

Census Workers Contacts of Brokers and Agents

Recently NAR received reports that brokers and agents have been contacted by U.S. Census workers requesting information about the owners or occupants of properties that the brokers or agents have listed for sale. In some cases these reports indicate that the Census workers aggressively sought from brokers or agents such information, and may have even advised that the brokers or agents were legally obligated to provide such information about property occupants.

NAR contacted the U.S. Census Bureau to learn more about their practices and the duty, if any, of real estate professionals to provide information about the occupants of properties for which they may be providing real estate services. Section 223 of Title 13 of the United States Code provides that it is unlawful for an "...owner, proprietor, manager, superintendent, or agent of any hotel, apartment house, boarding or lodging house, tenement, or other building, (to) refuse or willfully neglect, . . . to furnish the names of the occupants of such premises,..." In NAR's discussion with the Commerce Department's Chief Counsel for Economic Affairs, who has responsibility for the Census Bureau, she agreed with NAR's assessment that while this language may include some relationships between real estate professionals and their clients or customers, it does not generally apply to the "ordinary" case of a residential real estate broker or agent taking an exclusive listing for a residential property and marketing that property in the variety of ways that real estate professionals commonly do. Thus, brokers and agents in that circumstance are not legally compelled to provide information about the owners or residents of listed property being marketed for sale.

The Census Bureau explained that its workers, called "enumerators," are instructed to make a least three personal visits and three telephone calls to each residence for which a mailed census form is not returned. If enumerators are not successful after such contacts in reaching occupants to obtain census information, they are instructed to seek information from potentially knowledgeable "proxy" sources, such as neighbors or others. Another potential proxy source from whom some enumerators may have requested information are real estate brokers or agents identified on a For Sale sign posted on a property of interest that happens to be for sale at the time census information is being collected. The information requested may include that about property owners or residents, or whether the property is vacant, being offered for sale or rent, or rented or otherwise occupied on an occasional basis.

As we discussed with the Census Bureau, a real estate professional's authority to provide information requested by enumerators is governed by his or her agreement with the property owner. Because real estate professionals are hired by property owners to market and promote the sale or rental of property, they are generally empowered to provide information about the property, rather than about the property owners or occupants, to persons or entities that have a genuine potential interest in purchasing the property. Moreover, in many cases real estate professionals may not be able to provide complete, accurate, or current information about the residents of listed properties, and providing information about the occupancy of properties may also raise security issues.

Accordingly, the Census Bureau acknowledged that in the case of brokers or agents who have listed residential property for sale or lease, the information provided to Census enumerators by brokers or agents about property owners or occupants may be limited to that which the owner has expressly authorized, either in advance in the listing agreement, or given explicitly by the owner to the broker or agent at the time a broker or agent is contacted by a Census enumerator requesting property owner/occupant information. NAR believes, and the Census Bureau appears generally to agree, that is a reasonable approach and consistent with the limits of the above-cited statutory obligation to provide information to Census enumerators in certain cases.

The Census Bureau also provided the following link to its webpage showing contact information for its various regional offices: <http://www.census.gov/regions/>. Other questions or concerns about Census enumerator contacts of real estate professionals should, in each case, be referred initially to the appropriate region office for resolution.

In sum, therefore,

- Real estate professionals who list residential property for sale or lease are not obligated by law to provide to Census enumerators information about the owners or occupants of such properties;
- Real estate professionals who are contacted by Census enumerators for information about the owners or occupants of property listed for sale or rent should determine what information they may or should provide by considering the extent to which the owner, in the property listing agreement, has authorized them to offer such information;
- Alternatively, real estate professionals who are contacted by Census enumerators for information about property owners or occupants of listed properties may choose to consult with the owner for direction as to what information, if any, may be provided to the enumerator, and provide to the enumerator only that information the owner authorizes to be made available.