



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Josue Garcia, Real Estate Analyst
Miami-Dade Department of Public Housing and Community Development

FROM: Susannah Nesmith, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2023-144, Section 2-11.1(c) (d) (n) and (f), Limitation on Contracting with the County

DATE: October 24, 2023

CC: All COE Legal Staff, Coralee Taylor, Chief Real Estate Officer, Miami-Dade Department of Public Housing and Community Development

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“COE”) and requesting our guidance regarding the application of the County Ethics Code to your wife’s proposed work as a realtor and mortgage loan originator, working with developers and homebuyers seeking to participate in the In-Fill Housing program and first-time homebuyer programs administered by your County department.

Facts

You are one of four real estate analysts at the Infill Program of the Miami-Dade Department of Public Housing and Community Development (“PHCD”). The Infill Program¹ conveys surplus County-owned property to certain qualified developers who are required to build a single-family home, or in some cases a multifamily home, on the property within two years and then sell the home or homes to qualified low-income buyers. Your office’s oversight over each property begins after the Board of County Commissioners has conveyed a property to a developer, then you or one of the other real estate analysts are assigned that property for case management. Developers are required to submit to your office periodic progress reports and your office ensures compliance with the many requirements for Infill Program development. Your office also ensures compliance with the requirements for buyers of Infill Program homes. The County oversight provided by your

¹ For more on the Infill Program, see the program guidelines.
<https://www.miamidade.gov/housing/library/guidelines/infill/infill-housing.pdf> (accessed Oct. 19, 2023).

office continues for at least 20 years and as long as 60 years, during which period homeowners who decide to sell are required to do so to qualified low-income buyers at specified rates below market value.

We have also spoken with your supervisor, Coralee Taylor, the Chief Real Estate Officer for the Infill Program at PHCD. She advised that there are only a handful of developers who participate in the Infill Program and that one, Habitat for Humanity (“Habitat”), is responsible for a substantial portion of the properties. Habitat is a non-profit that uses volunteers to build affordable homes and allows new homeowners to invest “sweat equity” by also working on the construction of their new home. She further advised that it would be difficult, and potentially impossible, to limit your assignments to certain developers – she said she does not have sufficient staff to restrict your workload to non-Habitat developers, for example. She also advised she would have difficulty screening you out of any of the other developers, because of the limitations of her staffing and the difficulty managing workflow with such a small staff.

You advise that your wife is preparing to take the test to obtain her realtor’s license and that she is already working as a mortgage loan originator. She is not yet affiliated with a broker and she does not yet have clients. You ask if a prohibited conflict of interest may arise when she begins working as a realtor if she represents developers who are participating in the Infill Program and, alternatively, if she represents buyers who are buying from those developers. Furthermore, you ask if a prohibited conflict of interest may arise if she represents low-income buyers who access first-time homebuyer assistance programs administered by PHCD². Outside of Infill Program buyers, you do not oversee transactions involving the various first-time homebuyer assistance programs that your department administers. Your wife would not be an employee of either the developers or the buyers participating in these programs, but would instead be paid a commission at closing, based on the final sale price, as is standard in real estate sales contracts.

Issue

Whether there is any conflict of interest under the Miami-Dade Conflict of Interest and Code of Ethics (“Code of Ethics”) between your county role at PHCD and your wife’s proposed employment as a realtor representing developers and/or homebuyers accessing the Infill Program for which you work and other PHCD assistance programs.

Discussion and Opinion

Generally, sections 2-11.1 (c) and (d) of the County Ethics Code permit County employees and their immediate family members to transact business with the County, so long as the contract does not interfere with the full and faithful discharge of the County employee’s duties, the County employee does not participate in negotiating or awarding the contract, and the County employee’s job duties will not require him or her to be involved with enforcing or overseeing the contract.

² For more on the various PHCD programs for first-time homebuyers, including programs to convert from a Section 8 renter to a homeowner, downpayment assistance programs and the home loan program, *see* <https://www.miamidade.gov/global/housing/affordable-homeownership-program.page> (last accessed October 19, 2023).

However, the County Ethics Code prohibits County employees **and their immediate family members** from transacting business with the County department for which the County employees work. Specifically,

[the limited exclusion from the general prohibition on County employees contracting with the County] shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

County Ethics Code § 2-11.1(c)(2).³

Section (c)(2) applies specifically to contracts between the County and companies in which the employee or the employee's family member has a "controlling financial interest." *Id.* The Ethics Code defines a controlling financial interest as "direct or indirect interest of ten (10) percent or more in a firm, partnership, or other business entity." County Ethics Code § 2-11.1(b)(8). However, the Ethics Code also requires any employee whose immediate family member is employed by an entity doing business with the County, when the family member does not have a controlling financial interest, to file a sworn affidavit disclosing the employment and affirming that the County employee is not engaged in lobbying on behalf of the family member's employer and **does not oversee the selection or administration of any contract** the family member's employer may hold with the County. County Ethics Code § 2-11.1 (f). The affidavit must be filed with the Miami-Dade Clerk of the Circuit Court.⁴

For example, when the spouse of the Department of Transportation and Public Works ("DTPW") worked for a company that contracted with DTPW, the Ethics Commission found that the department director had to file the above mentioned affidavit but because the employee's spouse had no controlling financial interest in the company, there was no conflict of interest, as long as the department director recused herself from any decisions involving her husband's employer. *See* RQO 15-06; *see also* RQO 11-11 (employee's spouse with no controlling financial interest in a County vendor who employed the spouse may continue to work for the vendor, but the County employee should not participate in any selection committee reviewing projects on which the spouse's employer was bidding) and INQ 2023-129 (the spouse of a Miami-Dade Fire Rescue ("MDFR") employee could take a job with an MDFR vendor because the County employee had no oversight or administrative authority over the vendor's contract, but the County employee was required to file the affidavit specified in Section 2-11.1(f) of the Ethics Code).

³ The term "immediate family" includes spouses. *See* County Ethics Code § 2-11.1(b)(9).

⁴ The form is available here: <https://documents.miamidade.gov/ethics/forms/no-controlling-interest.pdf>

Similarly, the Commission on Ethics has found that spouses of county employees can work as subcontractors for county vendors contracting with the County employees' department under certain conditions. *See* INQ 2023-72. In that case, the spouse of an assistant director at the Miami-Dade Water and Sewer Department ("WASD") was permitted to serve as a subcontractor bidding on two WASD solicitations, so long as the County employee did not have any oversight over the solicitation and was able to recuse himself from the supervision of any WASD employees who later accessed the contract or otherwise had oversight over it. *Id.* Significantly, the supervisor of the county employee in that case confirmed that she was able to ensure that the assistant director would also not be permitted to supervise any employee who would administer or oversee the contract. *Id.*

The Commission also found that the spouse of a quality assurance officer at PHCD could serve as a subcontractor to a vendor contracting with PHCD, as long as the County employee did not oversee or administer any aspect of the vendor's contract, or the County certification process required by federal law for subcontractors on that specific project. *See* RQO 18-02. In that case, the Commission noted that Section 2-11.1(n) prohibits County employees participating in any official action which will directly or indirectly affect a business in which a family member has a financial interest. *Id.*

While not completely analogous to your circumstance, the Commission guidance applying to spouses of County employees who are employed by vendors contracting with the employees' Department and spouses of County employees who are subcontractors of vendors contracting with the employees' Department, are instructive. Both require that County employees have no participation in the selection, administration or oversight over any aspect of a County transaction in which the employees' spouse has a financial interest, directly or indirectly, even when there is no controlling financial interest or the company is not contracting directly with the County.

Here, your spouse working as a realtor and mortgage loan originator would have an indirect financial interest in the three types of transactions you describe: representing developers selling Infill Program properties to homebuyers, representing homebuyers buying Infill Program properties and representing buyers accessing PHCD's several assistance programs for low-income homebuyers buying non-Infill Program properties. In all three cases, 100 percent of her financial remuneration would be based on the successful conclusion of the contract, including compliance with County restrictions placed on that contract. In the two cases involving the Infill Program, your office is tasked with overseeing compliance with the County rules that apply to the sales contract and her remuneration would be based on a percentage of the final sale price, which is also restricted by County rules that your office is tasked with overseeing.

Furthermore, because your supervisor advised it would be infeasible for you to recuse yourselves from transactions in the Infill Program involving Habitat, your wife would not be able to represent either party in an Infill Program transaction involving that entity without causing you to have an impermissible conflict of interest. While your supervisor said she might be able to allow you to recuse yourself from transactions involving smaller developers, she advised that this might be hard to accomplish because of the small size of your office, as well as the workflow, which begins when the property is conveyed by the Board of County Commissioners, so conceivably before your wife is engaged in representation. Whether your supervisor is able to allow you to recuse yourself from

performing your job duties in relation to certain developers is entirely up to her discretion, based on departmental needs.

If you are unable to recuse yourself from oversight over any developers, you would have an impermissible conflict of interest any time your wife represents a developer or a homebuyer in the Infill Program. If you are able to recuse yourself from work involving a certain Infill Program developer who is represented by your wife, you and your department must ensure that you do not discuss or consult with your colleagues on any aspect of cases involving that developer.

Regarding the third category of transactions, buyers accessing PHCD's assistance programs for home purchases that do NOT involve the Infill Program, you would not have a conflict of interest because you have no involvement with the oversight of those programs, but out of an abundance of caution, you should still file the affidavit specified in Section 2-11.1(f) of the Ethics Code, because your wife would be involved in and have an indirect financial interest in contracts overseen by your department, though not your specific office.

If your future job responsibilities with the County change, you should seek a new opinion.

Additionally, you may not lobby the County in support of your wife's clients in any County solicitation or contract. *See* County Ethics Code § 2-11.1(m)(1). Furthermore, the County Ethics Code prohibits County employees from exploiting their official position. This means you may not use your County position to secure special privileges or exemptions with respect to your wife's employer in any County solicitation or contract. *See* County Ethics Code § 211.1(g). This prohibition would extend to referring business to your wife when you are interacting with any party involved in the Infill Program, or with members of the public who may inquire about the Infill Program.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. Based on directives from the department that employs you, or under state law, other conflicts may apply. If you have additional questions regarding possible conflicts based on PHCD directives, contact your supervisor or the Mayor's office. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Commission on Ethics or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.