



NATIONAL ASSOCIATION
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The Voice for Real Estate®

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November 15, 2004

Office of the General Counsel
Regulations Division
Room 10276
Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

COMMENTS RE: DOCKET NO. FR-4871-P-01; HUD 2004-0006

Dear Sir/Madam:

The NATIONAL ASSOCIATION OF REALTORS® (NAR), which represents over 1 million professional real estate practitioners, submits the following comments on the proposed regulations governing the disposition of HUD-owned properties and real estate broker participation in predatory lending practices. [Docket No. FR-4871-P-01; HUD 2004-0006, September 17, 2004].

The purpose of the property disposition program is to dispose of properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the FHA mortgage insurance fund. Under current rules, properties that are sold on an individual competitive bid basis are sold through local real estate brokers and after the properties are initially advertised, bids may be submitted by all potential purchasers. However, in the case of properties offered with insured mortgages, HUD may give priority to owner-occupant purchasers for a period of up to 30-days. For properties offered without insured mortgages, priority will be given to governmental entities and nonprofit organizations prior to other owner-occupant purchasers.

NAR is aware of the fact that there have been instances where properties have been sold to investors posing as owner occupant purchasers and that HUD has been criticized for its inability to prevent brokers who deliberately falsify the occupancy status of clients in the Department's REO disposition program. HUD has received complaints from various communities, disgruntled potential home buyers, and brokers. NAR believes that this practice places brokers who do play by the rules at a competitive disadvantage and diminishes the confidence that the sale of HUD-repossessed properties is fair. In fact, some NAR members have indicated that the sale of HUD-

owned properties in their areas is seen by many legitimate brokers as being too complex and subject to much abuse to be worth the time and frustration.

The proposed rule is intended to remedy those situations where brokers are not in compliance with HUD's policy. The proposed rule is similar to existing rules for removing FHA appraisers, consultants and nonprofit organizations. The rule provides a more expeditious procedure for removing real estate brokers who violate the law than the current suspension and debarment procedures. NAR is cognizant of the fact that under current rules enforcement agencies, such as HUD's Inspector General or HUD's Mortgagee Review Board and the Justice Department, must be selective in pursuing cases that have the greatest impact of waste, abuse or potential harm to the general public. Since falsifying owner occupant sales may not rise to this level, it often takes about 2 years for an investigation to be complete. Under the current system, a real estate broker can continue to participate in the program while an investigation is proceeding. Assuming that charges are eventually brought against the broker and the broker is found guilty, then the guilty party may have been preventing honest brokers from procuring homes for legitimate owner occupants while the investigation was proceeding.

While NAR acknowledges that situations like this exist, we also believe that the problem is not pervasive nationwide and that the great majority of registered brokers abide by the HUD guidelines and properly represent their clients' interests. However, in those situations where the problem does exist NAR believes that it needs to be dealt with at the program level and generally supports the proposed rule. There should be uniform requirements and procedures for removing real estate brokers that are involved in fraudulent activity in the sale of HUD-owned properties. NAR believes that this type of behavior represents a significant lapse in ethics on the part of the perpetrators. In fact, the violations listed that justify removal from HUD's roster also violate several articles of NAR's Code of Ethics.

NAR submits the following comments on certain sections of the proposed rule:

1. Sec. 291.100 General policy (i) (1).

(i) Disciplinary actions against HUD-qualified real estate brokers-- (1) In general. Real estate brokers that are involved in Real Estate Owned (REO) sales will be removed from HUD's qualified selling broker list and will be blocked from using HUD systems to participate in the sale of HUD-owned single family properties for good cause...

HUD already has procedures in place to remove participants such as appraisers and nonprofits from its programs. NAR would support having those procedures apply to brokers as well. These procedures essentially entail HUD initiating an internal investigation based on its own observations, based on program controls that indicate a problem or in response to an external complaint. Before arriving at a decision, the results of the investigation are reviewed by senior area office personnel. If it is deemed appropriate, the case is finally referred to the Inspector General's office.

2. Sec. 291.100 General policy (i) (2) (ii) (G).

2) Good cause. Good cause includes, but is not limited to: (ii) Any of the following actions by a broker: (G) Committing any other offense that reflects on the broker's character and integrity, including non-compliance with civil rights requirements regarding the sale of HUD-owned single family properties.

NAR is concerned about how the Department will interpret "committing any other offense that reflects on the broker's character and integrity..." Even though this language can be found in some of HUD's rules dealing with qualifications for program participation and similar language can be found in policy related to participation by appraisers, mortgage brokers and others who wish to do business with HUD, NAR believes it is overly broad and can be open to misinterpretation. NAR recommends that this language be deleted.

3. Sec. 291.100 General policy (i) (4).

(4) Response and conference. Real estate brokers will be given 20 days after the date of the notice (or longer, if provided in the notice) to submit a written response to HUD opposing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with the written response. If a conference is requested, it will occur within 15 days after the date of receipt of the request.

NAR supports the 20 day response period once the notice is issued, but recommends that the 15 day deadline for the conference be extended to 30 days to provide more time to prepare.

4. Sec. 291.100 General policy (i) (5) (ii).

(5) Disposition - (ii) Response from real estate broker. If the real estate broker submits a written response within the time provided, the removal and deactivation are delayed until HUD considers the response and makes a final determination... If HUD's decision affirms the removal, the broker has the right to a hearing before an administrative law judge (ALJ). The removal remains in effect pending the proceeding before the ALJ...

If HUD makes an initial determination and denies an appeal the decision is final unless the broker submits the case to an ALJ. NAR believes that brokers should not be suspended until they have exhausted their due process rights to a hearing before an ALJ. At the very least, brokers should be allowed to request that the ALJ issue an order requiring HUD to allow them to continue to participate in the program until the case is finally resolved.

NAR submits the following additional comments on the proposed regulation:

5. In order to ensure the continued protection of the public and cooperation between the states and HUD, NAR recommends that the names and license numbers of brokers removed from HUD's qualified selling broker list be referred to the appropriate state licensing authority. This could be accomplished in much the same manner as the names and license numbers of errant appraisers are referred to state appraiser licensing boards. If applicable, the state agency may

open a complaint and investigation and take the appropriate action against its licensee. Not only will this assist in protecting the public, but state agencies may be permitted under their statutes to assess more stringent penalties for fraudulent activity. This may assist HUD in its overall goal of providing more housing opportunities to first time and owner occupant buyers.

6. When HUD suspends a broker from the program, it affects all the agents in a firm even if a single agent caused the problem. Even though we recognize that brokers are responsible for monitoring the activities of their agents, we request that the Department consider assigning Name and Address Identification Numbers (NAIDS) to individual agents in addition to brokers. In this way, the agent who violates the law can be readily identified. If this is not doable and the problem was the result of a single agent, whom the broker subsequently fired and implemented management controls to prevent a reoccurrence, then NAR believes that this should result in a remedy that does not entail removal from the program.

NAR appreciates the opportunity to provide these comments and looks forward to continuing our good working relationship with the Department. If we can provide further information, please contact Peter Morgan at 202-383-1233.

Sincerely,



Joseph M. Ventrone
Managing Director