

October 1, 2013



The Honorable Carol Galante  
Assistant Secretary for Housing - Federal Housing Commissioner  
US Department of Housing and Urban Development  
Washington, DC 20410

Dear Commissioner Galante:

First, on behalf of the members of the National Association of Exclusive Buyer Agents, I'd like to applaud your efforts to protect real estate consumers. As an organization, we really felt that the new pre-foreclosure policy restricting dual agency was a step in the right direction.

It is our understanding that the dual agency portion of the policy is no longer going to take effect on October 1, at least in part due to some communication with the National Association of REALTORS. I have read their September 18 letter to you and would like to provide an alternative view in support of the policy.

We disagree that the new policy would place more homeowners at risk for foreclosure. In fact, we would counter that the opposite is true. Real estate agents are retained to represent their clients. In a traditional sense, that representation would include full fiduciary duties to that client including obedience, loyalty, disclosure, confidentiality, accounting, and reasonable care. In a dual agency situation, a real estate agent can no longer provide these full fiduciary duties or full representation. The agent certainly could not be loyal to the seller if he or she now must also be loyal to the buyer. Serving two masters leaves neither represented at best and potentially fraudulent at worst. The new policy would ensure full representation for these at-risk homeowners, providing assistance with a difficult process. In addition, with over one million REALTORS in the United States, I am certain that homeowners would be able to find a knowledgeable, reputable listing agent even if one of the mega-brokers chose not to take these listings. Even in the example in NAR's letter where one firm had agents on both sides of the transaction in 30% of their sales, the majority of their sales, 70%, were with agents in different brokerages. I'm sure that even NAR would agree that the agents outside of the mega-brokerages are just as knowledgeable and in some cases, possibly more experienced as well.

We also disagree that the new policy would worsen the issue of pre-foreclosure sales "not meeting minimum net sales proceeds requirements." A listing agent is contracted to get the highest price and best terms for the seller. A buyer agent is contracted to get the lowest price and best terms for the buyer. In dual agency, the agent can no longer negotiate for a higher or lower price and instead simply becomes a go between. This means that the troubled homeowner must rely on his or her own negotiating skills and knowledge potentially resulting in the acceptance of a lower sales price than may have been with full representation. In addition, it means that the lending institution must rely on information received from an agent with dual allegiance. It is

quite probable that if the seller has his or her own agent, that the sales price of the home would be higher thereby lessening this issue.

In addition, we disagree that this policy "conflicts with state license law in every state." While it is true that states do allow dual agency in one form or another, no state prohibits single agency or the representation of only one side in a transaction. In fact, our members practice exclusive agency, only representing buyers, legally and comfortably throughout the United States. This is not only not in conflict with state laws, but also creates less likelihood of conflicts in representation.

I would also like to address the policy as it relates to two agents in the same brokerage representing both buyer and seller as opposed to the same agent representing both. In our opinion, this type of transaction is equally fraught with potential problems. First and foremost, in most states, the contract is between the consumer and the broker, not the individual agent, and the broker serves the transaction in a supervisory capacity. This means that regardless of which individual agents with whom the buyer and seller are working, it is the broker actually responsible for the deal and who would or at least should be consulted if any issues arise. In addition, while the mega-brokers may have agents in multiple offices, it is probable, especially with smaller brokerages, that both agents would work out of the same office meaning that conversations could be overheard, faxes could be seen, and other information could inadvertently be shared between agents mitigating the effectiveness and purpose of the dual agency restriction.

In reality, the only thing that NAR is protecting is its members' rights in collecting both sides of the commission in the transaction. In short, it's about money – not the consumers' money or the mortgage lenders' money, but about the ability of the brokers to make more money. Some of their members recognize this fact and disagree with their stance. Because of this, I urge you to reinstate the dual agency restrictions in FHA pre-foreclosure transactions. We would also appreciate being included in any discussions on changes proposed by NAR and would respectfully suggest that consumer groups such as Consumer Federation of America or American Homeowners Grassroots Alliance be consulted as well.

Sincerely,



Michael Byrd  
2013 President