



Pennsylvania Association of Realtors®

Fair Housing Guidelines



500 N. 12th Street, Lemoyne, PA 17043
800-555-3390
parealtor.org

June 14, 2013
[updated June 26, 2013]

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This information has been brought to you by the Pennsylvania Association of Realtors'® Diversity Committee of the in partnership with the Pennsylvania Human Relations Commission.

NOTICE

The Pennsylvania Human Relations Act intends to preserve the right to freedom from discrimination in public accommodations, housing accommodations, places of employment and commercial property.

The Pennsylvania Human Relations Act prohibits discrimination of persons because of age (persons 40 years of age or older), ancestry, color, disabilities, familial status, national origin, race, religion, or sex.

ASSISTANCE

Whether you need assistance in developing general policies and procedures, providing training for your employees and agents, or guidance in a particular case, contact the Pennsylvania Human Relations Commission.

Harrisburg Regional Office: Riverfront Office Center, 5th Floor, 1101-1125 South Front Street, Harrisburg, PA 17104-2515

717-787-9784 or 717-787-7279 TTY users only

(serves Adams, Bedford, Berks, Blair, Bradford, Cambria, Carbon, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York counties)

Philadelphia Regional Office: 110 North 8th Street, Suite 501, Philadelphia, PA 19107

215-560-2496 or 215-560-3599 TTY users only

(serves Bucks, Chester, Delaware, Montgomery and Philadelphia counties)

Pittsburgh Regional Office: 301 Fifth Avenue, Suite 390, Piatt Place, Pittsburgh, PA 15222

412-565-5395 or 412-565-5711 TTY users only

(serves Allegheny, Armstrong, Beaver, Butler, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Venango, Warren, Washington and Westmoreland counties)

To report a bias incident anywhere in PA:

717-787-4410 or 717-787-4087 TTY users only

717- 772-4340 Fax

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GENERAL GUIDELINES

As Realtors[®], your real estate activities are governed by fair housing laws, regulations and ordinances at the federal, state and local levels, as well as by the Realtor[®] Code of Ethics. It's important to know the various sets of rules and how to structure your practice to ensure that you're following the rules at all times. Realtors[®] and brokers may act with the best of intentions without realizing that their actions and words may be misinterpreted by consumers.

Throughout any transaction, it's important to keep in mind:

1. Realtors[®] and brokers should not rely on their intentions or commitment to fair housing principles. Monitor all actions for their APPEARANCE and EFFECTS.
2. Inadvertent discrimination (de facto different treatment) can be prevented by adhering to STANDARD POLICIES and PROCEDURES.
3. Public perceptions of possible discrimination can be reduced by good communication, good service, good manners, and focusing on the customer's desires and needs.
4. What a Realtor[®] or broker may find humorous or off-handed may be misunderstood.
5. Maintain and retain accurate records/notes on all key conversations, dealings and showings.

Any information Realtors[®] or brokers keep in regards to fair housing should be kept with other transactional information, and should be retained for up to six (6) years since Fair Housing suits may be filed up to six (6) years after an alleged incident of discrimination.

PROTECTED CLASSES

The right to purchase and sell real estate is a fundamental RIGHT of all persons and is PROTECTED BY LAW.

National, state and local fair housing laws protect this fundamental right and, at a minimum, prohibit discrimination against any person based on that person's: **

AGE
ANCESTRY
COLOR
DISABILITY
FAMILIAL STATUS
NATIONAL ORIGIN
RACE
RELIGION
SEX
USE OF A GUIDE ANIMAL DUE TO BLINDNESS/ DEAFNESS
HANDLING OR TRAINING OF SUPPORT OR GUIDE ANIMALS

**Note that many municipalities have identified additional protected classes by local ordinance, including but not limited to sexual orientation and gender identity.

Article 10 of the National Association of Realtors®' Code of Ethics also goes beyond federal and state law by prohibiting Realtors® from discriminating based on SEXUAL ORIENTATION (added in 2011), and it is anticipated that GENDER IDENTITY will be added effective in 2014.

ADVERTISING AND MARKETING GUIDELINES FOR PROPERTIES

One of the easiest ways to be accused of a possible fair housing violation is to place ads that contain potentially discriminatory language. Ensuring that listings and other advertisements contain non-discriminatory language is one of the easiest risk-reduction measures that can be taken. Please refer to APPENDIX for more specific information on words and phrases to be avoided and related advertising rules and regulations.

For the purpose of these guidelines, the term ADVERTISEMENT and related terms refer to any statement intended to solicit business from, or inform the public of, real estate opportunities — whether or not printed or howsoever published or circulated, and includes verbal statements.

1. No advertisement relating to the sale, lease, rental or acquisition of real estate should indicate any preference, limitation, specification or discrimination based upon: AGE, ANCESTRY, COLOR, DISABILITY, FAMILIAL STATUS, NATIONAL ORIGIN, RACE, RELIGION, SEX, USE OF A GUIDE ANIMAL DUE TO BLINDNESS/ DEAFNESS and HANDLING OR TRAINING OF SUPPORT OR GUIDE ANIMALS, or any class protected by local ordinance or the Realtor® Code of Ethics.

2. No advertisement may imply, or be so worded or pictured that it could be construed to imply, any preference, exclusion or limitations based on the above protected classes. For example:

- References to specific religious or ethnic institutions, buildings, landmarks, services, etc. located nearby.

Example: An advertisement that says "Just around the corner from St. Andrew's Catholic Church."

- Use of words or symbols (including colloquialisms) which suggest racial, religious, sexual or ethnic exclusion, or suggest the racial, religious, sexual or ethnic composition of a neighborhood or building.
- Use of human models which consistently depict exclusively one race, sex, etc.

Example: A brokerage that specializes in condominium rentals uses stock photos of a White couple without children in each printed ad. Using models of one race without children could be viewed as signaling a preference for certain types of tenants, even if that preference is not in the text of any ad.

3. No marketing effort should have the effect of creating, abetting or attempting to exploit an atmosphere of panic selling including:

- Initiating or increasing solicitation or other marketing activities in areas where there is a possible perception and that such solicitation has a racial connotation.
- Inducing, soliciting, or attempting to list properties in neighborhoods where such activities could be construed as panic selling.
- Steering persons in the protected classes to sensitive neighborhoods.
- Advertising properties available in sensitive neighborhoods only in news media oriented to persons in the protected classes.

Example: A postcard that says "Sell While the Market's Good" could be viewed as discriminatory if mailed to property owners in a neighborhood that has been seeing demographic changes.

4. No advertising should misrepresent, by actual statement or innuendo, the availability, condition, terms of sale or rental, etc. of any advertised property. Specific practices to be avoided are:

- Misrepresenting or otherwise misadvertising within a neighborhood that any property within such neighborhood is available for sale or rent in any context where such misrepresentation would have the effect of fostering an impression that there has been or will be an increase in real estate activity within such neighborhood due to residence, or anticipated increased or decreased residence of protected class persons.
- The use of any code, term, or phrase to indicate the racial composition of the neighborhood.

Example: The term "transitional neighborhood" is sometimes used to signify that an area is going through a change in ethnic makeup. Whether intended as a positive or negative, the term can imply something about the reason behind the change, which could make it unacceptable.

- Don't misrepresent the transaction availability to attract or dissuade a client.

Example: A Hispanic client is interested in a renting a property that is listed as "for sale or lease." Unless the seller has decided to only accept purchase offers moving forward, it would not be appropriate for the listing broker to tell the potential tenant that the property is 'really' only available for purchase in an effort to discourage the rental.

5. While brokers are encouraged to advertise in media oriented to persons in the protected classes, the properties advertised therein should not be substantially different from those advertised in the general media with respect to the racial, ethnic, religious, etc. composition of the neighborhoods in which the advertised properties are located. Property advertised in media oriented to persons in the protected classes should also be advertised in media or newspapers of general circulation.

Example: A Realtor® with 10 active listings has just listed a property that is within walking distance of two synagogues and the local Jewish Community Center. The local Jewish community publishes a weekly newspaper distributed only to the members of local Jewish congregations. The Realtor® could advertise this listing in the Jewish community paper, but should also advertise other listings well. Similarly, the Realtor® should not use this community paper as his only advertising vehicle, but should advertise in the same media used for other listings.

6. Any selective use of advertising media or content should be subjected by the broker to an "effects tests," i.e. are the differences, whether or not intentional, likely to have discriminatory results by attracting, discouraging, or excluding any particular racial, ethnic, religious, etc. segment of the community?

7. Negative marketing efforts which discourage or attempt to discourage the purchase or lease of property by representing that it is located in a neighborhood, community or adjacent area to any other area in which a protected class resides, or may in the future reside in increased or decreased numbers are not only illegal but against the interests of the owners or sellers represented by brokers and salespeople. For the same reasons, Realtors® should never misrepresent, invent, distort or exaggerate conditions, circumstances or incidents which even implicitly relate to the presence of one or another protected class in a neighborhood in order to encourage a listing or discourage a possible sale or rental.

Example: A Realtor® tells her clients that she wouldn't be interested in purchasing a home because the surrounding neighborhood is "urbanized." By indicating the ethnic composition of this neighborhood is somehow different than another, the Realtor® may make one neighborhood seem less desirable than another and be found guilty of a fair housing violation.

8. Where an "open house" is used as a marketing technique, uniform information, assistance and positive customer service should be given to all guests.

9. Use of the "Equal Housing Opportunity" slogan or logotype is encouraged in any advertisements used by brokers where space or budget considerations permit.

CAUGHT IN THE MIDDLE

Unfortunately, brokers and Realtors® sometimes learn that another party involved in a sale appears to be committing a violation of fair housing law. The innocent broker or Realtor® may be perceived by the client to be conspiring or cooperating with this other party who may be a seller, another broker or agent, lender, builder, appraiser, government official, etc.

Realtors® should protect themselves from becoming a co-defendant by taking the following steps:

1. Attempt to prevent discrimination by suggesting an appropriate course of action consistent with the law.
2. Make clear to all parties that you strongly oppose any illegal discriminatory acts and make sure all your actions are consistent with that position.

3. Advise the persons involved that discrimination may have taken place and that they can seek the assistance of the Pennsylvania Human Relations Commission.
4. Consider filing your own complaint with the Pennsylvania Human Relations Commission if you consider yourself an aggrieved party.

Example: Realtor® W has reviewed his African-American client's loan offer from ABC Bank and noticed that the loan product appeared to be much less favorable than loans offered to similarly situated buyers of other races. If Realtor® W believes ABC Bank may be steering minority clients to less attractive loan products, he could certainly point that out to his client, and could even contact the loan officer or a supervisor to register his concerns. If the issue is not addressed appropriately, the Realtor® could even consider filing a complaint against this lending institution.

INTIMIDATION AND HARASSMENT

Brokers, Realtors®, and their clients and customers can be the targets of those attempting to prevent persons in the protected classes from moving into a neighborhood. There are federal and state laws providing for both criminal and civil sanctions against anyone who engages in intimidations, harassment, or violence against others exercising their fair housing rights, including brokers, agents and sellers. If such a situation arises, contact the Pennsylvania Human Relations Commission (PHRC), or if the situation poses an immediate threat to life or property, contact the Federal Bureau of Investigation (FBI) and local or state police.

While of course brokers and Realtors® want to advise their potential buyers of actual or potential problems associated with a neighborhood, they run the risk having their remarks misinterpreted. If the buyer initiates the question and the Realtor® believes that a problem exists, the buyer should be referred to various sources, including possibly the PHRC, for objective third-party information. If the buyer does not initiate the question, and the Realtor® is aware of past problems in the neighborhood, the Realtor® should first contact PHRC and/or brokerage counsel to discuss what can be said and how it should be said.

TRAINING AND MONITORING

Brokers should provide in-house training regarding the policies and procedures adopted by the firm and avail themselves and their agents to outside training opportunities whenever possible. Periodic reinforcement of the training should occur on a regular basis with continual emphasis placed on the importance to the firm of adherence to the policies and procedures. Records of all fair housing training sessions and participants should be maintained.

Because brokers are liable for the actions of their agents, it is imperative that they continually monitor the activities of their salespeople and take disciplinary action whenever appropriate.

AT HOME WITH DIVERSITY PROGRAM

The National Association of Realtors® diversity certification, “At Home with Diversity: One America” is granted to licensed real estate professionals who meet eligibility requirements and complete the NAR “At Home with Diversity” course. The course focuses on diversity awareness, building cross-cultural skills, and developing a diversity business plan.

The certification signals to customers that the real estate professional has been trained on working with diversity in today’s real estate markets. Certification allows the real estate professional to display NAR’s diversity marks and the HUD “One America” mark and logo. The coursework provides valuable business planning tools to assist real estate professionals in reaching out and marketing to today’s diverse housing market.

PURCHASE/SALE GUIDELINES

MEETING CONSUMERS / PRE-CLIENT STAGE

With the amount of personal information available on the Web, it is quite likely that a Realtor® may discover information about a potential client prior to their first meeting. For example, it may be quite easy to discover a potential client’s age, race, gender, familial status and/or religion simply by looking at an online profile of the individual.

Realtors® should consider implementing policies that restrict the amount of data you attempt to collect prior to a first meeting with a potential client. All real estate staff should be trained to treat all consumers equally, but if there’s a claim of unequal treatment, it’s easier to defend yourself if you can show that you did not have any specific identifying information available to you.

Realtors® are sometimes confronted with possible fair housing problems at the very first meeting with a consumer, even before securing a listing or buyer agency contract. When a client or potential client makes known to a Realtor® that he/she expects the Realtor® to engage in a course of discriminatory conduct, it is imperative that the Realtor® clearly declare his/her unwillingness to do so even if it appears that the listing may be lost. This should be done tactfully and professionally by affording the potential client the benefit of the Realtor’s® professional knowledge and advice about the legal dangers faced by the seller if he/she pursues any attempt to discriminate either through another broker or on his/her own. If the seller persists in his/her efforts, the Realtor® should be prepared to walk away from the transaction.

Example: At their first meeting, a seller informed her potential Realtor® that it would be helpful if he could find a buyer who would “fit into” the neighborhood so her neighbors wouldn’t be distressed if the makeup of the neighborhood changed.

The salesperson informed the seller that it is violation of the federal and state fair housing act to discriminate against a particular group of people and that any qualified buyer should be

eligible to purchase the house. When the seller repeated her request, the Realtor® politely ended the meeting and refused the listing.

Once a listing agreement has been secured, the seller must by law receive a copy of the Notice as set forth in 16 Pa. Code 43.14: "Responsibilities of Owner of Real Property Under the Pennsylvania Human Relations Act." Many organizations have developed standard listing agreements with this notice pre-printed on the back. Firms not having access to such forms are encouraged to develop their own.

Realtors® should review this Notice with the seller at the time of the listing. This provides an opportunity for the Realtor® to explain the law, note his/her firm's compliance with the law, and eliminate misunderstandings which might arise should the seller be presented with an offer from a person in the protected classes.

While a seller may change the terms and conditions of a listing sale as time goes on, it is important to be sure that this is not done in an effort to exclude potential purchasers. It is essential that the Realtor® and broker have a clear, accurate and complete record of the initial terms and conditions and any changes in the terms and conditions made by the seller. Retain any confirming letters sent to the sellers when changes occur. Such documentation prevents miscommunications with buyers and sellers and also creates documentation for the Realtor® should he/she become involved in a discrimination complaint or suit regarding the terms and conditions of sale.

Example: A seller has told his Realtor® that he's willing to accept offers that include a seller assist. When he receives an offer containing a seller assist from a Vietnamese buyer, the seller asks his Realtor® to tell the buyer that offers with assists will not be considered. The Realtor®, responding via email, tells the seller that he'll respond in that way if the seller is changing the terms for all future offers, but that he is not willing to selectively disqualify a buyer from a protected class.

AVAILABILITY

To assure that the public reviews consistent information regarding the availability of properties for sale, each brokerage should develop written procedures governing how such information will be distributed, and who is authorized to distribute it.

Brokers are encouraged to maintain some sort of unified records with information on all properties being listed for sale - particularly those being listed by the brokerage. In many cases the local MLS will contain the vast majority of properties for sale in a particular market and can be relied upon when discussing properties listed by other brokers. But if there is additional information that may be available for in-house listings (e.g., listings that haven't been put in the MLS, or additional information not entered in the MLS), a brokerage should have policies on how and when that information will be made available.

As a general rule, only information on the record may be given to the public, and all available information should be given to all potential buyers who are financially qualified for the property.

In addition, a firm should develop written rules regarding the following:

1. Under what conditions a property is placed on or removed from the record.
2. Who is authorized to update the record and when this shall be done.
3. Who may and who may not give information to the public.
4. How persons who are not authorized to give information should handle public inquiries.
5. What information should and should not be given over the telephone or via email, if this differs from that to be given in person or online.
6. How properties will be handled when qualified offers are pending the seller's acceptance or rejection.
7. What disciplinary act will be taken against those violating any of these rules or policies.

The MLS and other listings should be COMPLETE, ACCURATE, CURRENT, CONSPICUOUS, and ACCESSIBLE. It should contain comprehensive data relating to each property and proposed sale. All known properties for sale from sources such as listings of other brokers or multiple listing systems should be made available.

Information supplied to prospective buyers concerning the location, nature, condition, price, etc. of each property, as well as data regarding settlement costs and financing terms, should be consistent, accurate and specific.

Example: A prospective client with an Asia Indian accent calls the real estate office to inquire about available properties within a certain price range. The person answering the call refers them to three available listings, all of which are located within a neighborhood with a large Asia Indian population. A similar request is made by a potential buyer with no accent, who is referred to three different properties. Realtors® should not make assumptions about where a client would like to live. The Realtor® needs to ask additional questions to learn what locations the client is interested in and not assume the client is only interested in properties located near other Asian Indian people.

QUALIFYING BUYERS

As a good business practice – having nothing to do with fair housing – it is generally recommended for Realtors® to financially qualify all prospective buyers before discussing specific properties. This allows the Realtor® and prospect to narrow the field of interest and assess a price range based on objective criteria rather than assumptions.

In the process of qualifying prospective buyers, brokers should have policies regarding on the following:

1. Offices should have a standard policy governing how prospective buyers are treated whether they inquire in person, over the telephone or online. This includes questions of courtesy, initial information given, explanations of the firm's policies and procedures,

returning telephone calls, following through on promises, etc. This ensures equal treatment of all prospective clients and the utmost customer service.

Example: An African-American client arrives in the real estate office and is asked to wait in the lobby. A second client arrives and is immediately escorted to a Realtor's® office. While it may appear the clients are not receiving equal service, the situation could be addressed by explaining to the first client, "We have several scheduled appointments this morning but if you would like to wait, one of our Realtors® should be able to meet with you." When the second client arrives, the receptionist could say, "You're right on time for your appointment. Your Realtor® is waiting for you in her office."

2. Prospects should be interviewed in a consistent manner. A standard form is helpful in assuring this, but similar questions should be asked of all prospects regarding the type of real estate sought, features desired, locational preferences, their financial profile, etc.

Example: In his first meeting with an Asian buyer, Realtor® A asks about the buyer's expected budget and preferred neighborhoods. In his first meeting with a Hispanic buyer, he starts by showing them inexpensive townhomes. By not asking the same sorts of questions, Realtor® A has created a possible issue of discrimination.

3. All financial questions should be asked of each spouse or co-buyer, and any single prospect regardless of sex. Assumptions should never be made about any prospect's preferences or financial ability. Every prospect should be given equal assistance and advice toward maximizing the limit of what they can reasonably and responsibly afford. Do not probe more deeply or imply disbelief in financial information because the prospect is a person in a particular protected class. Determine the price range of a prospect objectively after providing such assistance.

Example: A Realtor® met with two prospective buyer couples interested in purchasing a home. The first couple, a Latino husband and wife with two children, was asked to provide a mortgage pre-approval prior to being shown any properties. Later that same day, the Realtor® met with a white couple with one child who wanted to see the same property. The Realtor® made arrangements and showed them the house that evening, prior to the first couple providing their financial information.

Asking for a pre-approval letter is not discriminatory by itself, but she may have discriminated because she only requested the pre-approval from the Latino couple.

4. Never focus or attempt to focus the attention of a prospect on certain communities or neighborhoods before the prospect clearly indicates such a limitation.

SHOWING PROPERTIES

After qualifying a prospect:

1. All properties meeting the objectives and financial ability of the prospect should be disclosed and discussed. Try to not rule out any properties based on the perceived needs of the client - only based on the criteria that have been provided.

2. Keep all discussions objective and factual. Do not exaggerate or emphasize positive or negative features of properties located in neighborhoods you believe are compatible or hostile to the prospect's race, religion, etc. Steering non-minority clients is illegal as well as steering minority clients.

Example: A White couple asked about purchasing a home in an area with several distinct neighborhoods. Though there were homes that met their basic criteria in several neighborhoods, their agent only provided information on properties in the two neighborhoods with minimal minority populations. Though the buyers were not minorities themselves, this is still inappropriate 'steering' based on race.

3. Do not discourage or attempt to discourage the purchase of property by representing that it is located in an interracial or diverse area, or may in the future be so integrated.

Example: A White couple with two children asks a Realtor® to see four properties they found listed online. The Realtor® reviews the listings and tells the couple that she will show them three of the properties but the fourth property is located in a "diverse" neighborhood and the school district in that neighborhood doesn't have a good reputation. She assures her clients that they wouldn't be happy with that property.

Because she gave her opinion regarding the neighborhood and school's quality, this Realtor® could be found guilty of a fair housing violation. She cannot steer clients away from a property just because she doesn't believe they want to live in a more ethnic neighborhood. The Realtor® should remember that her duty is to provide equal service to meet her clients' needs, not what she thinks is best for them.

4. Never misrepresent, invent, distort or exaggerate conditions, circumstances or incidents which even implicitly relate to the presence of one or another racial or ethnic group in a neighborhood.

5. Do not discuss information about the racial, ethnic, etc. composition of a neighborhood or its schools. If a buyer is interested in demographic data about a particular neighborhood or school statistics, there are various online resources that the buyer can use on his own. Any agent's opinions based on a protected class is a potential discrimination claim waiting to happen. Further, the buyer's idea of an "acceptable" statistic may not be the same as yours. For example, when discussing "good" schools, some might consider many different criteria such as graduation rate, college acceptance rate, AP classes, athletic programs or school violence.

If the client's requests persist, advise your clients, "My company's policy, as well as federal and state laws, prohibit me from commenting on the diverse or ethnic characteristics of any neighborhood or school. I also abide by the National Association of Realtors® Code of Ethics, which outlines the fair and equal treatment of all prospective buyers."

6. Allow clients to decide which properties they wish to see and show them in an order decided by the client, or in an order which does not have the effect of steering the client to a racially specific area first.

7. Provide fair and equal service to all clients. While it is impossible to offer the exact same services to any two clients, Realtors® should strive to provide the same services in the same manner as much as possible. If your own business practices have legitimate differences for different types of clients, it may be helpful to set those expectations early in the relationship so clients understand why they may be treated differently.

Example: A Realtor® arrived at her office with a young White couple in her car after showing them several houses. She met a Korean client there, and suggested he follow her to a home he wished to see. The client did not believe there was any discriminatory treatment, because the agent had explained that she had a personal policy of driving clients who were viewing more than four homes at a time, but asking other clients to meet her at properties so she would not have to drive back to her office after each showing.

8. Realtors® should express their concerns about a property, equally with all clients. Likewise, positive features of each property shown should be pointed out to all prospective buyers.

Example: A person in a wheelchair was working with a Realtor® Z to purchase a home. During the showing the agent repeatedly pointed out the accessibility and “universal design” elements of the home, including wide hallways, lowered counters and deep toe-kicks. When showing able-bodied buyers the same home he did not point out those characteristics. Aside from a possible discrimination case, by not pointing out the accessibility features Realtor® Z also lost the chance to sell the home to the second client, whose elderly parents were going to live with them.

9. Recognize when information is needed by a prospect and follow through promptly.

10. Realtors® should monitor themselves. Compare the service provided to all buyers by comparing:

- The number of homes disclosed to each
- The number of homes shown to each
- The location of the homes disclosed and shown
- The prices of the homes disclosed and shown
- The amount of time which elapsed between initial contact and actual selling.

11. Maintain accurate records of what properties were shown, when and to whom as a defense against charges of steering. Asking questions, gathering information, keeping records or using application forms containing information regarding the age, ancestry, color, disability, familial status, national origin, race, religion, sex, is not permitted by the Pennsylvania Human Relations Act. For example, you should not have any records comparing how many properties were offered to Asians, Latinos, etc. Simply maintain similar records for all clients in the event of a future complaint.

OFFERS

Once a client has found the property of their choice:

1. Realtors® should explain the necessary steps to proceed with making an offer to all clients.
2. Communicate equally with all clients, explaining the sales process and preparing them for possible hurdles.
3. Discuss all financing options with all clients. Offer to assist all buyers in exploring alternative financing.
4. All offers from all buyers should be treated equally. Do not advise a buyer in a protected class to make a “better” offer to ensure they get the property.
5. Promptly submit offers to the seller without comment about the race, etc. of the buyer. Nor should the seller be dissuaded from accepting the offer on any but objective, factual grounds related to the terms of the offer and the buyer’s ability to perform on the contract.

RENTAL PROCEDURES

MEETING CONSUMERS / PRE-CLIENT STAGE

With the amount of personal information available on the Web, it is quite likely that a Realtor® may discover information about a potential client prior to their first meeting. For example, it may be quite easy to discover a potential client’s age, race, gender, familial status and/or religion simply by looking at an online profile of the individual.

Realtors® should consider implementing policies that restrict the amount of data that is collected prior to a first meeting with a potential landlord or tenant client. All real estate staff should be trained to treat all consumers equally, but if there’s a claim of unequal treatment, it’s easier to defend yourself if you can show that you did not have any specific identifying information available to you.

Realtors® are sometimes confronted with possible fair housing problems at the very first meeting with a consumer, even before securing a listing or buyer agency contract. When a client or potential client makes known to a Realtor® that he/she expects the Realtor® to engage in a course of discriminatory conduct, it is imperative that the Realtor® clearly declare his/her unwillingness to do so even if it appears that the listing may be lost. This should be done tactfully and professionally by affording the potential client the benefit of the Realtor’s® professional knowledge and advice about the legal dangers faced by the seller if he/she pursues any attempt to discriminate either through another broker or on his/her own. If the client persists in his/her efforts, the Realtor® should be prepared to walk away from the transaction.

Example: At their first meeting to discuss property management services, a landlord indicates that he's only willing to rent to tenants who "blend in" with existing tenants, most of whom are of a similar age and ethnic background.

The salesperson informed the seller that it is violation of the federal and state fair housing act to discriminate against a particular group of people and that any qualified tenant should be permitted to lease an apartment. After explaining that units would likely be vacant for less time with a larger rental pool, the landlord understood the business advantages of adhering to the fair housing rules and did not repeat the request.

Once a listing agreement has been secured, the seller must by law receive a copy of the Notice as set forth in 16 Pa. Code 43.14: "Responsibilities of Owner of Real Property Under the Pennsylvania Human Relations Act." Many organizations have developed standard listing agreements with this notice pre-printed on the back. Firms not having access to such forms are encouraged to develop their own.

Realtors® should review this Notice with the landlord at the time of the listing. This provides an opportunity for the Realtor® to explain the law, note his/her firm's compliance with the law, and eliminate misunderstandings which might arise should there be a rental application from a person in a protected class.

AVAILABILITY

To assure that the public reviews consistent information regarding the availability of properties for lease, each brokerage should develop written procedures governing how such information will be distributed, and who is authorized to distribute it.

Brokers are encouraged to maintain some sort of unified records with information on all properties being listed for lease – particularly those being listed by the brokerage. Though this information is generally available in the MLS for sales transactions, it may not be so easily available for rentals in all markets. If that's the case, brokers should maintain their own record of available properties in a uniform manner. If there is additional information that may be available for in-house listings (e.g., listings that haven't been put in the MLS, or additional information not entered in the MLS), a brokerage should have policies on how and when that information will be made available.

As a general rule, only information on the record may be given to the public, and all available information should be given to all potential tenants who are qualified for the property. In addition, a firm should develop written rules regarding the following:

1. Under what conditions a property is placed on or removed from the record.
2. Who is authorized to update the record and when this shall be done.
3. Who may and who may not give information to the public.
4. How persons who are not authorized to give information should handle public inquiries.

5. What information should and should not be given over the telephone or via email, if this differs from that to be given in person or online.
6. How properties will be handled when qualified rental applications have been submitted and are awaiting the owner's acceptance or rejection.
7. What disciplinary act will be taken against those violating any of these rules or policies.

Information supplied to prospective tenants regarding the location, nature, condition, price, etc. of each property, should be consistent, accurate and specific.

Example: A prospective client who uses a guide dog asked to see several available apartments. An assistant in the office who was not authorized to speak about apartments told the prospective client that all of their apartments had a strict no-pets-allowed policy.

Not only did the assistant violate fair housing rules (assistance animals are not considered to be "pets" under the law), but he could – and probably should – be sanctioned for violating office policy. Even those staff not authorized to discuss rental policies should receive basic fair housing training to avoid similar problems.

TERMS AND CONDITIONS

When managing multiple units, it is common for different units to have different rental criteria – even for those owned by the same landlords. For example, single-family homes will probably have different rules than apartments, and units with different characteristics will generally have different rents or tenant qualifications. For example, renovated apartments in a high-rise might rent for a higher fee than non-renovated apartments, even though they have the same floor plan.

It is imperative that prospective tenants receive complete and accurate information when starting the rental process so they can make an informed decision about which units are appropriate for them. Even more importantly, if they're given incorrect information that is later changed, it may seem as though the change was done for a discriminatory purpose if it has the result of disqualifying them for a property.

To avoid such problems, every broker and agent should for his/her own protection:

- 1. Develop a listing/management agreement which clearly defines the roles of the owner and the broker.** It should specify what policies and decisions will be left to the broker's sole discretion, and which have been predetermined by the owner. By law, the agreement should be accompanied by a copy of the OFFICIAL NOTICE: Responsibilities of Owners of Real Property under the Pennsylvania Human Relations Act.
- 2. Discuss what policies and procedures the broker will be using with the property owner even if the broker is given complete authority to select a tenant.** This helps eliminate the problem of an owner raising objections or concerns about a tenant after the fact. Moreover, it needs to be perfectly clear in writing who has the authority to accept/reject applicants under what circumstances.

3. Discuss what criteria will be used in the selection of a tenant. For example, will the first qualified tenant be accepted, or will the most qualified tenant be chosen from an applicant pool? Are there any blanket or unit-specific exclusions that will be made (such as excluding pets, or applicants with a certain criminal history)? Make sure that the owner has no undeclared assumptions about what is necessary for the acceptance, or sufficient for the rejection, of a prospective tenant.

Example: A prospective tenant is the first to apply for an apartment that will be vacated at the end of the month, and he meets the minimum criteria established by the landlord. The property management agreement between the broker and owner states that when advertising a unit that is currently leased, the broker is to collect applications for two weeks and then select the candidate with the highest credit score who meets all other qualifications. This provision was explained to the prospective tenant, who was also told that he lost the property to a tenant with a higher credit score. Because the property manager followed the written policy of the owner and explained that policy to the prospective tenant, no discrimination case was filed.

4. Discuss with the owner when a unit will be available for occupancy and whether there are any reasonably foreseeable factors which may alter this date; policies and procedures for showing the unit; whether anyone else has been or may be authorized to discuss, show or commit the unit; and whether the owner may be considering selling rather than renting.

5. Incorporate in the agreement any understandings between the owner and the broker which are unusual, special, or any requirements mandated by the owner. Have the owner sign and date the agreement.

Once the broker and owner believe they will be speaking with one voice about the rental of the unit (ACCURACY and COMPLETENESS of INFORMATION), the broker must assure that this information is given to the public in a UNIFORM manner.

Brokers should, therefore, consider the following procedures:

1. Prepare a listing sheet for each unit on the inventory record which would include the usual information regarding the location, size, physical layout, desirable features, terms of rental, etc.

2. Clearly instruct all employees (whether administrative, maintenance, etc.) whether or not they are authorized to provide information about housing opportunities to the public. This should include preparing or updating job descriptions to explicitly define the limits or scope of each employee's authority and by sending memos to all personnel (with periodic reminders) stating the policy.

3. Instruct employees authorized to give information to the public to provide all and only the information on the listing sheets when asked for information regarding rental units.

4. Instruct employees to give information regarding the rental application process in accordance with the written, general policies and procedures governing the office and give any special exceptions applying to a particular unit which should also be included on the listing sheet.

5. Instruct employees about what information should be given over the phone if this differs from that to be given in face-to-face meetings.
6. Closely monitor compliance with these instructions.
7. Document information in writing and discipline appropriately.

APPLICATION PROCESSING AND TENANT SELECTION

A uniform application procedure should also be designed, placed in writing, and consistently used and monitored. Well defined procedures should include the following:

1. Under what circumstances applications are to be offered to prospective tenants.
2. Use of a uniform application form (such as the PAR Rental Application) which asks no information regarding any protected class, including those protected in any local fair housing laws.
3. Instructions to make no explicit or implicit adverse decisions about prospective tenants until their application has been completed and processed.
4. Instructions to employees to provide equal assistance and advice to applicants who are completing the applications.
5. Instructions to agents to review completed applications with applicants to assure completeness, accuracy, thoroughness, and sufficiency of the information given.
6. Verifiable, measurable criteria for selecting tenants such as current income (net or gross) and debts, credit history, past rental and employment history, future employment, etc.

Example: A landlord requires a certain minimum gross income to qualify for a rental. When disclosed, the landlord is willing to accept child support, alimony and public assistance benefits as part of the calculation. A prospective tenant submits an application citing Federal Supplemental Security Income (SSI) received on behalf of her mentally disabled child, but the landlord refuses to count this towards her income. Because other similar income is considered, this refusal could indicate discrimination based on the handicapped child and/or the applicant's familial status.

7. Uniform application of the criteria to all applicants.
8. Instructions to use only information on the application, or information obtained as part of your verification procedures, in tenant selection procedures. If an issue such as criminal records is important enough to influence your selection process, it should be incorporated as a uniformly applied criteria.
9. Notice to rejected applicants giving the basis of their rejection. Note that if a prospective tenant is rejected because of information in a credit report, a notice must be provided under the Fair Credit Reporting Act.

RETENTION OF TENANT APPLICATIONS AND MAINTENANCE OF WAITING LISTS

Rental applications (for both successful and unsuccessful applicants) should be retained for a minimum of one year, and real estate brokers should retain them for at least three years to comply with the Real Estate License and Registration Act (RELRA). Consult with your attorney to determine whether to retain the applications for a longer period as a defense against possible litigation – some may suggest holding on to them for up to six years.

If your business has a need for a “waiting list,” all applications should be recorded on a list which clearly indicates each applicant’s position for which type, location, etc. of property being sought. Ideally, applications will be dated and time-stamped to show the order in which they were received. Procedures should specify when, by whom, and how the waiting list will be updated. The waiting list should be made available for inspection by all rental applicants. In addition, the waiting list should show the manner and date of disposition of each application.

MEETING AND QUALIFYING TENANTS

Those managing rental properties should have an established policy regarding how requests are made and how they are acknowledged. The policy should outline how potential tenants are met and what criteria are used to qualify them as tenants. Establishing a policy will provide protection against claims made.

“REASONABLE ACCOMODATIONS”

A policy manual for tenants, outlining what tenants are responsible for and what is expected, should be made available. But regardless of tenant policies, property managers should recognize that fair housing laws and the Americans with Disabilities Act require them to accommodate reasonable requests from tenants with disabilities.

For example, property owners can be required to allow reasonable alterations of a property to accommodate a disabled tenant, and may be obligated to adjust other rules and regulations to accommodate these needs. When determining whether a request is reasonable, landlords can consider criteria such as whether the request would:

- Cause an undue financial or administrative burden to the landlord
- Change the nature of the housing units
- Cause harm or damage to others

Example: An elderly tenant is a little unstable following a stroke. He has requested permission to add grab bars in the tiled shower that are attached to wall studs to provide him with additional stability. Even though the tenant manual prohibits making any changes to tiled walls, the owner would probably be required to allow installation of the grab bars. Note that the tenant can be required to pay for the alterations.

Example: The policies for an apartment complex state that no tenant is issued a reserved parking space, nor may any tenant attempt to permanently reserve a space by any means. An elderly tenant who uses a walker has requested a reserved spot at the curb cut closest to her front door. This accommodation is also likely to be required, though it could be perceived as “special treatment” by other tenants.

Example: An prospective tenant with autism requests that the apartment units above, below and beside his unit be kept empty so he is not disturbed by the noise. The financial burden on the landlord may make this an unreasonable request, although the landlord should discuss whether other accommodations – such as stricter enforcement of existing noise rules – would be acceptable.

COMMERCIAL PROPERTIES

It is worth noting that while federal fair housing rules apply only to residential housing, the Pennsylvania law and regulations also include commercial real estate under its anti-discrimination umbrella. As such, Realtors® should be careful to look out for potential discriminatory acts when leasing or selling any property, including commercial property.

Example: Guiseppi has engaged Realtor® Q to search for a location for a new restaurant. After sending listing information for several closed pizza shops, Guiseppi begins to wonder if Realtor® Q is basing his listing search on ethnic considerations rather than business considerations.

Example: Juan and Sally have asked a broker to assist in finding locations for a small professional office. Before starting to work with them, the broker requests information on Juan’s residency status, but not Sally’s. This lack of consistency suggests a discriminatory motive in asking Juan for the information.

Note that there may be legitimate reasons for potential businesses to request demographic information based that may be based on protected classes. For example, a child care franchise will need to know how many families with young children live in their expected service area. Similarly, an Asian market will potentially want to locate near areas with a large Asian population. Though Realtors® may not want to anticipate these requests, in most cases it will be acceptable to provide that information if there is a legitimate business reason.

Example: A client seeking to lease space for a Vietnamese restaurant asks his broker to provide demographic information indicating the population of Vietnamese residents so he can select a location nearby. The broker could comply with this request.

Example: A client seeking to open a sandwich shop asks his broker to provide information on the number of African-American families nearby so he can avoid having “the wrong element” frequent the restaurant. The broker should not comply with this request.

APPENDIX

PROHIBITED USAGES

§ 45.171. Race/color/national origin

It is unlawful to advertise a limitation, preference or discrimination on account of race, color or national origin. Examples include the use of:

- (1) Any color to describe a group of people for example, white, brown, red, black or yellow.
- (2) Any nationality or race to describe a group of people for example, Caucasian, Negroid, Chinese, Asian Immigrant, French, Hawaiian, Arab, Oriental, African-American, Irish, and the like.
- (3) Landmarks or organizational locations which are indicative of a particular nationality or race, unless all of the landmarks in the area are noted for example, if proximity to a specific place associated with a particular ethnic group is noted as a directional landmark, reference should be made to all other nearby comparable facilities of interest to other groups.
- (4) Code words which are recognizable in a particular neighborhood as connoting neighborhoods that restrict certain races or ethnic groups. Code words are facially neutral words and phrases which are used in a particular circumstance which are understood to mean an illegal preference.
- (5) Neighborhood and geographical landmarks such as "Chinatown" and "little Italy" are acceptable terms if the description is used in connection with the property being sold or rented and not for exclusionary purposes.
- (6) Phrases such as "oriental garden" and "kosher restaurant" are acceptable when used as a description of the property being sold or rented, not as a landmark for other property.

§ 45.172. Familial status/age

(a) It is unlawful to advertise a preference, limitation or discrimination against families with children in the household or against persons 40 years of age or older. Examples include the following:

- (1) The use of any phrase which notes a preference, limitation or discrimination for adults, couples or singles or families without children—for example, "adult atmosphere," "mature adults preferred," "great for retired couple or couple just starting out," "adult/family sections," "no kids/pets okay," "couples only," "ideal for singles," "adult community," or "suitable for one or two adults."
 - (2) The use of any colloquialisms which imply the same as those in subsection (a)(1)—for example, "empty nesters," "honeymooners," or "swinging singles."
 - (3) The listing of the number of children allowed.
- (b) Notwithstanding the prohibitions in subsection (a), it is not unlawful to:
- (1) List the size and number of rooms or bedrooms.

(2) Indicate that the housing meets the requirements for “housing for older persons” as defined in section 4 of the act (43 P.S. § 954). A publisher may rely on the advertisers’ written representations of such, unless the publisher has reason to believe otherwise.

(3) Advertise a preference against children and advertise age restrictions when the housing accommodation qualifies as “housing for older persons” as defined in section 4 of the act.

§ 45.173. Disability

(a) It is unlawful to advertise a preference, limitation or discrimination against persons with disabilities or to advertise that the property is not accessible.

(b) It is not unlawful to describe housing as accessible to persons with disabilities.

§ 45.174. Religion

(a) It is unlawful to advertise a preference, limitation or discrimination on the basis of religion. Examples include:

(1) The use of any religious denomination — for example, Christian, Jew, Muslim or Buddhist.

(2) Phrases such as “surround yourself with Christians.”

(3) The use of a particular landmark or location which is indicative of a particular religion.

(b) Notwithstanding the prohibitions in subsection (a), it is not unlawful for any religious or denominational institution or organization or any charitable or educational organization which is operated, supervised or controlled by or in connection with a religious organization or any bona fide private or fraternal organization to advertise:

(1) A preference to persons of the same religion or denomination or to members of the private or fraternal organization.

(2) That the making of the selection is calculated by the organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained.

§ 45.175. Sex

(a) It is unlawful to advertise any preference, limitation or discrimination on the basis of sex. Examples include “males only need apply,” “professional male preferred” or “perfect for single female.”

(b) Notwithstanding the prohibitions in subsection (a), it is not unlawful to advertise a preference based on sex in the rental or leasing of housing accommodations as follows:

(1) In single-sex dormitory.

(2) For rooms in one’s personal residence in which common living areas are shared.

LIST OF WORDS OR PHRASES TO AVOID

§ 45.181. Words to be avoided

(a) It is unlawful to use the following words or phrases in housing advertisements unless used in a clearly non-discriminatory context such as “white cabinets” or “French doors.” The list is neither intended nor reasonably able to be all inclusive. It is also unlawful to use words or phrases not appearing on the list, but which are used in a context which may be reasonably interpreted as indicating an unlawful discriminatory intent.

Able-bodied

Adult — If the housing is “housing for older persons” as defined by the Federal Fair Housing Act (42 U.S.C.A. §§ 3601-3619 and 3631) and the act, it is appropriate to say so.

(i) A newspaper/publisher may publish an advertisement for housing, and be held harmless for liability for an advertisement which uses the terms “senior housing,” “senior community,” “retirement community,” if the advertiser provides a statement formally, in writing, to the newspaper/publisher that the property being advertised meets the requirements for housing for older persons as defined in the act.

(ii) Equivalent phrases referring to persons 55 and 62 and older such as “adult community, 55 and over,” “adult community, 62 and over,” “adult 55+,” “adult 62+” to describe housing for older persons, will also be acceptable.

(iii) The term “adult” alone or with terms that do not meet housing for older persons requirements will remain unlawful terms as a description of housing for older persons.

| | |
|--|--|
| African American | Color (any when used to describe persons) |
| Asian | Colored |
| American Ancestry (any) | Couple |
| Black | Crippled |
| Blind | Deaf |
| Buddhist | Disability (any) — It is acceptable to describe housing as accessible to persons with disabilities. It is not acceptable to attempt to limit the housing to certain persons by stating that it is not accessible. |
| Catholic | |
| Caucasian | |
| Chicano/Chicana | Disabled |
| Child/children — Restrictions, unless “housing for older persons” | Empty nester |
| Chinese | Ethnic neighborhood |
| Christian | Ethnic group (any) |
| Church, near | Foreigners |

Handicapped
Hindi
Hispanic
Ideal for . . . (a type of person)
Immigrants
Independently, capable of living
Indian
Integrated
Interracial
Irish
Jew/Jewish
Latino/Latina
Mentally handicapped, ill, retarded
Mexican-American
Middle Eastern(er)
Minority
Mixed community
Mormon
Moslem
Mosque, near
Muslim
Nationality (any)
Newlyweds
Parish, near
Perfect for . . . (a type of person)
Polish
Prefer
Protestant

Puerto Rican

Race (any, when used to describe a person)
Religion (any, when used to describe persons)
Retarded

Retired persons, retirees — If it is “housing for older persons,” as defined by the Federal Fair Housing Act and the act, use that phrase, as many people who are retired may not qualify for housing for older persons while many people still working may in fact be eligible for housing for older persons.

Segregated

Senior Use — “housing for older persons,” as defined by the Federal Fair Housing Act and the act. See note under adult and retired persons. Many people who do not consider themselves senior may be eligible for housing for older persons.

Suitable for

Synagogue, near

Temple, near

White

Young

Youthful

(b) Any of the words in subsection (a) may be used if they are part of an address. For example, Poplar Church Road, Lutheran Street, Churchville, Black Ridge or Indian Hills, and the like, are permissible.