

FAIR HOUSING & HUMAN RIGHTS
3.0 CREDIT HOURS

Overview:

- “A Matter of Place,” created by Fair Housing Justice Center
- Broker’s Responsibility to Uphold Fair Housing Policy
- Situation/Suggested Response
- Testers
- Reporting Fair Housing Misconduct
- Federal and State Anti-Discrimination Laws
- The Federal Fair Housing Act of 1968
- The Americans with Disabilities Act
- NYS Law – NY Human Rights Law Article 15 of Executive law
- New York Real Property Law and DOS Regulations
- New York City Commission on Human Rights
- Types of Discrimination
- Legal Responsibility
- Megan’s Law
- Emotional Results of Housing Discrimination
- Cease and Desist Lists and Non-Solicitation Orders

A Broker’s Responsibility to Uphold Fair Housing Policy (45 MINUTES)

- A person who holds a Broker’s License must:
 - Supervise Salesperson(s)
 - Provide for Fair Housing training
 - Take appropriate steps to ensure compliance
- U.S. Supreme Court: individual broker-owners are NOT personally liable for the acts of Agents who commit Fair Housing law violation (January 2003)
- The Fair Housing Act forbids racial discrimination in respect to the sale or rental of a dwelling (82 Stat. 81, 42 U. S. C. §§ 3604(b), 3605(a))
 - Does the Act impose personal liability without fault upon an officer or owner of a residential real estate corporation for the unlawful activity of the corporation's employee or Agent?
 - We conclude that the Act imposes liability without fault upon the employer in accordance with traditional agency principles, i.e., it normally imposes vicarious liability upon the corporation but not upon its officers or owners
- Office Procedures
 - Provide Housing & Anti-Discrimination Disclosure Form as produced by NYS DOS
 - Display Fair Housing Poster in window of each office branch, on all websites operated by licensees and at each Open House (amendment to FHA requires all offices to display prominently)
 - Provide Equal Service (ex. greeting people, obtaining listings, providing same measure of treatment, buyer’s housing needs and wants should be emphasized and limited to the price, size, special features, and location of the property)
 - Record Keeping (ex. housing choices written down and kept by Agent, keeping disclosure records for three years)
 - Know Fair Housing Laws (ex. regularly engage in training)
 - Know How to Report Fair Housing Misconduct

- NAR recommends Agents sign policy statement/commitment to equal opportunity
- Designate Fair Housing Officer

Examples & Suggested Responses (10 MINUTES)

Testers (5 MINUTES)

- Enforcer of Law
- Usually volunteers or employees of Federal, State agencies, and private civil rights groups
- Testers will pose as prospective homeseekers
- Aim is to check if race influences information or services offered by licensees
- Investigation by testers recognized by U.S. Supreme Court and DOS

Federal & State Anti-Discrimination Laws (50 MINUTES)

- Civil Rights Act of 1886
- Federal Fair Housing Act of 1968 & Exemptions
- Amendment in Housing and Community Development Act of 1974
- Fair Housing Amendments Act of 1988
- Supreme Court Decisions:
 - Plessy v. Ferguson
 - Buchanan v. Warley
 - Brown v. Board of Education
- Violations: Actual and Punitive Damages
 - Although there are no statutory limits on the amount of damages awarded under section 1982, the Fair Housing Act may impose limits, depending on the forum in which the complaint is raised
 - There are no limitations on the amount of damages in judicial proceedings under the Fair Housing Act; however, the size of awards will be capped if the complaint is handled by an administrative law judge
 - When a complaint is filed with HUD and the department's attempts at conciliation fail, HUD may issue a formal charge and the dispute will be presented to an administrative law judge, unless one of the disputants elects to go to court
 - If the charge is sustained, the administrative law judge may award actual damages and assess a civil penalty of up to \$10,000 for the first discriminatory practice, up to \$25,000 if the respondent has committed another violation within the previous five years, or up to \$50,000 if the respondent committed two or more violations within the previous seven years
- Q&A / Quiz on Federal Protected Classes
- Americans with Disabilities Act
- New York State Laws
 - NY Human Rights Law, Article 15 of Executive Law
 - Broader in scope than Federal Law
 - Includes residential property, land, commercial property, credit transactions
 - Addresses public housing
 - Also prohibits discriminatory practices in areas besides housing
 - Created Division of Human Rights
 - Exemptions—less than Federal law and more restrictive
 - NY Real Property law and DOS Regulations

- Prohibits evicting tenants if tenant becomes pregnant or has child while occupying premises
- Prohibits landlords from refusing rental to families with children
- Covers mobile park homes
- DOS may investigate complaints
 - Review of DOS procedure for investigation and violations
- NYC Commission on Human Rights

Examples & Suggested Responses (10 MINUTES)

Unlawful Practices (20 MINUTES)

- Based on an individual's membership in a protected class, unlawful behavior includes:
 - Refusing to sell, rent, or lease housing
 - Misrepresenting the availability of housing
 - Setting different terms, conditions, or privileges for the sale, rental, or lease of housing
 - Providing different housing services or facilities
 - Posting discriminatory advertising or marketing that indicates a preference, limitation, or discrimination based on a protected class (e.g., 'no children' or 'married couples only')
 - Refusing to provide a reasonable accommodation for a person with a disability
 - Steering a potential homebuyer or renter to, or away from, an area on the basis of race or national origin
 - Pressuring, for profit, homeowners to sell by exploiting ethnic, racial, or other demographic changes (blockbusting)
 - Threatening, coercing, or intimidating individuals because they exercise their fair housing rights or assist others in doing so
 - Refusing to make a mortgage loan to a qualified applicant due to protected class
 - Refusing to provide information regarding loans due to protected class
 - Imposing different terms or conditions on a loan or credit card, such as different interest rates, points, or fees due to protected class
 - Discriminating in appraising properties due to protected class
 - Denying conventional mortgages in certain communities (redlining) due to protected class
- Types of Discrimination
 - Redlining (Discriminatory Financing)
 - Blockbusting
 - Steering
 - Discriminatory Advertising
 - Woods-Drake v. Lundy
 - Courts must vigorously enforce the prohibitions of the Fair Housing Act and the other antidiscrimination statutes, and they cannot shy away from awarding fair and just damages to the victims of discrimination
 - A law is ultimately of no effect if it is not enforced, and there can be no doubt that the imposition of appropriate damages, both compensatory and punitive, is a highly visible and compelling enforcement mechanism of fair housing laws

Legal Responsibilities (5 MINUTES)

- Real Estate Professionals in positions to take lead to ensure equal opportunity and fair housing

- Emotional results of discrimination in housing
- Laws alone not enough

Additional Legal Responsibilities after New Regulations (10 MINUTES)

- New Fair Housing Disclosure
 - Furnished by DOS
 - Broker responsible for ensuring that Broker and Agents provides to prospective purchasers, sellers, tenants, and/or landlords **upon first substantive contact**
 - Records of signed disclosures or affidavits stating person's refusal to sign same must be kept for three (3) years
 - Disclosure may be given in person (hard copy) or via email, text, electronic messaging system, or facsimile
 - Notice disclosure requirement applies to all properties
- Fair Housing Notice
 - Must be posted on all websites created and maintained by Broker/Agents
 - Link to Notice must be prominently displayed
 - Must be displayed at all Open Houses/property showings
- Entities approved to provide instruction pertaining to fair housing and/or discrimination shall cause a recording (video and audio) to be created of each course in its entirety
 - The recordings must be kept for at least one year or for as long as required by law if the recording is believed to be the subject of litigation
 - Recording may be subject to audit by the DOS

Megan's Law (5 MINUTES)

- Provides two major information services to the public:
 - Sex offender registration and community notification
 - Details of what is provided as part of sex offender registration and how community notification is handled vary from state to state, and in some states the required registration information and community notification protocols have changed many times since Megan's Law was passed
 - The Adam Walsh Child Protection and Safety Act supplements Megan's Law with new registration requirements and a three-tier system for classifying sex offenders according to their risk to the community
- Requires public registry of known sex offenders
 - Real Estate Agents have a duty to disclose the presence of sex offenders in the neighborhood
 - Extent of disclosure responsibility has been tested by the courts; Glazer v. LoPreste (278 A.D.2nd 198)

Persons with Disabilities (10 MINUTES)

- Reasonable Accommodation for Housing
 - The Law protects the rights of people with disabilities by requiring landlords, coops, and condominiums to make a reasonable accommodation for disabled tenants, shareholders, or owners
 - A reasonable accommodation can be structural such as a ramp at the building entrance to provide wheelchair access or installing grab bars in a bathroom.

- A reasonable accommodation can also involve a policy change such as permitting a tenant who is blind or has a psychological disability to have a guide dog or companion animal, despite a building's 'no pets' policy.
- The Law also requires the landlord to pay for an accommodation if it is deemed reasonable—that is architecturally and financially feasible

Reporting Fair Housing Misconduct (10 MINUTES)

- Immediately report discriminatory behavior or conversations to Broker
- Licensees should not agree to represent individuals who refuse to comply
- Illegal discriminatory behavior report to either NY Division of Human Rights (NYS) or NYC Commission on Human Rights (NYC)
- Filing a Complaint (NYC)
 - Where to Go:
 - If you believe you have been the victim of discrimination in the City of New York, you may file a complaint with the Law Enforcement Bureau of the NYC Commission on Human Rights, located at 40 Rector Street, 10th Floor, in lower Manhattan. Commission services are free of charge.
 - You cannot file a complaint with the NYC Commission on Human Rights if you have already filed the same complaint with the NYS Division of Human Rights, the Equal Employment Opportunity Commission, or in any court.
 - Time Limit:
 - The NYC Human Rights Law requires that the complaint be filed within one year of the last alleged act of discrimination.
 - Appointment:
 - To schedule an appointment, please call 311 (or (212) NEW-YORK or (212) 306-7450, although walk-ins are accepted. If you are unable to travel to the Commission's offices, they will make alternative arrangements.
 - When you visit the Commission, you will meet with a staff attorney to discuss the allegations of discrimination.
 - What to Bring:
 - To expedite the interview process, please bring all relevant information covered in the complaint with you such as names, addresses, and phone numbers of the people or organizations you are charging and the exact dates of the events.
 - Photo ID.