



U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

February 23, 2017

MEMORANDUM NO:
2017-KC-1801

Memorandum

TO: Dane M. Narode, Associate General Counsel for Program Enforcement, Office of General Counsel, CACC

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FROM: Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

SUBJECT: Final Action Memorandum: Purchaser of HUD-Insured Single-Family Property Settled Allegations of Causing the Submission of a False Claim

INTRODUCTION

We reviewed preforeclosure sales under the Federal Housing Administration (FHA) program in the St. Louis, MO, area as part of our preforeclosure sale initiative. We began our preforeclosure sale initiative in response to a tip from a citizen we received in 2011. After developing this case, we referred it to the U.S. Department of Housing and Urban Development (HUD) Office of Program Enforcement, who negotiated this settlement.

BACKGROUND

The preforeclosure sale option allows borrowers in default (resulting from an adverse and unavoidable financial situation) to sell their home at fair market value and use the sale proceeds to satisfy the mortgage debt even if the proceeds are less than the amount owed. This option is appropriate for borrowers whose financial situation requires that they sell their home, but they are unable to do so without FHA relief because the gross recovery on the sale of their property (sale price minus sale expenses) is less than the amount owed on the mortgage.

The services of a real estate broker-agent must be retained to market a property within 7 days of the date on which the approval to participate is granted. The broker-agent selected should have no conflict of interest with the borrower, the lender, the appraiser, or the purchaser associated with the preforeclosure sale transaction. Any conflict of interest, appearance of a conflict, or self-dealing by any of the parties to the transaction is strictly prohibited (Mortgagee Letter 2008-43).

RESULTS OF REVIEW

We found that the purchaser of the property entered into a consulting agreement with the realtor for the preforeclosure sale. The agreement required that when the purchaser later sold the property, he would pay half of the net proceeds from the sale of the property to the realtor's consulting company. Despite having this additional agreement in place, the purchaser signed the arm's-length affidavit as the buyer and affirmed, "...there are no agreements, special understandings, hidden terms, or contracts between the parties other than the Contract..." The property was sold a second time on the day of the preforeclosure sale. The title company paid \$19,140 from the proceeds of the second sale to the realtor's consulting company. HUD strictly prohibits any conflict of interest or self-dealing by preforeclosure sale participants. HUD paid a claim for \$139,323 to the lender because the preforeclosure sale price was less than the balance of the loan.

On December 17, 2015, HUD served a complaint on the purchaser, alleging that the purchaser caused the submission of a false claim to HUD and made multiple false statements in the arm's-length affidavit and seeking a penalty and an assessment under the Program Fraud Civil Remedies Act.

HUD and the purchaser entered into a settlement as both parties mutually desired to avoid further expense and litigation and to reach a satisfactory resolution of this matter. The settlement agreement did not constitute an admission of liability or fault on the part of any party and was voluntary and entered into by the purchaser after due consideration of the terms of the agreement. The purchaser agreed to pay HUD \$5,000.

RECOMMENDATION

We recommend that HUD's Office of General Counsel, Office for Program Enforcement,

1A. Acknowledge that the settlement agreement for \$5,000 represents an amount due HUD.

As of November 18, 2016, the settlement agreement of \$5,000 had been reached, and it represents an amount due HUD. Included in the settlement agreement is documentation of an initial payment of \$1,000 and a repayment agreement that requires monthly payments with final payment expected by May 15, 2021. In accordance with HUD Handbook 2000.6, REV-4, the final action target date will be set at June 14, 2021. At issuance of this memorandum, we will enter a management decision into HUD's Audit Resolution and Corrective Action Tracking System, along with any supporting payment information received to date.