

Application for Exemption Under Prohibited Transaction Class Exemption 96-62 for Certain  
Transaction Involving Mark R. Madura Sole Proprietorship Profit Sharing Plan  
EIN: 06-1344141  
Plan No.: 002

**MARK R. MADURA SOLE PROPRIETORSHIP  
PROFIT SHARING PLAN  
NOTICE TO INTERESTED PERSONS**

1. You are hereby notified that a written submission has been filed on behalf of the Mark R. Madura Sole Proprietorship Profit Sharing Plan (the Plan) by Mark and Margaret Madura (the Applicants), who are seeking authorization, pursuant to Prohibited Transaction Exemption 96-62 (PTE 96-62), 61 FR 39988, July 31, 1996, as amended by 67 FR 44622, July 3, 2002, from the sanctions resulting from the application of the prohibited transactions restrictions under section 4975(c)(1) of the Internal Revenue Code of 1986, as amended (the Code), in the transaction described below (the Proposed Transaction).
2. The Applicants seek authorization from the Department of Labor (the Department) to purchase property currently owned by the Plan. The residential property in question is located at 6157 Paseo Delicias, Rancho Santa Fe, San Diego, CA 92067 (the Property).
3. If the Department authorizes the Proposed Transaction under PTE 96-62, the sanctions of sections 4975(c)(1)(A), (D) and (E) of the Code, will not apply to the sale of the Property by the Plan to the Applicants.
4. The authorization is subject to the following conditions:
  - The terms and conditions of the Proposed Transaction are at least as favorable to the Plan as those that the Plan could obtain in an arms-length transaction with an unrelated party;
  - The Plan receives the fair market value of the Property on the date of the Proposed Transaction, as determined by a qualified independent appraiser (the Appraiser);
  - The Proposed Transaction is a one-time transaction for cash; and
  - The Plan pays no real estate fees, commissions, costs or other expenses in connection with the Proposed Transaction or the submission for consideration under PTE 96-62.
5. The Plan is a profit sharing plan with net assets available for benefits totaling \$1,266,610.49 as of December 31, 2013. The Applicants are the sole trustees and participants/beneficiaries of the Plan.
6. Among the assets of the Plan is the Property that is located in Rancho Santa Fe, California. The Property was constructed in 1975 and consists of a two-bedroom, two bath residence comprising 1,743 square feet. The Plan purchased the Property on October 2, 2010 from an unrelated third party as an income investment, for a purchase price of \$714,000. The Plan

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paid the consideration in cash. The Property has not been encumbered by a mortgage since it has been owned by the Plan. The Property has been periodically rented to arms' length tenants and has experienced vacancy between occupancies. The Property has not been used by the Applicants or any other disqualified person with respect to the Plan (including any relatives of the Applicants). The Property is also not located within close proximity to other real property that is owned by the Applicants or other disqualified persons.

7. The Plan has received all rental proceeds associated with the Property and it has paid the costs of maintenance, expenses and property taxes. From the date that the Plan purchased the Property to the present, the Applicants' good faith estimate of such proceeds paid to the Plan is \$57,000 and of such expenses paid by the Plan is \$34,564. Thus, the Plan has experienced a net profit of \$22,436 with respect to these expenses. In addition, the Applicants have managed the Property without charging any fees to the Plan and they have never used the Property themselves for any purpose. Although the Plan has attempted to sell the Property to unrelated third parties for over six months, no one has expressed an interest.

8. The Property has been appraised by Tyler P. Lowman, of Southwest Equity Appraisals, located in San Diego, California. The Appraiser is a California Certified Residential Real Estate Appraiser, with 21 years of experience in researching and appraising residential property in southern California. The Appraiser is subject to sanction for misconduct by the California Office of Real Estate Appraisers.

9. The Appraiser states that he has had no prior affiliation or business dealings with the Applicants and that he has derived less than 1% of his 2013 gross income from the Applicants. In addition, the Appraiser has certified that he has no interest in the Property and no bias for or against the Property or the Applicants.

10. Acting solely on the Plan's behalf, the Appraiser placed the fair market value of the Property at \$900,000 as of November 1, 2013 in an appraisal report (the Appraisal Report) dated November 27, 2013. In valuing the Property, the Appraiser used the Sales Comparison Approach to valuation. The Appraiser also consented to and acknowledged that the Appraisal Report would be forwarded to the Department as part of this submission for final authorization of the Proposed Transaction. Thus, on the basis of the Appraisal Report and the most recent valuation of the Plan, the Property would represent approximately 71% of the Plan's assets.

11. The Applicants represent that the Proposed Transaction is in the interest of the Plan and the participants and beneficiaries. Although the Property was intended to be an income-producing asset, the Applicants state that this goal has not been realized because of the sporadic rentals. Through the Proposed Transaction, the Applicants explain that the Plan will be able to dispose of the Property at its fair market value for cash, realize the appreciation of this investment and thereby create a more liquid asset with an opportunity for better growth. Also according to the Applicants, the Proposed Transaction will allow the Plan to diversify its holdings further without waiting for a buyer, which could take a long

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time. The Applicants will not incur any brokerage commissions, fees and expenses in connection with the Proposed Transaction or the subject submission.

12. The Proposed Transaction is substantially similar to the following individual exemption and authorization approved under PTE 96-62, which the Department has granted within the past 60-120 months:

- (a) **PTE 2007-16, 72 Fed. Register 51,473, September 7, 2007 for The Victor P. Olson Profit Sharing Plan**, an individual exemption for the sale of a parcel of improved real property by the plan to Victor P. Olson, a party in interest to the plan. The sale was a one-time transaction for cash. The purchase price was the greater of (1) \$375,000 or (2) the fair market value of the property at the time of the sale. The plan was not required to pay any commissions, costs, or other expenses regarding the sale. The property comprised a significant portion of the plan's total assets, 50%. In this case, the Property is 73% of the Plan's total assets. It is therefore submitted that the current exemption is substantially similar in all material respects.
- (b) **FAN 2012-04E, May 26, 2012, Douglas S. Dorflinger and Associates Profit Sharing Plan**, an approved authorization under PTE 96-62, for the sale of a parcel of improved real property by the plan to Douglas S. Dorflinger and Pamela C. Dorflinger, parties in interest to the plan. The sale was a one-time transaction for cash. The plan was a profit sharing plan, like the Plan in question. The plan was not required to pay any commissions, costs or other expenses for the sale. The transaction involved an underperforming property in Southern California whose sale allowed the plan to diversify its holdings. The plan received the fair market value on the date of the sale.

13. As a person who may be affected by this authorization, you have the right to comment on the Notice to Interested Persons (the Notice) by June 16, 2014. Comments should be addressed to:

Employee Benefits Security Administration  
Office of Exemption Determinations  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Room N-5700  
Washington, DC 20210  
Attn: Mrs. Blessed Chuksorji-Keefe

14. Comments may also be submitted by facsimile to (202) 219-0204, or by e-mail to [chuksorji.blessed@dol.gov](mailto:chuksorji.blessed@dol.gov). You should reference submission number E-00742 when you submit your comment. **Warning.** Do not include any personally identifiable information (such as name, address, other contact information or confidential business information) that

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you do not want publicly disclosed. If you have any questions regarding your right to comment on the Notice, you may contact Mrs. Chuksorji-Keefe at (202) 693-8567.

15. The Department will make no decision on the request for final authorization for the Proposed Transaction until it reviews all comments received in response to the Notice.

16. The final authorization to engage in the Proposed Transaction will occur on June 20, 2014, unless the Department notifies the Applicants otherwise. The Proposed Transaction will occur within 60 days following the date of final authorization by the Department.