



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Tangie White, Community Development Division Chief, Miami Dade County Public Housing and Community Development Department

FROM: Gilma Diaz-Greco, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2021-82 Limitations on Contracting with the County, Miami Dade County Ethics Code Section 2-11.1(c), (g), and (m)

DATE: 05-11-21

CC: File; Marlow, Simona, Senior HR Manager and John Vanegas, Accountant 3, Miami-Dade Public Housing and Community Development; Eric Johnson, Programs Administrator and Coordinator, Miami-Dade Economic Advocacy Trust.

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible ethics conflicts involving your sale of a property to a buyer applying for a Homeownership Assistance Program (HAP) loan administered by the Miami-Dade Economic Advocacy Trust (MDEAT).

Facts:

You are employed at the Miami-Dade County Public Housing and Community Development Department (“PHCD”) working as a Chief of the Department’s Community Development Division. You are selling an apartment you own in the Doral area. The buyer has applied for a loan through MDEAT’s HAP program. PHCD also oversees and administers a Homeownership Assistance Program (PHCD HAP), but the two programs are independent in funding and administration. Furthermore, your job duties at PHCD do not include any involvement in either PHCD HAP or MDEAT HAP.

The buyer of the Doral property you are selling has applied for an MDEAT HAP loan. The MDEAT HAP loan includes a loan information Rider to be signed by the both the Seller and the buyer.

Issue:

Whether the County Ethics Code prohibit or sets limitations on your signing the MDEAT HAP Rider as part of the sale of your property.

Discussion and Opinion

Several section of the County Ethics Code must be considered in analyzing this matter.

Section 2-11.1 (c) (2) of the Conflict of Interest and Code of Ethics Ordinance enumerates limitations on County employees entering into contracts with the County. It states:

Notwithstanding any provision to the contrary herein, Subsection (c) and (d) shall not be construed to prevent any employee ... from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the employee or any member of his or her immediate family has a controlling financial interest, with Miami-Dade County or any person or agency acting for Miami-Dade County as long as:

- 1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County,
- 2) the employee has not participated in determining the subject contract awards or awarding the contract, and
- 3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including but not limited to its enforcement, oversight, administration, amendment, extension, termination, or forbearance.

With respect to the facts provided in this matter, we contacted MDEAT to obtain information about the MDEAT HAP Rider. As the seller of the property only items five (5) and six (6) of the MDEAT HAP Rider apply to you. Item 5 serves to notify the seller that public funds are being used to aid the buyer, and that the HAP loan process may extend the timeline to complete the real estate purchase transaction. Item 6 provides that, in order for MDEAT HAP funds to be disbursed in the real estate transaction, a HAP approved closing agent (title company or attorney) must be used to complete the transaction. The purpose of the Rider is to serve as a HAP loan disclosure document to acknowledge the HAP program requirements and no changes may be made to the document. The Rider is not a part of the purchase contract between you as a seller and the buyer; nor between the buyer and MDEAT; and the Rider does not create a contractual relationship between you and MDEAT. *See generally* INQ 18-18.

In this instance, given that the Rider serves only as a loan disclosure document and does not create any contractual relationship between you and MDEAT, Section 2-11.1(c)(2), which applies to County employees entering into contracts with the County, would not cover the Rider and thus your signing an acknowledgment of this loan disclosure document would not be prohibited by the County Ethics Code.

You should also note that Sections 2-11.1 (g) and (m) of the County Ethics Code must be followed. Section (g) would prohibit you from securing special privileges or exemptions for yourself or the seller in any part of this transaction, and section (m) would prohibit you from representing the buyer in any matter before any County agency.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

Feel free to contact me at 305 350-0638 if I may be of further assistance.