



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Oscar Barco, Real Estate Officer
Miami-Dade County Public Housing and Community Development Department

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

SUBJECT: INQ 2024-133

DATE: August 1, 2024

CC: All COE Legal Staff; John Vanegas, PHCD; Simona Marlow, PHCD; Tangie White, PHCD; Shawn Topps, PHCD

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust to request our guidance regarding your application for a First Time Home Ownership Mortgage through the Homebuyer Loan Program (“HLP”),¹ administered by the Miami-Dade County Public Housing and Community Development Department (“PHCD”).

Facts:

You are interested in applying for the HLP in an effort to purchase a home.

You are employed by PHCD as a Real Estate Officer for the Miami-Dade County Infill Housing Initiative Program² (“Infill Program”). In your role as a Real Estate Officer, you are responsible for the monitoring and compliance of developers and homebuyers who participate in the Infill

¹ The HLP assists qualified individuals and families in the purchase of a primary residence. *See Homebuyer Loan Program, AFFORDABLE HOMEOWNERSHIP PROGRAM, <https://www.miamidade.gov/global/housing/affordable-homeownership-program.page>* (last visited July 31, 2024).

² The Infill Program administers the sale or transfer of County-owned properties to developers, who agree to build affordable homes to be sold to very low, low- and moderate-income persons. *See Infill Housing Initiative Program Guidelines, available at <https://www.miamidade.gov/housing/library/guidelines/infill/infill-housing.pdf>* (last visited July 31, 2024).

Program from initial conveyance of County-owned lots to the final sale of the developed property to a qualified homebuyer. Tasks for the Real Estate Officer position include, but are not limited to, the review of Infill Program required application documents, recording of release of liens as applicable, review of Impact Fee deferral/refund applications, review of buyers income for adherence to area median income guidelines, site inspections to determine accuracy of developers progress reports, monitoring for compliance with the County deed and Infill Program requirements, and assisting with all aspects of the sale of an Infill home to a qualified buyer including the coordination of requirements for second mortgages and the preparation of restrictive covenants for closing.

While you do not specifically administer the HLP, some functions of your position with the Infill Program require that you have some administrative roles/interactions with the HLP when an Infill property buyer also utilizes the HLP. For instance, your position includes assistance with all aspects of the sale of an Infill home to a qualified buyer, including the coordination of requirements for second mortgages and the preparation of restrictive covenants for closing.

Per the PCHD mitigation plan discussed below, you have filed the required ethics disclosure statement with PHCD, alerting the department that you are a PHCD employee.

Issue:

Whether the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) would prevent you from contracting with PHCD, to participate in the HLP.

Discussion:

Sections 2-11.1(c) and (d) of the County Ethics Code generally allow County employees to enter into a contract or transact business, individually or through a firm, with the County, as long as they do not work within the County department that enforces, oversees, or administers their contract, agreement, or business transaction with the County. *See* RQO 00-13 (an employee of the Public Health Trust working at Jackson Memorial Hospital could contract with the then-extant Miami-Dade Housing Agency (“MDHA”) to provide Section 8 housing without giving rise to a prohibited conflict of interest because she did not work for the MDHA and her County employment was otherwise entirely separate from her agreement with the MDHA). *See also* Section 2-11.1(c)(2), County Ethics Code.

However, sections 2-11.1(c)(5)(5) and (c)(5)(6) of the County Ethics Code provide an exemption to the above limitation on transacting business with the County to allow a County employee to apply for direct assistance from PHCD, as long as the employee is otherwise eligible for the assistance program and does not participate in the administration the program. Meanwhile, section 2-11.1(c)(6) of the County Ethics Code allows employees of PHCD to apply for PHCD assistance programs, even if they participate in the administration of the assistance program, as long as the Department takes steps to mitigate any potential conflict of interest. The ordinance specifies that employees in this situation may proceed with an application for assistance **only after** the Ethics Commission has found the mitigation plan “sufficient to abate the potential conflict of interest” and must include the removal of the employee “from participation in the administration of the program as regards his or her application.” Section 2-11.1(c)(6), County Ethics Code.

The Ethics Commission received a mitigation plan, “Mitigation Measures for Employees and Family Members Accessing Department Housing Programs Policy,” from PHCD on June 12, 2024. That policy requires PHCD employees and their immediate family members who apply to participate in PHCD assistance programs to notify the department in writing of their employee status or relationship to an employee. The policy also provides for a separate level of review by an assistant department director of any applications to PHCD assistance programs filed by PHCD employees or their immediate family members.

Tangie White, the director of the division that oversees HLP, and Shawn Topps, the supervisor of HLP, have stated they will ensure that PHCD employees and their family members who have applied to the program are screened out of any access to their own applications.

Opinion:

Based on the facts presented here, we find that your application and participation in the HLP program will not violate the County Ethics Code, despite the fact that your position as a Real Estate Officer in the PHCD Infill Program includes some involvement or administrative responsibilities in the HLP, because you have disclosed the conflict and PHCD has presented a mitigation plan to the Ethics Commission that is sufficient to abate the potential conflict of interest, as required. *See* Section 2-11.1(c)(5)(5) and (c)(6), County Ethics Code.

You are reminded that **you can have no role in your application** and that you must refrain from contacting anyone at PHCD on your behalf regarding your application as long as it is pending.

This opinion is limited to the facts as you presented them to the Commission on Ethics regarding conflicts under Subsection (c) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance. 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 your County department directives, contact your department 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/>.

Please submit this opinion to the Miami-Dade Public Housing and Community Development Department for inclusion in your file. The Commission on Ethics does not submit this memorandum on your behalf.

INQs are informal ethics opinions provided by the legal staff of the Miami-Dade Commission on Ethics and Public Trust. 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 this is an informal opinion, covered parties who 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.