CONFLICT OF INTEREST

CITY EMPLOYEES PARTICIPATING IN
HOME PURCHASE ASSISTANCE PROGRAM

To: Names withheld at persons' requests (Fort Lauderdale)

SUMMARY:

City Housing and Community Development Division employees would not be prohibited under Section 112.313(7)(a), Florida Statutes, from participating in the City's Community Redevelopment Agency Purchase Assistance Program, through application of Section 112.316, Florida Statutes, provided that they have no involvement in reviewing, processing, or otherwise evaluating their own applications or in monitoring their compliance with program requirements. CEO 06-10 is referenced.¹

QUESTION:

Is a prohibited conflict of interest created by your participation in a home purchase assistance program, where the program hired your agency to review and process prospective homebuyers' applications?

Under the circumstances presented, your question is answered in the negative.

In your letter of inquiry, additional information supplied to our staff, and telephone conversations between you and our staff, you relate that you are employed by a City, in its Housing and Community Development Division, and that you are residents of the City who have submitted

¹ Prior opinions of the Commission on Ethics may be obtained from its website (www.ethics.state.fl.us).
individual applications to participate in the City's Community Redevelopment Agency (CRA) Purchase Assistance Program as first-time homebuyers. You relate that you learned about the CRA Program through the developer's website, a site linked to the CRA. You explain that, pursuant to the CRA Program guidelines, you meet all income and household requirements to participate in the CRA Program, which operates on a first ready, first qualified, first served basis and is subject to funding availability. You also state that during your initial inquiry regarding the Program, you discovered that out of a total of eleven homes, only six were available for purchase, as five of the homes already were under contract. As such, you contacted the developer directly to find out about the availability of the six properties and subsequently made the required 3% down payment to secure your respective homes. Although currently secured, you explain that you will not be able to afford to complete the purchase of your homes without the Program subsidy. You also relate that since the Division (your agency) currently has a first-time homebuyer program, the CRA enlisted it to review and process applications for the Program subsidy. However, you explain that—to avoid possible conflict of interests or the appearance of impropriety—your individual applications were directly routed to an outside third-party entity for review, who in turn re-routed the applications to County government for a separate review.

The materials you submitted indicate that the CRA donated the land (where your prospective homes are to be built) to the developer pursuant to an agreement requiring that the developer sell the homes to qualified applicants at restricted prices. In addition to submitting an application to the CRA and satisfying income requirements, potential homebuyers must agree to reside on the property for a minimum of seven (7) years or repay the full value of the land as

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2 The CRA Program funding provides gap financing up to $45,000.
stipulated by the CRA based on an acceptable appraisal, and must agree to sign restrictive covenants to assure that the uses contemplated by the project continue to inure to the benefit of the community.

The provision of the Code of Ethics for Public Officers and Employees relevant to your inquiry is Section 112.313(7)(a), Florida Statutes, which states:

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee...; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

The first part of Section 112.313(7)(a) prohibits you from having a contractual relationship with the CRA, an agency (as defined in Section 112.312(2), Florida Statutes) arguably doing business with (by virtue of hiring the Division to review and process Program applications) your agency (the Division). The second part prohibits you from having a contractual relationship which would create a continuing or frequently recurring conflict between your private interests and the performance of your public duties or which would impede the full and faithful discharge of your public duties.

Based upon the Program's requirements, as summarized above, a contractual relationship appears to exist between you and the CRA, the agency that administers the CRA Program subsidy. However, you relate that, in your public capacities as City employees, you do not personally work for the CRA or with the program\(^3\) that reviews homebuyers' applications in the Division.

\(^3\) HOME Investment Partnerships Program (HOME).
Specifically, you explain that employee "one (1)" works as the Housing and Community Development Coordinator monitoring projects and sub-recipients for compliance under the Division's Community Development Block Grant Program, while employee "two (2)" works as a Code Compliance Officer conducting housing quality standard inspections under the Division's Housing Opportunities for Persons with HIV/AIDS Program. As such, you are not in decision-making positions related to the CRA, including the CRA Program subsidy. While it appears that the funds for the homebuyer assistance may be limited, you relate that qualifying for the CRA Program subsidy is based on objective criteria applicable to all eligible homebuyers and that the executive director of the CRA has the exclusive responsibility for determining which applicants are approved to receive it. Though the Division and CRA are separate "agencies" within the City's nomenclature, where the CRA arguably is doing business with your agency (by way of hiring the Division to process the applications for its Program's subsidy), the interaction between them is significant. Therefore, since you would have a contractual relationship with the CRA and the CRA arguably is doing business with your agency, you would be restricted by Section 112.313(7)(a)—if applied in isolation—from participating in the CRA Program and receiving its subsidy.

However, Section 112.316, Florida Statutes, provides:

CONSTRUCTION.—It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from...following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

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4 Since you relate that the CRA hired the Division to process applications for the CRA Program subsidy, employees of the Division are actually processing the applications on behalf of the CRA.
We previously have considered circumstances similar to those presented here. In CEO 06-10, we did not believe that the subject employees should necessarily be barred from participating in their agency’s cost-share programs that were available to all qualifying landowners, as long as they were otherwise eligible, and as long as they played "absolutely no role in determining their eligibility for programs or in monitoring their compliance with program requirements." As such, we applied Section 112.316 and found no prohibited conflict was created under Section 112.313(7)(a). More recently, in Complaint No. 15-209 and Complaint No. 15-210 we rejected the recommendations of our Advocate and dismissed the complaints, finding that there was no probable cause to believe that the Respondents, as employees of a city or of the city’s housing authority, violated Section 112.313(7)(a) by having conflicting employments and/or contractual relationships in relation to a loan received from their agency.⁵ Similarly, in Complaint No. 18-097, we dismissed a complaint with a finding of no probable cause to believe that the Respondent, as an employee of a city, violated Section 112.313(7)(a) by acting in her official or private capacities to inappropriately contract with a program that was administered by her agency in order to make repairs to her and her husband’s property.⁶ As a result, where it does not appear that pursuit of a private economic interest, via participation in the Program, will interfere with the performance of your duties in your public capacities, and in light of our previous findings, we believe that it is appropriate to apply Section 112.316 to negate any restriction that would arise in your situation via the literal language of Section 112.313(7)(a).

Accordingly, under the specific circumstances of your inquiry, we find that you are not

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⁵ We also found that there was no probable cause to believe that the Respondents violated Sections 112.313(6) and 112.313(8), Florida Statutes.
⁶ We also found that there was no probable cause to believe that the Respondent violated Sections 112.313(6) and 112.313(8), Florida Statutes.
restricted by Section 112.313(7)(a), Florida Statutes, from participating in the CRA Program and receiving its subsidy in accordance with the Program's requirements, provided that you have absolutely no involvement in reviewing, processing, or otherwise evaluating your own applications or in monitoring your own compliance with Program requirements. Notwithstanding, you, along with any other Division employees who seek to participate in the CRA Program, should be mindful of Section 112.313(6), Florida Statutes, which prohibits one from corruptly using their position to obtain a special benefit (i.e., CRA Program funding), and take care not to run afoul of it.

Your question is answered accordingly.

KBR/der/vlk
Simone,
Received. We will be in touch.
Thank you,
Chris Anderson
C. Christopher Anderson, III
Executive Director and General Counsel
Florida Commission on Ethics
(850) 488-7864

From: Simone Flores <SFlores@fortlauderdale.gov>
Sent: Wednesday, July 10, 2019 5:30 PM
To: Anderson, Chris <ANDERSON.CHRI@leg.state.fl.us>
Cc: Christopher Leonard <CLEonard@fortlauderdale.gov>
Subject: Request Ethics Opinion for Conflict of Interest
Importance: High

Good Afternoon Mr. Anderson,

Please find attached for your review and opinion on a potential Conflict of Interest.

All entities involved are awaiting a response to determine if we may move forward with this transaction.

Looking forward to your timely response.

Respectfully,

Simone Flores
Housing & Community Development Coordinator
City of Fort Lauderdale | Housing and Community Development
914 Sistrunk Blvd. Suite 103
Fort Lauderdale, FL 33311
Ph: (954) 828-4516
Fax:(954) 847-3700
SFlores@fortlauderdale.gov

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The Housing and Community Development (HCD) programs do not discriminate based on race, color, sex, sexual orientation, gender identity, religion, familial status, or disability.

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Two employees within the City’s HCD department want to purchase homes within Sweeting Estates, a CRA project. I believe Purchase and Sale Agreements have been signed with the Developer. Under our Development Agreement, the CRA donated the land to the Developer and will require the Developer to sell the homes to qualified applicants at restricted prices. Under its homebuyer program, the CRA will provide subsidy up to $45K to qualified applicants who must make separate application with the CRA. The potential homebuyer must agree to reside on the property for a minimum of 7 years or repay the appraised value of the land as memorialized in a Restrictive Covenant they must sign. They must also satisfy the income limitations.

The HCD Department was hired by the CRA to process the applications for the CRA subsidy. Both employees work for HCD (and the City) but are not leased employees of the CRA under the Services Agreement. The employees are not providing goods or vendor services (except for their labor) to the City or the CRA and they do not serve on the CRA Board of Commissioners or the Advisory Board.

After the applications are vetted and screened by HCD and our third-party vendor and partner, they would be approved by the Executive Director.

The employees’ applications are being screened and vetted by an agency comparable to HCD within Broward County to provide independent and impartial review. None of the requirements to receive the subsidy, primarily household income and 7 year residency, are being waived by the CRA. None of the employees (or their co-workers or supervisors) would be allowed to speak with Chris regarding their applications and we would make full disclosure to Chris that these 2 homebuyers are employees of HCD.

Under F.S. 112.316, I think the employees have the right to purchase a home and enter into a contract. Purchasing a home (without the subsidy) does not interfere with their ability to perform their duties.

The potential conflict of interest may arise under F.S. 112.313 (7)(a), Doing Business With One’s Agency. The HCD employees are actually processing the applications on behalf of the CRA. They don’t necessarily have a working relationship with Chris who makes the final decision. Also, the HCD applicants are not employees of the CRA nor are they covered by the Services Agreement between the City and the CRA in my opinion.

I spoke to the Florida Ethics Commission and they suggested the employees ask for a formal opinion. Do you think we should?

I think we have provided sufficient firewalls to protect the independence, impartiality and transparency of the transaction and allow the employees to proceed forward under the process and procedure outlined above.
July 10, 2019

Chris Anderson, Executive Director
The Florida Commission on Ethics
P. O. Drawer 15709
Tallahassee, FL 32317-5709

Good Afternoon Mr. Anderson,

RE: Request Ethics Opinion for Conflict of Interest

We work for the City of Fort Lauderdale (COFL) in the Division of Housing and Community Development (HCD). We were advised to reach out to your office; Florida Commission of Ethics (FCE) for a formal opinion on a potential Conflict of Interest.

The issue:

Myself and another employee; Christopher Leonard (cc’d here on this email) desires to purchase our individual homes through COFL’s Community Redevelopment Agency Program (CRA) as first-time homebuyers. The CRA is not a direct agency of the city, but rather is a redevelopment arm of the city.

The CRA is offering a homebuyer subsidy incentive of up to $45,000 to qualified candidates. The incentive is for down payment and/or closing costs. HCD currently has a first-time homebuyer program. CRA therefore, enlisted the assistance of HCD to review all potential applicants of the program.

To this end, we applied and our application was directly routed to an outside third-party entity for review, who in turn re-routed it to Broward County for separate review. This is to avoid any Conflict of interest or perception of the same.

We have attached the COFL attorney’s opinion on the matter for further reference.

Situation facts:

- City employees for 1-2 years
- Work for the Division of Housing and Community Development (HCD) as a compliance officer
- Does not work for the city’s CRA or with the program that review homebuyers’ applications in HCD.
- We are not in a decision-making positions.
- Gained knowledge about the CRA home-purchase program through the developer’s website that was linked the CRA.
- During our initial inquiry there were only six homes left for purchase. Five were already under contract.
- We contacted the developer directly to find out about the availability of the six properties.
- We meet all income and household requirements (pursuant to the CRA program guidelines) to participate in the CRA homeowner program (including that for the subsidy).
- We made the required 3% down payment to secure the home. We cannot afford the purchase without the subsidy.

Thank you for your time and consideration. We look forward to your prompt response. Please feel free to contact us with additional questions.

Respectfully,

Simone Flores
201-463-9222

Christopher Leonard
302-528-3542
Thank you!

From: Simone Flores <SFlores@fortlauderdale.gov>
Sent: Tuesday, August 13, 2019 9:22 AM
To: Rahming, Deanna <RAHMING.DEANNA@leg.state.fl.us>
Cc: Christopher Leonard <CLeonard@fortlauderdale.gov>
Subject: RE: Formal Advisory Opinion

Hi Deanna,

Thank you for following up with us on this matter. The Program that administers the first time homebuyer applications is referred to as Home Investment Partnerships Program (HOME). We do not work with that program.

To this end, Below is the blurb of our functions:

**Simone Flores**
Title: Housing and Community Development Coordinator
Functions: Monitor projects and sub recipients for program compliance under the Community Development Block Grant (CDBG) Program for the Division of Housing and community Development.

**Christopher Leonard**
Title: Code Compliance Officer
Functions: Housing quality standard inspections under the division’s Housing Opportunities for Persons with HIV/AIDS (HOPWA) Program.

Respectfully,
Simone Flores
Housing & Community Development Coordinator
City of Fort Lauderdale | Housing and Community Development
914 Sistrunk Blvd. Suite 103
Fort Lauderdale, FL 33311
Ph: (954) 828-1516
Fax: (954) 847-3700
SFlores@fortlauderdale.gov

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The Housing and Community Development (HCD) programs do not discriminate based on race, color, sex, sexual orientation, gender identity, religion, familial status, or disability.
Good afternoon, Ms. Flores:

At your earliest convenience, would you (along with Mr. Leonard, if possible) give me a call regarding the formal opinion that I am drafting in response to your ethics inquiry? Please know that I was unable to leave a voice message on your cell phone earlier today, but did leave a message on your work voicemail.

Thank you,

Deanna E. Rahming
Attorney

Florida Commission on Ethics
(850) 488-7864