

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

NATIONAL ASSOCIATION OF HOME)
BUILDERS, *et al.*,)
)
Plaintiffs,)
)
v.)
)
SHAUN DONOVAN,)
Secretary of Housing & Urban)
Development, *et al.*,)
)
Defendants.)
_____)

CIVIL ACTION NO. 1:08cv1324

**JOINT MOTION FOR A STAY OF PROCEEDINGS, OR, IN THE ALTERNATIVE,
FOR AN ENLARGEMENT OF TIME**

The parties, through their undersigned counsel, hereby jointly move for a stay of proceedings in the above-captioned action until April 20, 2009. The grounds for this motion are as follows:

1. In the above-captioned action, plaintiffs challenge, pursuant to the Administrative Procedures Act (“APA”), *see* 5 U.S.C. § 702, *et seq.*, a portion of a final rule recently promulgated by the United States Department of Housing and Urban Development (“HUD”). *See generally* 73 Fed. Reg. 68,204 (Nov. 17, 2008). More specifically, plaintiffs challenge the definition of the phrase “required use” that HUD promulgated through that final rule for purposes of the agency’s Real Estate Settlement Procedures Act (“RESPA”) regulations. The Office of the United States Attorney for this district, *see* FED. R. CIV. P. 12(a)(2), was served with a copy of the summons and complaint on December 29, 2008.

2. On January 7, 2009, this Court entered an order setting a briefing schedule for cross-motions for summary judgment, including the filing of defendants' answer and the administrative record. The parties' initial summary judgment memoranda are due to be filed, pursuant to this Order, on March 9, 2009.

3. On today's date, HUD officials have elected to seek the withdrawal of the very portion of the new RESPA rule (*i.e.*, "required use") that is the subject of plaintiffs' challenge in the instant civil action. Agencies that seek to withdraw rules promulgated by the prior administration that have yet to go into effect must notice the same for public comment; here, HUD has provided a period of thirty (30) days. HUD officials have sent a notice to this effect to the *Federal Register* for immediate publication.

4. As this Court is likely now aware, the administrative record in this case spans nearly 8,000 pages, and the legal issues raised by plaintiffs' civil action are somewhat complex. Given the above, it would be a waste of scant judicial resources to have this Court review both that voluminous record and the parties' substantial memoranda when the agency's actions will likely render such time and effort moot. As a result, the parties have agreed that the filing of initial summary judgment memoranda on March 9, 2009, would be a waste of these very resources.

5. Nor will either party suffer any prejudice from this stay. The parties had agreed to the aforementioned truncated briefing schedule¹ in order to allow a reasonable opportunity for full briefing on the merits of plaintiffs' challenge, and for this Court's decision on the same, before the

¹Indeed, had this litigation proceeded solely under the timing provisions found in the Federal Rules of Civil Procedure, defendants would have filed their answer only a week ago, on February 27, 2009. See FED. R. CIV. P. 12(a)(4).

new regulatory provision at issue would go into effect on April 16, 2009. Simultaneously with their proposal to withdraw the regulation itself, HUD has also chosen to extend the effective date of the pertinent regulation another ninety (90) days – to July 16, 2009. As such, even if, after having received comment on its proposal to withdraw the regulation, HUD elects to retain the rule, plaintiffs are in exactly the same position as they are now – with a full opportunity to litigate the merits of their challenge and obtain this Court’s decision on the same before the dawn of the new effective date.

6. The parties therefore request that this Court vacate the present scheduling order and stay proceedings in the instant action until April 20, 2009. At that time, the parties can report to the Court about the status of the agency’s present intent to withdraw the regulation at issue in this litigation, and can propose the proper course of future proceedings, if any.

7. In the alternative, the parties request that this Court enlarge the time within which initial summary judgment memoranda may be filed by two weeks time, or until March 23, 2009. In this event, the parties will thereafter agree upon a new briefing schedule and submit the same to this Court.

8. A proposed order has been tendered to the Court with this joint motion.

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Respectfully submitted,

_____/s/_____
Michelle Hinchliffe Holmes
Va. Bar No. 75004
Weiner Brodsky Sidman Kider PC
1300 19th Street, N.W., Fifth Floor
Washington, D.C. 20036
Telephone: (202) 628-2000
Fax: (202) 628-2011
Email: holmes@wbsk.com

ATTORNEYS FOR PLAINTIFFS

DANA BOENTE
ACTING UNITED STATES ATTORNEY

By: _____/s/_____
DENNIS C. BARGHAAN, JR.
YIRIS CORNWALL
Assistant U.S. Attorneys
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: (703) 299-3891
Fax: (703) 299-3983
Email: dennis.barghaan@usdoj.gov

DATE: March 6, 2009

ATTORNEYS FOR DEFENDANTS

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[Proposed] ORDER

Upon consideration of the joint motion for a stay of proceedings, or, in the alternative, for an enlargement of time, it is hereby

ORDERED that the joint motion is GRANTED; it is hereby further

ORDERED that proceedings in this case are stayed until April 20, 2009; and it is further

ORDERED that the parties file a status report on or before April 20, 2009.

Date: _____

UNITED STATES DISTRICT JUDGE