



## **FAIR HOUSING**

### **OVERVIEW**

Claims of discrimination usually arise out of allegations of discrimination on the basis of race or color, religion, or creed, sex, disability or handicap, or marital or family status. This article reviews the responsibilities of brokers and salespersons under existing anti-discrimination prohibitions.

### **FEDERAL ANTI-DISCRIMINATION LAW**

At the federal level, there are two main statutes dealing with discrimination in housing which apply to all real estate licensees in all states: the Civil Rights Act of 1866 (42 U.S.C. §1982) and the Fair Housing Act of 1968 (42 U.S.C. §§3601 et seq.), which was last amended in 1983. The Civil Rights Act of 1866 is limited to racial discrimination in connection with all transactions involving real property. The Fair Housing Act of 1968, as amended, makes it unlawful for anyone to discriminate on the basis of race, color, religion, sex or handicap or national origin in the selling or rental of property, or in negotiations relating thereon. It also prohibits such discrimination in advertising the sale or rental of dwellings.

### **STATE ANTI-DISCRIMINATION LAW**

**1. New York State Anti-Discrimination Law.** New York's Human Rights Law (N.Y. Executive Law §§236-237); Civil Rights Law (Article 2-A, §§18-19) and Public Housing Law (Article XI §223) make it an unlawful discriminatory practice to refuse to sell, rent or lease housing accommodations, land or commercial space to anyone, or to discriminate, or to refuse to negotiate for the sale, rental or lease of such premises to anyone because of race, creed (religion), color, national origin, sex, age, disability, marital or familial status, blindness, hearing impairment, or use of a hearing service or guide dog. It is also unlawful to advertise or use any form of application for the purchase, rental or lease of housing accommodations, land or commercial space, or to record or make any inquiry in connection with the prospective purchase, rental or lease of such properties, which expresses or intends any limitation, specification or discrimination with respect to those same characteristics.



**2. State License Law and Regulations.** New York's License Law (Article 12A of the Real Property Law) requires that all licensees be trustworthy and competent, which includes compliance with antidiscrimination legislation. In addition, the Department of State has enacted Rule 175.17 which prohibits attempts to induce the sale or lease of residential property by "making any representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion or national origin."

### **LOCAL ANTI-DISCRIMINATION LAWS**

Many local jurisdictions have comparable prohibitions against discrimination (see, e.g. N.Y.C. Administrative Code, §8-102 et. seq.).

### **CODE OF ETHICS**

Article 10 of NAR's Code of Ethics provides that brokers "shall not deny equal professional services to any person for reasons of race, creed, sex or country of national origin" and "shall not be party to any plan or agreement to discriminate against a person or persons on the basis of race, creed, sex or country of national origin."

### **PROHIBITIONS AGAINST DISCRIMINATION**

Racial Discrimination and Discrimination Based on Color or National Origin

**1. Federal Law.** The Civil Rights Act provides, "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

The Civil Rights Act of 1866 has been interpreted by the United States Supreme Court to prohibit all discrimination in the selling and leasing of real estate, regardless of whether the discrimination arises out of private or governmental transactions. *Jones vs. H. Mayer Co.*, 392 U.S. 409 (1968).

Fair Housing Act of 1968 (42. U.S.C. §§3601 etc. seq.). The Fair Housing Act of 1968 makes it unlawful:

- to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a



- dwelling to any person because of race, color, religion, sex, familial status, or national origin.
- to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.
- to make, print, 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, or discrimination based on race, color, religion, sex, handicap, familial status or national origin.
- to represent to any person because of race, color, religion, sex, handicap, familial status or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.
- for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations, regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status or national origin. 42 U.S.C. §3604.

In addition, the Fair Housing Act specifically states that it is unlawful for any one person or other entity whose business includes selling, brokering, or appraising residential real estate to discriminate against any person in making available such a transaction, or in terms or conditions of such a transaction, because of race, color or national origin (42 U.S.C. §3605).

Importantly, the discriminatory practices of "steering" and "blockbusting" are precluded by the Fair Housing Act. Steering generally involves the directing of a prospective purchase to a particular neighborhood or area because of the purchaser's race, color, religion, etc. Steering also involves the refusal to show properties in a certain area to a purchaser for the same reasons. Blockbusting includes any actions used to induce panic selling of properties, and generally involves frightening home owners into selling by stating or implying that a particular racial, religious or ethnic group is or will be moving into the homeowner's neighborhood. Both of these practices are specifically prohibited by the Fair Housing Act. *Zuch vs. Hussey*, 394 F. Supp. 1028 (D.C. Mich., 1975) (42 U.S.C. §§3604(a), 3604(e)).

**2. New York State Human Rights Law. (N.Y. Executive Law §§ 290 et. seq.).** New York State Human Rights Law provides that it is an unlawful discriminatory practice for anyone to refuse to sell or to refuse to negotiate for the sale, lease or rent of housing



accommodations, land or commercial space to anyone because of race, color or national origin. It is also unlawful to use any form of application for, record of, or inquiry in connection with, the purchase or prospective purchase, rental or lease of housing accommodations, land or commercial space, which expresses or intends any limitation, specification or discrimination with regard to characteristics of race, color or national origin.

Also specifically prohibited by New York State Human Rights Law are the practices of blockbusting and steering (New York State Human Rights Law, N.Y. Executive Law §296[3-b]). Real estate brokers must not represent that a change has, will or may occur in the composition of any block, neighborhood or area, with respect to racial characteristics. Brokers must not represent that a change will or may result in undesirable consequences for the purpose of a real estate transaction. Brokers in this state also cannot misrepresent the availability of properties or otherwise deny or withhold their services for discriminatory purposes. Real estate broker boards are similarly precluded from discriminating with respect to exclusion from or expulsion from their membership.

New York State Civil Rights Law. (Article 2-A, §§18-19). Owners of publicly assisted housing accommodations in this state cannot refuse to rent or lease or otherwise deny or withhold such housing because of, nor discriminate on the basis of race, color, national origin or ancestry. It is similarly unlawful for any person, such as a real estate broker, to make or to cause to be made any written or oral inquiry concerning the race of a person seeking to rent or lease any publicly-assisted housing accommodation. New York State Public Housing Law. (Article II, §223). A broad provision in the New York State Public Housing Law prohibits discrimination against any person because of race in relation to any public housing project subject to New York State Public Housing Law.

New York State Real Estate Brokers' Licensing Law. As noted above, under Article 12-A of the Real Property Law, the Secretary requires that all licensees must abide by the laws of the United States and New York State in conducting their activities. Licensed real estate brokers are subject to fines, suspension or revocation of their licenses for violations of the aforementioned anti-discrimination laws.



**NATIONAL ASSOCIATION OF REALTORS®—CODE OF ETHICS AND STANDARDS OF PRACTICE (Article 10)**

Article 10 of the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics prohibits the denial of equal professional services to any person because of race, or country of national origin. In order to avoid a violation of the Code of Ethics, a REALTOR must not be a party to any plan or agreement to discriminate against a person or persons on the basis of race or country of national origin.

**SEXUAL DISCRIMINATION**

**1. Federal Law. Fair Housing Act of 1968 (42 U.S.C. §§3601 et seq.).** The Federal Fair Housing Act imposes the same prohibitions on unlawful discriminatory practices in regard to sexual discrimination as it does for racial discrimination. Any aspect of a real estate-related transaction premised upon sexual discrimination will constitute an unlawful discriminatory practice.

**2. State Law. New York State Human Rights Law (N.Y. Executive Law §§290 et. seq.).** New York State Human Rights Law prohibits discriminatory practices because of sexual discrimination. Similarly, it is also an unlawful discriminatory practice for any real estate board to exclude or expel any otherwise qualified individual from its membership, or to discriminate against such individual in the terms, conditions and privileges of its membership based solely on an individual's sex.

There is a limited exemption from New York State's Human Rights Law prohibiting unlawful sexual discrimination: the rental of all rooms in a housing accommodation to individuals of the same sex. New York State Real Estate Brokers' License Law. Under Article 12-A of the Real Property Law, licensees are subject to the same liability for unlawful sexual discrimination as for unlawful racial discrimination.

**3. NATIONAL ASSOCIATION OF REALTORS® Code of Ethics. (Article 10).** The Code of Ethics prohibits denial of equal professional services to any person for reason of their sex. A REALTOR shall not be a party to any plan or agreement to discriminate against a person or persons on the basis of their sex.



## **RELIGION OR CREED**

**1. Federal Law. Fair Housing Act (42 U.S.C. §§3601 et. seq.).** Unlawful discriminatory practices under the Fair Housing Act are prohibited whether based on racial, sex or religious discrimination. As with racial discrimination, the practices of steering and blockbusting are prohibited with regard to religious discrimination.

**2. State Law. New York State Human Rights Law (N.Y. Executive Law §§290 et. seq.).** As with racial and sexual discrimination, the same practices are defined as unlawful for discrimination based on one's creed.

An important exemption from unlawful discrimination under New York State Human Rights Law exists for religious organizations. Exempted from the Human Rights Law is a religious or denominational organization, or any organization operated for charitable or educational purposes, which is supervised, controlled by, or connected with a religious organization. Such organization is exempted if it limits sales or rental of housing accommodations or admission to or gives preference to persons of the same religion or denomination. Similarly, the organization is exempted if it takes such action as it calculates will promote the religious principals for which it is established or maintained.

It is also an unlawful discriminatory practice for a real estate board to discriminate in its membership based on one's creed.

**New York State Civil Rights Law. (Article 2A, §§18-19).** As with racial characteristics, New York State Civil Rights Law declares it an unlawful discriminatory practice for owners of publicly assisted housing accommodations to refuse to rent or lease or otherwise deny or withhold housing because of, or to discriminate on the basis of one's creed. As with racial discrimination, it is unlawful for any person to make or cause to be made any written or oral inquiry concerning the creed of a person seeking to rent or lease any publicly assisted housing accommodation (New York State Civil Rights Law, Article 2A, §18-c[3]).

**New York State Public Housing Law. (Article 11, §223).** As with racial discrimination, a broad provision in the New York State Public Housing Law prohibits discrimination against any person because of creed in relation to any public housing project subject to New York State Public Housing Law.



**3. NATIONAL ASSOCIATION OF REALTORS Code of Ethics and Standards of Practice.** (Article 10). Article 10 of the NATIONAL ASSOCIATION OF REALTORS Code of Ethics prohibits the denial of equal professional services for reason of creed. A REALTOR shall not either be a party to any plan or agreement to discriminate against a person on the basis of creed.

### **DISABILITY OR HANDICAP**

**1. Federal Law. Fair Housing Act (42 U.S.C. §§3601 et. seq.).** The Federal Fair Housing Act proscribes the same unlawful discriminatory practices against handicapped persons as it does against persons for reasons of race, sex and religion. However, 1988 amendments to the Fair Housing Act, effective March 13, 1989 define additional unlawful discriminatory practices with regard to handicapped individuals.

Basically, the Fair Housing Act makes it illegal to discriminate against persons with mental or physical handicaps. Excluded from the definition of "handicap" is any person who is a current controlled substance abuser. Also excluded is one who presents a current threat to the health, safety, or property of others. Under the 1988 amendments, it is unlawful to discriminate in the sale or rental, or to otherwise deny a dwelling to any buyer or renter because of a handicap. Unlawful discrimination because of such handicap occurs whether the handicap is of the buyer or of the renter; or of a person who resides or will reside in the dwelling once it is sold, rented or made available; or of any person associated with the buyer or seller. It is also unlawful to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling because of a handicap. Again, discrimination in this instance occurs whether the handicap is of the buyer or renter; or of a person who resides or will reside in the dwelling once it is sold, rented or made available; or of any person associated with the buyer or seller.

Discrimination against a handicapped individual also includes a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises as occupied or to be occupied by such person if such modifications may be necessary to afford such person "full enjoyment" of the premises. There exists, however, an exemption in the case of a rental, whereby the landlord may condition permission for a modification upon the renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear expected. This condition is allowed to be impossible on tenants in cases where it is "reasonable" to do so.



Discrimination against a handicapped person also includes a refusal to reasonable accommodate such persons in rules, policies, practices and services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

The 1988 amendments to the Fair Housing Act also provide that all new multi-family dwellings of four or more units scheduled for first occupancy after March 31, 1991 must be designed and constructed to meet minimum accessibility standards thereby avoiding unlawful discriminatory practices against handicapped individuals. If the dwelling has one or more elevators, these minimum standards must be met in each unit. If the dwelling does not have an elevator, these standards must be met in all ground units in a dwelling. The minimum accessibility standards require that:

1. The public use and common portions of each building must be readily accessible and usable by handicapped persons.
2. All the doors designed to allow passage into and within all premises in such dwellings must be sufficiently wide to allow passage by handicapped persons in wheelchairs.
3. All premises within such dwellings must contain the following adaptive features:
  - a. An accessible route into and through the dwelling;
  - b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
  - c. reinforcements in bathroom walls to allow later installation of grab bars; and
  - d. Usable kitchens and bathrooms allowing maneuverability by a person in a wheelchair.

**2. State Law. New York State Human Rights Law (N.Y. Executive Law, §§290 et. seq.).** In New York State, the Human Rights Law provides that it is an unlawful discriminatory practice for anyone to refuse to sell, rent, or lease housing accommodations, land or commercial space to anyone, or to discriminate, or to refuse to negotiate for the sale, rent or lease of such premises to anyone because of disability, blindness, hearing impairment, or use of a hearing service or guide dog. It is also unlawful to advertise or use any form of application for the purchase, rental or lease of housing accommodations, land or commercial space or to record or make any inquiry in connection with the prospective purchase, rental or lease of such properties, which



expresses or intends any limitation, specification or discrimination with respect to a handicap.

As with racial discrimination, the Human Rights Law prohibits the practices of blockbusting and steering. Discrimination by new associations of licensees with regard to their membership solely on the basis of an individual's handicap is also unlawful (New York State Human Rights Law, N.Y. Executive Law §296[5][d]).

**New York State Civil Rights Law. (Article 2A, §§18-19).** Owners of publicly assisted housing accommodations in New York State cannot refuse to rent or lease or otherwise deny or withhold such housing because of nor discriminate on the basis of a handicap. It is similarly unlawful for any person, such as a real estate broker, to make or to cause to be made any written or oral inquiry concerning the handicap of a person seeking to rent or lease any publicly assisted housing accommodation.

**New York State Public Housing Law. (Article 11 §§223a and 223b).** Public Housing Law states that no one is to be denied occupancy or to be evicted from any dwelling solely because a person owns a hearing dog. No one who is legally blind, severely physically handicapped or who is mute can be denied occupancy or evicted from any dwelling on the ground that such person owns a dog or cat which resides with such person. However, if a health hazard results therefrom, the public health officer has jurisdiction to take the appropriate corrective measures.

## **AGE**

**1. Federal Law. Federal Age Discrimination Act of 1975 (42 U.S.C. §§6101 et. seq.).** The Federal Age Discrimination Act of 1975 prohibits discrimination on the basis of age in federally financially assisted programs or activities. Consequently, discriminatory practices based on age in the sale or rental of federally assisted housing or in related actions or practices are prohibited.

Under the Federal Fair Housing Act (42 U.S.C. §§3601 et. seq.), the Secretary of HUD must make annual reports to Congress detailing progress made nationally in eliminating discriminatory housing practices under the Age Discrimination Act of 1975 (42 U.S.C. §§3608 ie) (6) and (f)).



**2. State Law. New York State Human Rights Law (N.Y. Executive Law §§290, et. seq.)** New York State Human Rights Law prohibits discrimination in the sale or rental of housing, or in related practices, based on a person's age.

New York State Civil Rights Law (Article 2A, §§18 - 19). Owners of publicly assisted housing accommodations in this state cannot refuse to rent or lease or otherwise deny or withhold such housing because of, nor discriminate on the basis of age. It is similarly unlawful for any person, such as a real estate broker to make or to cause to be made any written or oral inquiry concerning the age of a person seeking to rent or lease any publicly assisted housing accommodation. In addition, a real estate board is precluded from discriminating in regard to its membership and membership practices based on a person's age.

### **MARITAL OR FAMILIAL STATUS**

**1. Federal Law. Fair Housing Act (U.S.C. §§3601 et. seq.).** The 1988 amendments to the Fair Housing Act prohibit discrimination against families with children (unlawful discrimination because of familial status). The act does not, however, preempt any state or local ordinances governing the maximum number of persons who may occupy a dwelling unit. There is only one exemption from unlawful discrimination based on familial status. Exempted from discriminatory liability is housing for older persons. "Housing for older persons" is defined as housing:

- a. provided by a state or federal program specifically designed and operated to assist elderly persons;
- b. intended solely for and solely occupied by persons 62 years of age or older; or
- c. intended and operated for occupancy by at least one person 55 years of age or older per unit that, in addition:
  - i. provides significant facilities and services specifically designed to meet the physical and social needs or to provide important housing opportunities for older persons; and
  - ii. has at least 80% of the units occupied by at least one person 55 years of age or older; and



iii. publishes and adheres to policies and procedures demonstrating an intent by the owner or manager to provide housing for persons 55 years of age and older.

"Housing for older persons" will not fail to qualify for the exemption if on the date of enactment of these amendments (September 13, 1988) the current residents did not satisfy the numerical age requirements of the exemption. The exemption will still apply as long as any new occupants meet the age requirements and any then unoccupied units of housing were reserved for persons meeting the age requirements of the act.

**2. State Law. New York State Human Rights Law (N.Y. Executive Law §§290 et. seq.)** The New York State Human Rights Law prohibits discrimination based on marital status. An exemption from this antidiscrimination law applies to housing accommodations restricted exclusively to persons 55 years of age or older.

New York State Real Property Law (Article 7, §§236-237) Under the New York State Real Property Law, it is unlawful for building, apartment house and mobile home park owners to refuse to rent, or to discriminate in renting to persons having children, or to incorporate any clause or provision in a lease requiring tenants to remain childless or to not bear children.

Exemptions from this antidiscrimination law apply to:

- a. federally subsidized, insured or guaranteed housing units for senior citizens;
- b. one or two family owner occupied dwelling houses or mobile homes; or
- c. mobile home parks exclusively for persons 55 years of age or older.