

Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Tribe has the meaning provided for the term "Indian tribe" in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

§ 291.10 General policy regarding rental of acquired property.

HUD will lease acquired property to comply with other designated HUD programs, or when the Secretary determines that it is in the interest of HUD. Leases may include an option to purchase in appropriate circumstances.

Subpart B—Disposition by Sale

SOURCE: 64 FR 6480, Feb. 9, 1999, unless otherwise noted.

§ 291.90 Sales methods.

HUD will prescribe the terms and conditions for all methods of sale. HUD may, in its discretion, on a case-by-case basis or as a regular course of business, choose from among the following methods of sale:

(a) *Future REO acquisition method.* The Future Real Estate-Owned (REO) acquisition method consists of a property acquisition agreement (or agreements) between HUD and a transferor (or transferors), which shall provide for the right and obligation of the transferor(s) to acquire a future quantity of properties designated by HUD as they become available. HUD will select such transferor(s) through a competitive process, in accordance with all applicable laws and regulations, including the requirements in § 291.200. The transferor(s) shall have the right and obligation to manage and dispose of the properties upon such terms and conditions as are approved by the Secretary;

(b) *Competitive sales of individual properties.* This method consists of competitive sales of individual properties to individual buyers, the procedures for which are described in § 291.205;

(c) *Direct sales methods.* There are three types of direct sales methods:

(1) Direct sales of properties without insured mortgages to governmental en-

tities and private nonprofit organizations, the procedures for which are described in § 291.210(a);

(2) Direct sales to displaced persons, sales of razed lots, or auctions, the procedures for which are described in § 291.210(b);

(3) Direct sales to other individuals or entities that do not meet any of the categories specified in paragraphs (a) through (d) of this section, under the circumstances and procedures described in § 291.210(c);

(d) *Bulk sales*, the procedures for which are described in § 291.210(d); or

(e) *Other sales methods.* HUD may select any other methods of sale, as determined by the Secretary.

§ 291.100 General policy.

For all sales, except as otherwise specifically indicated, those sales conducted in accordance with §§ 291.90(a) and 291.200 or with subpart D of this part, the following general policies apply:

(a) *Qualified purchaser.* (1) Anyone, including a purchaser from a transferor of a property pursuant to §§ 291.90(a) and 291.200, regardless of race, color, religion, sex, national origin, familial status, age, or disability may offer to buy a HUD-owned property, except that:

(i) No member of or delegate to Congress is eligible to buy or benefit from a purchase of a HUD-owned property; and

(ii) No nonoccupant mortgagor (whether an original mortgagor, assumptor, or a person who purchased "subject to") of an insured mortgage who has defaulted, thereby causing HUD to pay an insurance claim on the mortgage, is eligible to repurchase the same property.

(2) Neither HUD nor any transferor pursuant to §§ 291.90(a) or 291.200 will offer former mortgagors in occupancy who have defaulted on the mortgage the right of first refusal to repurchase the same property.

(3) HUD will offer tenants accepted under the occupied conveyance procedures outlined in 24 CFR 203.670 through 203.685 the right of first refusal to purchase the property only if:

(i) The tenant has a recognized ability to acquire financing and a good

§ 291.100

24 CFR Ch. II (4-1-08 Edition)

rent-paying history, and has made a request to HUD to be offered the right of first refusal; or

(ii) State or local law requires that tenants be offered the right of first refusal.

(b) *List price.* The list price, or “asking price,” assigned to the property is based upon an appraisal conducted by an independent real estate appraiser using nationally recognized industry standards for the appraisal of residential property.

(c) *Insurance.* Properties may be sold under the following programs:

(1) *Insured.* A property that meets the Minimum Property Standards (MPS), as determined by the Secretary, for existing dwellings (Requirements for Existing Housing, One to Four Family Living Units, HUD Handbook 4905.1, which is available at the Department of Housing and Urban Development, HUD Customer Service Center, 451 7th Street, SW, Room B-100, Washington, DC 20410; by calling (202) 708-3151; or via the Internet at www.hud.gov) will be offered for sale in “as-is” condition with FHA mortgage insurance available. Flood insurance must be obtained and maintained as provided in 24 CFR 203.16a.

(2) *Insured with repair escrow.* A property that requires no more than \$5,000 for repairs to meet the MPS, as determined by the Secretary, will be offered for sale in “as-is” condition with FHA mortgage insurance available, provided the mortgagor establishes a cash escrow to ensure the completion of the required repairs.

(3) *Uninsured.* A property that fails to qualify under either paragraph (c)(1) or (c)(2) of this section will be offered for sale either in “as-is” condition without mortgage insurance available, or in “as-is” condition under section 203(k) of the National Housing Act (12 U.S.C. 1709(k)).

(d) *Financing.* (1) Except as provided in paragraph (d)(2) of this section, the purchaser is entirely responsible for obtaining financing for purchasing a property.

(2) HUD, in its sole discretion, may take back purchase money mortgages (PMMs) on property purchased by governmental entities or private nonprofit organizations who buy property for ul-

timiate resale to owner-occupant purchasers with incomes at or below 115 percent of the area median income. When offered by HUD, a PMM will be available in an amount determined by the Secretary to be appropriate, at market rate interest, for a period not to exceed 5 years. Mortgagors must meet FHA mortgage credit standards.

(3) *Purchase money mortgage (PMM).* For purposes of this section, the term “purchase money mortgage,” or *PMM* means a note secured by a mortgage or trust deed given by a buyer, as mortgagor, to the seller, as mortgagee, as part of the purchase price of the real estate.

(e) *Environmental requirements and standards.* Sales under this part are subject to the environmental requirements and standards described in 24 CFR part 50, as applicable.

(f) [Reserved]

(g) *Lead-based paint poisoning prevention.* Properties constructed before 1978 are subject to the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, F, and R, of this title.

(h) *Listings.* Any real estate broker who has agreed to comply with HUD requirements may participate in the sales program. Purchasers participating in the competitive sales program, except government entities and nonprofit organizations, must submit bids through a participating broker.

(1) *Open listings.* Except as provided in paragraph (h)(2) of this section, properties are sold on an open listing basis with participating real estate brokers.

(2) *Asset management and listing contracts.* (i) A local HUD office may invite firms experienced in property management to compete for contracts that provide for an exclusive right to manage and list specified properties in a given area.

(ii) In areas where a broker has an exclusive right to list properties, a purchaser may use a broker of his or her choice. The purchaser’s broker must submit the bid to HUD through the exclusive broker.

(i) *Disciplinary actions against HUD-qualified real estate brokers.*

(1) *In general.* Real estate brokers that are involved in Real Estate Owned (REO) sales will be removed from HUD's qualified selling broker list and will be prohibited from using HUD systems to participate in the sale of HUD-owned single family properties for good cause in accordance with the procedures of this paragraph. Nothing in this section prohibits HUD from taking such other action against a broker as provided in 24 CFR part 24 or from seeking any other available remedy.

(2) *Good cause.* Good cause includes, but is not limited to:

(i) Conviction under 18 U.S.C. 371 or 1010 of a broker or an agent supervised by that broker and acting within the scope of the agent's duties;

(ii) Any of the following actions by a broker or an agent supervised by that broker and acting within the scope of the agent's duties:

(A) Falsifying loan documents or aiding or abetting persons in the use of false or misleading information including, but not limited to, forged or fraudulent gift letters and owner occupant certifications;

(B) Acting in concert with an appraiser to arrive at an artificial appraised value;

(C) Engaging in fraudulent activities (with or without the assistance of an appraiser) that have led to default and payment of an insurance claim;

(D) Failing to comply with earnest money collection, management, and disbursement procedures as set forth in this part;

(E) Failing to maintain a current state license;

(F) Violating the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*);

(G) Non-compliance with civil rights requirements regarding the sale of HUD-owned single family properties;

(H) Involvement in, or knowledge of, any fraudulent activity by any person involved in the REO sales transaction; and

(I) Any other actions or omissions that evidence a lack of business integrity or non-compliance with the laws, regulations, and rules applicable to housing, lending, or real estate sales.

(3) *Written notice.* Once HUD makes an initial finding that there is good cause to remove a broker, HUD will provide the broker with written notice of proposed removal from HUD's qualified selling broker list and deactivation of the broker's access to HUD systems to participate in the sale of HUD-owned properties. The notice will:

(i) State the reasons that HUD is taking the action;

(ii) Identify the violations or deficiencies involved;

(iii) Provide a citation to the relevant regulation, statute, or policy; and

(iv) State the effective date and duration of the removal and deactivation.

(4) *Effective date and duration of removal.* (i) The effective date of the broker's removal will be the 30th day after the date of the notice, unless the broker submits a written response or requests a conference in accordance with paragraph (i)(5) of this section;

(ii) HUD's determination of the duration of removal and deactivation will be based upon HUD's consideration of the number and seriousness of the broker's violations and deficiencies.

(5) *Response and conference.* Real estate brokers will be given 20 days after the date of the notice (or longer, if provided in the notice) to submit a written response to HUD opposing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with the written response. If a conference is requested, it will occur within 15 days after the date of receipt of the request. HUD may extend the 15-day period by providing written notice to the broker. HUD may request additional information at or following a conference and provide additional time to submit such information. If the information is not submitted by the time set by HUD, the conference is completed. If the information is timely submitted, the conference is not completed until HUD has considered the additional information.

(6) *Disposition.* (i) *No response from real estate broker.* If the real estate broker does not submit a written response within the time provided, the removal and deactivation take effect in accordance with the notice.

§ 291.200

(ii) *Response from real estate broker.* If the real estate broker submits a written response within the time provided, the removal and deactivation are delayed until HUD considers the response and makes a final determination. HUD will consider the sufficiency of any corrective actions taken by a broker with respect to its procedures and, if relevant, its agents, in reaching its decision. Within 20 days after the date of receipt of the written response, or if a conference is requested, within 20 days after the date of completion of the conference, HUD will advise the real estate broker in writing of the decision to rescind, modify, or affirm the removal from HUD's qualified selling broker list and the deactivation of the broker's access to HUD systems to participate in the sale of HUD-owned properties. The written decision by HUD shall constitute final agency action.

(7) *Effect of removal proceeding on bids.* All bids submitted and commissions earned by the real estate broker prior to removal will be honored, unless HUD determines they were made under fraudulent circumstances.

[64 FR 6480, Feb. 9, 1999, as amended at 64 FR 50225, Sept. 15, 1999; 71 FR 65325, Nov. 7, 2006]

Subpart C—Sales Procedures

SOURCE: 64 FR 6481, Feb. 9, 1999, unless otherwise noted.

§ 291.200 Future REO acquisition method.

(a) Under this method of property disposition, HUD will enter into a property acquisition agreement (or agreements) with a transferor (or transferors), which shall provide for the right and obligation of the transferor(s) to acquire a future quantity of properties designated by HUD as they become available. The transferor(s) will be selected through a competitive process, conducted in accordance with applicable laws. HUD will negotiate the specific terms of the property acquisition agreement(s) with the selected transferor(s). The properties will be available on an "as-is" basis only, without repairs or warranties.

(b) *Eligible entities.* An individual, partnership, corporation, or other legal entity will not be eligible to partici-

24 CFR Ch. II (4-1-08 Edition)

pate in this process if at the time of the sale, that individual or entity is debarred, suspended, or otherwise precluded from doing business with HUD under 2 CFR part 2424.

[64 FR 6481, Feb. 9, 1999, as amended at 72 FR 73495, Dec. 27, 2007]

§ 291.205 Competitive sales of individual properties.

When HUD conducts competitive sales of individual properties to individual buyers, it will sell the properties on an "as-is" basis, without repairs or warranties, and it will follow the sales procedures provided in this section.

(a) *General.* (1) Properties that are sold on an individual competitive bid basis are sold through local real estate brokers, except as provided in § 291.100(h).

(2) For properties being offered with insured mortgages, priority will be given to owner-occupant purchasers, as defined in § 291.5, for a period of up to 30 days, as determined by HUD. For properties offered without insured mortgages, priority will be given to governmental entities and nonprofit organizations prior to other owner-occupant purchasers.

(b) *Net offer.* (1) The net offer is calculated by subtracting from the bid price the dollar amounts for the financing and loan closing costs and the broker's sales commission, as described in paragraph (b)(2) of this section.

(2) If requested by the purchaser in the bid, HUD will pay all or a portion of the financing and loan closing costs and the broker's sales commission, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. In no event will the total amount for broker's sales commission exceed 6 percent of the purchase price, except for cash bonuses offered to brokers by HUD for the sale of hard-to-sell properties.

(c) *Acceptable bid.* HUD will accept the bid producing the greatest net return to HUD and otherwise meeting the terms of HUD's offering of the property, with priority given to owner-occupant purchasers as described in paragraph (a)(2) of this section. The greatest net return is calculated based on the net offer, as described in paragraph (b) of this section.