

Outline for Fair Housing Orientation

Keep these questions in mind:

1. Who can file a housing discrimination claim?
2. Who is at risk?
3. What are the penalties that can be imposed?
4. What kind of behavior is considered discriminatory?
5. What are the benefits of good record keeping?
6. Does discrimination need to be intentional to be actionable?

Who can file a housing discrimination claim?

There are 7 protected classes under Federal law:

Race	1866 & 1968
Color	1968
Religion	1968
National Origin	1968
Sex	1974
Handicap or Disability	1988
Familial Status	1988

Certain exception to the Fair Housing Act:

- Owner occupied buildings with no more than 4 units
- Owner owns no more than 3 properties, and
 - No broker is involved
 - No discrimination in advertising
 - Not more than once every 2 years
- Church & private club facilities
- Over 55 and 62+ housing
- No exceptions for race because of 1866 act

There are 13 protected classes (or more) in Wisconsin

Race	Sexual Orientation
Color	Lawful Source of Income
Religion	Age
National Origin	Ancestry
Sex (Gender Identity)	Marital Status
Disability	Status as a victim of Domestic Abuse,
Family Status	Sexual Assault, or Stalking

The Federal exceptions do not apply under State law; however, Wisconsin does have some exceptions:

- Over 55 housing
- Housing designed for disabled can be reserved for disabled
- Tenants who constitute a direct threat to the safety of other tenants or damage to the premises
- Legitimate restrictions on occupancy
- Shared premises (roommates)

Who is at risk?

- We all are! Sellers, Listing Brokers and Agents, Selling Brokers and Agents (however, brokers will not be held liable for the acts of an agent)
- Very often the REALTOR® is not the problem
- REALTORS® do have the responsibility to confront the problem if it arises
- We must advise a seller that refusing an offer based on the protected class status of the buyer is illegal and that they should consult an attorney before making such a decision
- We must advise a buyer that we cannot provide information regarding the racial composition of a neighborhood, if such is requested

What are the penalties that can be imposed?

- Compensatory
 - Economic (out-of-pocket or other financial loss)
 - Non-economic (pain and suffering, humiliation, etc.)
- Civil fines and forfeitures
- Injunctive relief
- Affirmative relief
- Attorney fees (actual) and costs
- Possible punitive damages (no limit)

With both state and federal claims, the case can be brought either as an administrative hearing or as a judicial proceeding (through federal district or state circuit courts). The administrative hearings are quicker, less expensive, and are capable of providing essentially the same relief as the court proceedings. However, you can only have a jury trial in a judicial proceeding (administrative hearings are before an Administrative Law Judge) and only a court can award punitive damages.

What kind of behavior is considered discriminatory?

Federal law (Title VIII)

- To refuse to sell or rent, or to otherwise make unavailable, a dwelling because of a person's membership in a protected class
- Discrimination in the terms, conditions or privileges of a sale or rental of housing, or in the provision of services in connection with same
- Use of advertising that expresses a preference for or against certain persons because of their membership in a particular protected class
- Representations that a dwelling is not available for sale or rent, when in fact the dwelling is available
- Attempts to induce a person to sell or rent a dwelling by referring to the prospective entry of persons of a particular race, color, sex, religion, national origin, handicap or familial status

State law – To segregate, separate, exclude or treat any person or class of persons unequally because of their protected class status. (Wis. Stats. 106.50 (1m) (h))

As REALTORS® we have several other issues to consider, as well:

- We cannot facilitate or accept the discriminatory behavior of sellers or buyers; be prepared to walk away from a listing or a buyer, if necessary

- Advertising
 - We cannot show a preference for or against any protected class in our advertising (exception – marketing accessibility features of a home)
 - Be aware that advertising can be discriminatory on its face and actionable even if there has been no specific injured party (testers are monitoring ads)
 - Both Federal & State courts have accepted the “ordinary reader” standard
 - Basic rule is “advertise the property”; don’t advertise the type of buyer or renter you’re looking for
- Steering – directing buyers toward or away from certain areas based on their protected class status – offer to show everything; don’t make assumptions on where buyers want or don’t want to live (Newsday investigation into housing discrimination on Long Island, New York)
- Redlining – a facially neutral provision that results in having a disparate impact on a particular protected class (typically involves lending and insurance)
- Blockbusting – inducing panic sales by appealing to fears of lowered property values because of encroachment by minority buyers
- Avoid even the appearance of discrimination! Telling or even listening to certain “jokes” could be considered tacit approval of discrimination if the issue ever arose
- NAR Code of Ethics – Standard of Practice 10-5: “REALTORS® must not use harassing speech hate speech, epithets, or slurs based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity.”

What are the benefits of good record keeping?

Sometimes claims are filed weeks or even months after the alleged discrimination occurred. Without good recordkeeping an agent may find themselves in a “your word against theirs” situation without much independent recollection and nothing to refer to. Good recordkeeping could save your career, not to mention thousands of dollars.

Does discrimination have to be intentional to be actionable?

The answer is clearly “NO”.

For more information, check out:

Fair Housing from NAR’s Real Estate Brokerage Essentials

nar.realtor/fair-housing/excerpt-from-real-estate-brokerage-essentials

“Fairhaven: A Fair Housing Simulation” at *nar.realtor/fair-housing/fairhaven*

Fairhaven is a fair housing simulation training for REALTORS® that uses the power of storytelling to help members identify, prevent, and address discriminatory practices in real estate. Inspired by real stories, this innovative online experience has agents work against the clock to sell homes in the fictional town of Fairhaven, while confronting discrimination in the homebuying process. Learners will also walk in the shoes of a homebuyer facing discrimination. The training provides customized feedback that learners can apply to daily business interactions.

Newsday’s investigation into housing discrimination on Long Island at *projects.newsday.com/long-island/real-estate-agents-investigation/*