

Fair Housing Broker Guide

Overview

April is Fair Housing month which marks the annual celebration of the passage of the 1968 Fair Housing Act and allows us the perfect time to not only educate the public on the importance of Fair Housing laws, but refresh our own knowledge of the law and risk management practices.

Federal fair housing law consists of the Civil Rights Act of 1866 and Title VIII of the Civil Rights Act of 1968, otherwise known as the Fair Housing Act. As of 1988, the Act provides that no protected class can be discriminated against in the sale, rental, or financing of residential dwellings. Federal law also states that all U.S. citizens have the same rights to “inherit, purchase, sell, hold, and convey real and personal property.” The U.S. Supreme Court has interpreted the Fair Housing Act to cover private real estate transactions.

Under the federal law there are 7 protected classes:

- Race – A group of people united based on a common history, nationality, or geography
- Color – The color of one’s skin
- Religion
- Gender
- National Origin – A person’s or their ancestor’s country of birth
- Familial Status - Individuals under age 18 who live with a parent or guardian, pregnant women, and anyone about to obtain custody of someone under 18.
- Disability - an individual with a physical or mental impairment that substantially limits one or more of a person’s major life activities,

a record of such impairment, or being regarded as having such impairment.

o this definition of disability includes recovering alcoholics, recovering drug addicts, and HIV/AIDS. The Virginia Fair Housing office has also included hoarding as a disability .

Virginia Fair Housing Law adds an additional protected class: Elderliness (e.g. age 55 years or older)

Some Virginia localities impose their own fair housing protected classes. Always check the local fair housing ordinances in your county.

As REALTORS[®], we are also bound by Article 10 of the Code of Ethics which prohibits discrimination against two additional protected classes: *Sexual orientation and gender identity*.

Code of Ethics: Article 10

REALTORS[®] shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS[®] shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

REALTORS[®], in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

Prohibited Activities

Discrimination can take the form of:

- Refusing to sell, lease, or otherwise make unavailable a dwelling to a particular individual who has the ability to purchase or rent the dwelling because he or she is a member of a protected class.

- Inducing a person to sell or rent by referring to the prospective entry of persons of a particular race, religion, national region, or handicap.
- Setting different terms or conditions for different people in the same sale or rental because they are in a protected class.
- Falsely denying that housing is available for inspection, sale, or rental based on someone's membership in a protected class.
- Steering: an effort to influence a person's housing choices based on race or other protected class
- The making, printing, or publishing of any statement, notice or advertisement with language that indicates a preference, limitation or discrimination on the basis of a protected class.

The Code of Ethics gives REALTORS® further guidance on prohibited activities:

Standard of Practice 10-1

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information. (Adopted 1/94, Amended 1/06)

Complaints & Penalties

Anyone who perceives they have been discriminated against, including testers, can file against anyone who engages in a potentially discriminatory act prohibited by fair housing laws (employers may be liable too - e.g. brokers, property management companies. They don't need to have known or participated).

Fair Housing Testers

Persons who pose as prospective buyers or renters for the purpose of gathering information on whether a housing provider is complying with fair housing laws. The primary focus of the program is to identify unlawful housing discrimination on the basis of race, national origin,

disability, or familial status. Since 1992, the Department of Justice has filed 98 cases with evidence generated directly from their testing program. However, because of the potential for large monetary judgments in Fair Housing cases, there are also organizations and companies that actually train and pay people to be testers who go out in search of people potentially violating Fair Housing laws.

- Actual damages
- Injunctive relief
- Suspension or revocation of license
- \$11,000 for first offense
- \$27,500 for second offense within 5 years
- \$55,000 for two or more offenses within 7 years

Risk Management

- Become familiar with all the protected classes (including local ordinances) and their definitions.
- Develop and follow standard procedures for all buyers and sellers.
- Allow buyers to set their own limits and make their own choices in their housing search, but do not accommodate any requests to limit searches on the basis of protected classes.
- Sensitize your clients to fair housing laws and your obligation to comply before you enter into a brokerage relationship.
- Use the Equal Housing Opportunity logo, statement, or slogan on all advertising. Use of the logo creates a presumption that you are trying to follow fair housing law.

Questions and Answers

Questions

A sales associate shows the parents of a blind toddler a house for sale at the end of a quiet cul-de-sac. One block away, on a busy corner, the parents notice another house for sale that meets their specifications and ask why the sales associate didn't show them that one. Did the sales associate violate fair housing laws?

Answer

Potentially. Even if the sales associate has the family's best interests in mind, she can be said to be acting discriminatorily on the basis of the toddler's handicap.

Questions

A property manager shows a young, single woman a top-floor apartment when there is a first-floor unit available. Did he violate fair housing laws?

Answer

Potentially. A perfectly sincere concern for this woman's safety may have led the manager to steer the tenant to the top-floor unit he perceives as safer. He can be said to be acting discriminatorily based on the tenant's gender.

Questions

Can a landlord refuse to rent to five college students without worrying about discrimination?

Answer

Ordinarily, yes. College students are not a protected class. However, be careful that the refusal to rent does not disproportionately affect a protected class. An example would be an ad refusing to rent to college students in an area adjacent to a historically black college or university. The landlord's intent may not be racist but his action could have a disproportionate effect on a protected class.

Questions

What should I do if I'm representing sellers who express an intent to discriminate in violation of the Fair Housing Act—someone who refuses to sell to an African American, for example?

Answer

This is not the time to be diplomatic. Remind the sellers that they pledged in the listing contract not to discriminate. Explain that you cannot honor their request. If the sellers are unwilling to abide by fair housing laws, terminate the relationship and confirm your decision in a letter to the sellers and with a copy in your transaction file.

If the sellers express their feelings in front of a potential buyer, follow the same course of action, plus take an additional step of sending the buyer and their agent/broker a letter confirming your commitment to equal housing and indicating that you terminated your relationship with the sellers.

Also be certain to notify your broker and discuss the situation with him or her.