



sales



fairhousing

*Shared Neighborhoods,
Equal Opportunities*

Pocket Guide



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

SALES POCKET GUIDE

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INTRODUCTION

What would you do if a seller, homebuyer or sales associate asked you to discriminate based on race, color, religion, sex, handicap, familial status, or national origin? Federal, state, and local fair housing laws insist that you provide sellers and homebuyers with equal professional services in the marketing or selection of their properties. Understanding the fair housing laws will help you to accurately respond to questions and avoid charges of “panic peddling,” “red-lining,” “steering,” or any other type of discrimination prohibited by fair housing laws.

Compliance with fair housing laws requires establishing a program within each firm that places a high priority on equal housing opportunity. For a program to be positive, credible, and effective within your firm, the concept of equal housing opportunity must be built into the firm’s business philosophy and performance requirements. Only then can you and your firm exhibit commitment to fair housing.

Laws do not change attitudes, people do. To provide equal housing opportunities, you must make a conscious personal commitment to eliminating bias and prejudice from the housing market. This commitment means adhering to office procedures to provide all customers and clients equal professional services. Your commitment is required because equal housing opportunity is the law, it is good business, and it is right.

INTRODUCTION

This *Pocket Guide* contains significant facts about fair housing laws and outlines steps you can take to implement a personal commitment to fair housing in your business practice. A number of common questions about fair housing are listed, along with suggested answers to guide your responses.

FAIR HOUSING LAWS

A number of federal, state and local laws codify our nation's commitment to the provision of fair housing for all. These laws date back to 1866 when the United States Congress determined that all citizens should have the same right as white citizens to buy, sell, rent, hold, or convey any type of property. The *Civil Rights Act of 1866* was held to apply to all property, public and private, by the United States Supreme Court in *Jones v. Mayer*, decided in 1968.

Also in 1968, the Congress adopted *Title VIII of the Civil Rights Act of 1968*, now known as the Fair Housing Act. The Fair Housing Act was amended in 1974, 1988 and 1995, and prohibits discrimination based on race, color, religion, sex, handicap, familial status, or national origin.

STATE AND LOCAL LAWS

Many state and local governments adopt their own fair housing laws and ordinances. These state and local laws are often quite similar to, or modeled after, the federal Fair Housing Act. If the U.S. Department of Housing and Urban Development (HUD) has certified that the state or local law is *substantially equivalent* to the Fair Housing Act, HUD must refer complaints it receives to the appropriate state or local enforcement agency for handling.

The coverage of state and local fair housing laws is often different than that provided by the federal law. The protection offered by the Fair Housing Act applies across the nation, regardless of state and local laws. Some state and local laws provide broader coverage than the Fair Housing Act. In those states, discrimination on additional bases, such as age, source of income, marital status, or sexual orientation is also prohibited.

Please check your state and local laws and make a note here of the basis upon which discrimination is illegal in your state:

- race
- color
- religion
- sex or gender
- disability or handicap
- familial status
- national origin
- other _____
- other _____
- other _____

PERSONAL COMMITMENT

I agree to:

- ◆ Provide equal professional service without regard to the race, color, religion, sex, handicap, familial status, or national origin of any prospective client, customer or the residents of any community.
- ◆ Keep informed about fair housing laws and practices, improving my clients' and customers' opportunities and my business.
- ◆ Develop advertising that indicates everyone is welcome and no one is excluded; expanding my customers' and clients' opportunities to sell, buy, or lease property.
- ◆ Inform my clients and customers about their rights and responsibilities under the fair housing laws.
- ◆ Document my efforts to provide equal professional service, which will assist me in becoming a more responsive and successful real estate professional.
- ◆ Refuse to tolerate noncompliance.
- ◆ Learn about those who are different than I am and celebrate those differences.
- ◆ Take a positive approach to fair housing practices and aspire to follow the letter and spirit of the law.
- ◆ Develop and implement fair housing practices for my firm to carry out the letter and spirit of this declaration.

Q&A: WORKING WITH SELLERS

The following questions illustrate fair housing issues you may frequently confront in your day-to-day business. Read through each section, paying attention to the issues represented by the questions and answers. Keep this guide for quick reference should these or similar situations arise. Keep in mind that each situation is unique. Your commitment to and understanding of fair housing will enable you to develop an appropriate response based on the guidance contained in these questions and answers. 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 sales associates can use if confronted with this type of question.

Working with Sellers

Fair housing laws apply to the owners and sellers of housing. You can provide a unique service to home sellers and owners by informing them of their fair housing rights and responsibilities. This also helps you to avoid situations where the seller or owner expects you to discriminate on their behalf.

Make sure your listing agreement includes a clear statement that property is offered for

Q&A: WORKING WITH SELLERS

sale or rent without discrimination based on race, color, religion, sex, handicap, familial status, or national origin. You should also provide the seller or owner with a brochure, such as *What Everyone Should Know About Equal Opportunity in Housing* developed by the NATIONAL ASSOCIATION OF REALTORS®. In addition to explaining the fair housing laws and your fair housing policy, be prepared to answer questions or respond to certain situations in an affirmative manner. You should be alert for questions and comments which indicate possible discrimination as you present offers from buyers. Be prepared to remind sellers and owners of their obligations to follow the law and your policy not to discriminate. In some situations, you may be forced to cancel your listing agreement if the seller or owner refuses to follow the law.

QUESTION #1

I believe that I, as a homeowner, have the right to sell my own home. A local broker told me I cannot sell my home for my required price to the person I want. Is that true?

Key Points:

- The Fair Housing Act prohibits sellers, who utilize real estate brokers or forms of advertising, from refusing to sell or rent the seller's home because of race, color, religion, sex, handicap, familial status, or national origin of the purchaser or tenant.
- The Civil Rights Act of 1866 grants all citizens the same rights to buy or rent real estate as enjoyed by white citizens. It prohibits all discrimination on the basis of race in the sale or rental of housing without exception.

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Areas of Liability:

- A seller or owner who discriminates on the basis of race, color, religion, sex, handicap, familial status, or national origin is in direct violation of the law.

Actions to Take:

- Inform the seller that there can be no discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin in the sale or rental of the property.

Suggested Response:

- You have the absolute right to sell your home to anyone at your required price as long as you don't discriminate among otherwise qualified buyers on the basis of race, color, religion, sex, handicap, familial status, or national origin. Federal fair housing laws prohibit you from discriminating against qualified homebuyers because of their race even if you don't use a real estate broker or sales associate or forms of advertising.

QUESTION #2

Could you call and tell me who you're showing my house to?

Key Points:

- By law, all people can purchase property regardless of their race, color, religion, sex, handicap, familial status, or national origin.
- Sellers have the right to know the identity of people who will be viewing their property.

Q&A: WORKING WITH SELLERS

- One reason sellers list their property with a broker is to avoid the time and effort of screening homebuyers and of showing the property themselves.

Areas of Liability:

- A seller who wants to screen homebuyers may be intending to discriminate on the basis of race, color, religion, sex, handicap, familial status, or national origin.
- If you or the seller discriminate or attempt to discriminate in this way, you are both in direct violation of the federal fair housing laws.

Suggested Response:

- I'll be showing your home to _____(use name).
- If the seller responds with concern about the national origin, religion, or race of the prospective buyers (or anyone from any other protected class), you should say: "Please remember that it is unlawful to screen or otherwise discriminate against homebuyers on the basis of race, color, religion, sex, handicap, familial status, or national origin. If you are not willing to comply with the fair housing laws, I must remove myself from this relationship to avoid claims against me and my broker that we also engaged in unlawful conduct."

Q&A: WORKING WITH SELLERS

QUESTION #3

Will property values go down if minorities move in?

Key Points:

- Some sellers and homebuyers assume that the number of minority persons in a neighborhood affects property values.
- Many factors can affect the value of residential real estate, including schools, transportation, employment opportunities, shopping areas, park and recreational facilities, the property's physical characteristics, its general state of repair or disrepair, and the prevailing mortgage interest rate.
- The Fair Housing Act prohibits you from attempting to influence an owner to sell based on racial or ethnic considerations.

QUESTION #4

The Condominium Association (Co-op Board, or Homeowners Association) does not want someone who makes a lot of demands to move in. I think they might want to keep someone with a wheelchair out of this unit since it would require a ramp and a special parking place.

Key Points:

- The Fair Housing Act prohibits discrimination against persons with disabilities.
- Condo, co-op, and homeowners associations often reserve the right to approve or reject new residents.
- Such approval or rejection cannot be based on race, color, religion, sex, handicap, familial status, or national origin.

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- Condominium, co-op, and homeowner associations are required to allow reasonable modifications to housing, such as a ramp, paid for by an occupant with disabilities, and are required to make reasonable accommodations in rules, such as those governing parking, to enable an occupant with disabilities to use and enjoy the dwelling.
- Restrictions in property deeds, covenants, or other bylaws which restrict occupancy based on race, color, religion, sex, handicap, familial status, or national origin are generally unlawful and cannot be enforced, nor should they be communicated to any prospect without notification that the restrictions are void and unenforceable.

Areas of Liability:

- Refusing or discouraging a sale because of disability is a violation of the Fair Housing Act. Refusing to allow reasonable modifications or refusing to make reasonable accommodations in rules, practices, and procedures to allow an occupant with disabilities to use and enjoy a dwelling is a violation of the Fair Housing Act.

Actions to Take:

- Reassure the seller that the Fair Housing Act prohibits the condominium (co-op or homeowners) association from discriminating.
- Inform the seller that the Fair Housing Act provides for reasonable modifications to the dwelling and accommodations in rules to allow occupants with disabilities to use and enjoy a dwelling.

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Suggested Response:

- The Fair Housing Act protects people with disabilities from discrimination in housing. A condominium (co-op, homeowner) association may not use disability as a factor in making decisions on the approval of a new occupant. In addition, the Fair Housing Act requires that reasonable modifications to the premises, such as the installation of a ramp, made at the expense of the occupant, be allowed if those modifications are necessary to the use and enjoyment of the dwelling unit by an occupant with a disability. Likewise, the association must make reasonable accommodations in its rules, such as those assigning parking spaces, to allow an occupant with a disability to use and enjoy the dwelling. I can't imagine the association discriminating in such a manner. If you would like, I can provide some fair housing information to the association.

QUESTION #5

What color (religion, nationality, etc.) are the prospects?

Key Points:

- When this question is asked, either you have failed to communicate to the seller that a decision to sell cannot be based on the homebuyer's race or the seller refuses to accept the consequences of discriminating under the fair housing laws.
- This type of question should alert you to what may become very serious problems in

Q&A: WORKING WITH SELLERS

marketing this seller's property. Federal fair housing laws require that all property be offered to any qualified homebuyer without regard to race, color, religion, sex, handicap, familial status, or national origin.

Areas of Liability:

- When a seller who has listed with your firm asks you this question, it can cause significant problems and expose you and the cooperating brokers and sales associates to charges of discrimination, unless it is immediately resolved.

Suggested Response:

- Please remember that it is unlawful to discriminate against homebuyers on the basis of race, color, religion, sex, handicap, familial status, or national origin. Courts have held agents and brokers liable under the Fair Housing Act for simply answering the kind of question you are asking.

QUESTION #6

Can I get sued if I refuse to sell to minorities?

Key Point:

- A refusal to sell or rent based on race, color, religion, sex, handicap, familial status, or national origin is illegal and violates Section 804(a) of Title VIII of the Civil Rights Act of 1968.

Areas of Liability:

- The seller can be exposed to charges of discrimination if the refusal to sell is based on the race, color, religion, sex, handicap,

Q&A: WORKING WITH SELLERS

familial status, or national origin of the homebuyer and not on differences in the terms or conditions of the sale or in the qualifications of the homebuyer.

If you do not *immediately* dissociate yourself from a seller or lessor who wants to discriminate, you may also be charged with discrimination.

Suggested Response:

- Yes, you can be sued for violating the Fair Housing Act. In addition, if I work with a seller who wants to discriminate on the basis of race, color, religion, sex, handicap, familial status, or national origin, I will also be vulnerable to a lawsuit under the Fair Housing Act.

QUESTION #7

Are these homebuyers really qualified?

Key Points:

- A question like this is often legitimate and is not a source of liability, because it is a way for a seller to evaluate a homebuyer's financial ability to conclude the sale or transaction.
- A seller's concern with qualification may stem from the stereotyping of women and minority groups, i.e., "protected classes," as poor credit risks.
- A seller has the right to be concerned with a homebuyer's financial arrangements because if the transaction collapses, the seller would have to begin the marketing process all over again.

Q&A: WORKING WITH SELLERS

Areas of Liability:

- Any inappropriate conduct or comment by you could lead the seller to apply discriminatory qualification criteria to the sale of the property, exposing you and the seller to charges of discrimination.

Actions to Take:

- Be extremely sensitive to this question, because it may be prompted by fears generated by stereotypical images of “protected classes.” You must not, under any circumstances, reinforce these images.
- Respond to this question with a description of the process and criteria that you use to qualify the homebuyer.
- Tell the seller that he or she can review the homebuyer’s qualifying information.
- Identify and address the seller’s specific concern about the qualification process.
- Explain to the seller that it is inaccurate and inappropriate to assume that women and minority groups are poor credit risks.

Suggested Responses:

- It is my responsibility as a sales associate to present to you the offers of all homebuyers interested in your property.
- Based on what Mr. and Mrs. Lewis have told me, and what I have been able to confirm, I believe the Lewises have the financial resources and income to qualify to purchase your home. Let me show you my firm’s standard buyer qualification form and how I determined whether the Lewises could afford to buy your home.

Q&A: WORKING WITH SELLERS

QUESTION #8

Can I wait for Mr. and Mrs. O'Brien to make an offer? Mr. and Mrs. Richardson just don't seem to be the type I want to buy my home.

Key Points:

- A decision on an offer can be delayed until the seller concludes that all offers have been submitted.
- Be sure to clearly and carefully explain to the seller that a delay could mean losing a sale and owing you a commission based on a full price offer.
- Section 804(a) of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, states that it is unlawful to refuse to sell or rent, after the making of a bona fide offer, a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin.

Areas of Liability:

- The seller could be charged with discrimination for avoiding offers from minorities.

Actions to Take:

- Remind the seller immediately of the fair housing laws regardless of whether a sales associate or broker is used and any obligation set forth in the listing agreement.
- Urge the seller to consider a good offer from a minority person in the same way that you would encourage consideration of a good offer from any other person.
- Be sure you objectively and fairly present, explain, and evaluate all offers to the seller.

Q&A: WORKING WITH SELLERS

- Never encourage a homebuyer to submit an offer because a seller is intending to discriminate against people who have already submitted an offer.
- Present the same terms and conditions to all homebuyers.
- Never show favoritism toward any homebuyer submitting offers.
- If the seller delays his or her decision and this leads to a “bidding war,” it is important that any minority homebuyer be given the opportunity to meet or beat any other offer.

Suggested Responses:

- I don't understand why you feel that Mr. and Mrs. Richardson are not persons you want to buy your home. They have made a good offer and are financially qualified.
- I can respect your desire to consider all offers, and I will try to get a firm offer from the O'Briens immediately. But the Richardson's offer is a good one, and I would hate to see you lose out by delaying. Also, if you reject a full price offer, you must still pay my commission. Is there a nondiscriminatory and lawful reason that you don't consider the Richardsons to be the persons to buy your home?

QUESTION #9

If I take my home off the market, how long do I have to wait before I can market it again?

Key Points:

- Withdrawal of property is a technique frequently used by sellers or lessors when confronted with an unwanted offer from a minority homebuyer. This type of activity

Q&A: WORKING WITH SELLERS

usually leads to suspicions of fair housing violations and will often trigger “testing.”

- Sellers have the right to remove their property from the market and re-list it whenever they want.
- Try to find out the reasons why the seller wants to take the property off the market. Removing the property may be necessary due to changes in an anticipated career move or due to illness.

Areas of Liability:

- You will be exposed to charges of discrimination if you become involved in removing property from the market to frustrate a sale to a member of a protected class.
- A delay in re-listing the property might help “cover up” illegal discrimination, but it doesn’t excuse the seller from liability or any broker or sales associate who participates in the strategy. If you re-list the property when the reasons the property was initially withdrawn from the market still apply, you and the seller could be charged with discrimination.

Actions to Take:

- Carefully examine the reasons why the property was removed from the market, especially if the seller received an offer from a minority homebuyer. Document the circumstances and have the seller confirm your documentation even if the property is being withdrawn for nondiscriminatory reasons.

Q&A: ADVERTISING/PROMOTION

- Advise sellers of the legal risks involved in taking a property off the market and urge them to talk to an attorney.
- Insist that the seller honor all rights and compensation provided by the listing agreement.
- Don't try to explain or justify the withdrawal of the property to the person making the offer.
- Tell the seller that you will direct the homebuyer to him or her for an explanation. Face-to-face meetings between the seller and the minority homebuyer are valuable for several reasons:
 - You are relieved of the problem of explaining the reasons for the withdrawal.
 - The minority homebuyer can see that it is the seller, not you, who has made the decision.
 - You can maintain your objective role.
 - The possibility of a direct confrontation may discourage the seller from withdrawing the property.
- Before accepting a re-listing, have the seller confirm, in writing, that the reasons the property was initially withdrawn from the market no longer apply.

Advertising and Promotion

Actions taken to market a listing for your firm must be in accordance with fair housing laws. The Fair Housing Act makes it unlawful to: make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation

Q&A: ADVERTISING/PROMOTION

or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.

It is important to note that the phrase “indicates any preference, limitation, or discrimination” means violation of the law can occur without intent. It is the perception of the reasonable reader that determines whether the notice, statement or advertisement violates the law. Marketing decisions must not be based, in any way, or have any direct correlation to, race, color, religion, sex, handicap, familial status, or national origin or such composition of a neighborhood or community.

From a practical perspective you should be very careful when using target marketing techniques and when developing the content of promotional material including the comments for a listing in the MLS.

Three areas to pay attention to:

- ◆ Marketing strategies that limit exposure to less than the entire market.
- ◆ Words used.
- ◆ Human models used.

Q&A: ADVERTISING/PROMOTION

QUESTION #10

I only want your office to market it, no MLS and no signs - they attract undesirables. You can do that, can't you?

Key Points:

- Some sellers will not permit their broker to use yard signs or include their property in the Multiple Listing Service (MLS) because they don't want to get direct calls from passersby or reveal their move to neighbors or other brokers. It may also discourage the casual looker and reduce the chance of their home being burglarized.
- Some sellers only want their broker to show the property. This type of refusal will not generate liability either to you or to the seller under the fair housing laws.
- The seller has the final decision on using yard signs or the MLS.
- Fair housing groups and communities frequently try to discourage the use of signs and the MLS because these open marketing techniques frustrate achieving or maintaining an integration quota in the community.

Areas of Liability:

- Refusal to permit signs or the use of the MLS could possibly have discriminatory intent.
- If the seller refuses to use signs or the MLS in order to steer away certain homebuyers because of their race, color, religion, sex, handicap, familial status, or national origin, then the seller's conduct will be considered illegal under the fair housing laws.

Q&A: ADVERTISING/PROMOTION

Actions to Take:

- Try to determine why the seller doesn't want to use the MLS or signs.
- Remind the seller that it is unlawful to discriminate on the basis of race, color, religion, sex, handicap, familial status, or national origin.

QUESTION #11

Is it necessary to use the Equal Housing Opportunity slogan and logo in ads?

Key Points:

- The Fair Housing Act does not require the use of the Equal Opportunity slogan or logo.
- Many customers are unaware of the fair housing laws and some continue to expect that discrimination still exists in the housing marketplace.
- Use of the slogan and logo expresses a commitment on your part to fair housing.
- Use of the slogan and logo can serve as evidence of your intent to abide by the Fair Housing Act.

Areas of Liability:

- There is no liability simply for not using the Equal Housing Opportunity logo in an ad.

Actions to Take:

- Use the Equal Housing Opportunity slogan and logo whenever possible in your marketing efforts.
- When you use the slogan and logo, display it prominently.

Q&A: ADVERTISING/PROMOTION

Suggested Response (broker to sales associate):

- While not required by the law, I like to show the homebuying public that all properties are offered without discrimination. The Equal Housing Opportunity logo shows that.

QUESTION #12

How do I know if this ad meets fair housing requirements?

Key Points:

- Advertisements, notices, and statements in connection with the sale or rental of a dwelling, including comments in a listing, are subject to the Fair Housing Act.
- Notices, statements, or advertisements which indicate a preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin violate the Fair Housing Act.
- The “reasonable” reader, who is a member of the group alleged to have been discriminated against by the ad, determines whether it indicates a preference, limitation or discrimination.

Areas of Liability:

- Anyone who participated in the publication of a discriminatory ad, notice or statement is liable for that discrimination. This includes the person who developed the ad, the broker, the ad agency, the publisher, i.e., newspaper, and the owner of the property.

Actions to Take:

- Do you want to limit the housing to certain groups, or do you prefer certain prospects,

Q&A: ADVERTISING/PROMOTION

based on race, color, religion, sex, handicap, familial status, or national origin? If so, you are on your way to violating the Fair Housing Act.

- Will people in your community perceive the ad or marketing efforts to indicate such a preference or limitation? If so, you have probably violated the Fair Housing Act.
- Can you demonstrate a good faith effort to implement fair housing in your business practices? If so, this may assist you in your defense of a fair housing claim.

Suggested Response (broker to sales associate):

- If you have some question about the way an ad or marketing strategy will be perceived by someone, consider using alternative language or a more inclusive strategy. It makes good sense to be inclusive in your ads and always describe the property, not potential buyers; you don't want to turn a valued customer away because he or she might be offended by the words in an ad. Likewise, you might miss reaching a potential customer or client because of your targeted efforts.

QUESTION #13

The newspaper won't take my ad because of some of the words in it. They say they have a list of words I cannot use in my ads. Where are my rights under the First Amendment to advertise how I see fit? Where do these lists of words come from?

Key Points:

- The First Amendment doesn't apply to advertising illegal business practices.

Q&A: ADVERTISING/PROMOTION

- Advertising which indicates a limitation or preference can have the effect of dissuading people from considering certain housing options.
- Newspapers and other publishers, including MLSs, are liable for discriminatory advertising they publish.
- Word lists are developed by newspapers and others to identify words that commonly indicate an illegal preference or limitation.

Areas of Liability:

- Anyone who participated in the publication of a discriminatory ad, notice, or statement is liable for that discrimination. This includes the person who developed the ad, the broker, the ad agency, the publisher, i.e., newspaper, and the owner of the property.

Actions to Take:

- Meet with newspaper staff to understand how they developed their list of words. It is the newspaper's right not to publish certain language in real estate ads, even if such language does not violate the Fair Housing Act.
- Use word lists as warnings of words which may indicate a preference in violation of the law.
- Make efforts to use alternative language in your ads. Describe the property, not potential buyers or renters.

Suggested Response (broker to sales associate):

- Advertising which indicates a discriminatory preference or limitation violates the Fair Housing Act. Newspapers are also liable for

Q&A: WORKING WITH BUYERS

the publication of discriminatory ads and have created lists of words they will not accept in ads to reduce their risk of violating the Fair Housing Act. Use their lists as a warning that some people in the community believe the words indicate discrimination in housing and try to use alternative language in your ads. Remember, it is best to describe the property, not the prospective tenant, purchaser or neighbor.

Working with Buyers

The key to fair housing when working with prospective buyers is providing equal professional service. The NATIONAL ASSOCIATION OF REALTORS® has developed the Equal Professional Service Model:

- ◆ Using systematic procedures
- ◆ Obtaining objective information
- ◆ Letting the customer set the limits
- ◆ Providing a variety of choices
- ◆ Documenting the service you provide

QUESTION #14

What is the racial composition of this neighborhood? Or, I only want to see white (Jewish, black, etc.) neighborhoods.

Key Points:

- Brokers and sales associates often work with homebuyers who have a preference for a neighborhood with a specific racial, religious, or ethnic character.

Q&A: WORKING WITH BUYERS

- Federal law prohibits you from marketing property based on the racial or ethnic makeup of the neighborhood.

Areas of Liability:

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

Actions to Take:

- If the homebuyer appears to restrict the home search on the basis of race, color, religion, sex, handicap, familial status, or national origin of a neighborhood's residents, you should specifically note this on the homebuyer's *Equal Service Report Form*.
- Never estimate or give an opinion on the racial, religious, or ethnic composition of the neighborhood.
- Refer homebuyers to sources of information such as the library or the local municipal offices, so they can research the questions themselves.

Suggested Response:

- Some courts have held brokers and agents in violation of the Fair Housing Act simply for answering that kind of question. If you really feel that such information is relevant, you should contact local authorities that may track census and other data.

Q&A: WORKING WITH BUYERS

QUESTION #15

Are there high quality schools in the area?

Key Points:

- Many of the suits filed and cases that have gone to trial which allege “racial steering” involve comments by sales associates about schools.
- Professional testers often ask this kind of question to get a response that they can use to show that the sales associate attempted to influence the choice of housing.

Areas of Liability:

- If you make either complimentary or critical comments about schools based on the race of the homebuyer and the racial characteristics of the school population, you could be exposed to charges of racial discrimination.

Actions to Take:

- Provide the homebuyer only with reliable and authoritative information, such as student-teacher ratios, expenditures per pupil, percentage of students who go on to college, and the number of National Merit scholars from the recent graduating class.
- Refer the potential homebuyer to sources of information, such as the school or the school district’s main office.
- Maintain the same type of information for each school; never show favoritism for one school over another.
- Never attempt to influence a housing choice with either positive or negative general comments about the school or give an

Q&A: WORKING WITH BUYERS

estimate or opinion of the racial, religious, or ethnic composition of the student body.

Suggested Response:

- To get the best answers to your questions, you should contact either the school or the school district's main office.

QUESTION #16

Where are all the white residents moving to now that the area is integrated?

Key Point:

- The Fair Housing Act prohibits influencing or attempting to influence a person to buy or sell a home using statements about the entry or prospective entry of people of a particular race into a neighborhood.

Areas of Liability:

- If you suggest that you agree with or endorse the notion that white residents will move out once an area is integrated, you could be charged with “panic peddling” or “steering,” which are illegal practices.

Actions to Take:

- Be factual when you respond to this type of question.
- State the reasons why the owners of homes you listed or sold decided to move if you know the answer.

Q&A: WORKING WITH BUYERS

Suggested Responses:

- There are always people moving in and out of this area. Some move to larger houses and some are transferred to another city. If you want to buy, I'm sure I can help you find a house in an area that suits your needs. Do you have a particular area in mind?
- I'm not aware that any unusual selling is going on in this area. I recently sold a home here because the owners were moving to another state. Let's discuss some of the features you're looking for in a home and neighborhood. We have homes available in several areas.

QUESTION #17

Are my kids going to have other kids to play with?

Key Points:

- Parents are naturally interested in how their children will adjust to a new home and neighborhood, and usually there is no legal risk in responding to this question.

Areas of Liability:

- If you respond to this question with information on the racial, religious, or ethnic backgrounds of the neighborhood residents, you could be open to charges of discrimination.

Actions to Take:

- Respond only to the question asked.
- Never volunteer information concerning race, color, religion, sex, handicap, familial status, or nationality of the residents in the neighborhood.

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QUESTION #18

Would you live here?

Key Points:

- Homebuyers often ask brokers and sales associates for their opinions regarding their choice among various homes.
- The Fair Housing Act prohibits attempts to influence the selection of housing on the basis of race, color, religion, sex, handicap, familial status, or national origin.

Areas of Liability:

- If you suggest that race, color, religion, sex, handicap, familial status, or national origin should be a factor in the homebuyer's housing choice, you could be charged with discrimination.

Actions to Take:

- Give your honest opinion, whether it's positive or negative, to this question and give a nondiscriminatory reason for your opinion.
- Never mention or volunteer information related to the area's makeup based on race, color, religion, sex, handicap, familial status, or national origin.

Suggested Responses:

- Yes, I would. This area is well-maintained and that particular house is nicely located. It's very convenient to the commuter trains and shopping and the elementary school is only a few blocks away.
- No, I wouldn't because the house is too small for our teenager's activities.

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QUESTION #19

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 homebuyer.
- 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 a part of business.

Areas of Liability:

- You can generate a testing complaint by becoming paranoid about being tested and using inappropriate marketing practices based on your suspicions.

Actions to Take:

- Don't attempt to frustrate the tester.
- Treat a tester as a homebuyer, even if the tester is identifiable.
- Respond only to the question asked and never disparage the use of testers as a legitimate means for enforcing fair housing laws.
- Your firm should have procedures, forms (such as the *Equal Service Report* and the *Equal Service Report-Rentals*), and policies that document the delivery of equal professional service to homebuyers. Use these forms. Then, if a complaint of discrimination is alleged, you and your firm will have the evidence on hand to explain or justify the alleged offending conduct in nondiscriminatory terms.

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Suggested Responses (broker to sales associate):

- Being tested is one of the risks in this business. The time you spend with a tester is no different from the time you spend with a prospect who's a casual looker. If you know your business and follow the firm's routines and policies, there will be no problem.
- If you think you can identify a tester, I think you may be deceiving yourself. If you're concerned about being tested, it's best to either treat all of your prospects as testers or none of your prospects as testers. Then you will provide all of your prospects with equal professional service; that's what fair housing compliance is all about.

QUESTION #20

If I suspect I'm being tested, does the tester have to admit he is testing me if I ask?

Key Point:

- A tester does not have to admit he is a tester, if asked.

Areas of Liability:

- Testers can lie about their status and purpose, and their report will still be admissible evidence in court or usable in a fair housing complaint. A tester's misrepresentation to you does not disqualify their claim that they were misinformed as to the availability of property or financing for reasons of their race, color, religion, sex, handicap, familial status, or national origin.

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Actions to Take:

- Don't waste your time trying to figure out who is or isn't a tester. Asking questions suggests concern due to a guilty conscience and will probably increase the tester's interest and inquiries.

Suggested Responses (broker to sales associate):

- A tester doesn't have to admit what he is doing. And even if he did admit who he is and what he's doing, that knowledge should have no effect on the way you treat him. Knowing a person is a tester can only hurt you by tempting you to provide deferential treatment or inhibiting your conduct or attitude. Forget it and do your job.

QUESTION #21

Ordinarily, when I cannot relate to a homebuyer, I refer the homebuyer to another salesperson whose personality is better suited to the homebuyer's. Can I continue to follow this procedure if the homebuyer is a minority?

Key Point:

- Personality conflicts with a homebuyer can occur and should be handled carefully to avoid any charges of discrimination.

Areas of Liability:

- Avoid any criteria for reassigning homebuyers that are based on race, or that can be interpreted in any way as being based on race, color, religion, sex, handicap, familial status, or national origin.

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Actions to Take:

Brokers:

- Never assign homebuyers to sales associates on the basis of race, color, religion, sex, handicap, familial status, or national origin. Never assign minority sales associates to work solely with homebuyers interested in relocating to predominantly minority residential areas.

Sales Associates:

- If you find that you are having personality conflicts with a homebuyer and a reassignment is necessary, it should be made by the principal broker or sales manager. Your broker or manager should investigate the reasons given for the reassignment to ensure no racial bias or prejudice has occurred. Interview the homebuyers to determine their feelings and preferences in the matter.
- If a reassignment is made, try to assign the homebuyers to a sales associate of the same race as the original sales associate. If the homebuyers request a sales associate of a specific race, color, religion, sex, handicap, familial status, or national origin, the circumstances of the reassignment should be carefully documented.

Suggested Response (broker to sales associate):

- Just what is the problem between you (a white sales associate) and Mr. and Mrs. Hollins (a black couple)? I realize that people from the Midwest may not be able to

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appreciate how much more expensive housing is here in the Bay Area. You know Fred (another white sales associate) is originally from the Midwest and he just put Mr. and Mrs. Smith (a white couple) from Des Moines in a nice ranch last week. Maybe he will have better luck with Mr. and Mrs. Hollins. Do you mind if he tries to help them?

QUESTION #22

How do I handle minority homebuyers who want to see homes that are plainly beyond their price range?

Key Point:

- Homebuyers occasionally want to consider properties beyond their price range.

Areas of Liability:

- If you differ your response to homebuyers based on race, color, religion, sex, handicap, familial status, or national origin, you could be charged with discrimination.

Actions to Take:

- Explain to the homebuyer that lenders must follow guidelines that restrict the size of the loan they can make to persons having a specific income level and personal debt structure.
- Qualify homebuyers to determine the price range they can afford.

Suggested Responses:

- According to the listing sheet, Mr. Fuller, that home is about \$300,000 over the price we

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decided was the maximum you could afford. I'm pretty sure the sellers will not accept such a steep price reduction.

- Unless you have some additional income or funds for a downpayment that we have overlooked, Ms. Hadley, I'm not aware of any lender that would give you the loan you'd need to purchase that home. There are, however, at least a dozen homes that seem to fit your needs that are within the price range determined. Why don't we focus on these first?

QUESTION #23

Why is this question on race included on the equal services forms? Isn't it illegal to ask information regarding race?

Key Points:

- Using race or any other characteristic covered by fair housing laws in decisions related to the provision of housing opportunities is prohibited.
- Collection of information regarding the race of applicants or prospects has often been suspect and may indicate that race is being used as a factor.
- Collection of such information, however, for affirmative purposes, like self monitoring of fair housing compliance, is not illegal, nor suspect.
- The NATIONAL ASSOCIATION OF REALTORS® recommends that you indicate your perception of a prospect's race on the *Equal Service Report*. If a sales associate has a tendency to treat people differently because of race, the sales associate will treat a

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prospect according to the sales associate's perception of the prospect's race.

- If a prospect questions why you are keeping information on race, simply inform the prospect that your firm regularly monitors its sales associate's actions to assure that all prospects are treated fairly and equally. The collection of this information helps the broker make sure that there are no differences of treatment based on race.
- You should keep the information on race separate from any applications or offers on the property so there is little chance that third parties who have not met the prospects will have knowledge of the prospect's race.

ENCOUNTERING DISCRIMINATION

WHEN YOU ENCOUNTER DISCRIMINATION...

If the party discriminating is your client or is not a client of any other real estate professional:

Talk to the party who appears to be violating the law and explain fair housing laws to that person. Ask that person to act in a nondiscriminatory fashion. This often resolves the matter and results in the homeseeker obtaining access to housing as guaranteed by fair housing laws. Follow up with a letter summarizing your discussion.

If the party discriminating is a client of another real estate professional:

Talk to the other real estate professional and explain your concerns. Ask the other real estate professional to speak with the client and end the discriminatory behavior. Follow up with a letter summarizing your discussion.

If the discrimination is not ended or corrected and the party discriminating is your client:

End your relationship with that client, i.e., terminate the listing. Inform the homeseeker regarding what has occurred and your belief that discrimination was involved. Provide the homeseeker with information on where to file a complaint. Follow up with a letter to the client and to the homeseeker summarizing your discussions and actions taken.

If the discrimination is not ended and the party discriminating is not your client:

Inform the homeseeker regarding what has occurred and your belief that discrimination was involved. Provide the homeseeker with

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information on where to file a complaint. Follow up with a letter to the homeseeker summarizing your discussion.

If the discrimination is not ended and the party is another real estate professional:

In addition to the above, you may file an ethics complaint with your local board or association alleging violation of Article 10 of the Code of Ethics.

Agencies to whom acts of discrimination may be reported:

U.S. Department of Housing and Urban Development (HUD)

Phone:

1-800-669-9777

1-800-927-9275 (TTY)

Internet:

www.hud.gov/complaints/housediscrim.cfm

List of State and Local Government Human Rights or Civil Rights Agencies/Private Fair Housing Groups

Internet:

www.hud.gov/offices/fheo/partners/FHAP/agencies.cfm

Protect your own fair housing rights:

You also may have a cause of action against the discriminating party and file a complaint on your own behalf.

Please Note:

You may report any incident of discrimination to an appropriate agency without filing a complaint.

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 housing laws demand.

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

