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

September 21, 2016

MEMORANDUM NO:
2016-KC-1801

Memorandum

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

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

SUBJECT: Final Action Memo: Agent-Broker of HUD-Insured Single-Family Property Settled Allegations of Making a False Certification on a Preforeclosure Sale Closing Worksheet

INTRODUCTION

The U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), reviewed preforeclosure sales under the Federal Housing Administration (FHA) program in the St. Louis, MO, area.

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. A broker-agent must never be permitted to claim a sales commission on a preforeclosure sale of his or her own property or that of an immediate family member (for example, spouse, sibling, parent, or child) (Mortgagee Letter 2008-43).

RESULTS OF REVIEW

We found that a realtor purchased a property in January 2010 using a limited liability company he controlled while also acting as the seller's agent. The borrower hired the realtor to list the property on November 9, 2009. That same day, the borrower entered into a contract to sell the property to the realtor's company, St. Louis Commercial Development, LLC. Closing occurred on January 14, 2010. The realtor signed the preforeclosure sale closing worksheet as the seller's agent-broker and certified, "…there are no hidden terms or special understandings with the buyer, seller, closing agent or mortgagee." That same day, St. Louis Commercial Development, LLC sold the property to a third party for $8,500 more than it paid. HUD paid a claim for $71,498 to the lender because the preforeclosure sale price was less than the balance of the loan.

On October 23, 2015, HUD served a complaint on the realtor, alleging that the certification on the closing worksheet was false and seeking a penalty and an assessment under the Program Fraud Civil Remedies Act.

HUD and the realtor 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 realtor after due consideration of the terms of the agreement. The realtor agreed to pay HUD $10,000.

RECOMMENDATION

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

> 1A. Acknowledge that the settlement agreement for $10,000 represents an amount due HUD.

As of the date of this memorandum, the settlement amount due HUD had been paid in full. Therefore, no further action is required by the Office of General Counsel. At issuance of this memorandum, HUD OIG will enter a management decision into HUD's Audit Resolution and Corrective Action Tracking System, along with the supporting payment information to show that final action was completed.