



rental

fairhousing

*Shared Neighborhoods,
Equal Opportunities*

Pocket Guide



NATIONAL ASSOCIATION
OF REALTORS®

The Voice for Real Estate®

Real Strength.
Real Advantages.

For a complete listing of the business solutions offered from the NATIONAL ASSOCIATION OF REALTORS[®], visit us online at www.REALTOR.org/Store.

To receive NAR product updates and specials, send your email address to: narprod@realtors.org

**FAIR HOUSING:
SHARED NEIGHBORHOODS,
EQUAL OPPORTUNITIES**

RENTAL POCKET GUIDE

© 2008 NATIONAL ASSOCIATION OF REALTORS®

All rights reserved.

TABLE OF CONTENTS

Introduction	1
Fair Housing Compliance	2
Federal Fair Housing Laws	4
State and Local Fair Housing Laws	7
Conduct Prohibited by Fair Housing Laws	8
Conduct <u>Not</u> Prohibited by Fair Housing Laws.....	11
Testing	12
Penalties for Violating Fair Housing Laws	13
Program for Compliance	16
Conclusion	21
Rental Transaction Checklist	23
Frequently Asked Questions	28

INTRODUCTION

The principle that all persons are entitled to live wherever their resources permit has been reflected in state and federal fair housing laws and decisions of the United States Supreme Court since 1968.

Despite the existence of state and federal fair housing laws that are enforced by severe penalties, there is still discrimination in today's housing market. This fact supports the idea that the true solution to housing discrimination is changing personal values and attitudes.

Laws do not change attitudes, people do. To provide equal housing opportunities to all people regardless of race, color, religion, sex, handicap, familial status, or national origin, you must make a conscious personal commitment to eliminating bias and prejudice from the housing market. This commitment means adhering to policies and office procedures that provide all prospective tenants with equal professional services. Your commitment is required because equal housing opportunity is the law, it is good business, and it is the right thing to do.

This pocket guide contains a summary of significant facts about fair housing laws, emphasizes the importance of complying with them, and suggests procedures for ensuring that equal housing opportunities are provided to all prospective tenants.

INTRODUCTION

The pocket guide also contains a *Rental Transaction Checklist* that can be modified, as appropriate. Use of this checklist should help ensure that all prospective tenants are treated uniformly and professionally.

FAIR HOUSING COMPLIANCE

- To preserve a property and retain its value, you and the property owner must evaluate prospective tenants. This type of evaluation presents risks because you and the property owner may consciously or unconsciously rely on bias, prejudice, or stereotyping when determining a prospective tenant's character and creditworthiness. When making leasing decisions, the act of relying on criteria such as race, color, religion, sex, handicap, familial status, or national origin is a violation of federal fair housing laws.
- The financial consequences of noncompliance with fair housing laws are risks you cannot afford to take. Penalties can include actual as well as punitive damages, civil penalties, and payment of the plaintiff's attorney fees. In addition, your own legal defense costs could be substantial.
- A lawsuit alleging a discriminatory housing practice can also result in damage to a firm's reputation, public humiliation, embarrassment, and adverse publicity.

FAIR HOUSING COMPLIANCE

- Fair housing cases often include claims of intentional or willful misconduct. Therefore, errors and omissions insurance or any other liability insurance rarely covers fair housing claims.
- The doctrine of *respondeat superior* provides that an employer is responsible for the conduct of its employees. Similarly, accepted agency principles provide that a principal is responsible for the conduct of its agents. Both legal principles apply to fair housing cases.
- The employer or principal is held responsible for the conduct of its employees or agents merely by showing that the employees or agents who engaged in discriminatory conduct worked for that employer or principal.
- An employer or principal cannot protect itself from liability for a fair housing violation committed by its employees or agents merely by declaring it did not authorize or know about the misconduct.
- Where the brokerage firm is incorporated, it is the corporation that is the employer or principal, and the corporation, therefore, is held liable for the discriminatory conduct of its agents.

FEDERAL FAIR HOUSING LAWS

- Federal laws that are commonly referred to as “fair housing laws” consist of the following:

Civil Rights Act of 1866

Fair Housing Act

(Title VIII of the *Civil Rights Act of 1968*, as Amended in 1974, 1988 and 1995)

14th Amendment to the United States Constitution

- The table on pages 5 and 6 compares various provisions of the *Fair Housing Act* and the *Civil Rights Act of 1866*.
- The *14th Amendment* applies only to actions taken by government agencies. It requires states to guarantee all persons equal protection of the laws.
- The *14th Amendment* does not apply to private discriminatory conduct. The *14th Amendment* is used only in rare cases when there is government involvement in a housing discrimination case against a property owner or rental agent operating in the private housing market.

Civil Rights Act of 1866

What the laws say

Grants all citizens the same rights with regard to property as white citizens.

Who the laws protect

Protects all non-white citizens from racial discrimination in the sale, rental, holding or conveyance of any type of property.

Penalties the court can order

Injunctive relief, compensatory and punitive damages, attorney's fees to the successful plaintiff.

Amount of time available to file a complaint

Determined by state law.

Basis for filing complaints

Discrimination against non-white citizens.

Fair Housing Act

Prohibits discrimination in the sale, rental, lease or negotiation for real property to be used for housing based on race, color, religion, sex, handicap, familial status, or national origin. Also prohibits discrimination in residential real estate related transactions (i.e., financing, appraisals) or the provision of brokerage services.

Protects all citizens from discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin in the sale, rental, holding or conveyance of property to be used as a dwelling.

Injunctive relief, civil penalties, compensatory and punitive damages, attorney's fees to the successful plaintiff.

For complaints filed with HUD, one year after the last act of discrimination occurred. For lawsuits filed by private persons in federal court, two years after the last act of discrimination occurred.

Discrimination based on race, color, religion, sex, handicap, familial status, or national origin.

**Basis for filing complaints—
cont'd**

Racial discrimination in the sale, rental, holding and conveyance of any type of property.

Discrimination in the sale or rental of a dwelling.
Discrimination in residential real estate related transactions (financing, appraisal).
Discrimination in brokerage services.
Intimidation, interference or coercion.

How the laws are enforced

Civil actions may be brought into state or federal courts by persons injured by discriminatory conduct prohibited by the act.

A person injured by an alleged discriminatory practice may file a complaint with HUD or file a suit in federal court. HUD may initiate a complaint or investigation on its own behalf. HUD, after investigation, may issue a charge of discrimination. The HUD charge will be tried before an Administrative Law Judge unless a party to the charge elects a jury trial in federal court. The Attorney General may file a suit in federal court where a “pattern of practice” of discrimination can be shown or where the issue presented is of general public importance.

**Types of situations not covered
by the laws**

No exclusions.

The sale or rental of a single-family home, provided the services of a broker or agent are not used and there is no discriminatory advertisement. The rental of units in an owner-occupied building containing four or fewer units. The above exemptions do not apply to discriminatory statements or advertisements. Noncommercial clubs or religious housing. Familial status provisions do not apply to qualified housing for older persons.

STATE AND LOCAL FAIR HOUSING LAWS

- Many states and local governments adopt their own fair housing laws and ordinances.
- If the fair housing law of your state or local government has been certified by HUD as being substantially equivalent to the Fair Housing Act, HUD must refer complaints it receives to the appropriate agency for handling.
- State and local fair housing laws sometimes provide broader coverage than the Fair Housing Act. In addition to prohibitions against discrimination based on race, color, religion, sex, handicap, familial status, or national origin, some states also prohibit discrimination based on:
 - age
 - source of income
 - occupation
 - marital status
 - sexual orientation
 - unfavorable discharge from the military

CONDUCT PROHIBITED BY FAIR HOUSING LAWS

The following types of conduct are illegal under the 1866 Act and the Fair Housing Amendments Act.

- Refusing to rent a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.
- Steering prospective tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of the residents in a building or community.
- Discriminating in the terms, conditions, privileges, provision of services, or use of facilities because of race, color, religion, sex, handicap, familial status, or national origin.
- Limiting the use of common or community facilities based on the tenant's or guest's race, color, religion, sex, handicap, familial status, or national origin.
- Applying more burdensome rental criteria due to the applicants' race, color, religion, sex, handicap, familial status, or national origin.
- Advertisements that express a preference for or against tenants of a particular race, color, religion, sex, handicap, familial status, or national origin.
- Discrimination in the application of eviction policies based on race, color, religion, sex, handicap, familial status, or national origin.

CONDUCT PROHIBITED BY FAIR HOUSING LAWS

- Misrepresenting the availability of a unit based on the prospect's race, color, religion, sex, handicap, familial status, or national origin.
- Coercion, intimidation, threats or interference with any person's fair housing rights, or because that person is abiding by the fair housing laws.
- In addition, under the Fair Housing Act, the following actions concerning persons with handicaps are illegal:
 - Refusing to make reasonable accommodations in rules, policies, practices, or services necessary to provide a disabled person equal opportunity to use and enjoy a dwelling.
 - Refusing to permit a disabled person to make reasonable modifications to an apartment if it is necessary for the disabled person to fully enjoy it. The property owner may require that the tenant restore the interior of the apartment to the condition that existed before, if it will interfere with a future tenant's use of the premises.
- When a plaintiff files a complaint against you that alleges a discriminatory housing practice, he or she need only prove that your conduct had a discriminatory effect. The plaintiff does not have to show that you intended to discriminate.

CONDUCT PROHIBITED BY FAIR HOUSING LAWS

- Discriminatory effects can result if your rental guidelines or policies cause a disproportionate number of minority applicants to be rejected.
- Discriminatory effects can result if your guidelines or policies are applied in a discriminatory manner to exclude specific individuals.

CONDUCT NOT PROHIBITED BY FAIR HOUSING LAWS

- The Fair Housing Act does not guarantee any person a right to housing he or she cannot afford.
- Under the Fair Housing Act, the property owner or you are free to determine the economic class of tenants in a development and to set rents at whatever the market will bear.
- You or the property owner may lawfully refuse to rent to persons with a history of violent, destructive, or disruptive behavior, as long as the determination is based upon reliable information.
- You and the property owner can adopt and apply uniform, objective, and nondiscriminatory rental criteria designed to evaluate a prospective tenant's character, credit worthiness, and reliability.

TESTING

Testing is an investigative technique designed to identify whether you and/or the property owner have treated people unequally because of their race, color, religion, sex, handicap, familial status, or national origin.

- A typical testing situation for discrimination based on race involves two persons, one white and one black, posing as home or apartment seekers. Each tester separately approaches you or the property owner and gives nearly identical housing information requirements and financial qualifications. Each tester then notes the treatment received and the homes or apartments he or she saw.
- The purpose of the test is to isolate race or some other illegal basis for discrimination, such as familial status, as the only variable that might explain any disparate treatment received by the two testers.
- Evidence resulting from testing is admissible in housing discrimination suits.
- The United States Supreme Court has held that a tester who receives inaccurate information from either you or a property owner about housing availability may sue you and/or the property owner, even if the tester is not actually seeking housing.

PENALTIES FOR VIOLATING FAIR HOUSING LAWS

There are legal remedies available to a complainant:

- He or she may file a complaint with the U.S. Department of Housing and Urban Development (HUD). HUD will investigate the complaint and file a charge if evidence of discrimination is found. Such a charge will be tried before an Administrative Law Judge (ALJ), unless one of the parties elects to have the case heard in federal court.
- An aggrieved party or the U.S. Department of Justice may file a federal lawsuit.

The most fundamental type of relief a court or ALJ will award is actual damages caused to an aggrieved party.

- Actual damages include any out-of-pocket costs the plaintiff incurred while obtaining alternative housing and any additional rent or costs associated with that alternative housing.
- Another form of actual damages results from non-economic injuries such as humiliation, mental anguish, or other psychological injuries. Such damages are additional to any out-of-pocket losses the plaintiff incurred, and often are assessed relative to the severity of the discriminatory behavior.

PENALTIES FOR VIOLATING FAIR HOUSING LAWS

- In cases tried before an ALJ, a civil penalty of up to \$10,000 for a first violation, increasing to \$50,000 for third violations, may be imposed. In cases brought by the Justice Department, civil penalties of up to \$100,000 may be imposed.
- The federal court may award the payment of punitive damages—monetary awards designed to deter the wrongdoer from any future misconduct. Punitive damages do not reimburse the plaintiff for losses actually suffered; instead, they punish the wrongdoer.

To receive punitive damages, the plaintiff must show that the wrongdoer's conduct was "willful", "wanton", or "malicious", and specifically motivated by an intent to exclude the plaintiff for discriminatory reasons.

- Injunctions are court orders that require a wrongdoer to do or not do a specified act.
- Attorney's fees may be awarded to the prevailing party.

Beyond these specific legal remedies applicable throughout the United States, the following types of penalties may be imposed:

- Loss of license can occur in states where applicable real estate license laws prohibit discriminatory housing practices.

PENALTIES FOR VIOLATING FAIR HOUSING LAWS

- Penalties under Article 10 of the REALTOR® Code of Ethics which prohibits REALTORS® or REALTOR-ASSOCIATE®s from providing unequal professional services to clients, customers, or prospective tenants.

These penalties can include suspension or expulsion from your association of REALTORS®.

PROGRAM FOR COMPLIANCE

Implementing a comprehensive fair housing compliance program is the most effective action a property owner or property manager can take to minimize risk under the fair housing laws.

An effective fair housing compliance program may be evidence of compliance and consists of the following seven basic components:

1. Your firm publicly commits to fair housing compliance through:
 - a. Adoption and display of the REALTOR® Fair Housing Declaration. The Declaration can be found by going to www.REALTOR.org/divweb.nsf/FairHousing?OpenView and selecting the Diversity/Web/HousingDeclaration link.
 - b. Conspicuous use of the Equal Housing Opportunity logo on all appropriate advertising.
 - c. Involvement in community efforts to remove barriers to equal housing opportunity and service on an Equal Opportunity Committee of an association of REALTORS®.

PROGRAM FOR COMPLIANCE

2. Your firm should develop and use procedures to implement its fair housing commitment.
 - a. These procedures should require that equal professional service be provided to all prospective tenants and applicants. The three basic elements of equal professional service are: obtaining objective information regarding the prospect's needs and wants such as rent, size and location of the unit; letting the customer set the limits; and providing a variety of choices.
 - b. Existing and prospective tenants should be treated courteously and respectfully and given reasonably equivalent service and assistance.
 - c. You should either use the *Rental Transaction Checklist* provided or develop your own checklist to ensure that equal and professional services are provided to all prospects.
3. A high priority of your firm should be educating and training agents to use methods that will ensure compliance with fair housing laws.
 - a. Agents must be taught that stereotyping and prejudgments have no place in the management of an apartment building or housing development.

PROGRAM FOR COMPLIANCE

- b. All agents and those associated with your firm must receive regular fair housing training.
4. Noncompliance with your firm's fair housing compliance program must not be tolerated.
 - a. Noncompliance should never be treated as a "calculated" risk of doing business.
 - b. Repeated failure to adhere to the firm's fair housing policies by any agent should be grounds for dismissal.
5. Your firm should include a clause in its management contracts with property owners that ensures the property will be offered without regard to race, color, religion, sex, handicap, familial status, or national origin.
6. Your firm should regularly and systematically document its efforts to provide equal professional service.
 - a. Each agent should be required to keep records of each prospective tenant's:
 - name
 - address
 - telephone numbers
 - race
 - specifications for housing
 - amount of rent prospect wishes to pay

PROGRAM FOR COMPLIANCE

- b. All agents should be required to complete an *Equal Service Report* or similar form for each prospect served. Such forms serve as records of prospects' requests, services your firm provided, and units offered or shown. The NATIONAL ASSOCIATION OF REALTORS® *Equal Service Report* form is available in the *Fair Housing Handbook* (item 166-1084) for your use. The *Fair Housing Handbook* can be purchased at www.REALTOR.org/Store, or by calling 1-800-874-6500. Your firm may also develop a form containing similar or more detailed information that can be used to document each agent's performance. Each agent should be instructed to keep records of when an application is received, a credit check ordered, references checked, and employment verified.
- c. If you require a particular applicant to submit more information than ordinarily required by your firm, you should explain, in writing, your reasons, and include them with the application.
- d. Your firm should give each prospect a brochure containing information about fair housing laws and your firm's commitment to these policies. A model publication is the NATIONAL ASSOCIATION OF REALTORS® *What Everyone Should Know About Equal Opportunity in Housing* brochure (item 166-799). This brochure, which is available in English and Spanish, can be purchased at www.REALTOR.org/Store or by calling 1-800-874-6500.

PROGRAM FOR COMPLIANCE

- e. To solicit information about professional services received, send a follow-up survey to all prospective tenants who are not actively in contact with your firm. This acts as an “early warning” about potential fair housing complaints and is an excellent tool for monitoring an agent’s performance.
7. Any failures in performance must be identified and promptly corrected.
- a. Managers must be on the alert for subtle indications that an agent is not sensitive to fair housing policies.
 - b. Managers should deal immediately with inappropriate behavior by providing counseling or, if ultimately necessary, suspension or discharge.

CONCLUSION

Racial stereotyping and prejudice must be overcome before equal opportunity in housing becomes a fact of life rather than a principle of law. All individuals, regardless of race, color, religion, sex, handicap, familial status, or national origin must be guaranteed the right to own or rent any property that he or she can afford. Because the potential for discrimination still exists, you and the property owner cannot afford to be ignorant or casual about the requirements of fair housing laws. Ignorance must be replaced with knowledge and appreciation of what fair housing laws demand.

**Equal housing opportunity is the law,
it is good business, and
it is the right thing to do.**

**RENTAL TRANSACTION
CHECKLIST**

RENTAL TRANSACTION CHECKLIST

Introduction

- Greet prospects
- Stand up, shake hands
- Introduce yourself
- Ask for prospects' names
- Offer seating
- Offer refreshments (optional)
- Pre-qualify prospects
- Find out what size apartment they want
- Ask for price range of interest
- Determine prospects' "wants"
- Determine prospects' "needs"
- Ask if they would like to see apartment(s)

Use the *Equal Service Report Form*.

Showing the apartment

- Have keys available
- Show apartment(s) requested
- Follow set route; escort prospects at all times
- Allow prospects to enter first
- Point out locks, closet space, kitchen, bedroom(s), etc.
- Point out facilities, i.e., pool, laundry room, trash area, storage, parking, etc.
- Ask for prospects' questions
- Keep records including any comments and questions
- Show any additional apartments that meet prospects' wants/needs

RENTAL TRANSACTION CHECKLIST

Discuss neighborhood facilities (use a local map, if available), such as:

- Shopping centers
- Schools
- Transportation

Finally,

- Find out if prospects want to rent the apartment
- Keep records of prospects' responses
- Give prospects your business card, brochures, or other appropriate materials

RENTAL TRANSACTION CHECKLIST

Application Process

- Give prospects application form
- Describe the tenant selection process to the prospects
- Explain how you evaluate applications and select tenants
- Tell prospects the credit check fee, if any, and whether it is refundable
- Tell prospects application deposit amount and when deposit is refundable
- Tell prospects how long the application process will take

Ask prospects to complete form.

Review completed application.

- Make sure it is completed correctly and fully
- Check for prospects' signature(s) on the completed application form

Obtain deposit from prospects.

RENTAL TRANSACTION CHECKLIST

Selection Process

- Use established company selection criteria in an objective manner
- Call the credit bureau or send prospects' application
- Provide only necessary and objective information
- Contact prospects' current and former landlords to determine payment history (unless completed by credit bureau)
- Contact prospects' employer to verify employment and length of time on jobs
- To determine acceptance or rejection, objectively evaluate information about the prospects and follow company policy
- Call prospects to inform of acceptance or denial

If denied, provide prospects with objective reasons in writing.

- Explain the refund of application deposit, if appropriate
- Keep records of selection process, and contact with prospects
- When prospects are accepted, welcome them to their new home
- Explain building policies and provide tenants with apartment care guidelines
- Request rent check and security deposit
- Give tenants the apartment keys
- Provide tenants with contact names and telephone numbers for any problems

RENTAL TRANSACTION CHECKLIST

Documentation Process

- Document all verbal or written contact with prospective tenants
- File all verbal and written information relative to each prospect
- Keep records for at least two years and/or as long as the prevailing statute of limitations in fair housing complaints requires for your area

Other:

- _____
- _____
- _____

**FREQUENTLY
ASKED QUESTIONS**

FREQUENTLY ASKED QUESTIONS

The following questions illustrate fair housing issues you may frequently confront in the rental housing market. Read through the questions and answers. Keep this guide handy for quick reference, should such situations arise.

Questions are analyzed in four ways:

- *Key Points* identify the significance of this question under fair housing laws.
- *Areas of Liability* highlight legal consequences of responding inappropriately to the question under the fair housing laws.
- *Actions to Take* focus on the appropriate responses to such a question.
- *Suggested Responses* provide recommended and legally acceptable responses agents can use if confronted with this type of question.

FREQUENTLY ASKED QUESTIONS

Questions from building owners

QUESTION #1

What color (religion, nationality) are the prospects?

Key Points:

- When this question is asked, either you have failed to communicate to the owner that a decision to rent cannot be based on the prospect's race, or the owner refuses to accept the consequences of discriminating under fair housing laws.
- This type of question should alert you to problems that may become very serious when marketing this owner's property.
- Federal fair housing laws require that all property be offered to any qualified tenant or home-seeker without regard to race, color, religion, sex, handicap, familial status, or national origin.

Areas of Liability:

- If such a question is not immediately resolved, it can cause significant problems and expose you to charges of discrimination.

FREQUENTLY ASKED QUESTIONS

Actions to Take:

- Explain your firm's policy and responsibilities with regard to fair housing compliance.
- Provide the owner with a copy of the NATIONAL ASSOCIATION OF REALTORS® publication, *What Everyone Should Know About Equal Opportunity in Housing*.
- Include the following provisions in the property management agreement:

This property will be offered, shown and made available for lease to all persons without regard to race, color, religion, sex, handicap, familial status, or national origin.

- Immediately report this question to the manager.
- Advise the owner that you may not lawfully provide this information. Terminate your relationship with the owner if the owner refuses to consider tenants because of race, color, religion, sex, handicap, familial status, or national origin. Document your efforts.

FREQUENTLY ASKED QUESTIONS

Suggested Response:

- I may not lawfully provide that information. If you intend to violate the management agreement I need to know now, to avoid exposure to charges of discrimination and possible litigation against myself, my firm, and you. Remember, our management agreement says this property is to be offered without regard to race, color, religion, sex, handicap, familial status, or national origin.

QUESTION #2

I don't see why I have to allow this handicapped applicant to change the apartment. It's my building and I don't want there to be any changes.

Key Points:

- The Fair Housing Act prohibits refusal to permit, at the handicapped person's expense, reasonable modifications of existing premises occupied or to be occupied by a handicapped person, if the modifications are necessary for this person to fully enjoy the premises.

FREQUENTLY ASKED QUESTIONS

- According to fair housing regulations, the owner may condition approval of a renter's proposed modification, to provide that the renter submit a reasonable description of this modification. The renter may also be required to make reasonable assurances that the work will be completed in a "workmanlike" manner and that required building permits will be obtained.
- The property owner may condition permission for a modification on the renter's agreement to restore the interior of the premises to the condition existing before modification, unless the modification does not interfere with the property owner's or next tenant's use and enjoyment of the premises. Reasonable wear and tear to the premises is generally excepted.
- The property owner may not increase the handicapped person's security deposit. Where it is necessary to ensure that funds will be available to pay for any restorations of modifications, the property owner may negotiate that the tenant pay into an interest-bearing account over a reasonable period of time. The amount of money deposited in the account should not exceed the anticipated cost of the restorations. The interest shall accrue to the benefit of the tenant.

FREQUENTLY ASKED QUESTIONS

Areas of Liability:

- An owner may be found in violation of the Fair Housing Act if permission for reasonable modifications for a disabled person is denied or unreasonably burdened with conditions.

Actions to Take:

- Discuss the Fair Housing Act provisions relative to reasonable modifications for persons with disabilities.
- Remind the owner that while inquiring about the nature of a disability is prohibited, requests for modifications may include reference to why modifications are necessary.
- Suggest that the owner establish written policies and procedures for making modifications or accommodations for the disabled.
- Document discussions and agreements made with the owner about how requests for modifications and accommodations will be handled.

FREQUENTLY ASKED QUESTIONS

Suggested Responses:

- The Fair Housing Act requires that you allow reasonable modifications, at a tenant's expense, to enable a disabled tenant to fully use and enjoy the premises. The law requires you to allow this modification if it does not detract from the value or usability of the apartment for future tenants, or if the apartment can be restored by the tenant at the end of the lease.
- Let's develop an agreement with this tenant that outlines the modifications and states the tenant's obligations with respect to them.

FREQUENTLY ASKED QUESTIONS

Questions from prospective tenants

QUESTION #3

I only want to see buildings in white (or Jewish, black, etc.) neighborhoods.

Key Points:

- Rental agents and brokers often work with prospects and home-seekers who have a preference for a neighborhood with a specific racial, religious, or ethnic character.
- Federal law prohibits you from marketing property based on the racial or ethnic makeup of the neighborhood.

Areas of Liability:

- You will be open to charges of discrimination if you discourage or encourage a prospect to rent because of the racial, ethnic or religious composition of a building or neighborhood.

Actions to Take:

- If the prospect insists on restricting the housing search on the basis of race, color, religion, sex, handicap, familial status, or national origin of a building or neighborhood's residents, you should specifically note this on the prospect's *Equal Service Report*.

FREQUENTLY ASKED QUESTIONS

Suggested Response:

- I can help you find a great apartment, but I legally cannot choose your neighbors. Let me identify a number of homes, apartments, etc., that meet your other specifications, we'll look at the ones you want to see and when you've seen and considered everything, you can make your decision.
-

QUESTION #4

A nurse has to visit me every night for several hours. Will there be any problems in obtaining a key for my nurse?

Key Point:

- The Fair Housing Act requires that reasonable accommodations in rules, policies, practices, or services be made when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

FREQUENTLY ASKED QUESTIONS

Areas of Liability:

- An owner and manager may be found in violation of the Fair Housing Act if reasonable accommodations for the disabled are not made or are unreasonably burdened with conditions.

Actions to Take:

- Discuss your policy to make reasonable accommodations in rules, policies, practices, or services for persons with disabilities.
- Provide the prospect with your written policies and procedures for permitting modifications or making accommodations for the disabled.
- Document discussions with the prospect concerning requests for modifications and accommodations.

Suggested Response:

- We would be happy to provide you with a key for the nurse if you complete this request form for the key and state on it why this accommodation is necessary. We ask you to agree that the nurse may keep a key and that you will assume responsibility for the actions of that nurse when he/she is on the premises. You also agree to provide us with the name, address, and telephone number of the nurse, and that you notify us within 24 hours of any changes.

FREQUENTLY ASKED QUESTIONS

QUESTION #5

What is the racial composition of this building?

Key Point:

- Federal law prohibits any attempts to rent or refusals to rent based on the racial composition of a neighborhood or building.

Areas of Liability:

- You can expose yourself to charges of discrimination if you discourage or encourage a prospect to buy because of the racial, religious, or ethnic composition of the neighborhood or building.

Actions to Take:

- Never provide information or give an opinion about the racial, religious, or ethnic composition of a neighborhood or building.
- Refer prospects to sources of information, such as the library, the local municipal offices, or the Internet, so they can research the questions themselves.

FREQUENTLY ASKED QUESTIONS

Suggested Response:

- We cannot lawfully provide racial, religious, or ethnic statistics. If you'd like to research this matter, I can refer you to the city's planning department or Bureau of Census. They may have that information.

FREQUENTLY ASKED QUESTIONS

Questions from other agents

QUESTION #6

How do I treat a minority prospect who is obviously a tester and insists on wasting my time?

Key Points:

- A properly trained tester is indistinguishable from a prospect.
- The Supreme Court has ruled that testing is legal.
- Testing for fair housing compliance is an investigative technique that must be recognized as a risk and cost of business.

Areas of Liability:

- Treating anyone differently because of race, color, religion, sex, handicap, familial status, or national origin is a violation of the Fair Housing Act.

Actions to Take:

- Don't attempt to frustrate the tester.
- Treat the tester as a prospect even if the tester is identifiable.
- Respond only to questions asked and never volunteer information concerning race, color, religion, sex, handicap, familial status, or national origin.

FREQUENTLY ASKED QUESTIONS

- Your firm should have procedures and forms such as the *Equal Service Report Form*, and policies that document the delivery of equal professional service to all prospects. Then, if a complaint of discrimination is alleged, you and your firm will have the evidence on hand to explain or justify the questioned conduct in nondiscriminatory terms.

Suggested Responses:

- Being tested is one of the risks in this business. If you know your business and follow the firm's routines and policies, you'll do your job successfully.
- If you think you can identify a tester, you may be deceiving yourself. If you are concerned about being tested, it's best to either treat all of your prospects as testers or none as testers. Only then will you be providing *all* of your prospects with equal professional service. This is what fair housing compliance is all about.



©2008 NATIONAL ASSOCIATION OF REALTORS®
All Rights Reserved.

166-153
(01/08B)



NATIONAL ASSOCIATION
OF REALTORS®

The Voice for Real Estate®

430 North Michigan Avenue
Chicago, IL 60611-4087
1.800.874.6500
www.REALTOR.org