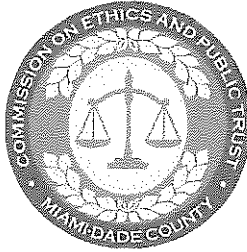


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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Via email at: Michael.Liu@miamidade.gov

October 20, 2017

Michael Liu, Director
Miami-Dade County Dept. of Public Housing
& Community Development
701 NW 1st Ct., 16th Floor
Miami, FL 33136

Re: RQO 17-06 Limitations on Transacting Business with the County

See Miami-Dade County Ethics Code Section 2-11.1 (c)

Dear Mr. Liu:

IN A PUBLIC MEETING on October 12, 2017, the Miami-Dade Commission on Ethics and Public Trust ("County Ethics Commission") opined that no prohibited conflict of interest would exist under the County Ethics Code for Mary Pacheco, who is employed as your Senior Executive Secretary, to participate in the First Time Buyers Home-Ownership Second Mortgage Program ("Second Mortgage Program") administered by PHCD's Finance Division. The County Ethics Code permits her to participate in the Second Mortgage Program because she meets the requirements of the exemption set out in Section 2-11.1(c)(5)(5) of the Code, which allows a County employee to participate in housing assistance programs administered by PHCD, provided that the employee does not administer or oversee the program to which he or she is applying.

As background, Ms. Pacheco, your Senior Executive Secretary, is seeking to purchase a home in Miami-Dade County and would like to participate in the Second Mortgage Program administered by PHCD's Finance division. Ms. Pacheco's County job responsibilities include performing secretarial and clerical duties for the PHCD Director. Her County job duties do not include administration or oversight of the Finance Division or of the Second Mortgage Program administered by that Division. Furthermore, her job duties do not include any responsibilities with respect to personnel decisions in any PHCD division; nor supervision or oversight of subordinates of the Finance Division; nor supervision of other PHCD staff.

As the Director of PHCD you are responsible for the general oversight of all PHCD programs and PHCD employees. However, you advise that you are not involved in decision-making or oversight regarding the Second Mortgage Program because that program is administered by PHCD's Finance Division,

and second mortgages are approved or denied by the loan officers at the Finance Division level based on set guidelines.¹

The Second Mortgage Program is funded by County surtax funds and by State Housing Initiatives Partnership ("SHIP") funds.² The purpose of this program is to assist individual borrowers to complete financing for the purchase of a home where the individual is unable to obtain a loan for the entire mortgage amount from a private lender. Second Mortgage Program applicants first apply for a mortgage through a private lender. Factors such as income level may limit the mortgage amount that a private lender may provide. Thus, for eligible applicants, the remainder of the mortgage amount would be completed by the Second Mortgage. PHCD works with participating private lenders to provide second mortgage assistance using surtax and SHIP funding sources. In general, individuals or families who meet the income qualification and program guidelines are approved for the program. Funding is handled by PHCD's Finance Division, and the computer system used for mortgage underwriting is only accessible to the Finance Division's loan processing team. Approval or denial of the mortgage is made at the loan officer level pursuant to a set formula established by the Finance Division derived from federal lending practices and from the statutory requirements of the funding sources (in this case surtax and SHIP).³

At issue here is whether Ms. Pacheco, who is employed at PHCD, may transact business with the County department in which she is employed. Generally, Sections 2-11.1 (c) and (d) of the County Ethics Code permit County employees to transact business with the County under certain circumstances, but the Code prohibits County employees from transacting business with the County departments in which they work. Section 2-11.1(c)(2) states in relevant part:

... [Allowing County employees to do business with the County under certain circumstances] "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."

However, the County Ethics Code provides an exemption to the above limitation on transacting business with the County, where the County employee is seeking to participate in housing assistance programs. This exemption specifically provides that a County employee may apply for direct assistance from the Housing Department (PHCD) provided that the employee is otherwise eligible for the assistance program, and the County employee does not administer the program.

¹ See e-mail from Michael Liu, Director, Miami-Dade Public Housing and Community Development department, to Gilma Diaz-Greco, Staff Attorney, Miami-Dade County Commission on Ethics and Public Trust (Sept.26, 2017, 4:03 pm EST) (on file with Ethics Commission Staff Attorney).

² With respect to surtax funding, Florida law allows certain counties to levy a discretionary surtax for providing low and moderate income housing. The tax applies to deeds and other instruments relating to real property in an amount not to exceed 45 cents per \$100. Currently, only Miami-Dade County assesses the discretionary documentary stamp tax. PHCD uses surtax funds to support the Home-Ownership Second Mortgage Program. See Fla. Stat. §125.0167(1) (2017). The other sources of funds for the Second Mortgage Program are SHIP funds. The Florida Housing Finance Corporation (Florida Housing) is a public corporation and is the state's housing finance agency. It was created by the State of Florida legislature 35 years ago to assist in providing a range of affordable housing opportunities for residents. Florida Housing administers the SHIP program. SHIP funds are distributed on an entitlement basis to all counties. Funds may be used for acquisition of property and down payment assistance. See Fla. Stat. §§420.907-420.9089 (2017).

³ PHCD's Finance Division advises that on rare occasions special circumstances might exist which would require review by the Finance Division Director.

Additional review is warranted when the applicant is employed by PHCD as in this case. In previous opinions, the Ethics Commission determined that PHCD employees may participate in housing assistance programs administered by PHCD as long as the PHCD employee does not work in the PHCD **division** that administers the assistance program for which the employee is applying. PHCD is organized into six separate divisions whose functions are distinct and separate from one another.⁴ Employees of each division generally do not discuss their work or share program files with others outside of their division.

Although Ms. Pacheco is employed as the Senior Executive Assistant of the PHCD Director, her job responsibilities are limited to clerical and ministerial duties and do not involve administration or oversight of the Finance Division or the Second Mortgage Program. It is also relevant that decisions regarding the approval or denial of Second Mortgage loans are made at the division level by the loan officer based on set lending practices as well as the requirements set out by the funding sources. Neither you, as the PHCD Director, nor Ms. Pacheco are involved in decisions regarding the approval or denial of the Second Mortgage Program loans.

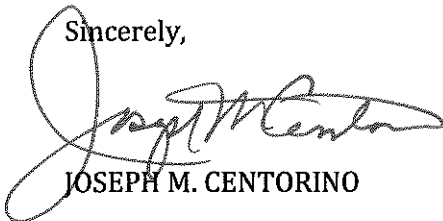
Under the facts presented here and the exemption in the County Ethics Code, it is evident that the exemption would cover Ms. Pacheco's application to participate in the Second Mortgage Program because she is not involved in this program's administration or oversight. Consequently, the County Ethics Code permits Ms. Pacheco to participate in the Second Mortgage Program.

PHCD is advised to ensure that the established firewalls continue to isolate Ms. Pacheco's work from the Finance Division.

This opinion is based on the facts presented and construes the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. If the facts change, please contact the Commission on Ethics. The opinion is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me or Gilma Diaz-Greco, Staff Attorney, if we can be of further assistance.

Sincerely,



JOSEPH M. CENTORINO

Executive Director

⁴ RQO 12-06 (County employee employed by PHCD may continue to contract as a Section 8 landlord with the County because the Public Housing Agency, which administers the Section 8 program, remains distinct and separate from the other divisions in the newly enlarged Public Housing and Community Development Department and firewalls have been established to isolate the work of the Public Housing Agency from the two other divisions within the expanded department.), RQO 09-20 (Employee of County GSA department employee may participate in County Infill Program and Second Mortgage Program overseen by the Housing Department because the employee is not involved in the administration of either of these programs.) *See also* INQ 14-87 and H-INQ 15-09.