

Disclosure of Interest

This case demonstrates the importance of disclosing one's interest in a real estate transaction under the Board's regulations. In addition to disclosing pursuant to the regulations, as a REALTOR® you also have a duty under the Code of Ethics Article 4, which states:

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative.

Remember your disclosure obligations in a transaction so you do not end up in double trouble!

THE SITUATION:

Mark Flan was issued a real estate salesperson license on January 23, 2013. From June 25, 2015 through March 20, 2019, Mr. Flan's license was affiliated with Home Realty, Inc. On March 20, 2019, Home Realty returned Mr. Flan's license to the Department of Professional and Occupational Regulation. On March 25, 2019, Mr. Flan's license was active with By the Sea Realty.

The Board received a written complaint from Reginald Schutte, Managing Broker for Home Realty regarding Mr. Flan regarding a transaction that their brokerage firm was involved in.

THE INVESTIGATION:

Investigators learned that on February 4, 2019, Rabbit Foot, LLC (Rabbit Foot), as buyer, and the U.S. Department of Housing and Urban Development (HUD", as Seller, entered into a sales contract for the purchase of a property in Virginia Beach, Virginia. Virginia Beach Realty was the listing firm, with Benjamin Allen as the agent who represented the seller. Home Realty was the selling firm with Mr. Flan as the buyer's agent. Settlement occurred for the property on March 20, 2019.

Rabbit Foot was a limited liability corporation that registered with the Virginia State Corporation Commission on April 14, 2015. Mr. Flan is the registered agent and member/manager for Rabbit Foot.

Upon review of the contract, investigators saw that the contract did not contain any written disclosures indicating that Mr. Flan was a member/manager of Rabbit Foot. Mr. Flan told investigators that he is the registered agent and one of the owners of Rabbit Foot. He explained that the contract did not have a section for an agent to disclose any relationship with the buyer, and that in general HUD does not care if an agent has a relationship with the buyer. He also added that Mr. Schutte was aware of his relationship with Rabbit Foot.

Mr. Schutte told investigators that while there is no place on the HUD Contract for an agent to disclose their relationship to the buyer, Mr. Flan could have written an addendum disclosing his relationship.

THE RESULT:

The Board determined that Mr. Flan, as the selling agent, failed to disclose in writing in the contract that he had an ownership interest in the company that purchased the property. It imposed a monetary penalty of \$1,000, placed him on probation, and required him to complete two classroom hours of Board-approved continuing education pertaining to Real Estate Agency.

The Board was particularly concerned that as a licensee of over six years, Mr. Flan did not disclose his ownership interest, especially because his real estate activity includes purchasing properties in the name of Rabbit Foot to repair and resell. The Board was also concerned by his statement that HUD could not care less about such disclosures. One member of the Board reported, "I have worked with HUD on numerous transactions and they *do* care." It saw that Mr. Flan's blatant disregard for the Board's regulation warranted the imposition of a higher penalty.