be permitted. In the event that a property has been listed by the broker who has been selected to represent the Housing Commission, [the retained broker] and the Housing Commission desires to explore potential acquisition of the listed property, the retained broker shall not represent the Housing Commission. In such event, the Housing Commission may either represent itself, or may use an alternative broker, not affiliated with the listing broker who was a retained broker. If a property has been listed by a broker retained by the Housing Commission, including any and all brokers employed by the retained brokerage company, the Housing Commission shall not pay any commission nor compensation of any type or kind in connection with any transaction involving the purchase of the listed property by the Housing Commission, including, without limitation, any and all portions of the listing commission, which shall be paid for solely by the seller of the property.

- **Abstention in the Event of Conflict.** The Housing Commission will determine in its sole discretion whether the broker/agent's representation with respect to the acquisition of a property or interest in the property or seller is prohibited or likely prohibited by federal, state or local law, rule or regulation. If the Housing Commission determines that such representation or other financial, business or other interest ARE NOT PROHIBITED by any federal, state, or local law, rule or regulation, then the broker/agent shall represent the Housing Commission with respect to the potential acquisition of such a property. However, if either the Housing Commission determines that such representation or other interest ARE prohibited by any federal, state, or local law, rule or regulation or broker/agent represents any seller with respect to a property, then broker/agent shall not represent the Housing Commission with respect to the potential acquisition and the broker/agent consents to the Housing Commission's acquisition of such property utilizing another broker/agent, or without a broker and the broker/agent waives the right to receive a commission or other compensation of any kind whatsoever with respect to the Housing Commission's acquisition of such property. Nothing herein shall prohibit or otherwise limit the broker/agent's right to compensation from the seller of the property which compensation shall be disclosed to the Housing Commission in writing prior to the execution of the purchase and sale agreement. The Housing Commission's determination under this section must be in writing and signed by the designated officer of the Housing Commission.
- **Confidential Information.** The broker/agent shall not disclose the confidential information of the Housing Commission to anyone.

Qualifications. The broker/agent shall, at all times during the rendition of services, be a real estate agent licensed by the State of California's Department of Real Estate and shall exercise the standard of care used by brokers within the City of San Diego.

Retained Brokers. The relationship between the broker/agent and the Housing Commission will be a non-exclusive representation. Housing Commission may retain several brokers and will refer properties to a retained broker on a rotating basis, or based on experience of the

broker as determined by the Housing Commission in its sole discretion. The Housing Commission will track properties referred by retained brokers to properly determine the appropriate broker/agent that is entitled to compensation for the acquisition of a property.

Processes based on Property Status. The agreement between the broker/agent and the Housing Commission will include specified processes each for Listed Properties, Unlisted Properties and Off-Market Properties.

Compensation. The agreement between the broker/agent and the Housing Commission will include different compensation structures as agreed upon by the parties for Listed Properties, Unlisted Properties, and Off-Market Properties. In situations where the broker/agent obtains fees from a seller or co-operating brokers, the broker/agent will disclose all fees obtained and to be obtained prior to the execution of the purchase and sale agreement for each transaction.

Approval. The Housing Commission will seek and secure appropriate approvals from the President and CEO, San Diego Housing Commission Board, or the Housing Authority for the City of San Diego as required by the Procurement Policy and San Diego Municipal Code Section 98.0301 prior to the payment of any funds under the agreement.

Appraisal Peer Review. For any acquisition made by the Housing Commission pursuant to the Acquisition Policy, the Housing Commission shall obtain an independent peer review or desk review of the certified appraisal of value obtained by the Housing Commission pursuant to Section 4.1.12 of the Acquisition Policy.

Recommendation of Brokers from Other Governmental Entities. In addition to the processes set forth in the Procurement Policy, the Housing Commission will seek recommendations from other governmental entities that have worked with the potential brokers. If possible, potential brokers shall provide the Housing Commission with three recommendations.

Housing Commission's Retention of Conflict/Fraud Detection Software and Professional Services. The Housing Commission shall procure, pursuant to its Procurement Policy, software and professional services to analyze potential conflicts of interest involved in any purchase transaction, in which, the Housing Commission is a purchaser or seller. Examples of potential vendors include those companies determined to be most qualified to evaluate conflict and/or potential fraud, in connection with each transaction.

FISCAL CONSIDERATIONS

These actions do not have any fiscal impact.

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS

On March 24, 2009, the Housing Authority approved Policy PO-RED-374.02 (Report No. HAR09-016; Resolution No. HA-1410).

The Housing Authority approved revisions to Policy PO-RED-374.02 on November 15, 2016 (Report No. HAR16-029; Resolution No. HA-1705) to comply with current federal, state, local laws and/or current Housing Commission practice and as a result of the amendment to San Diego Municipal Code

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section 98.0301, which the City Council approved October 18, 2016 (Agenda Item No. 330) and November 15, 2016 (Agenda Item No. 63; Ordinance No. O-20746).

On November 12, 2021, the Housing Commission Board of Commissioners (Board) approved a partial-year contract with Marcus & Millichap to provide on-call real estate broker services to the Housing Commission (Report No. HCR21-106), with direction to staff to return to the Housing Commission Board with an action that makes the practices set forth within the Marcus & Millichap agreement a requirement for all future Housing Commission real estate acquisition transactions. After the Housing Commission Board's approval and direction to staff, City Council President Sean Elo-Rivera requested that the new requirements for future Housing Commission real estate acquisition transactions be presented to the Housing Authority for consideration.

On January 7, 2022, the proposed Administrative Regulation was presented to the Housing Commission Board of Commissioners (Board) for consideration. The Board returned the item to staff for revisions consistent with comments from the Board, to be returned to the Board for consideration at a later date.

On February 4, 2022, the Housing Commission Board unanimously approved recommending that the Housing Authority approve the proposed Administrative Regulation with three exceptions:

- There will be no dual agency.
- The Housing Commission will seek recommendations from other governmental entities that have worked with the broker, three if possible.
- There will be a desk review/peer review of the appraisal the Housing Commission obtains independently for any property acquisition.

In addition, the Housing Commission Board on February 4, 2022, approved a resolution to forward the proposed Administrative Regulation to the Housing Authority for consideration pursuant to San Diego Municipal Code 98.0301(e)(2)(A).

On February 10, 2022, City Council President Sean Elo-Rivera and City Councilmember Chris Cate sent a memo to Housing Commission President & CEO Richard C. Gentry, requesting to have the Housing Authority review and discuss the proposed Administrative Regulation.

ENVIRONMENTAL REVIEW

The proposed Administrative Regulation is not a project as defined by the California Environmental Quality Act (CEQA) Section 21065 and State CEQA Guidelines Section 15378(b)(2), as it is a general policy and procedure making activity of a governmental entity. Processing under the National Environmental Policy Act is not required as no federal funds are involved in this action. The parties agree that the provision of any federal funds as the result of this action is conditioned on the City of San Diego's final NEPA review and approval.

Respectfully submitted,

Emily S. Jacobs

Emily S. Jacobs
Executive Vice President
Real Estate Division
San Diego Housing Commission

Approved by,

Jeff Davis

Jeff Davis
Deputy Chief Executive Officer
San Diego Housing Commission

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Attachments: 1) Proposed Administrative Regulation
2) Policy PO-RED-374.02
3) Housing Commission Board Resolution

Docket materials are available in the “Governance & Legislative Affairs” section of the San Diego Housing Commission website at www.sdhc.org.

HOUSING AUTHORITY OF
THE CITY OF SAN DIEGO

RESOLUTION NUMBER HA-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE HOUSING AUTHORITY OF THE
CITY OF SAN DIEGO AUTHORIZING SAN DIEGO
HOUSING COMMISSION TO ADOPT ADMINISTRATIVE
REGULATION REGARDING RETENTION OF REAL ESTATE
BROKERS; OPERATING PROCEDURES FOR BROKERS; AND
PEER OR DESK REVIEW OF APPRAISALS.

WHEREAS, San Diego Housing Commission (Housing Commission) Policy PO-RED-374.02, “Policy for Acquisition and or Purchase of Real Estate,” authorizes the Housing Commission to contract or cooperate with brokers for property acquisitions and to create administrative regulations to implement the policy; and

WHEREAS, on November 12, 2021, the Housing Commission Board of Commissioners (Board) approved a partial-year contract with Marcus & Millichap to provide on-call real estate broker services to the Housing Commission, and directed Housing Commission staff to return to the Board with an action that makes the practices set forth within the Marcus & Millichap agreement a requirement for all future Housing Commission real estate acquisition transactions; and

WHEREAS, Housing Commission staff prepared a proposed administrative regulation expanding on Housing Commission Policy PO-RED-374.02 specifically addressing the retention of real estate brokers and operating procedures for brokers; and

WHEREAS, on February 4, 2022, the Board adopted Housing Commission Resolution No. HC-1935 unanimously recommending forwarding to the Housing Authority for action

pursuant to San Diego Municipal Code section 98.0301(e)(2)(A) authorizing the Housing Commission to adopt the proposed administrative regulation with the following three amendments: (1) there will be no dual agency permitted; (2) the Housing Commission will seek recommendations from other governmental entities that have worked with the broker before retention, three if possible; and (3) there will be a desk review/peer review of every appraisal the Housing Commission obtains independently for any property acquisition; and

WHEREAS, on February 10, 2022, in accordance with San Diego Municipal Code section 98.0301(e)(2)(C), City Council President Sean Elo-Rivera and Councilmember Chris Cate sent a written notice to the Housing Commission President and Chief Executive Officer requesting for the Housing Authority to review and discuss the proposed administrative regulation; NOW, THEREFORE,

BE IT RESOLVED, by the Housing Authority of the City of San Diego, as follows:

1. The Housing Commission is authorized to adopt the San Diego Housing Commission Administrative Regulation regarding Retention of Real Estate Brokers; Operating Procedures for Brokers; and Peer or Desk Review of Appraisals, as set forth in Attachment 1 to this resolution.

2. The Housing Commission President and Chief Executive Officer, or designee, is authorized to alter the San Diego Housing Commission Administrative Regulation regarding Retention of Real Estate Brokers; Operating Procedures for Brokers; and Peer or Desk Review of Appraisals only to correct a typographical or clerical error or omission, with the written approval and concurrence of Housing Commission General Counsel, without further action by the Housing Commission Board or the Housing Authority.

3. Housing Commission staff will notify the Housing Authority and the San Diego City Attorney's Office about any subsequent amendments or modifications to the San Diego Housing Commission Administrative Regulation regarding Retention of Real Estate Brokers; Operating Procedures for Brokers; and Peer or Desk Review of Appraisals.

APPROVED: MARA W. ELLIOTT, General Counsel

By _____
Hilda R. Mendoza
Deputy General Counsel

HRM:nja
02/02/2022
Attachment 1 - San Diego Housing Commission Administrative Regulation, AR _____
Or. Dept: SDHC
Doc. No. 2898386



The City of San Diego
Item Approvals

Item Subject: Approval of a San Diego Housing Commission Administrative Regulation Regarding Retention of Real Estate Brokers, Operating Procedures for Brokers and Peer or Desk Review of Appraisals

Contributing Department	Approval Date
DOCKET OFFICE	02/02/2022
ENVIRONMENTAL ANALYSIS	02/03/2022

Approving Authority	Approver	Approval Date
HOUSING COMMISSION FINAL DEPARTMENT APPROVER	MARSHALL, SCOTT	02/01/2022
EXECUTIVE VICE PRESIDENT	DAVIS, JEFF	02/07/2022
CITY ATTORNEY	MENDOZA, HILDA	03/02/2022

San Diego Housing Commission ADMINISTRATIVE REGULATION		
Subject: RETENTION OF REAL ESTATE BROKERS; OPERATING PROCEDURES FOR BROKERS; AND PEER OR DESK REVIEW OF APPRAISALS		
Number: AR	Effective Date: January __, 2022	Page 1 of 8

1. Purpose. The Housing Authority of the City of San Diego [“Housing Authority”] previously approved Policy for Acquisition and or Purchase of Real Estate, Policy PO-RED-374.02 [the “Acquisition Policy”], effective December 15, 2016, which allows for the adoption of Administrative Regulations to implement that policy. It is the intent of this Administrative Regulation for the Retention of Real Estate Brokers; Operating Procedures for Brokers; and Peer or Desk Review of Appraisals [“Broker and Appraisal Review Administrative Regulation”] to provide a methodology for procuring the services of real estate brokers; to provide operating procedures to be utilized by retained brokers to ensure that all applicable conflict of interest rules and regulations are complied with in a timely and complete manner; and to provide a requirement for a peer or desk review of appraisals obtained pursuant to the Acquisition Policy.
2. Scope. The scope of this Broker and Appraisal Review Administrative Regulation is to provide for an approved method of procurement of real estate brokers for the acquisition of real estate by the San Diego Housing Commission [“Housing Commission”], in accordance with the terms and conditions of its Statement of Procurement Policy, Policy PO-PUR-373.01 [“Procurement Policy”]. This Broker and Appraisal Review Administrative Regulation is adopted to provide operating procedures to ensure the Fair Political Practices Act [FPPA] rules and regulations are timely satisfied, and to further require certain financial disclosures by Real Estate Brokers to the Housing Commission at set times throughout the term of the agreement. These disclosures are necessary to ensure that no prohibited conflicts of interest under any and all applicable local, state, and federal laws and/or regulations will occur as the result of the acquisition by the Housing Commission, or, if such interests are shown to exist, that the Housing Commission shall be allowed to proceed to acquire the real estate without the aid and assistance of the conflicted broker/agent without the Housing Commission being required to pay any real estate commission or without payment of any compensation to said broker/agent. This Broker and Appraisal Review Administrative Regulation shall also require an independent peer or desk review of appraisals obtained by the Housing Commission pursuant to the Acquisition Policy.
3. Definitions. Terms utilized within this Broker and Appraisal Review Administrative Regulation are either defined the first time that the term is utilized or there is a cross reference to other sources that provide those definitions. In addition, terms that are defined in the Acquisition Policy, as amended from time to time, shall have the same meaning in this Broker and Appraisal Review Administrative Regulation.
4. Approved Real Estate Broker Retention Procedures. Processes for procurement of real

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Commission
**ADMINISTRATIVE
REGULATION**

Subject: **RETENTION OF REAL ESTATE BROKERS; OPERATING PROCEDURES FOR BROKERS;
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Number: **AR**

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estate brokers are generally set forth within the Procurement Policy, as amended from time to time. These methods include, but are not limited to, Requests for Qualifications, Requests for Proposals, Sealed Bids, and Non-Competitive Procurements, to the extent permissible under applicable law. In addition, as set forth within the Acquisition Policy, the Housing Commission may also deal directly with real estate brokers who present listed properties to the Housing Commission and to cooperate with brokers, as set forth within Acquisition Policy Section 4.1.4.

5. Recommendation of Brokers from Other Governmental Entities. In addition to the processes set forth in the Procurement Policy, the Housing Commission will seek recommendations from other governmental entities that have worked with the potential brokers. If possible, potential brokers shall provide the Housing Commission with three recommendations.
6. Required Contractual Provisions: Any contract between the Housing Commission and a retained real estate broker shall include terms and conditions that accomplish the following:
 - A. **Conflicts of Interest**
 - i. **Compliance with all applicable conflict laws.** Brokers and agents shall comply with any and all local, state, and federal conflict of interest laws, rules and regulations, as they shall hereafter be amended from time to time.
 - ii. **Statement of Economic Interest Disclosure Form (Form 700).** Any real estate brokers or agents representing the Housing Commission which are defined by the FPPA as “consultants” of the Housing Commission shall be required to file a Form 700 disclosure form at all times required by the state and local law, and in addition, prior to the execution of any contract the “consultant” shall provide an executed paper Form 700 for Housing Commission review to ensure that at the date of execution of the contract that no known conflicts of interest exist.
 - iii. **Updated Conflict Attestations.** Prior to Housing Commission entering into any Letters of Intent, Purchase and Sale Agreements, and prior to closing escrow to purchase real estate, brokers and agents shall update prior written disclosures in writing and deliver the same to Housing Commission so that Housing Commission may verify that the broker/agent has no conflicts of interest that would preclude the Housing Commission from working with the

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broker/agent and purchasing the real estate.

- iv. **Dual Agency.** In the event the broker/agent represents the owner or owners of property that the broker/agent believes may be suitable for the Housing Commission's consideration, the broker/agent shall provide the Housing Commission with a written disclosure notice stating the address of the property, the owner of the property, the names of all persons employed or otherwise working for the broker/agent with respect to the property, and any and all prior and current business or personal relationships between the broker/agent and the seller(s) of the property.

No dual agency arrangement shall be permitted. In the event that a property has been listed by the broker that has been selected to represent the Housing Commission and the Housing Commission desires to explore potential acquisition of the listed property, the retained broker shall not represent the Housing Commission. In such event, the Housing Commission may either represent itself, or may use an alternative broker, not affiliated with the listing broker, that was a retained broker. If a property has been listed by a broker retained by the Housing Commission, including any and all brokers employed by the retained brokerage company, the Housing Commission shall not pay any commission nor compensation of any type or kind in connection with any transaction involving the purchase of the listed property by the Housing Commission, including, without limitation, any and all portions of the listing commission, which shall be paid for solely by the seller of the property.

- v. **Housing Commission's Retention of Conflict/Fraud Detection Software and Professional Services.** The Housing Commission shall procure pursuant to its Procurement Policy, software and professional services to analyze potential conflicts of interest involved in any purchase transaction, in which the Housing Commission is a purchaser or seller. Examples of potential vendors include those companies determined to be most qualified to evaluate conflict and/or potential fraud, in connection with each transaction.
- vi. **Abstention in the Event of Conflict.** The Housing Commission will determine in its sole discretion whether the broker/agent's representation with respect to the acquisition of a property or interest

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in the property or seller is prohibited or likely prohibited by federal, state, or local law, rule or regulation. If the Housing Commission determines that such representation or other financial, business, or other interest ARE NOT PROHIBITED by any federal, state, or local law, rule or regulation, then the broker/agent shall represent the Housing Commission with respect to the potential acquisition of such a property. However, if either the Housing Commission determines that such representation or other interest ARE prohibited by any federal, state, or local law, rule or regulation or broker/agent represents any seller with respect to a property, then broker/agent shall not represent the Housing Commission with respect to the potential acquisition and the broker/agent consents to the Housing Commission's acquisition of such property utilizing another broker/agent, or without a broker and the broker/agent waives the right to receive a commission or other compensation of any kind whatsoever with respect to the Housing Commission's acquisition of such property. Nothing herein shall prohibit or otherwise limit the broker/agent's right to compensation from the seller of the property which compensation shall be disclosed to the Housing Commission in writing prior to the execution of the purchase and sale agreement. The Housing Commission's determination under this section must be in writing and signed by the designated officer of the Housing Commission.

- vii. **Confidential Information.** The broker/agent shall not disclose the confidential information of the Housing Commission to anyone.

B. Termination

- i. **For Convenience.** The Housing Commission may terminate the agreement for convenience with thirty (30) days' notice to the broker/agent.
- ii. **For Cause.** The broker/agent's failure to timely and satisfactorily perform any obligations under the agreement shall constitute a default. Should the broker/agent fail to cure the default within a reasonable time, the Housing Commission may terminate the right to proceed under the agreement and procure equivalent services. Broker/agent shall be liable to Housing Commission for any extra costs incurred by the Housing Commission due to the default.
- iii. **For Lack of Funding.** The agreement may be terminated immediately by Housing Commission upon cessation of funding of

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- the state, local or federal program that funds the agreement.
- C. Attorneys' Fees and Costs.** If any legal action or arbitration is brought for the enforcement of the action, the successful party shall be entitled to recover reasonable attorneys' fees and other costs incurred, in that action, in addition to any other relief to which it may be entitled.
- D. Disputes.** All disputes arising under the agreement shall be resolved by litigation in San Diego Superior Court, Downtown Branch after first attempting resolution of the dispute through non-binding mediation.
- E. Qualifications.** The broker/agent shall, at all times during the rendition of services, be a real estate agent licensed by the State of California's Department of Real Estate and shall exercise the standard of care used by brokers within the City of San Diego.
- F. Retained Brokers.** The relationship between the broker/agent and the Housing Commission will be a non-exclusive representation. Housing Commission may retain several brokers and will refer properties to a retained broker on a rotating basis or based on experience of the broker as determined by the Housing Commission in its sole discretion. The Housing Commission will track properties referred by retained brokers to properly determine the appropriate broker/agent that is entitled to compensation for the acquisition of a property.
- G. Processes based on Property Status.** The agreement between the broker/agent and the Housing Commission will include specified processes each for Listed Properties, Unlisted Properties and Off-Market Properties.
- H. Compensation.** The agreement between the broker/agent and the Housing Commission will include different compensation structures as agreed upon by the parties for Listed Properties, Unlisted Properties, and Off-Market Properties. In situations where the broker/agent obtains fees from a seller or co-operating brokers, the broker/agent will disclose all fees obtained and to be obtained prior to the execution of the purchase and sale agreement for each transaction.
- I. Approval.** The Housing Commission will seek and secure appropriate approvals from the President and CEO, San Diego Housing Commission Board, or the Housing Authority for the City of San Diego as required by the Procurement Policy and San Diego Municipal Code Section 98.0301 prior to the payment of any funds under the agreement.

The above terms are in addition to any and all other terms suggested by the

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Housing Commission's general counsel.

7. Appraisal Peer Review. For any acquisition made by the Housing Commission pursuant to the Acquisition Policy, the Housing Commission shall obtain an independent peer review or desk review of the certified appraisal of value obtained by the Housing Commission pursuant to Section 4.1.12 of the Acquisition Policy.

History:

Authorized

Jeff Davis, Deputy Chief Executive Officer

DATE



POLICY

EFFECTIVE DATE: December 15, 2016

NO: PO-RED-374.02

SUBJECT: **POLICY FOR ACQUISITION AND/OR PURCHASE OF REAL ESTATE**

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1 **Purpose**

To state San Diego Housing Commission (“Housing Commission”) Policy and program parameters for acquiring real estate of types, including, without limitation existing dwelling units/homes and/or multifamily rental projects for Housing Commission ownership.

2. **Scope**

To provide guidance and direction to Housing Commission staff for the acquisition of real estate for Housing Commission ownership. This Policy also provides a mechanism for the approval of such acquisitions.

3 **Definitions**

Terms utilized within this policy are either defined the first time that the term is utilized or there is a cross reference to other sources that provide those definitions.

4 **Policy**

4.1 Implementation of Acquisition

4.1.1 In order to allow the Housing Commission to acquire homes, condominium units and/or multifamily rental projects, leasehold interests, unimproved land, and any and all other types and kinds of real property for Housing Commission ownership and operation, including units in foreclosure or that are in jeopardy of being foreclosed [collectively defined as “real estate” within this policy], with or without the use of real estate brokers, the Housing Authority of the City of San Diego (“Housing Authority”) delegates to the Housing Commission, the right, power and authority to purchase and acquire real estate as set forth and subject to the criteria of this policy.

4.1.2 In addition to utilizing brokers and/or dealing directly with individual developers and owners, the Housing Commission is encouraged to deal directly with lenders, to the extent feasible, including, without limitation, FNMA and FHLMC, to purchase properties acquired by such lender(s) through foreclosure, or by deeds



POLICY

EFFECTIVE DATE: December 15, 2016

NO: PO-RED-374.02

SUBJECT: **POLICY FOR ACQUISITION AND/OR PURCHASE OF REAL ESTATE**

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in lieu of foreclosure, and/or to acquire real estate which is the subject of a Notice of Default during the foreclosure procedure, but prior to actual foreclosure. In addition, the Housing Commission is encouraged and authorized to acquire real estate not at risk of foreclosure, to meet the City's Balanced Communities Policy.

- 4.1.3 The Housing Commission is authorized to review, approve, and execute any and all documents necessary and/or appropriate to effectuate the acquisition(s) referenced in this policy.
- 4.1.4 The Housing Commission is authorized to contract directly with brokers and/or to cooperate with brokers to effectuate the acquisitions.
- 4.1.5 Any acquisitions of single family homes/condominium units [Single Family Residences] may be accomplished by the President and Chief Executive Officer of the Housing Commission ("CEO"), or designee, subject to the provisions of Section 4.8 of this policy, without further action from or by the Board of Commissioners of the Housing Commission (Board of Commissioners), provided that the acquisition(s) is/are based upon a purchase price(s) at or below an appraised value and provided further the clear fee simple title may be acquired by the Housing Commission at the close of escrow. The CEO is authorized to execute any and all documents necessary and/or appropriate to allow for the acquisition of the Single Family Residences, as approved by the General Counsel of the Housing Commission.
- 4.1.6 The CEO is delegated the power and authority to approve due diligence efforts, up to the limits as set forth by the Housing Authority (currently \$250,000), in order to determine a property's value and suitability for acquisition. Due diligence efforts may include, but shall not be limited to, appraisal, physical needs assessment, lead paint and asbestos containing materials assessment, Phase I and Phase II environmental reports, geotechnical studies, and environmental review.
- 4.1.7 Acquisitions of real estate other than Single Family Residences shall be approved by the Board of Commissioners.
- 4.1.8 Any action taken by the Board of Commissioners, as authorized in this policy, may be reviewed by the Housing Authority within seven (7) days of the date of



POLICY

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any Housing Commission approval of an acquisition, by notice from any two (2) members of the Housing Authority (City Councilmembers) in addition to the other methods of causing review by the Housing Authority as set forth within the applicable provisions of San Diego Municipal Code, as amended from time to time.

- 4.1.9 Any action of the Housing Commission concerning any acquisition shall become final if no request for review by the Housing Authority is received within such seven (7) days period, in accordance with the provisions of San Diego Municipal Code.
- 4.1.10 The Housing Commission is delegated the power and authority to acquire loans, tax credits or other financing necessary and appropriate, if any, for any acquisition approved by it.
- 4.1.11 The property acquired shall be utilized by the Housing Commission, either as rental properties for low or moderate income housing, and/or the homes and/or units may be resold to qualified low and/or moderate income purchasers as permitted under applicable law. Any property to be resold shall be in safe, decent and sanitary condition.
- 4.1.12 No property may be acquired unless and until a certified appraisal of value has been obtained for each property to be acquired. The purchase price for the property to be acquired must be at or below the appraised value.
- 4.1.13 The Housing Commission shall comply with federal and/or state relocation law, as required in connection with any acquisition.
- 4.1.14 The Commission shall report to the Housing Authority and the City Council annually not less frequently than twice a year on the status of the acquisition(s) by written informational report(s).
- 4.1.15 The Housing Commission shall endeavor to balance the acquisitions of housing among neighborhoods so as to not overly concentrate low and moderate income residential dwelling units in any one geographic area.



SAN DIEGO
HOUSING
COMMISSION

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4.1.16 To the extent that any real estate being acquired is to be utilized for public housing, any all applicable federal law and regulations concerning public housing shall be addressed by the Housing Commission prior to the close of escrow for the acquisition. For the purposes of the subsection "addressed" means developing a workable and cost effective plan to meet the federal requirements.

Approved:


Jeff Davis

Executive Vice President & Chief of Staff

12-6-16
Date

History:

4/13/1979

Revision Date:

2/12/2009

Legislative Authority:

Health & Safety Code Sections: 34312.3, 34320, 34315, 34312.5, 34315.7

San Diego Municipal Code: Section 98.0301 (d) and (e)

SAN DIEGO HOUSING COMMISSION

RESOLUTION NO. HC-1935ADOPTED ON February 4, 2022

A RESOLUTION TO APPROVE FORWARDING TO THE HOUSING AUTHORITY OF THE CITY OF SAN DIEGO PROPOSED ACTION REGARDING AN ADMINISTRATIVE REGULATION REGARDING RETENTION OF REAL ESTATE BROKERS AND OPERATING PROCEDURES FOR BROKERS, PURSUANT TO SAN DIEGO MUNICIPAL CODE 98.0301(e)(2)(A), AND RELATED ACTIONS

WHEREAS, San Diego Housing Commission (Housing Commission) Policy PO-RED-374.02, "Policy for Acquisition and or Purchase of Real Estate," authorizes the Housing Commission to contract or cooperate with brokers for property acquisitions and to create Administrative Regulations to implement the policy; and

WHEREAS, the Housing Authority of the City of San Diego (Housing Authority) approved the policy on March 24, 2009 (Report No. HAR09-016; Resolution No. HA-1410); and

WHEREAS, the Housing Authority approved revisions to the policy, including renumbering it as Policy PO-RED-374.02, on November 15, 2016 (Report No. HAR16-029; Resolution No. HA-1705) to comply with current federal, state, local laws and/or current Housing Commission practice and as a result of the amendment to San Diego Municipal Code section 98.0301, which the City Council approved October 18, 2016 (Agenda Item No. 330) and November 15, 2016 (Agenda Item No. 63; Ordinance No. O-20746); and

WHEREAS, On November 12, 2021, the Housing Commission Board of Commissioners (Board) approved a partial-year contract with Marcus & Millichap to provide on-call real estate broker services to the Housing Commission, as described in Report No. HCR21-106. On a motion by Commissioner Eugene "Mitch" Mitchell, seconded by Vice Chair Ryan Clumpner and passed

4-0, the Housing Commission Board also directed Housing Commission staff to return to the Housing Commission Board with an action that makes the practices set forth within the Marcus & Millichap agreement a requirement for all future Housing Commission real estate acquisition transactions. The Housing Commission Board's November 12, 2021, action occurred pursuant to San Diego Municipal Code section 98.0301(e)(4)(A)(ii), pursuant to which the Housing Commission provided Housing Authority members seven-day advance notice of the Housing Commission's hearing of the matter.

WHEREAS, after the Housing Commission Board's approval and direction to staff, City Council President Sean Elo-Rivera requested that the new requirements for future Housing Commission real estate acquisition transactions be presented to the Housing Authority for action;

WHEREAS, the proposed Administrative Regulation is attached to Report No. HCR22-013, which Housing Commission staff presented to the Housing Commission Board for consideration on February 4, 2022; and

WHEREAS, the Housing Commission Board on February 4, 2022, approved the proposed Administrative Regulation with three exceptions and action to forward the Administrative Regulation to the Housing Authority for further action. The exceptions the Housing Commission Board approved are: There will be no dual agency; the Housing Commission will seek recommendations from other governmental entities that have worked with the broker, three if possible; and there will be a desk review/peer review of the appraisal the Housing Commission obtains independently for any property acquisition; NOW THEREFORE,

BE IT RESOLVED, by the Housing Commission Board that pursuant to the provisions of


San Diego Municipal Code Section 98.0301(e)(2)(A), the proposed Administrative Regulation regarding Retention of Real Estate Brokers and Operating Procedures for Brokers is forwarded to the Housing Authority of the City of San Diego for action.

THIS ACTION WILL BECOME FINAL ON February 11, 2022, subject to the provisions of San Diego Municipal Code Section 98.0301(e)(1). If the action doesn't become final, this resolution will be replaced by a resolution so indicating.

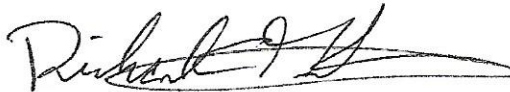
APPROVED as to form:

By /s/ Charles B. Christensen
Charles B. Christensen
General Counsel

I certify that the foregoing actions in this Resolution were approved by the San Diego Housing Commission Board of Commissioners at its meeting on February 4, 2022.

By: 
Scott Marshall
Vice President, Communications &
Government Relations

Approved: February 4, 2022


Richard C. Gentry
President & Chief Executive Officer
San Diego Housing Commission

Passed and adopted by the San Diego Housing Commission on February 4, 2022, and finalized on February 11, 2022, pursuant to the provisions of San Diego Municipal Code Section 98.0301(e)(1), by the following vote:

	Yeas	Nays	Excused	Not Present
Stefanie Benvenuto	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ryan Clumpner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Johanna Hester	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kellee Hubbard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Eugene "Mitch" Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Melinda Vasquez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

Richard C. Gentry

President & Chief Executive Officer of the
San Diego Housing Commission

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. 1935 passed and adopted by the San Diego Housing Commission on
February 4, 2022, and finalized on February 11, 2022.

By: _____



Scott Marshall
Secretary of the San Diego Housing Commission