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## Courtside *Real Estate*

### No License to Discriminate: 5 Discrimination Laws for REALTORS®



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#### Avoiding Discrimination in Real Estate

Housing is a necessity for life. It is no wonder that the Government protects individuals from discrimination that would keep them from obtaining this necessity. However, sometimes the interactions of these laws can create a challenging landscape to navigate for brokers, REALTORS®, and other real estate professionals. In many cases, a failure to understand the intricacy of such law can lead to accidental discrimination that was not in the mind of the REALTOR® or broker at the time of listing. A good knowledge of each applicable law will keep REALTORS® out of trouble.

#### The Laws

##### 1. Civil Rights Act of 1866

The Civil Rights Act of 1866 prohibits all racial discrimination in the sale or rental of property on a very basic level.

##### 2. Fair Housing Act

The Fair Housing Act enforces a national policy of fair housing throughout the United States for “protected classes.” The FHA makes it illegal to discriminate in the sale, lease, or rental of housing, or making housing otherwise unavailable, because of race, color, religion, sex, handicap, familial status, or national origin.

##### 3. Americans with Disabilities Act

The Americans with Disabilities Act prohibits discrimination against disabilities in public accommodations and commercial facilities.

##### 4. Equal Credit Opportunity Act

The Equal Credit Opportunity Act makes discrimination unlawful to make any credit application contingent upon any factor that involves the basis of race, color, religion, national origin, sex, marital status, age. It is also illegal to make the application contingent if all or part of the applicant's income derives from any welfare or public assistance program.

##### 5. State and Local Laws

State and local laws often provide even broader coverage than federal law. For example, in California, The Unruh civil rights act extends further protection from discrimination by all business establishments in California, including housing and public accommodations.

#### What to look for: Responsibilities & Disparate Impact

While each of these laws contains separate provisions for different classes of people, there are general actions that real estate professionals can take to avoid running afoul of any of them.

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Real estate professionals and landlords have a responsibility under the combination of all these laws to not discriminate in the sale, rental, and financing of any property based on race, color, religion, sex, handicap, familial status, or national origin. On a basic level, this means that no limitations in the sale or rental can be made before or during the sale that would make it contingent on any of these protected factors of the person looking to buy or rent. This would include denying that housing is available and advertising only to certain classes of people that there is a sale or vacancy. These types of actions and conditions would amount to blatantly discriminatory terms and subject the real estate professional at hand to serious liability.

While following the basic principles of not blatantly discriminating is relatively easy as stated above, there is an area included in the FHA that makes things a bit trickier. In *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, the U.S. Supreme Court ruled that disparate impact claims are cognizable under the FHA. This means that policies or practices that are even neutral on their face could still violate the FHA because they might have a “discriminatory effect.”

Some of these less obvious forms of discrimination in the real estate arena are as follows:

- Requiring applicants to have full-time employment. While this seems like a good business decision, court might find that this discriminates against various protected classes including those with disabilities and even veterans. The easiest way to avoid this blunder is to ask for “proof of income” instead, as it includes benefits and not job status.
- Asking for criminal history is another sticky wicket that could result in disparate impact. The key mistake in this situation is asking for criminal history without allowing for proper clarification from the potential renter or buyer.

In short, the best way to avoid disparate impact claims is to think thoroughly through every requirement you make as a condition of renting or selling a property. Do an analysis of every type of person that may be arguably impacted by it and check to see if they are a protected class. If you find that it does, you may still try to tailor the requirement so that it does not affect the specific class in the same harsh way.

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