

Fair Housing, Fair Policies and Procedures, Fair Warning

By: Jack K Waller, J.D., GRI, RAM



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Recent developments in fair housing investigation and enforcement have raised this important issue to new heights. This may seem strange since it's not as if our industry has lacked for awareness and compliance training. However, as long as a few real estate licensees continue to ignore, evade, or act in defiance of the law, further testing will continue.

Fair housing violations are insidious because they often "sneak" into a transaction as a nefarious attitude harbored in the heart or mind of a seller, buyer, or agent. While such an attitude may not result in a discernable act of discrimination, the impact on the innocent may be profound and last for years (remember your childhood when you were the last kid picked in the backyard ball game).

As civilized and advanced as society claims to be, the sad truth is that equal opportunity in housing is still not a reality for every person. Our industry continues to plague itself with the occasional licensee who stares state and federal laws in the face and then ignores them with impunity. To compound matters, each of us can likely recall direct or anecdotal evidence of an "unreported" violation of human trust and decency.

This article examines fair housing issues from a "Risk Management" perspective. While not intended to be an exhaustive study of every possible issue, it will serve as a basic compliance checklist and brief review for real estate professionals including broker/owners and sales associates alike. Before implementing any policy directives, or modifying an existing policy, is important to consult with a qualified legal expert.

Suggestions for members of the firm's Broker/Owner/Management Team

- As the person responsible for the control and direction of your organization, your policies and procedures set your course and determine how the inevitable "bumps in the road" are going to be handled. Without a firm policy, a company is often left with accusation, innuendo, subjective interpretation and the dreaded memory-of-convenience when attempting to extricate itself from the throws of a fair housing challenge.

- If you do not currently have a written fair housing policy & procedures guide, now is the time to create one (with the assistance of your attorney, of course).
- If you do have one, now is the perfect time for review to make certain it is (1) current, (2) understood by everyone in your organization, and (3) being uniformly implemented and enforced.

If you are part of your firm's Sales and/or Administrative Team

- Sales associates and staff must act in concert with management by learning and adhering to all risk reducing policies and procedures.
- As most of you already realize, your broker/owner/manager has made a commitment and in investment in your career. They provide the necessary facilities which allow you to generate your Gross Commission Income. Over the past several decades, broker/owners have even enhanced per agent productivity with accelerated commission plans (often at the expense of corporate profitability).

Key Policy Points for Brokers and Sales Associates

- **IMPORTANT:** It must be clearly understood that Errors & Omissions insurance generally does not cover fair housing violations. Many sales associates are unaware of this, instead relying on the false notion that the broker's liability "umbrella" covers anything and everything that occurs during the course of a real estate transaction.

Assume that a broker has a policy and procedure manual with a well crafted fair housing section. The policy manual is also incorporated, by reference, into the independent contractor agreement. If a sales associate or non-principle associate broker engages in a fair housing violation, whether accidentally or intentionally, he or she will have acted outside the scope of his or her authority with the broker. The associate will have acted alone. This is of little comfort if a fair housing investigation is under way.

- Draft/Update your housing policy: (1) Make certain



NCI Associates, Ltd.

Real Estate & Builder's Education/Business Consulting
241 E. Eleven Mile Road, MI 48071

248-548-2090

JKWaller@comcast.net
www.TeamNCI.com

everyone is familiar with it; (2) Consider having each sales associate and administrative employee sign a statement acknowledging their intent to comply; (3) Require company-wide training; (4) Consider designating a company "fair housing officer."

- Publicize your commitment: (1) Prominently display the fair housing poster in your office; (2) Use the Equal Opportunity Logo or slogan in advertising and on brochures; (3) Inform prospective sellers, buyers, landlords and tenants of your commitment to fair housing; (4) Consider having sellers and buyers initial the fair housing/anti-discrimination clause in the listing and buyer's agency agreements.
- Enforce internal procedures for "equal professional service": (1) Address how to obtain to obtain objective information, letting the customer set the limits, and offering a variety of choices; (2) Include procedures concerning courtesies and follow-up with office visitors; (3) Seek agreement to keep good records and document all prospect visits.
- Establish a corrective action policy: (1) Provide for additional training if necessary; (2) Be clear about ownership's intolerance of sales associates who do not comply; (3) Engage corporate counsel when necessary; (4) Document corrective actions and results.
- Establish a feedback and review procedure: (1) Regularly review and modify procedures to respond to changes in the law, new fair housing issues, and to correct any deficiencies in the policy or its implementation; (2) Consider employing a mechanism for feedback from customers and prospects; (3) Consider hiring an outside agency to assist with internal, private testing.

Training

Everyone associated with the firm who has contact with prospective buyers, sellers, landlords or tenants, including support staff, should be provided basic and on-going training in fair housing compliance.

- Training also includes engaging in regular discussion of fair housing issues at office meetings. Sales associates should be encouraged to make suggestions on additional practices.
- Consider bringing in an outside expert to work with initial or periodic, company-wide training.

Company Designated Fair Housing Officer

This "in-house" resource on fair housing can be invaluable in developing and monitoring fair housing office procedures. Having one resource helps to insure consistency in the firms' approach to fair housing concerns. Either the owner or someone designated by the owner should serve as the firm's fair housing officer.

Responsibilities can include:

- Policy review and enforcement (including examination of sales associate record keeping practices).
- On-going training.
- Keeping abreast of fair housing developments (also utilizing the company attorney as a resource).

- Providing "real time" answers to fair housing questions as they arise in the field.
- Supervision of fair housing compliance and adherence to equal professional service policies.

Equal Service Checklist

By examining existing procedures, you should be able to determine whether or not your current business practices are contributing towards the goal of providing equal professional service. Examine each stage of the sales or rental process.

Equality in services typically includes having written policies and procedures for:

- Initial contact with prospects and clients (including uniform hospitality policies; description of company services; obtaining initial prospect information; assignment to sales associates; contact record maintenance; and follow-up).
- Obtaining objective information regarding a prospects needs and wants (including identifying objective needs; responding to subjective requests by eliciting objective criteria; and determining whether the prospect knows what they are financially qualified to buy).
- Allowing the prospect to play a role in setting the housing search limits (including providing complete and accurate housing availability information, alternative financing methods, and facts affecting the choice of location; and allowing the prospect to make critical choices).
- Offering a variety of choices (including financing options; location; and types/styles of houses).
- Keeping good prospect/inquiry records (including housing requested; housing options and alternatives offered; and actual service provided).

Transaction Journal

Consider maintaining what I refer to as a "transaction journal." This is something as simple as a legal pad that you use to create a chronology of transaction conversations, questions, activities and events. It is important to record your notes as events unfold.

These contemporaneous notes are part of a sound record keeping practice. If they are ever needed, they may also provide evidence of you and your firm's compliance with fair housing. This could also be an invaluable defense in a housing discrimination complaint.

Keep your notes simple and to the point; you are not writing a diary. Record the date, time, parties and a brief capsule summary of what took place. Share your notes with your broker/owner/manager if: (1) anything unusual transpires, (2) you are asked to deviate from company policy, or (3) you feel management should be involved in a decision. Maintain your notes in the file after closing.

Fair Housing Advertising and Promotion

Owners and sales associates alike need to pay particular attention to their advertising practices. It is important to note that restrictions apply to the use of electronic media (websites), newspapers, radio, television, and billboard, as

well as any written material produced in connections with the sale or rental of a dwelling such as application forms, brochures, flyers, signs, posters or banners.

Part of the confusion over advertising "do's & don'ts" stems from the apparent lack of clear guidelines. The most current advice from HUD actually dates back to a 1995 memorandum from then acting Assistant Secretary for FHEO (the contents of which is summarized below). Keep in mind that while HUD may not consider a certain practice to be a violation of federal law, a plaintiff may still attempt a resource-consuming challenge to an advertisement.

As a result, a broker/owner may wish to institute more stringent advertising guidelines as part of his or her personal risk management strategy. Sales associates must make certain that any advertisement which involves the owner is compliant with all applicable fair housing laws as well as company policy.

NOTE: The following guidelines should be cleared with your broker or corporate counsel prior to actual implementation.

Race, Color, National Origin

Advertisements should not use racial or ethnic terms in describing the housing, current or potential residents, or the neighbors or neighborhood (e.g., white neighborhood; no Irish). Facially neutral advertisements do not necessarily create liability (e.g., rare find; desirable neighborhood).

Religion: Advertisements should not contain an explicit preference, limitation, or discrimination on account of religion (e.g., Jewish only; Christian home). Advertisements which use the legal name of an entity with a religious reference (e.g., Roselawn Catholic Home) or those which contain a religious symbol, standing alone, may indicate a religious preference (unless accompanied by an appropriate disclaimer). Advertisements containing descriptions of properties (e.g., apartment complex with chapel), or services (e.g., kosher meals available) do not on their face state a preference for persons likely to make use of those facilities and are, therefore, not considered to be violations of the Act.

Sex: Advertisements for single family dwellings or apartment units in a multi-family dwelling should contain no explicit preference, limitation, or discrimination based on sex. Terms which are commonly used as physical descriptions of housing units (e.g., master bedroom, mother-in-law suite, bachelor apartment) do not violate the Act.

Handicap/Disability: Real estate advertisements should not contain explicit exclusions, limitations, or other indications of discrimination based on handicap or disability (e.g., no wheelchairs). Advertisements containing descriptions of properties (e.g., great view, fourth-floor walk-up, walk-in closets), services or facilities (e.g., jogging trails), neighborhoods (e.g., walk to bus-stop), or accessibility features (e.g., wheelchair ramp) do not violate the Act.

Familial Status: Advertisements may not state an explicit preference, limitation, or discrimination based on familial status, or contain limitations on the number or ages of children, or state a preference for adults, couples, or singles (except in the case of qualified housing for older persons). Advertisements describing the properties (e.g., two bedroom, cozy, family room), services and facilities (e.g., no

bicycles allowed), or neighborhoods (e.g., quiet streets) are not facially discriminatory and do not violate the Act.

Bottom Line

A broker/owner who has instituted a fair housing policy has performed a great service for his or her sales associates!

A sales associate who has "signed on" to his or her employer's fair housing policy has performed a great service for his or her company!

A broker/owner and sales associate who diligently conform their real estate activities to sound fair housing policies have performed a great service for society!

Now, go hug a co-worker and say thanks!

Jack K Waller is a trusted and respected Real Estate Broker, Attorney, Educator, and Productivity Coach.

NCI Associates, Ltd.

School of Real Estate & Building
241 E. Eleven Mile Road
Madison Heights, MI 48071

Jack works with groups and on a private, one-on-one basis. He can be reached at 248-548-2090x24 or via email at JKWaller@comcast.net