

Fair Housing Reminders

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By Edward I. Sumber, Board Counsel

Sandra Bullock's Golden Globe best actress role in "The Blind Side" involved a homeless youngster in the City of Memphis, Tennessee who came from the wrong side of the tracks. The youngster's life was changed by a family which chose to embrace a high school student who ultimately became an All-American football player at Ole Miss and who is now with the Baltimore Ravens. The scenes of the City of Memphis are compelling. Recently, a fair housing lawsuit was filed by the City Fathers in Memphis against Wells Fargo in which it is contended that the Bank's "unlawful, irresponsible, unfair, deceptive and discriminatory" mortgage policies and practices during the early part of this past decade has led to a City crippled by foreclosures. More than 23,000 foreclosures throughout Memphis have dropped property values. According to the City Fathers, these foreclosures have eroded a tax base which supports the City and County services.

Fair Housing Remains a Significant Issue

Harvard University's Joint Center for Housing Studies recently published a forty page report entitled "The State of the Nation's Housing 2009." The report targets lenders and particularly those which engaged in offering "high cost" sub-prime loans. The report notes that "loans in foreclosure are heavily concentrated in low income minority neighborhoods." The report is able to differentiate between low income communities which are white, versus those which are occupied by minorities. HUD estimates that the median share of high cost loans in the minority communities was nearly one-half while the median share in low income white neighborhoods was one-third. Similarly, statistics show that minority neighborhoods are the subject of a much higher foreclosure rate than the white neighborhoods reflecting comparable income levels.

What does this have to do with Realtors?

During this period of time in which Americans are losing their homes at an unprecedented rate, issues of discrimination have come sharply into focus. It is imperative that every Realtor renew his or her knowledge of the Human Rights and Fair Housing Laws applicable to the marketing of real property and to be particularly diligent about compliance matters.

Reminders

Following the Civil War, Congress enacted the Civil Rights Act of 1866. This Act prohibited discrimination based on race or color. "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.” When a violation of the 1866 Civil Rights Act occurs, it is enforceable by a suit in Federal court.

The Federal Fair Housing Act of 1968

One of the major accomplishments of then President Lyndon B. Johnson was the enactment of the 1968 Federal Fair Housing Act. It is referred to by many as “Title VIII of the Civil Rights Act of 1968.” This Law originally made it unlawful to discriminate on the basis of race, religion or national origin when selling or leasing residential property. In 1974, sex (gender) was added as a protected class and in 1988, two additional classes were added, namely individuals with handicaps and familial status (e.g. families with children).

What is targeted by the Federal Fair Housing Act?

If discrimination is based upon a prospective tenant’s or buyer’s membership in a protected group it is improper for anyone to “refuse to sell, rent or negotiate with any person, or otherwise make a dwelling unavailable to any person.”

Similarly, it is improper to change the terms, conditions or services for different individuals as a means of discriminating against protected persons. Imposing a higher security deposit for a family with children is a form of discrimination.

Advertisements which state a preference or a restriction on the sale or rental of residential property also fall within the prohibitions of the Federal Fair Housing Act. An ad that states a preference for persons of a particular race, color or national origin violates this provision and is known as “steering”. An ad which states “Perfect for observant Jews” or “We specialize in homes for Asian immigrants,” constitutes discriminatory behavior. Refusing to show property or representing that the property is not available for sale or rental because of discriminatory intent similarly falls within the Act.

Another discriminatory activity is “blockbusting”. Blockbusting involves inducing owners of housing to sell or rent because of the prospective entry into the area or neighborhood of persons of a particular race, color, religion, national origin, handicap or familial status.

“Redlining” is a practice engaged in by lenders who refuse to make loans in areas which they deem to be subject to higher risks of default. This behavior as well constitutes a violation of Law.

And finally, denying any individual membership in a multiple listing service, brokerage organization or other association as a result of an intent to discriminate or engaging in discriminating behavior is prohibited under the Act.

Impermissible Advertising

The following inclusions in advertising would be deemed examples of discriminatory behavior under various laws including the Federal Fair Housing Law:

1. "White neighborhood;
2. No Albanians;
3. No Muslims;
4. Near synagogue;
5. Two blocks from Calvary Christian Academy;
6. "Perfect for single gentleman";
7. No wheelchairs;
8. Married couples only; and
9. Retiree's dream house."

Are There Exceptions to the Coverage of the Federal Fair Housing Laws?

This commonly asked question can be answered with a simple: "Yes." When a home is owned by an individual who does not own more than three such homes at one time and the following circumstances below apply, the sale or rental of that single family home is exempted from the Federal Fair Housing Laws:

- a) No broker, salesperson or agent is involved; and
- b) No advertising is used.

If the owner is not living in the dwelling at the time of the proposed transaction or was not the most recent occupant, only one such sale or rental by that individual can be exempted within any twenty-four month period.

Similarly, the rental of units is exempted in an owner-occupied one-to-four family dwelling in which no advertising is used.

A dwelling unit owned by a religious organization may be restricted to people of the same religion provided that the membership in the organization is not restricted on the basis of race, color, national origin, handicap or familial status.

Finally, a private club that is not open to the public can restrict rentals to its own members as long as the premises are not operated commercially.

Persons with Disabilities

The 1988 amendments to the Federal Fair Housing Act expanded the Act to persons with disabilities. Persons with disabilities have been a focus of fair housing advocacy for some time. A handicapped person is entitled under the Americans with Disabilities Act to "reasonable accommodations" from a landlord. For example, when a person

with a disability asks to have a service animal in an otherwise “no pet” housing facility, the landlord would usually be required to accommodate that individual. Landlords and agents are not permitted to ask a prospective tenant about the nature or severity of a handicap nor can a landlord directly or indirectly ask a tenant, subtenant, guest or invitee of a tenant as to “whether he or she has a mental illness, cerebral palsy, mental retardation, cancer, epilepsy, AIDS or other disability.”

Renew Your Knowledge

While mandatory continuing education in the field of fair housing is required in New York it is clear that consistent renewal of each Realtor’s knowledge base is essential to professionalism. Every Realtor is encouraged to go beyond any legal or statutory requirement for continuing education in order to be certain that there is absolute clarity about applicable fair housing requirements.

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Legal Column authors Edward I. Sumber, Esq. and John Dolgetta, Esq. are partners in the law firm of Edward I. Sumber, P.C. The firm has been counsel to the Westchester Putnam Association of Realtors, Inc. since 1974 and the firm was responsible for incorporating the Westchester-Putnam Multiple Listing Service, Inc. in 1976. For information about Edward I. Sumber, P.C. go to <http://www.sumberlawpc.com/>.