



## POLICY

**EFFECTIVE DATE:** December 15, 2016

**NO:** PO-RED-300.104

**SUBJECT:**

**POLICY FOR SALE AND/OR DISPOSITION OF REAL ESTATE**

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### 1 Purpose

To provide a comprehensive policy of the San Diego Housing Commission (“Housing Commission”) concerning the disposition and sale of Housing Commission-owned real estate, including without limitation multi-family projects, single-family homes, condominium units, land and/or public housing.

### 2 Definitions

Terms or words used within this policy are defined within the policy itself or by reference to other applicable references in which the words and or terms are defined. The word “disposition” includes all forms of transfer of real estate, including by grant deed, quitclaim deed, warranty deed, ground lease, sublease, assignments, transfers, and any and all other legally permissible methods of transferring real estate and/or interests in real estate to another person and or entity.

### 3 Policy

#### 3.1 Implementation of Sale or Disposition of Housing Commission-owned single-family homes and/or condominium units:

3.1.1 In order to allow for expeditious sale and disposition of single-family homes and/or condominium units, without approval by the Board of Commissioners of the Housing Commission (“Board of Commissioners”) or the Housing Authority of the City of San Diego (“Housing Authority”), the Housing Authority and the City Council of the City of San Diego hereby delegates to the President and Chief Executive Officer of the Housing Commission (“CEO”), or designee, the power to sell and dispose of single-family homes and/or condominium units without further approval by either the Housing Authority or the Board of Commissioners in the following instances:

- (a) When the sale and/or disposition of the single-family homes or condominium units are determined by the CEO to be necessary to comply with any program in an effort to acquire and redevelop foreclosed properties that might otherwise become sources of abandonment and blight within their communities, i.e. programs like the former Neighborhood Stabilization Program (“NSP”) that are hereafter created by state, federal and/or local law, and the sale is to a



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low income or moderate income buyer;

- (b) When single-family homes or condominium units have been acquired by foreclosure (Real Estate Owned, "REO") and have been determined to be surplus, within the meaning of Health and Safety Code Section 34315.7, and not needed by the Housing Commission for its housing stock; or
- (c) When it is determined by the CEO that the sale meets the requirements of Health & Safety Code Section 34312 et seq., including without limitation Section 34312.3, including scheduling a public hearing at the Housing Commission Board level, when required by any applicable law, including without limitation, Health & Safety Code Section 34312.3;
- (d) When single-family homes or condominium units have been acquired by foreclosure or through a deed in lieu of foreclosure on an affordable for-sale restricted unit and the homes or units are sold to an eligible buyer subject to affordable restrictions recorded against the property; or
- (e) In any other situation where the sale of the single-family homes or condominiums is determined by the CEO upon the advice of counsel, to comply with applicable federal, state and local law and the sale of the single-family homes or condominiums advances the mission of the Commission.

### 3.2 Conditions for Sale or Disposition by the CEO or designee of Single-Family Homes/Condominium Units:

- 3.2.1 All sales of condominium units or single-family homes acquired by the Housing Commission or the Housing Authority under any government stimulus program for sale to subsequent low or moderate income buyers must be sold within the parameters of a Housing Authority approved program. The CEO is given and delegated the full authority and power to make expenditures within his or her procurement authority, as referenced within the Housing Authority approved procurement policy, to repair and rehabilitate such homes and/or condominiums, if determined necessary or advisable by the CEO, before such resale, or, in the



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alternative, to sell such homes or condominiums in an “as-is where-is” condition without repair or rehabilitation. In such cases of no repair or rehabilitation, the CEO is delegated the authority and power to make rehabilitation loans to the homebuyer in sufficient amounts to allow the homebuyer to repair and rehabilitate the homes or condominiums, so that the homes and/or condominiums are safe, decent and sanitary.

- 3.2.2 All sales of condominium units or single-family homes acquired as REOs, under the terms of the Housing Commission’s foreclosure policy or otherwise, shall also be sold and disposed of by the CEO in accordance with applicable state, federal and local law, with preference being given to low and moderate income families and/or households, to the extent feasible and to the extent required by applicable law.
- 3.2.3 All sales of affordable for-sale restricted condominium units or single-family homes acquired by foreclosure or deed in lieu of foreclosure shall be sold by the CEO in accordance with the terms of any applicable restrictions recorded against the property.
- 3.2.4 Any action taken by the CEO to sell or dispose of any single-family home or condominium unit, with the exception of the affordable for-sale restricted units, shall be preceded by a seven (7) day written notice to each of the Members of the Board of Commissioners and a hand-delivered written notice to each of the Members of the Housing Authority with a signed and dated receipt of delivery. Within seven (7) days of the receipt of such written notice, any two (2) Members of the Board of Commissioners or any two (2) Members of the Housing Authority may elect to have the entire Board of Commissioners, or the entire Housing Authority, respectively, review a proposed sale or disposition. Such review shall be pursuant to the provisions of San Diego Municipal Code in the case of the review by the Housing Authority of the City of San Diego. If any Member of the Housing Authority or the Board of Commissioners elects to hear the matter, the sale or disposition shall not proceed until such hearing occurs before the full Board of the body seeking the review. In the event that the Board of Commissioners elects to hear a matter, the Board of Commissioners shall give seven (7) days written notice of its action to each Member of the Housing Authority, via hand-delivered written notice with signed and dated receipt of delivery, and any action of the Board of Commissioners shall not become final until seven (7) days have elapsed from the written notice to the Housing Authority



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Members, without any Member of the Housing Authority seeking review of the decision. If a review is sought of a decision of the Board of Commissioners, by any Member of the Housing Authority, any action of the Board of Commissioners shall not be final until it is reviewed by the Members of the Housing Authority.

- 3.2.5 Any action by the CEO to sell or dispose of any single-family home or condominium unit shall not become final until seven (7) days have elapsed, with no election by any Member of either the Board of Commissioners or the Members of the Housing Authority to hear the matter(s). Whenever a public hearing is required under applicable law, including without limitation, Health & Safety Code Section 34312.3, the CEO shall ensure that such hearing is scheduled before the Housing Commission Board.
- 3.2.6 The CEO is delegated the power and authority to acquire and/or provide such lending as is required to allow the property to be disposed of and/or sold.
- 3.2.7 The CEO shall comply with any and all relocation laws, if any, to the extent applicable, in connection with a sale or disposition of the single-family homes and/or condominium units.
- 3.2.8 The CEO shall acquire real estate appraisals of the single-family homes or condominium units, before sale or disposition and in compliance with the provisions of applicable law including without limitation Health and Safety Code Section 34315.7 and/or Health & Safety Code Sections 34312.3, if and as applicable.
- 3.3 Implementation of Sale or Disposition of Housing Commission-owned real estate other than single-family homes and condominiums:
  - 3.3.1 This policy allows for the sale and disposition of all other real estate, of every nature and kind, (except for the single-family homes and condominiums, which are dealt with in Section 3.2 of this policy), owned by the Housing Commission, including without limitation, multifamily housing and undeveloped land ( which is defined as “*real estate*” for the purposes of this Section 3.3), with approval by the Board of Commissioners of the Housing Commission (“Board of Commissioners”) or the Housing Authority of the City of San Diego (“Housing Authority”), under the following conditions:



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- a) Any action to sell or dispose of any *real estate* shall be determined by the Board of Commissioners upon the recommendation of the CEO and shall be preceded by a seven (7) day written notice to each of the Members of the Housing Authority with a signed and dated receipt of delivery. Whenever a public hearing is required under applicable law, including without limitation, Health & Safety Code Section 34312.3, the CEO shall ensure that such hearing is scheduled before the Housing Commission Board. Within seven (7) days of the receipt of such written notice, any two (2) Members of the Housing Authority may elect to review any action of the Board of Commissioners. Such review shall be pursuant to the provisions of San Diego Municipal Code. If two Members of the Housing Authority elect to hear the matter, the sale or disposition shall not proceed until such hearing occurs before the Housing Authority. The Housing Commission shall give seven (7) days written notice of its action to each Member of the Housing Authority, via hand-delivered written notice with signed and dated receipt of delivery, and any action of the Board of Commissioners shall not become final until seven (7) days have elapsed from the written notice to the Housing Authority Members, without any two (2) Members of the Housing Authority seeking review of the decision. If a review is sought of a decision of the Board of Commissioners by two Members of the Housing Authority, any action of the Board of Commissioners shall not be final until it is reviewed by the Housing Authority.
- b) When the sale and/or disposition of the *real estate* is determined by the Housing Commission Board to be necessary and the best option for redevelopment of properties that might otherwise become sources of abandonment and blight within their communities, or
- c) When *real estate* has been acquired by the Commission through foreclosure or through a deed in lieu of foreclosure and has been determined to be surplus, within the meaning of Health and Safety Code Section 34315.7, and not needed by the Housing Commission for its housing stock; or,
- d) When the Housing Commission Board determines that a greater public purpose can be achieved through the sale of underperforming *real*



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*estate* and the investment of sales proceeds into better performing assets and/or other affordable housing opportunities in the best interest of the public, the Housing Commission, and the City of San Diego.

3.3.2 Additional Conditions for the Sale or Disposition of Housing Commission-owned *real estate*:

- a) The CEO is authorized to review, approve and execute any and all documents and to perform such acts as are necessary and/or appropriate and/or convenient to effectuate the sales and dispositions referenced in this policy.
- b) The CEO is authorized to contract directly with brokers and/or cooperate with brokers to effectuate the sales and dispositions and to pay commissions as appropriate.
- c) The CEO shall adopt Administrative Regulations to implement this policy as necessary and appropriate.
- d) The CEO shall acquire real estate appraisals of the *real estate*, before sale or disposition, to ensure the Commission receives the fair market value of the property.
- e) The CEO shall report to the Board of Commissioners and the Housing Authority quarterly, concerning all sales and dispositions pursuant to this policy.

3.4 This policy is adopted pursuant to the provisions of Health and Safety Code Section 34320 affecting the disposition of *real estate*.

3.5 This delegation by the Housing Authority of the City of San Diego is made pursuant to the provisions of San Diego Municipal Code.

3.6 All sales and dispositions shall comply with any and all federal, state, local and Housing Commission conflict of interest provisions and shall preclude the sale of property to any person or entity that would have a conflict of interest under any applicable law. No sales shall be made to insiders at preferential rates and each sale shall be an arm's length bona fide transaction.



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- 3.7 This policy does not authorize the sale or disposition of any multifamily federal *public housing* projects, as defined in the 1937 Act, without the approvals referenced within this Section 3.7. Under certain exceptional and extenuating circumstances, where the Commission deems it necessary to enhance its financial ability to increase very low-income housing opportunities, the Commission may consider the sale of public housing units if such a sale is determined to be in the best interest of the Commission and of low-income households in need of affordable housing opportunities, but only to the extent such sale or disposition complies with all applicable laws and regulations concerning the sale or disposition of public housing, including without limitation 24 CFR Part 970 and other applicable sections. In addition to the approval of the U.S. Department of Housing and Urban Development, any sale of public housing shall also require the approval of the CEO and the Housing Commission Board, subject to the right of the Housing Authority of the City of San Diego to review that decision within seven (7) days of its approval by the Housing Commission Board as provided in the Municipal Code.
- 3.8 Under the terms of this policy, the Commission may dispose (which meaning shall include, but not be limited to sell, transfer, convey and lease) of real estate owned by it to any of its affiliates, including Housing Development Partners, or to wholly owned Limited Liability Companies formed by the Commission, (collectively "Affiliates") for any and all business reasons, provided that the dispositions provide the Commission with full and adequate consideration, including covenants by the Affiliate or LLCs to construct, rehabilitate, renovate and operate affordable housing for households earning 80 percent or less of area median income "(AMI)", or in appropriate cases up to 120 percent of AMI, for workforce housing, for a term of years. In addition, the Commission may ground lease the real estate to the Affiliate or LLC, for a period of years, with a reversion of the fee title to the Commission at such time as the parties may agree. In addition, the Commission may otherwise dispose of real estate by grant deed or other conveyance method, provided that the Commission receives an option to reacquire the real estate, at a time agreed to by the parties. The terms of the option shall be drafted in such a way that the Commission's interest to reacquire the property during the option period is preserved, and shall minimize any substantially adverse financial burden to the Commission, to the extent possible. Any transaction between the Commission and an Affiliate shall be entered into only after appropriate analysis by attorneys, bond counsel, financial advisors and others necessary to ensure that the interests of the Commission are fully protected and to ensure that the real estate disposed of provides affordable housing for the contracted term. This policy is promulgated under the provisions of Health and Safety Code Section 34320 and shall be interpreted in view of that code section, which provides,



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in part:

- 3.8.1 It is the intent of this policy to set a procedure for disposition or sale of Commission real estate to an Affiliate in full compliance with the following provisions of said Section 34320, which provides: **No law concerning the acquisition, operation, or disposition of property by other public bodies is applicable to an authority unless the Legislature specifically so states.**
- 3.8.2 Any disposition of *real estate* to Housing Development Partners under the provisions of this Section 3.8 may be made upon the recommendation of the Executive Vice President and Chief of Staff of the Housing Commission, or designee, to the Housing Commission Board of Commissioners, after approval by the processes in place at the time, provided however, the approval by the Housing Authority shall not be required unless two (2) or more members of the Housing Authority seek to review such actions by the Commission within seven (7) days of notice of such approval by the Housing Commission Board as provided for under the terms of the San Diego Municipal Code.
- 3.8.3 Any disposition of any *real estate* to an Affiliate other than Housing Development Partners, pursuant to the provisions of this Section 3.8, may be made by the recommendation of the President and Chief Executive Officer, or designee, to the Housing Commission Board, following the same procedures set forth in Section 3.8.3, above.

**Approved:**

\_\_\_\_\_  
Jeff Davis  
Executive Vice President & Chief of Staff

12-6-16  
\_\_\_\_\_  
Date





SAN DIEGO  
HOUSING  
COMMISSION

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**History:**

10/13/1988

**Revision Date:**

4/20/10

**Legislative Authority:**

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

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

24 CFR Part 970