

HOUSING AUTHORITY OF  
THE CITY OF SAN DIEGO  
RESOLUTION NUMBER HA-1938

DATE OF FINAL PASSAGE March 15, 2022

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 with changes to sections 5, 6.A, and 6.H, 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 /s/ Hilda R. Mendoza  
Hilda R. Mendoza  
Deputy General Counsel

HRM:nja  
02/02/2022  
03/15/2022 REV.  
Attachment 1 - San Diego Housing Commission Administrative Regulation, AR 219.000  
Or. Dept: SDHC  
Doc. No. 2917694



San Diego Housing  
Commission  
**ADMINISTRATIVE  
REGULATION**

**Subject: RETENTION OF REAL ESTATE BROKERS; OPERATING PROCEDURES FOR BROKERS;  
AND PEER OR DESK REVIEW OF APPRAISALS**

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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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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 shall seek recommendations from other governmental entities that have worked with the potential brokers. Potential brokers shall provide the Housing Commission with three recommendations, preferably from governmental entities.
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.

All brokers retained by the Housing Commission shall avoid any and all appearances of impropriety in fulfilling their duties under the terms of their contract. In addition, each broker shall comply with all terms and conditions of City Council Policy 000-04, and specifically shall comply with the terms of the Code of Conduct set forth within the City Council Policy 000-04, to assure that in addition to not violating any and all applicable laws, that there be no appearance of an impropriety in the performance of their real estate broker services for the Housing Commission.

- ii. **Statement of Economic Interest Disclosure Form (Form 700).** Any real estate brokers or agents representing the Housing Commission which are defined by the Fair Political Practices Act



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Commission (FPPC) 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 conflicts of interest exist. Brokers and agents are solely responsible for ensuring their filed Form 700 remains current and shall notify the Housing Commission within three business days of filing a Form 700 amendment.

- 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 broker/agent and purchasing the real estate.
- iv. **Dual Agency.** In the event the broker/agent retained by the Housing Commission 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 shall either represent itself, or shall use an alternative broker, not affiliated with the listing broker, that was a retained broker.

If a property has been listed by a broker otherwise retained by the

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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 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.



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The Housing Commission's determination under this section must be in writing and signed by the designated officer of the Housing Commission.

Nothing herein shall prohibit or otherwise limit the broker/agent's right to compensation from the seller of the property which compensation of any type or kind shall be disclosed and detailed to the Housing Commission in writing prior to the execution of the purchase and sale agreement.

- vii. **Confidential Information.** The broker/agent shall not disclose to anyone any information the Housing Commission has deemed in its sole discretion to be confidential. Confidential information shall be disclosed to the Housing Authority and the City Attorney's Office.

**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 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



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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 compensation of any type or kind from a seller or co-operating brokers, the broker/agent will disclose and detail all such compensation 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 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: Adopted 3/15/22**

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Authorized

DocuSigned by:

*Jeff Davis*

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Jeff Davis, Interim President & Chief Executive Officer

4/14/2022

DATE



Passed and adopted by the Housing Authority of the City of San Diego on March 15, 2022, by the following vote:

	<b>Yeas</b>	<b>Nays</b>	<b>Excused</b>	<b>Not Present</b>
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**AUTHENTICATED BY:**

Richard C. Gentry

Executive Director of the Housing Authority  
of the City of San Diego, California

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of  
RESOLUTION NO. **1938** passed and adopted by the Housing Authority of the City of San  
Diego, California on March 15, 2022.

By: 

**Scott Marshall**

Deputy Secretary of the Housing Authority  
of the City of San Diego, California