|  |  |  |
| --- | --- | --- |
| Slide 1 |  | **Instructor:** This toolkit will review the guidance document DPOR and the Fair Housing Office provided in April 2021 for the source of funds protected class. |
| Slide 2 |  | **Instructor:** Fair Housing law makes it unlawful to discriminate in these ways based on certain protected classes, which since 2020 includes a person’s source of funds. This list is not inclusive, but includes the four primary categories of discriminatory conduct.  **Source:** Virginia Code § 36-96.1:1, 36-96.3 |
| Slide 3 |  | **Instructor:** Importantly, a person’s source of funds may be considered without it being considered discriminatory in these two circumstances. First, if the owner of the property owns four or less properties (ownership defined as greater than 10% interest in a property) they may consider a person’s source of funds. That includes if they have an agent managing the property – regardless of how many properties the agent manages. Second, if an owner approves a tenant subject to their source of funds approving the property under a certain program, and the approval takes longer than 15 days after the owner requests tenancy approval, the owner may deny the rental on that basis.  **Source:** Virginia Code § 36-96.2 |
| Slide 4 |  | **Instructor:** Virginia REALTORS has a form you can use to verify how many properties your client owns to determine whether or not the “4 or less properties” exemption applies. We recommend that you have your clients review this and complete it, and verify or update it regularly. |
| Slide 5 |  | **Instructor:** The implementation of the source of funds protected class has still led to questions from real estate licensees, which DPOR and the Fair Housing Office have answered within a Guidance Document provided in April 2021. You can find the Guidance Document on DPOR’s website, and we encourage you to read it in full, particularly if you manage properties. But let’s start with sales and whether the source of funds protected class applies here and how. The Guidance Document says explicitly that sellers may consider financial terms and conditions from prospective purchasers without running afoul of the law. Specifically, sellers may consider the loan program or type of loan, including VA and FHA loan terms, as compared to all cash offers or conventional loans.  **Source:** Guidance Document, pp. 2-3 |
| Slide 6 |  | **Instructor:** The Guidance Document heavily emphasizes being consistent in how you apply income verification criteria. Essentially, have a policy and apply it consistently. It is OK to determine stability by looking at past income, just do it consistently. Conversely, looking ahead to forward income or how long a source of income may last, but only for those applicants who are using a non-traditional source of income would be a potential fair housing violation. In other words, are you able to know whether an applicant providing proof of income through current employment will still be employed at the same place and rate in 3 months time? No. So you should not use that kind of verification method for applicants who are using a different source of income than paychecks.  **Source:** Guidance Document, pp. 3-4 |
| Slide 7 |  | **Instructor:** The Guidance Document provides a calculation for those housing providers who require that an applicant prove they earn income and/or have access to funding for several months worth of rent. The example on this slide shows the appropriate way to calculate for such a requirement, by subtracting, for example, rental assistance funds from the rent to calculate the portion of rent for which the tenant is responsible before multiplying that number by the number of months required.  **Source:** Guidance Document, pp. 4-5 |
| Slide 8 |  | **Instructor:** Justifying a denial based on the “administrative burdens” of a certain funding source is not a defense that permits one to violate fair housing based on the source of funds. Judges in other states have found doing so to make the purpose of the statutory law requiring such protections to be moot. Essentially, legislatures are allowed to make laws and one cannot thwart the purpose of the law in such a way. The law does allow a denial if the property must be and is not approved by the source of the funds in question within 15 days.  **Source:** Guidance Document, pp. 5-6 |
| Slide 9 |  | **Instructor:** The Guidance Document goes into detail about the 15-day approval exemption timeline, anticipating questions regarding the definition of certain dates. The “Submission of the request for tenancy approval” date is the date on which a complete package is delivered (delivery defined as email, in-person delivery, or the date on which the packet was mailed) to the voucher administrator. The approval date is defined as the date the unit passes inspection as indicated on the inspection report. Implicit in the exemption (and explicit in the Guidance Document!) is that the housing provider must cooperate in good faith with the applicant and the voucher administrator during the process. If the provider does not cooperate in good faith, it will be held against them in any hearing on fair housing liability.  **Source:** Guidance Document, pp. 6-8 |
| Slide 10 |  | **Instructor:** We have learned today what the law is and how DPOR and the Fair Housing Office expects that it be implemented. Develop your policies appropriately, or if your client, the owner, has specific preferences ensure that you review them with these guidelines in mind so you may recommend changes if needed. Apply the screening policies consistently. You may have clients with different policies, but you must apply them to the property in question consistently. If you have an applicant using a housing voucher for which the property must be approved by the voucher administrator, approach that process in good faith and do not attempt to delay the process to reach the 15 day deadline where you can legally reject the tenant. Document your process, in writing, with the administrator so that you may later show, if necessary, that you followed the legal process for a rejection if the administrator does not approve the property within the legally required time. Finally, you are responsible for knowing how many properties your client owns – and, thus, whether the 4 or less exemption applies to them. Verify this regularly and update if necessary. You can use the Virginia REALTORS form developed for this purpose. |
| Slide 11 |  | [Read Q&A] |
| Slide 12 |  | [Read Q&A] |