

MIAMI VALLEY



FAIR HOUSING

Fair Housing Fundamentals
Through
NAR's Rental version of the
Curricula:
Shared Neighborhoods

MIAMI VALLEY



FAIR HOUSING

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TABLE OF CONTENTS

OPTIONAL: Pre-Course Quiz	1
Ice Breaker Activity	3
Ice Breaker Discussion	4
Course Goal and Objectives.....	5
Course Overview	7
Lesson 1: Fair Housing Laws.....	8
Lesson 2: Consistent Policies and Procedures.....	35
Lesson 3: Handicaps/Disabilities	61
Lesson 4: Occupancy Standards.....	76
Course Review	85
Appendix.....	86

OPTIONAL PRE-COURSE QUIZ

For each of the following statements, circle “T” if the statement is true and “F” if the statement is false.

- | | | | |
|---|---|-----|--|
| T | F | 1. | According to the Fair Housing Act, it is illegal to discriminate on the basis of familial status |
| T | F | 2. | When renting property to individuals with handicaps, the landlord must allow reasonable modification to the existing premises. |
| T | F | 3. | Fair housing law prohibits requiring and checking references for prospective tenants. |
| T | F | 4. | Familial status refers to a household that includes children under 18 years of age. |
| T | F | 5. | When setting occupancy standards for rental property, a property owner should indicate the number of children permitted to reside in that unit. |
| T | F | 6. | If a leasing agent discriminates on the basis of race, color, religion, handicap, familial status, or national origin, he or she is the only one liable for these actions. |
| T | F | 7. | There is no time limit for filing a fair housing complaint. |
| T | F | 8. | A prospective tenant should determine his or her needs and wants when choosing a rental property. |
| T | F | 9. | State and local laws prohibiting discrimination on the basis of sexual orientation are not valid since the federal law does not recognize sexual orientation as a protected class. |
| T | F | 10. | States and local governments can prohibit discrimination based on unfavorable discharge from the military. |
| T | F | 11. | In determining damage awards, punitive damages are awarded to compensate for emotional distress. |
| T | F | 12. | Punitive damages cannot exceed three times the amount of actual damages. |
| T | F | 13. | Equal professional services requirements are defined by the federal Fair Housing Act. |

OPTIONAL PRE-COURSE QUIZ

- T F 14. Mrs. Murphy's exemption is the common description of an exemption that applies to owner-occupied buildings of four or fewer units.
- T F 15. There are no exemptions to the Civil Rights Act of 1866.
- T F 16. The Fair Housing Act of 1968 has some exemptions.
- T F 17. Examples of physical impairment include multiple sclerosis, cancer, and diabetes.
- T F 18. In a series of advertisements, use of photographs of white married couples always indicates an illegal preference.
- T F 19. The term handicap does not include illegal use of a controlled substance.
- T F 20. Major life activities include self-care.
- T F 21. Occupancy standards are defined by federal fair housing law.
- T F 22. One purpose of occupancy standards is to protect tenants from unsafe and unhealthy conditions.
- T F 23. Owners and managers may develop occupancy standards that limit the number of children per unit.
- T F 24. The Keating Memo refers to HUD's policy on complaints alleging discrimination because of occupancy standards.
- T F 25. HUD defines national occupancy standards for privately owned rental housing.

ICE BREAKER ACTIVITY

Brainstorm with participants at your table to devise a method for remembering the seven groups (race, color, religion, sex, handicap, familial status, and national origin) protected under the Fair Housing Act. If you know state and local fair housing laws, you may include them too.

ICE BREAKER DISCUSSION

Notes:

COURSE GOAL AND OBJECTIVES

Goal:

The goal of this course is to enable participants to comply with the fair housing laws by approaching all prospective tenants in the same manner regardless of race, color, religion, sex, handicap, familial status, or national origin.

Objectives:

Lesson 1 - Fair Housing Laws

- Name from memory the seven protected classes stated by the Fair Housing Act
- Describe the significance of the five major events that have shaped fair housing law
- Define “familial status” according to the Fair Housing Act.
- Comply with additional fair housing protections based on state and local laws
- Analyze scenarios to recognize major fair housing violations and prohibited acts
- Given scenarios, compare and contrast fair housing violations and prohibited acts and legal conduct
- Distinguish between fair housing violations and application of exemptions
- Determine the applicability of the Fair Housing Act exemptions for housing for older persons, FSBOs and the “Mrs. Murphy” exemption
- Recognize steps in the complaint process

Lesson 2 - Consistent practices, policies, and procedures

- Cite reasons why all work with prospective rental tenants should be documented.
- Describe the benefits that result from consistently providing complete and accurate information to a client about a specific rental unit.
- List items which should be documented when showing a rental listing to a prospective tenant, and describe why these items should be documented.
- Establish systems for consistent documentation of transactions based on the Equal Professional Services model.
- Maintain consistent procedures in rental transactions through use of the rental transactions checklist.
- Develop advertisements and promotional copy, that do not contain words, phrases, symbols, or illustrations considered illegal, unethical, or of questionable motive, or that convey discriminatory intent.

COURSE GOAL AND OBJECTIVES

Objectives

Lesson 3 - Individual with handicaps/disabilities

- State the meaning of the word handicap, as defined by the Fair Housing Act.
- Recognize conditions, barriers, obstacles, rules and regulations that impact disabled persons and the fair housing implications.
- Discern reasonable accommodations and reasonable modifications as described by the Fair Housing Act.
- Comply with fair housing laws on disabilities when interviewing prospective tenants.
- Recognize the conditions and diseases that are and are not covered under the handicap protection.

Lesson 4 - Occupancy standards

- Describe the purpose of occupancy standards.
- Name factors to be considered when determining the reasonableness of owner and manager-determined occupancy standards.
- Develop occupancy standards that conform to HUD guidelines, and comply with state and local laws.

COURSE OVERVIEW

Lesson 1:

- Federal, state, and local law regarding protected classes
- history of fair housing in the United States and some exemptions to this law
- analysis of case study scenarios to recognize fair housing violations and prohibited acts
- how fair housing complaints are filed and enforced

Lesson 2:

- establishing and maintaining consistent, documentation of transactions based on the Equal Professional Services model
- guidelines for developing advertisements and promotional materials

Lesson 3:

- Working with prospective tenants with handicaps/disabilities
- Making reasonable accommodations and modifications as described by federal fair housing law

Lesson 4:

- Understanding and developing occupancy standards

Appendices

- The appendices of the participant's guide contains checklists, contacts for further information, office procedure forms, additional case law examples, advertising guidelines, and reference material

Throughout the course, case studies will be used to illustrate the application of federal fair housing law in rental transactions.

If you are taking the course for continuing education credit, an exam is provided (if required). It will take about 30 minutes to complete the exam after the course.

LESSON 1: FAIR HOUSING LAWS

Lesson Objectives:

Lesson 1 - Fair Housing Laws

- Name from memory the seven protected classes stated by the Fair Housing Act.
- Describe the significance of the five major events that have shaped fair housing law
- Define “familial” according to the Fair Housing Act
- Comply with additional fair housing protections based on state and local laws
- Analyze scenarios to recognize major fair housing violations and prohibited acts
- Given scenarios, compare and contrast fair housing violations and prohibited acts and legal conduct
- Distinguish between fair housing violations and application of exemptions
- Determine the applicability of the Fair Housing Act exemptions for housing for older persons, FSBOs, and the “Mrs. Murphy” exemption
- Recognize steps in the complaint process

WHAT IS FAIR HOUSING?

Fair Housing means every person has the same opportunities to purchase, lease, or occupy residential real property.

Fair housing laws prohibit certain activities in an effort to sustain an environment in which all persons are afforded equal housing opportunities. For example, fair housing laws prohibit:

- refusal to show, sell, or rent a property
- differing treatment
- panic selling or block busting
- steering
- discriminatory advertising or statements
- threats or interference with a person's fair housing rights

FAIR HOUSING LAWS

Everyone is protected by fair housing laws

Although some may believe that fair housing law exists for someone else's benefit, everyone, including the all of the participants in the classroom, are protected by fair housing laws. Everyone is covered by one of the seven federally protected classes.

The Fair Housing Act (see the appendices section for the full text of the Act) uses the term "handicap," rather than the more commonly used term, "disability." The definition of "handicap" in the Fair Housing Act is the same as the definition of "disability" in the Americans with Disabilities Act (ADA). However, the Fair Housing Act applies to housing, and the ADA applies to employment and access to commercial establishments, such as real estate sales offices and premises of associations of REALTORS®. Lesson three will focus on working with prospective tenants with handicaps/disabilities.

FAIR HOUSING LAWS

State and Local Fair Housing Laws

As previously mentioned, the Fair Housing Act enumerates seven protected classes: race, religion, color, sex, handicap, familial status, national origin. State and local fair housing laws sometimes, but not always, provide broader coverage than the Fair Housing Act. For example, some state and local governments extend protected status to additional classes, such as age, source of income, occupation, marital status, sexual orientation, and unfavorable discharge from the military. In addition, definitions may vary from state to state and from area to area. When inquiring about laws at any level, it is important to look at the definitions and clearly understand the intent and the requirements of the law.

Your instructor will provide information on additional state and local protected classes, if any. Note these additional protected classes in the chart below.

Federal	State of _____	City of _____
Race		
Color		
Religion		
Sex		
Handicap		
Familial Status		
National origin		

Which law prevails?

What if, for example, the local law does not prohibit discrimination based on “handicap,” but the federal law does? The federal law prevails. Federal statutes should be considered as the minimum laws. However, you must comply with local, state, and federal laws at all times. An overall rule of thumb is to comply with the law that places the greatest burden or imposes the most constraints in your area.

FAIR HOUSING LAWS

United States Constitution	1789	
13th and 14th Amendments to the United States Constitution	1856	Dred Scott Decision
	1866	
Plessy v. Ferguson	1866	Civil Rights Act
	1874	
	1968	Federal Fair Housing Act
Fair Housing Act Amendment	1974	
	1988	Fair Housing Act Amendment
Fair Housing Act Amendment	1995	

Declaration of Independence

The Declaration of Independence affirmed that all men were created equal, but the U.S. Constitution stated that slaves were considered to be “three-fifths of a person.”

Dred Scott Decision

Dred Scott was an African-American slave. His owner took him from Missouri, a slave state, to the free states of Illinois and Wisconsin. When returned to a slave state, Dred Scott, with the help of the Abolitionist cause, sued for his freedom, claiming he should be free since he had lived on free soil for a long time. The case went all the way to the U.S. Supreme Court. The U.S. Supreme Court’s decision, rendered in 1857, was that no slave, or descendant of a slave, could be a U.S. citizen. As a result of the Dred Scott decision, the U.S. Supreme Court determined that black persons “had no rights or privileges, but such as those who held the power and the government might choose to grant them,” and that they “had no rights which the white man was bound to respect.”

FAIR HOUSING LAWS

13th Amendment

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation. (adopted December 8, 1865)

14th Amendment

Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(adopted March 30, 1870)

Civil Rights Act of 1866

Among civil rights laws enacted by the Reconstruction Congress is the Civil rights Act of 1866, which specifically guarantees that “all citizens of the United States shall have the same right to inherit, purchase, lease, sell, hold and convey real and personal property as is enjoyed by white persons.”

Plessy v. Ferguson

On June 7, 1892, a 30-year-old shoemaker named Homer Plessy, regarded by the community as a person of color, was jailed for sitting in the "white" car of the East Louisiana Railroad. Plessy went to court and argued that the Separate Car Act violated the Thirteenth and Fourteenth Amendments to the Constitution. The trial judge was Massachusetts lawyer, John Howard Ferguson. In 1896, the Supreme Court of the United States heard Plessy's case and effectively stalled any further movement toward true racial equality by holding that “separate but equal” facilities are constitutionally permissible. The lone dissenting opinion, written by Justice John Harlan, foreshadowed events yet to come. (Refer to side bar.)

The Plessy decision was struck down in 1954 with the Brown v. (Topeka, Kansas) Board of Education.

“Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law...In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott case...”

-Justice John Harlan

FAIR HOUSING LAWS

Title VIII of the Civil Rights Act of 1968/Federal Fair Housing Act

Following the assassination of Dr. Martin Luther King, Congress passed the Civil Rights Act of 1968. Title VIII of that Act, now known as the Fair Housing Act, was enacted to specifically prohibit discrimination in housing on account of race, color, religion, or national origin. This was the beginning of a comprehensive body of statutes governing private and public housing in the United States. (Refer to side bar.)

“It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”

- Federal Fair Housing Act

Fair Housing Act Amendments

In 1974, an Amendment to the Act added “sex,” whether male or female, as a protected group. “Handicap” and “familial status” were added by the Fair Housing Act Amendments of 1988. The 1988 Fair Housing Act Amendments prohibit discrimination against families with children under the age of 18 (household with any person under the age of 18). Protection is extended to pregnant women, persons in the process of securing legal custody of children through adoption, divorce, or written permission of parents or legal guardians. The 1988 Amendment also made changes in the enforcement of fair housing law, which will be covered later in the course. In 1995, an amendment clarified the housing for older persons status.

The Civil Rights Act of 1966 and the Federal Fair Housing Act of 1968, as amended, are the foundation of fair housing law in the United States. While its goals have not been totally achieved, the Fair Housing Act is the law, and discrimination in the sale or rental of housing is strictly prohibited. Your understanding of this history, its implications, and its effects on accessibility to housing is critical to the success of the real estate industry today.

FAIR HOUSING LAWS

The Fair Housing Act describes specific prohibited acts of discrimination in the rental or sale of real property based on race, color, religion, sex, familial status, or national origin.

Prohibited practices:

- refusal to sell or rent
- making housing unavailable
- applying more burdensome criteria to a particular prospective tenant than that applied to others
- discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling or provision of services or facilities of the property.
- making, printing, or publishing any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discriminatory intent.
- representing that a dwelling is not available for inspection, sale, or rental when in fact the dwelling is available
- steering prospective tenants to, or away from, a particular dwelling, building or community making choices and assumptions for the prospective tenant.
- inducing, or attempting to induce, any person to sell or rent a dwelling by representations regarding the entry, or prospective entry, in the neighborhood of particular persons (block busting)
- discrimination in the rental or sale of a dwelling, or in the provision of services or facilities in connection with the dwelling, against a renter or buyer because of a handicap, that of a person residing in the dwelling, or that of anyone associated with that renter or buyer.
- limiting use of common or community facilities.
- refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises necessary to afford full enjoyment of the premises. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for modification on the renter agreeing to restore the premises to the condition that existed before the modification.
- refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford equal opportunity to use and enjoy the dwelling.
- failure to design and construct covered multifamily dwellings for first occupancy in such a manner that the dwelling's public and common use portions are readily accessible to and usable by handicapped persons.

In general, it is unlawful for any person or firm whose business includes engaging in residential real estate-related transactions to discriminate in making the transaction available, or in imposing terms or conditions because of :

- race
- color
- religion
- sex
- handicap
- familial status
- national origin

CASE STUDY #1: WELCOME TO LAKEVIEW TOWERS

“Yes, Mrs. Westin, I’ll look into it and have a word with the tenants in 35-C. “

Mike Adams shook his head as he hung up the phone. That was the third complaint he had received this month about the kids in apartment 35-C - running in the hallway, playing around the elevators, throwing water balloons off the balcony - - you name it! Now he would have to confront the parents again. That new manufacturing plant that opened south of the city had brought a lot of young families with kids into the area and the building. Most were good tenants. However, the older, longtime residents were unhappy with the increasing number of children in the building and some even threatened to move out. What was he supposed to do? The folks down at the main office made it clear that a “no kids” restriction for the building was out of the question, but they didn’t have to face the tenants every day.

Cindy, the building receptionist, popped her head in the door. “Mike, Helen Henderson, your two o’clock appointment is here. Hey, are you okay? You look a little peeved.”

“Oh, I’m okay. It’s just those kids in 35-C again,” Mike sighed.

Cindy rolled her eyes in sympathy. “Well, good luck. On the bright side, judging from the application the main office sent over, Ms. Henderson looks like a great prospect. Just the kind of tenant the building needs.”

Mike glanced at the rental application: good credit report, solid employment history, married, no kids. “Looks good. This should be easy.”

“She’s waiting in the lobby, next to the security desk. She said her husband will be here in a few minutes.”

Mike left the office with a spring in his step. Helping good tenants find the right apartment was the part of the job he enjoyed the most, but his heart sank when he saw Ms. Henderson standing in the lobby. He guessed that she was about six months pregnant. He really didn’t need more kids in the building now, especially a baby! Never mind what the main office said, he’d find a way to deal with the situation. Mike plastered on his best, professional smile.

“Good Afternoon, Ms. Henderson, welcome to Lakeview Towers. I understand you’re interested in a two-bedroom?”

“That’s right. The building location seems just right for us, close to my husband’s office. We really like the security, too, since my husband travels on business a lot. He’ll be here in a few minutes. While we’re waiting, could you tell me about some of the facilities?”

Mike drew in a sharp breath, stalling for time. How was he going to handle the situation?

"Well, you know, Mrs. Henderson, this building has a down side."

Startled by that unexpected statement, she asked, "Are you saying there's something wrong with the building?"

"Oh no, the building's in great shape. But it's such a large building, long hallways, elevators. It's got to be really hard dragging a baby stroller, a buggy. And then, of course there's always the problem of worrying about bothering the neighbors when the baby cries."

CASE STUDY #1: WELCOME TO LAKEVIEW TOWERS

Helen didn't quite know what to make of Mike's statements. True, this was her first child, and she didn't have experience with "dragging a baby stroller," as he said, but other people had babies and lived in apartments.

It couldn't be all that bad. She tried to change the subject.

"Does the building have a pool? Swimming a few laps may help me get back in shape after the baby."

"We have a roof deck pool with a super view of the city!" Mike blurted, then hesitated. "It's great for adults, but it really isn't safe for kids. We don't have a lifeguard on duty. There aren't any guardrails either, so it just isn't safe for the little ones. You wouldn't want your child to be in an unsafe environment, would you?"

Helen couldn't understand what Mike was getting at. Nothing in the advertisement for the building said anything about a "no children" policy. She hesitated for a moment before answering as politely as she could, "I can take care of my child. Right now, I'm just interested in finding an apartment."

Mike was about to explain that a lot of the tenants were senior citizens and, although he personally loved kids, older tenants complained, when a tall, dark-haired man in a three-piece business suit walked up to the security desk where they were standing and patted Helen's shoulder.

Helen's face brightened. "Hi, honey. Great timing. Mike, I'd like you to meet my husband, Larry Martinez. Mike was just about to show us the two-bedroom apartment."

Oh great, this was just what he needed. It wasn't enough that he had to listen to complaints about kids, recently some of the long-term tenants had been commenting negatively about the new signs around the building in English and Spanish. Mike started to stammer.

"Look, I'm not sure I can show that apartment now, I think it's already been rented. When you called did they tell you about the two-months security deposit, first and last months' rent, then there are the fees - - key deposit, parking, carpet cleaning."

Perplexed, Larry Martinez asked, "Mike, what's going on? I left the office early to come over here to see the apartment. We were told it was available."

Mike back pedaled across the lobby, trying to put as much distance between himself and the couple.

"You know availability is really tight and we have a long waiting list. Maybe you could check back with us in a couple of months."

Beads of perspiration were gathering on Mike's forehead when he reached the safety of his office. Through the front window, he could see the couple getting into their car. Their body language spoke volumes.

CASE STUDY #1: DISCUSSION

Discussion Questions

- On what basis, recalling the seven protected classes, is there a possibility of discrimination?
- What acts of discrimination take place?
- If building amenities are not safe, can the agent reasonably refuse to rent to families with children?

As you read, the Case Study gives examples of discrimination based on three of the protected classes:

- Color or national origin: When Helen introduced her husband as Larry Martinez (a name of possible Hispanic origin), the rental agent said that he was not sure he could show the apartment, the apartment had already been rented and there was a long waiting list.
- Familial status: The agent wanted to avoid renting an apartment to a family with children, even one on the way.

Acts of Discrimination

The agent may have violated fair housing laws by:

- refusing to rent.
- falsely denying that housing is available.

Familial Status

The 1988 Fair Housing Act Amendments prohibit housing discrimination against families with children under the age of 18 (households with any person under the age of 18). Protection is extended to pregnant women and persons in the process of securing legal custody of children through adoption, divorce, or written permission of parents or legal guardians.

Building Safety

If building amenities are not safe for children, the agent still cannot reasonably refuse to rent to families with children. The parents choose whether they want to live there. The management company or property owner cannot refuse access by children to areas such as swimming pools, weight rooms, and saunas. The management company or property owners may impose reasonable health and safety rules that limit access by unaccompanied children to such areas. A key word is “reasonable.” The building’s rules should not make use of building amenities by families difficult. In addition, property owners might be required to take steps that minimize the risk of injury to children who were previously excluded from a particular building or development.

CASE STUDY #2: WHERE'S HARRY?

Even from across the parking lot, Christine could see several people waiting in the office reception area. She really needed to talk with Sheila, the receptionist, about greeting customers promptly and courteously. Christine pushed open the office door just in time to hear Sheila say, “I gotta get off the phone now, the boss is coming. Okay, talk to you later. Bye!”

Sheila punched the hang-up button on the switchboard, patted her hair into place, stuck a pencil behind one ear, and looking past the tall African-American man standing in front of her desk, scanned the waiting area and asked, “Okay. Whose next?”

“I think I’m next,” he answered, his smile tightening into a quizzical grimace.

“Oh, Hi!” Sheila seemed to see him for the first time. “How can I help you?”

“My wife and I are interested in a two-bedroom apartment at your River Road building. We called last week and the manager, Harry, told us that a two-bedroom apartment was opening up this month. We went to the building today to see the apartment, but Harry wasn’t available. The maintenance man said that Harry was out of town for a few days and suggested we come down to the main office. We’d like to see the two-bedroom apartment that’s available there.”

Sheila, slowly shaking her head, responded, “I don’t think there is anything available at River Road.” Then, leaning back in her chair she called over her shoulder to anyone who might hear, “Does anyone know if we have any openings at River Road?”

A disembodied voice called from the back of the office, “Ask Harry.”

“Well, does anybody know where Harry is?” Sheila yelled.

No answer.

Sheila swiveled back around in her chair to face the customer. “Well, I don’t think we have anything available at River Road. How about the Bella Vista Terrace apartments. I think you’d really like it, lots of families with young kids live there.”

Christine, having observed the interaction, could see the customer’s growing consternation and decided to intervene. She stepped forward and extended her hand.

“Hello, I’m Christine Jacobs, the office manager. How can I help you?”

“Hi. I’m Curtis Jackson. Like I said, we’re interested in the River Road building. When my wife called about a vacancy there, the manager, Harry, told us that an apartment was going to be available. We left our name and phone number with him, but we never heard back. Now, Harry’s out of town and I’m hearing that there may or may not be anything available. Frankly, I feel like I’m getting the run-around.”

CASE STUDY #2: WHERE'S HARRY?

"I'm sorry for the confusion. If you just could have a seat in our waiting area for a moment, I'll ask one of our agents to get in touch with the staff at the River Road building and try to straighten this out."

Mr. Jackson responded with a shrug of his shoulders and took a seat close to the door.

Without stopping to take off her trench coat, Christine walked quickly past the reception desk and approached Brent, one of the office's most personable agents.

"Brent, I really need your help on this. Harry, over at River Road, told a prospective tenant that an apartment would be opening up. Now Harry is out of town and no one seems to know if anything is available. The prospective tenant is African-American and we don't want to create the impression of discriminating on the basis of race by denying availability because we don't know if an apartment is available. Can you get in touch with someone at River Road and get a straight answer? The prospective tenant is waiting in the reception area now."

"What prospective tenant?" asked Brent.

Christine glanced back over her shoulder to see an empty waiting area. Mr. Jackson was gone. She returned to the reception desk.

"Sheila, did Mr. Jackson leave?"

"Yeah. He just got up and walked out."

"Well, I'll give him a call then. Do you have his rental application form and phone number?"

Sheila replied sheepishly, "He didn't fill out an application form. We ran out of forms a few days ago."

"How have we been screening prospective tenants in the meantime? What about references for credit checks?" Christine asked incredulously.

Sheila replied breezily, "Oh, I just take down the names and phone numbers. Brent interviews them and if he thinks it's needed, he asks for references so we can do the credit check. Brent said that as long as he's been in the business, he can tell when a credit check is needed and when it isn't."

Christine sighed. "Sheila, someone else will cover the phone for a few minutes. Please go to the printer right now and have some more forms printed. And, make sure every prospective tenant fills one out. I'll talk to Brent about doing credit checks on every prospective tenant."

Christine walked away from the reception area, thinking, "Hopefully, that's one small fire extinguished." Joy, the maintenance coordinator, her ear pressed to a phone, mouthed a "Good Morning" as Christine walked past her desk.

CASE STUDY #2: WHERE'S HARRY?

Joy's desk was cluttered with the usual piles of notes, phone messages, invoices, repair estimates, and file folders. Joy's desk was the nerve center for all the buildings' maintenance and everyone marveled at how she was able to remember so many details. She was usually able to "keep everything in her head," but not today. Christine overheard Joy's side of the phone conversation.

"Really, Mrs. Hernandez? Well you know it's very hard to get a plumber to come out on short notice. Has it already been a week since you called about the clogged drain in the kitchen sink? Oh, I'm sorry about the delay. I'll try to get a plumber over as soon as possible? Yes, of course I have your phone number at work."

Joy hung up the phone and shuffled through the piles of notes in her in-box. "I must have that phone number in here somewhere," she muttered. Another phone call interrupted her search.

"Good morning, Mr. Johnson. How are you today? Your patio door is sticking again? No problem, I'll call the maintenance people right away."

Christine's sense of alarm grew. The firm's long-standing reputation for equal opportunity in housing could be easily tarnished because of unintentional actions that created the perception of discrimination. She picked up the phone and dialed Joe Hunter, the owner of the management company.

"Hi Joe. I'm sorry to say this, but I think we have a real problem here. Our actions and procedures, or lack of them, have the potential to create the perception of discrimination."

Christine went on to describe the morning's incident involving the River Road building.

"We've never tolerated discriminatory behavior among any of our staff and neither does Mr. Wells, the owner of the River Road building," Joe responded vehemently. "We even fired that building manager at Lakeview Towers, Mike Adams."

Christine replied, "Well, I know that, and you know that, but the public doesn't. Can we meet tomorrow morning? We need to make some changes and fast!"

CASE STUDY #2: DISCUSSION

Discussion Questions

- On what basis, referring to the list of seven federally protected classes, is there a possibility of discrimination?
- What acts of discrimination take place?
- Who might be liable and why?

Who is Liable?

A possibility of discrimination based on race, color, or familial status, exists in the Case Study. Brokers, owners, managers, and firms are all liable for the actions of their employees or the firms who represent them. In the Case Study, examples of employees' actions for which the firm is liable:

Brent, who handed the credit application to Christine, may have provided unequal treatment by choosing not to run a credit approval on a prospective tenant.

Sheila, the receptionist, may have steered the prospective tenant to another apartment building.

Joy, the maintenance manager, may have treated existing tenant unequally.

Harry, the absent maintenance person, may have caused other individuals in the office to deny availability because he did not keep records or communicate with the main office about vacancies.

Christine, the office manager, Joe, the owner of the management company, and the building owner may also be liable, because the incident described above is the responsibility of those further up the ladder. Brokers are responsible for the actions of their agents. The firm is also liable for the actions of the on-site maintenance staff and janitors at the buildings managed by the company. Everyone is responsible for maintaining fair housing practices. One individual could put the entire company at risk.

FAIR HOUSING ACT EXEMPTIONS

There are **NO** exemptions to the Civil Rights Act of 1866, which states that “all citizens of the United States shall have the same right to inherit, purchase, lease, sell, hold, and convey real and personal property.” Discrimination based on race or color is always illegal.

The Fair Housing Act of 1968 has some exemptions. Common exemptions are:

- qualified housing for older persons.
- Single-family housing for sale or rent by owner (FSBO), and owner-occupied buildings of four or fewer units (Mrs. Murphy’s exemption).
- religious organizations.

The exemptions for owner-occupied buildings of four or fewer units and FSBOs do not apply to advertising. Advertising a discriminatory preference is never exempt under the fair housing laws.

Housing for Older Persons

Discrimination based on familial status is illegal unless the property qualifies as “Housing for Older Persons” under the Fair Housing Act. Housing for older persons may lawfully exclude families with children. Real estate professionals who market housing to older persons should make sure that the facility or community has stated, in writing, that it complies with the requirements for the exemption. In order to qualify for the exemptions the following conditions must be met.

- At least 80% of the occupied units for housing to gain this exemption, the following 55 years of age or older.
- The housing facility or community publishes and adheres to policies and procedures that demonstrate its intent to be housing for older persons.
- The housing facility or community complies with rules issued by HUD for verification of occupancy.

Advertising Housing for Older Persons

Avoid the use of the term “adult” when advertising 55-and-over rental housing. The use of the term “adult” does not demonstrate an intent as housing for older persons and may trigger complaints that such housing does not qualify for the exemption. When describing 55-and-over housing, use the terms “senior housing” or “55-and-over housing” to represent the community’s intent to provide housing for older persons.

FAIR HOUSING ACT EXEMPTIONS

Mrs. Murphy's exemption is the common description of the Fair Housing Act exemption that applies to single-family housing for sale by rent or owner (FSBO), and owner-occupied building with four or fewer units when the property is not sold using the services of an agent. The Civil Rights Act of 1866 prohibits discrimination only on the basis of race and color, but it applies to all real estate transactions. The Fair Housing Act applies to the sale, rental, and financing of *dwelling*s. Mrs. Murphy's exemption protects an owner from an action under the Fair Housing Act, but that owner would still be exposed to a suit under the 1866 Civil Rights Act if the discrimination was based on race or color. Furthermore, the unit must be rented, or sold, without the use of discriminatory advertising and, or discriminatory statements.

For example, in a 1998 case (HUD v. Gruzdaitis), an administrative law judge has ordered a Buffalo, New York, landlord to pay \$25,000 in compensatory damages and a \$25,000 civil penalty after finding that the landlord had uttered profanities and spit on a black woman who was inquiring about an apartment for rent in his building. The judge found that because the landlord lived in the two-unit building he was exempt from all provisions except that which makes it unlawful to make a discriminatory statement in connection with the rental of a dwelling. The judge also ruled that the landlord had violated the law by intimidating, threatening, or interfering with the prospective tenant in the exercise of her right to inquire about the availability of housing.

The exemptions apply to:

- single-family housing for sale or rent by owner (FSBO), provided that:
 - the owner does not own or have ownership interest in more than three single-family houses at any one time.
 - the house is rented or sold without the use of a real estate broker, agent, salesperson, or person in the business of selling or renting dwellings.
 - the owner who sells the house does not reside in it at the time of the sale or was not the most recent resident prior to the sale. This exemption applies to only one such sale in a 24 month period.
 - the house is rented or sold without the use of discriminatory advertising.
- building of four or fewer units, and the owner lives in one of the units.

A question that may arise is if the exemptions can be used by real estate licensee who rent or sell their own property. In the case of Michigan Protection and Advocacy Service, Inc. v. Babin (18 F.3rd 337, 6th Cir. 1994), the court held that a vendor of a house fell within the exemption even though she was a licensed broker and used preprinted sales forms provided by her employer. The court specifically held that her occupation did not disqualify her from the exemption. It also found that she did not use the facilities or services of a real estate broker within the meaning of the Fair Housing Act since none of her employer's other personnel were involved in the sale and the employer did not receive a commission on the sale.

A property owner does not lose the exemption by virtue of the fact that he/she is a real estate broker or sales associate. However, a REALTOR® would be ethically precluded from discriminating in the rental or sale of his own property by Article 10 of the Code of Ethics.

FAIR HOUSING ACT EXEMPTIONS

“REALTORS® shall not deny equal professional services to any persons for reasons of race, color, religion, sex, handicap, familial status, or national origin. REALTORS® shall not be parties to any plan or agreement to discriminate against a persons or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin.”

If a REALTOR® engages in fair housing violations an ethics charge can be filed with local association to which the member belongs. If found in violation of Article 10, the member is subject to discipline. Sanctions approved by the NATIONAL ASSOCIATION OF REALTORS® include suspension or expulsion.

Religions Organizations Exemption

Religious organizations have exemptions under the Fair Housing Act. Religious organizations that own dwellings may limit the rental, sale, or occupancy of such dwellings to persons of the same religion or give preference to such persons. Exempt dwellings may not be used for commercial purposes, and religious membership must not be restricted because of race, color, or national origin.

Similarly private clubs that own lodgings may limit the rental or occupancy of such lodgings to their members or give preference to members. Again, such exempt dwellings cannot be used for commercial purposes.

Condominiums, Cooperatives, and Homeowner Associations

Condominiums, cooperatives, and houses in homeowner associations are covered by the Fair Housing Act. For instance, an association may not exercise its right to approve or disapprove prospective tenants or residents in a discriminatory manner. An association’s bylaws and other restrictions may not limit the rights of persons to housing or use of its facilities because of race, color, religion, sex, handicap, familial status, or national origin. Additionally, an association is subject to the reasonable accommodation and reasonable modification provisions, which will be covered in more detail later in the course, of the Fair Housing Act with regard to persons with disabilities.

Members of an association may be liable for the discriminatory acts of the association’s board of directors or agents. A board’s actions may be reviewed during an investigation of a fair housing complaint.

Associations may claim the “housing for older persons” exemption and lawfully exclude families with children, if the association and property meet the requirements of the exemption. Under the 55-and-over exemption, 80 percent of the occupied units must be occupied by at least one person who is 55 years of age or older, and the facility or community must be intended and operated for persons 55 years of ages or older.

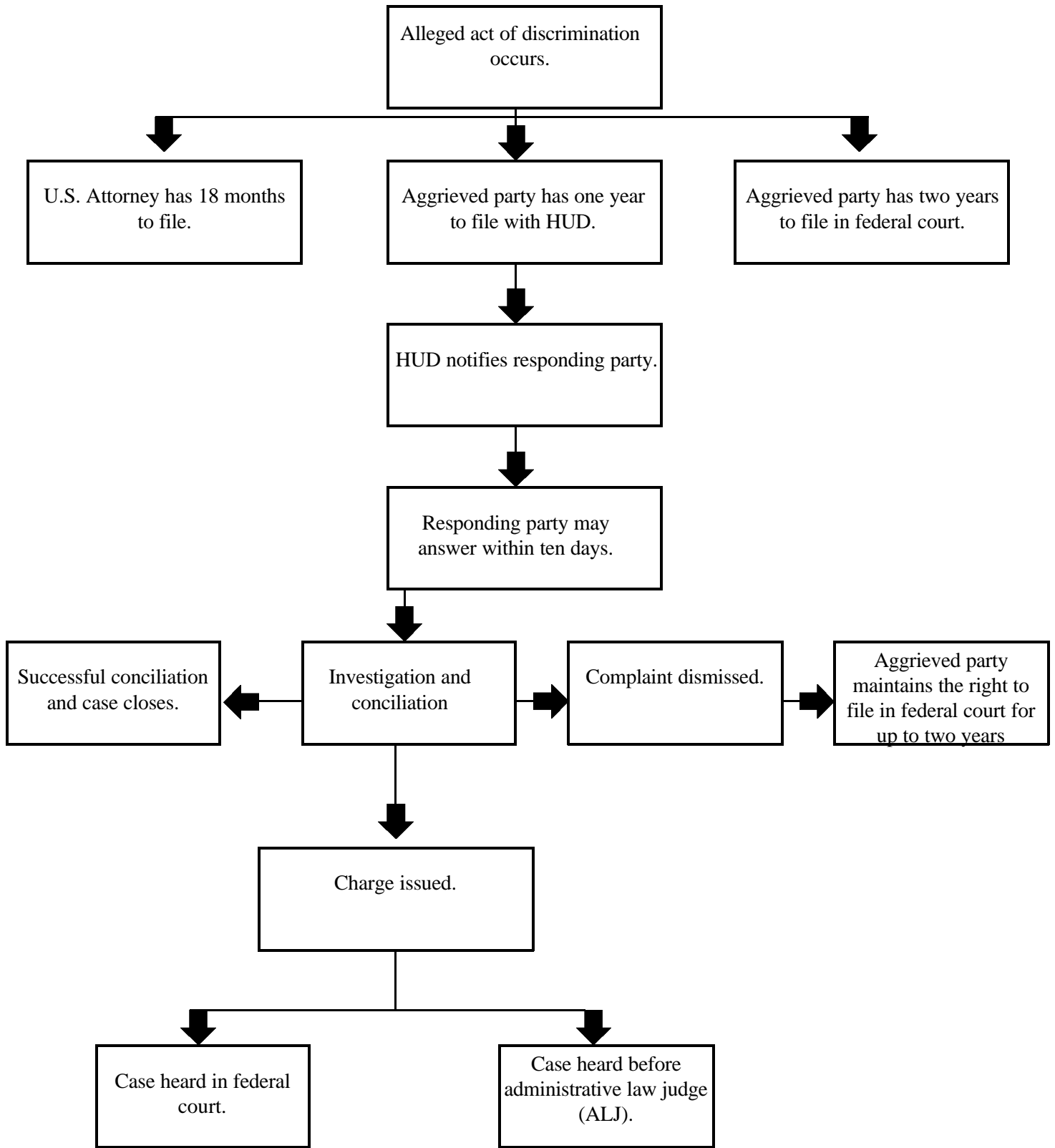
FAIR HOUSING ACT EXEMPTIONS

Property Covenants or Restrictions

During the history of our country, some persons have placed restrictions on property based on race, color, religion, sex, handicap, familial status, or national origin. Generally, these restrictions are void and unenforceable, with limited exceptions for particular types of religious housing and housing for older persons. The publication of these void restrictions may convey a message that the covenants or restrictions continue to be valid. Anytime a sales associate or broker is asked to provide a copy of the covenants or restrictions relating to use of a property the following message should be included:

These documents may contain restrictions or covenants based on race, color, religion, sex, handicap, familial status, or national origin. Such restrictions or covenants generally are void and unenforceable as violations of fair housing laws. Be assured that all property is marketed and made available without discrimination based on race, color, religion, sex, handicap, familial status, or national origin. Should you have any questions regarding such restrictions, please contact your attorney. Any attempt to limit your rights to housing because of race, color, religion, sex, handicap, familial status, or national origin should be immediately reported to your real estate broker.

FAIR HOUSING COMPLAINT PROCESS



FAIR HOUSING COMPLAINT PROCESS

A complaint may be filed with the Department of Housing and Urban Development (HUD) within one year after the alleged discrimination occurred. HUD staff will investigate the complaint and issue a charge if evidence of discrimination is found. The person who is the object of a charge, the aggrieved person, or HUD, has 20 days from issuance of a charge to elect to have the charge determined in federal district court. If no such election is made, the charge will be heard by an administrative law judge (ALJ) within HUD.

Aggrieved persons may:

- file a complaint directly with the federal court within two years after the alleged discriminatory action occurred.
- contact a fair housing center or a private attorney.

The aggrieved party may contact a fair housing center or a private attorney. A technique commonly used by such agencies is “testing.” Testing is about identifying variations in behavior. It is an investigative technique designed to identify whether you and/or the property owner have treated people unequally because of race, color, religion, sex, handicap, familial status or national origin. Testing involves comparing two sets of circumstances where there is one variable and isolating it as the basis for discriminatory treatment. Standards for proving a case of discrimination may mean that there are often multiple tests. A test can be carried out simply by asking a friend or co-worker to call the owner of the property in question to find whether consistent information about the availability of a unit is being disseminated. A tester can only file a complaint, if he or she received inaccurate information from the rental professional about housing availability or was steered. The tester may sue that persons, even if he or she is not actually seeking housing.

Some state and local government statutes are certified by HUD as being substantially equivalent to the Fair Housing Act. In such cases, HUD must refer complaints to the appropriate state or local government enforcement agency. Refer to the appendices for a state statute matrix.



FAIR HOUSING COMPLAINT PROCESS

Insert HUD Complaint form here.

FAIR HOUSING LAW VIOLATIONS

Damages and Penalties

The penalties imposed for violations of fair housing laws can be significant. Following is an overview of the types of awards given to complainants (plaintiffs) and the types of penalties assessed against defendants (respondents) in cases involving fair housing law violations.

Actual Damages

Actual damages include any out-of-pocket costs, such as what the plaintiff spent obtaining alternative housing and additional rent or costs associated with it. Actual damages are also injuries such as emotional distress, humiliation, mental anguish, or other psychological conditions. These are often assessed in relation to the severity of the discriminatory behavior. Actual damages can be secured in both administrative and federal courts.

Punitive Damages

If a charge is heard in federal court, a judge or jury can impose punitive, as well as actual damages. This a monetary award paid to the aggrieved person and is designed to punish the wrongdoer and prevent future misconduct. There is no limit to the amount of punitive damage awards.

Civil Penalties

If the charge is heard by an administrative court, the administrative law judge (ALJ) can impose civil penalties of \$11,000, \$27,500, or \$55,000, depending on the number of prior offenses committed.

The Department of Justice has the authority in “pattern of practice” cases to seek civil penalties of \$50,000 for a first offense and \$100,000 for any subsequent offense. Civil penalties, if assessed, are paid to the U.S. Treasury, not to the aggrieved person.

INJUNCTIVE RELIEF

Injunctive relief can be secured in both administrative and federal courts. An injunction is a court order that prohibits wrongdoers from doing a specified act. The injunction can be set for a specified or limited amount of time or it may be permanent. Because it prevents additional discrimination from taking place, it is frequently the first relief provided by the courts to a complainant and others who may have been discriminated against.

Temporary Injunction

A housing discrimination case featuring a temporary injunction typically prohibits a property owner from renting the unit in question until the case is settled.

Mandatory Injunction

A mandatory injunction may require the wrongdoer to take positive steps toward correcting the effect of prior illegal discrimination. Such steps can require a firm to set office procedures, maintain records, institute training, and promote equal housing opportunities through outreach of advertising.

Prohibitory Injunction

A prohibitory injunction, which is often permanent, bars the wrongdoers from engaging in a discriminatory housing practice.

Licensee Discipline

Courts and HUD are required to report any violations of the fair housing law by a licensee to the state licensing authority for appropriate discipline under the applicable state licensee law. Penalties can include loss of license. A REALTOR[®] found in violation of the Code of Ethics, Article 10, can be subject to suspension or expulsion from the local association of REALTORS[®].

COMPLAINT SUMMARY

Fair Housing Complaint Process Summary		
Who can file a complaint?	<p>Any aggrieved person who believes that they have been injured by a discriminatory housing practice.</p> <p>Includes:</p> <ul style="list-style-type: none"> • Home seekers • Real estate professionals • Testers • Anyone who has been injured • U.S. Attorney 	
Where does an aggrieved person file a complaint?	<ul style="list-style-type: none"> • Department of Housing and Urban Development (HUD) • Federal court • Substantially equivalent state/local fair housing agencies 	
What are the time limits for filing a complaint?	<ul style="list-style-type: none"> • HUD: Within one year of the occurrence • Federal court: Within two years of the occurrence (not including any time HUD has been processing a complaint) 	
<p><u>Damages</u></p> <ul style="list-style-type: none"> • Actual: out of pocket expenses, emotional distress, humiliation • Punitive: no limit, only available in federal court • Civil Penalties: \$11,000, \$27,500, \$55,000, only in administrative court as ordered by an administrative law judge (ALJ) • Attorney fees 	<p><u>Injunctive Relief</u> (may be specific length of time or permanent)</p> <ul style="list-style-type: none"> • Temporary: prevent rental of unit until complaint is settled • Prohibitory: bars further discriminatory acts • Mandatory: requires positive corrective measures 	<p><u>Licensee Discipline</u></p> <ul style="list-style-type: none"> • Loss of license • Suspension • Expulsion from association of REALTORS® (see Code of Ethics Article 10).

REPORTING ACTS OF DISCRIMINATION

What should be done when it appears that someone is in violation of fair housing laws? To protect a prospective tenant's rights to equal opportunity in housing and to avoid participating in discriminatory acts, take the following steps.

What should you do if:

The discriminating party is your client, or not the client of anyone else.

Talk to the party who appears to be violating the law, and explain fair housing laws to that person. Ask that person to act in a non-discriminatory fashion. This often resolves the matter and results in the prospective tenant obtaining access to housing as guaranteed by the fair housing laws. Follow up with a letter summarizing your discussion.

The discriminating party is the client of another agent.

Talk to the other agent, and explain your concerns. Ask the other agent to speak with the client to end the discriminatory behavior. Follow up with a letter that summarizes the discussion.

The discrimination has not ended or been corrected, and the discriminating party is your client.

End your relationship with that client. Inform the prospective tenant of what has occurred, and state your belief that discrimination was involved. Provide the prospective tenant with information about where to file a complaint. Provide follow-up letters to the client and the prospective tenant that summarize the discussion and actions taken.

The discrimination has not ended, and the discriminating party is not your client.

Inform the prospective tenant of what has occurred, and state your belief that discrimination was involved. Provide the prospective tenant with information about where to file a complaint. Follow up with a letter to the prospective tenant that summarizes the discussion.

The discrimination has not ended and the discriminating party is another REALTOR®.

In addition to the above, you may file an ethics complaint with the appropriate local REALTOR® association alleging a violation of Article 10 of the NAR Code of Ethics.

Protect Your Fair Housing Rights.

You may also have a cause of action against the discriminating party if you were injured by the discriminatory practice and can file a complaint on your own behalf. Acts of discrimination may be reported to HUD, state and local government human rights or civil rights agencies, or private fair housing groups. Contact the Department of Housing and Urban Development for more information. You may also refer to the appendices for a listing of sources of information about state and local laws.



LOCAL FAIR HOUSING CASE(S)

Your instructor may share information on example of local fair housing cases and how they were resolved.

LESSON 2: CONSISTENT POLICIES AND PROCEDURES

Lesson 2 - Consistent practices, policies, and procedures

- Cite reasons why all work with prospective rental tenants should be documented
- Describe the benefits that result from consistently gathering complete and accurate information from a prospective tenant.
- List items which should be documented when showing a rental listing to a prospective tenant, and describe why these items should be documented.
- Establish systems for consistent documentation of transactions based on the Equal Professional Services Model.
- Maintain consistent procedures in rental transactions through use of the rental transactions checklist.
- Develop advertisements and promotional materials, that do not contain words, phrases, symbols, or illustrations considered illegal, unethical, or of questionable motive, or that convey discriminatory intent.

RENTAL TRANSACTION CHECKLIST

Following is a fair housing *Rental Transaction Checklist* that includes various details for establishing and maintaining consistent procedures. It should be used when greeting prospects, approving credit history, showing properties, processing applications, selecting tenants, and for documenting your work with them.

Rental Transaction Checklist

Introduction

- ◆ Greet prospects
 - Stand up, shake hands
 - Introduce yourself
 - Ask for prospects' names
 - Offer seating
 - Offer coffee or soft drinks (optional)

- ◆ Pre-qualify prospects
 - Find out what size apartment they want
 - Ask what price range
 - Determine prospects' "wants"
 - Determine prospects' "needs"
 - Ask if they would like to see an apartment(s)
 - Use the *Equal Service Report Form*

Showing the apartment

- ◆ Have keys available

- ◆ Show apartment(s) requested

- ◆ Follow set route; escort prospects at all times
 - Allow prospects to enter first.
 - Point out locks, closet space, kitchen, bedroom(s), etc.

- ◆ Point out facilities, e.g. pool, laundry room, trash area, storage, parking, etc.

- ◆ Ask for prospects' questions

- ◆ Keep records and include any comments and questions

- ◆ Show any additional apartments that meet prospects' wants/needs

RENTAL TRANSACTION CHECKLIST

- ◆ Discuss neighborhood facilities (use local map, if available) such as:
 - Shopping centers
 - Schools
 - Transportation

- ◆ Find out if prospects want to rent the apartment
 - Keep record of prospects' responses

- ◆ Give prospects your business card, brochures, or other appropriate materials

APPLICATION PROCESS

Application Process:

- ◆ Give prospects application form
- ◆ Describe the tenant selection process to the prospects
 - Explain how you will evaluate applications and select tenants
 - Tell prospects the credit check fee, if any, and if it is refundable
 - Tell prospects the application deposit amount and when deposit is refundable
 - Tell prospects how long the applications process will take
- ◆ Ask prospects to complete form
- ◆ Review completed application
 - Make sure it is completed correctly and fully
 - Check for prospects' signatures on the completed application form
- ◆ Obtain deposit from prospects

Selection Process

- ◆ Use established company selection criteria in an objective manner
- ◆ Call the credit bureau or send prospects' application
- ◆ Provide only necessary and objective information
- ◆ Contact prospects' current and former property owners to determine their payment history (unless completed by credit bureau)
- ◆ Contact prospects' employers to verify employment and length of time on the job(s)
- ◆ To determine acceptance or rejection, objectively evaluate information about the prospects and follow company policy
- ◆ Call prospects to inform of acceptance or denial
- ◆ If denied, provide prospects with objective reasons
- ◆ Explain the refund of application deposit, if appropriate
- ◆ Keep records of selection process and contact with prospects

APPLICATION PROCESS

- ◆ When prospects are accepted, welcome them to their new home
 - Explain building policies and provide tenants with apartment care guidelines
 - Request rent check and security deposit
 - Give tenants the apartment keys

- ◆ Provide tenants with contact and telephone number for any problems

DOCUMENTATION PROCESS

- ◆ Document all verbal or written contact with prospective tenants
- ◆ File all verbal and written information relative to each prospects
- ◆ Keep records for at least two years and/or as long as the prevailing statute of limitations in fair housing complaints requires for your area.

Other

- _____
- _____
- _____

WHAT TO DOCUMENT?

Documenting Work with Prospective Tenants

The procedures you develop and use to document work with prospective tenants can go a long way toward ensuring equal professional service for customers and clients. Do not underestimate the importance of documenting all work you do.

Benefits of Documentation

Documentation allows you and your company to self assess activities and correct deviations from policy before business is damaged, because it enables monitoring of all office activity in an objective manner. It serves as a constant reminder of real estate professionals' fair housing responsibilities. It also provides you with evidence of your firm's compliance with the law. This may be an invaluable defense if you ever become involved in a housing discrimination complaint. Documentation helps you stay organized, because it is a record of activity and source of valuable follow-up information.

Benefits of Documentation	• Self assessment of activities
	• Reminder of responsibilities
	• Objective monitoring
	• Evidence of compliance
	• Organization

CASE STUDY #3: WE HAVE A PROBLEM

“Joe, I’m sorry to be the bearer of bad news. When I asked you to meet with me, my intention was to talk about the firm’s procedures and record keeping, but now we have a more immediate problem.” Christine punctuated her statement by handing Joe a HUD complaint form.

“What’s this all about?” he asked. “This firm has a long-term commitment to equal opportunity in housing. We rent to families with children, older persons, minorities. We’ve never had a fair housing complaint against this firm,”

“Well, unfortunately, we have one now,” Christine replied. “Do you remember that incident at Lakeview Towers a few weeks ago? The Martinez family? It seems that when the former building manager, Mike Adams, discouraged them from renting an apartment there, Mr. And Mrs. Martinez felt that they were discriminated against on the basis of national origin and familial status. They took their concerns to the community fair housing council, and the council sent testers to the building. The testers reported that they were treated differently than the Martinez family.”

“But, we fired the building manager right after that incident. Anyway how bad can it be? The Martinez family can’t have suffered too much in the way of financial damages,” Joe asked.

“Even though Mike Adams was let go, the firm is still responsible for its employee’s actions,” Christine replied ruefully. “And as far as damages, the penalties could be quite severe. Possible penalties include actual damages to compensate for out-of-pocket expenses as well as the humiliation of discrimination, and there is no dollar limit on punitive damages.”

“Christine, this can be really bad for business. We need to make sure nothing like this happens again?”

“Joe, I couldn’t agree with you more. The firm’s commitment to equal opportunity in housing can be undermined by lack of consistent procedures and record keeping.”

Joe shook his head, “I don’t want a lot of red-tape to get in the way of customer service.”

Christine replied, “Neither do I, but putting equal professional services procedures in place will actually improve our customer service and assure that everyone is treated equally. Lack of records can put us in a legally indefensible position.”

“What have you observed?” Joe asked.

Christine started counting on her fingers. “For example, yesterday, we denied availability of an apartment because of a lack of information about vacancies at the River Road building. Fortunately, we were able to clear up the confusion, but this lack of communication could have resulted in a discrimination complaint. We need procedures to make sure that all maintenance requests are handled promptly and in the order received. Every prospective tenant should complete an application form and we should document how the transaction is handled, including running a credit check.”

CASE STUDY #3: WE HAVE A PROBLEM

Christine continued. “Demeanor in greeting prospective tenants is important too. Everyone should be greeted in the same, welcoming manner. It’s not enough to say we’re committed to equal opportunity in housing, we need to demonstrate it with our actions.”

Joe threw up his hands in mock surrender. “Okay, I’m convinced. How do we get started?”

“That’s the good news,” Christine replied. “We can start right away by instituting consistent procedures, documenting our interactions with existing and prospective tenants, and training all of our personnel - - agents, receptionists, office staff, building managers, maintenance staff. Everyone!”

CASE STUDY #3: DISCUSSION

Discussion Questions

1. What damages might be awarded to the Martinez family if their cause is heard in federal court?
2. What procedures could Christine institute to assure that existing and prospective tenants receive equal, nondiscriminatory treatment?
3. How will the firm benefit from instituting consistent procedures?
4. Who should receive training?

As mentioned earlier, financial penalties can be quite severe. In the Case Study, if the Martinez family's case is heard in federal court, the penalties could include actual damages, which include both out-of-pocket expenses and compensation for emotional distress, mental anguish, and humiliation. Punitive damages may also be awarded as a means of punishing the wrongdoer. Attorney fees may also be awarded.

A firm can institute a number of procedures to assure that existing and prospective tenants receive equal, nondiscriminatory treatment. In the Case Study, examples of procedures could include:

- consistent procedures for greeting prospective tenants
- application form
- prompt report of vacancies
- documentation of work with prospective tenants
- service request form with "inbox/outbox" process to assure prompt handling in order received.
- Equal Professional Services Report form
- checklists

The benefits to the firm of instituting consistent procedures include:

- self assessment of activities
- reminder of responsibilities
- objective monitoring
- evidence of compliance
- organization

In order to assure that all procedures are understood and equally applied, everyone in the firm should receive training - - sales agents, office staff, maintenance staff, building managers, receptionist, etc.

DOCUMENTATION

When showing a rental property to a prospective tenant, the following should be documented.

- ◆ **Prospect information**
 - name, address, phone
 - race

- ◆ **How did the prospect learn of rental availability**
 - advertisement
 - sign
 - referral

- ◆ **Prospect preferences**
 - possession date
 - rent range
 - size and features of unit
 - number of bedrooms
 - requested locations
 - preference for housing for older persons

- ◆ **Property shown**
 - location
 - rent
 - if actually shown
 - prospect comments
 - application offered

- ◆ **Offer to put prospect on waiting list**
 - for which property

- ◆ **Other properties offered**
 - location
 - rent
 - if actually shown
 - prospect comments
 - application offered

DOCUMENTATION

◆ **Qualifying questions asked**

- income
- employment
- current rent

◆ **Application offered to prospect**

- did prospect complete and return application
- application and credit check fees quoted
- disposition, contact dates, and comments

Documenting Race

Why is a question on race included on the equal service forms? Isn't it illegal to ask information regarding race? Using race or any other characteristic covered by fair housing laws in decisions related to the provision of housing opportunities is prohibited. Collection of information regarding the race of applicants or prospects has often been suspect and may indicate that race is being used as a factor. Collection of such information, however, for affirmative purposes, like self monitoring of fair housing compliance, is not illegal, nor suspect.

You may indicate your perception of a prospective tenant's race on the Prospect Equal Services Report form. If a sales associate has a tendency to treat people differently because of race, the sales associate will treat a prospective tenant according to the sales associate's perception of the prospect's race. If a prospective tenant questions why you are keeping information on race, inform the prospect that your firm regularly monitors its sales associate's actions to assure that all prospects are treated fairly and equally. The collection of this information helps the firm make sure that there are no differences of treatment based on race. You should keep the information on race separate from rental applications so there is no chance that third parties who have not met the prospects will have knowledge of the prospect's race.



PROSPECT EQUAL SERVICES REPORT

PROSPECT EQUAL SERVICES REPORT

A Prospect Equal Services Report is a type of record-keeping which illustrates the objective information gathered from and service provided to prospective tenants. The Prospect Equal Services Report is a sample form for use by real estate professionals. Modifications of this form or other forms may be used to keep records.

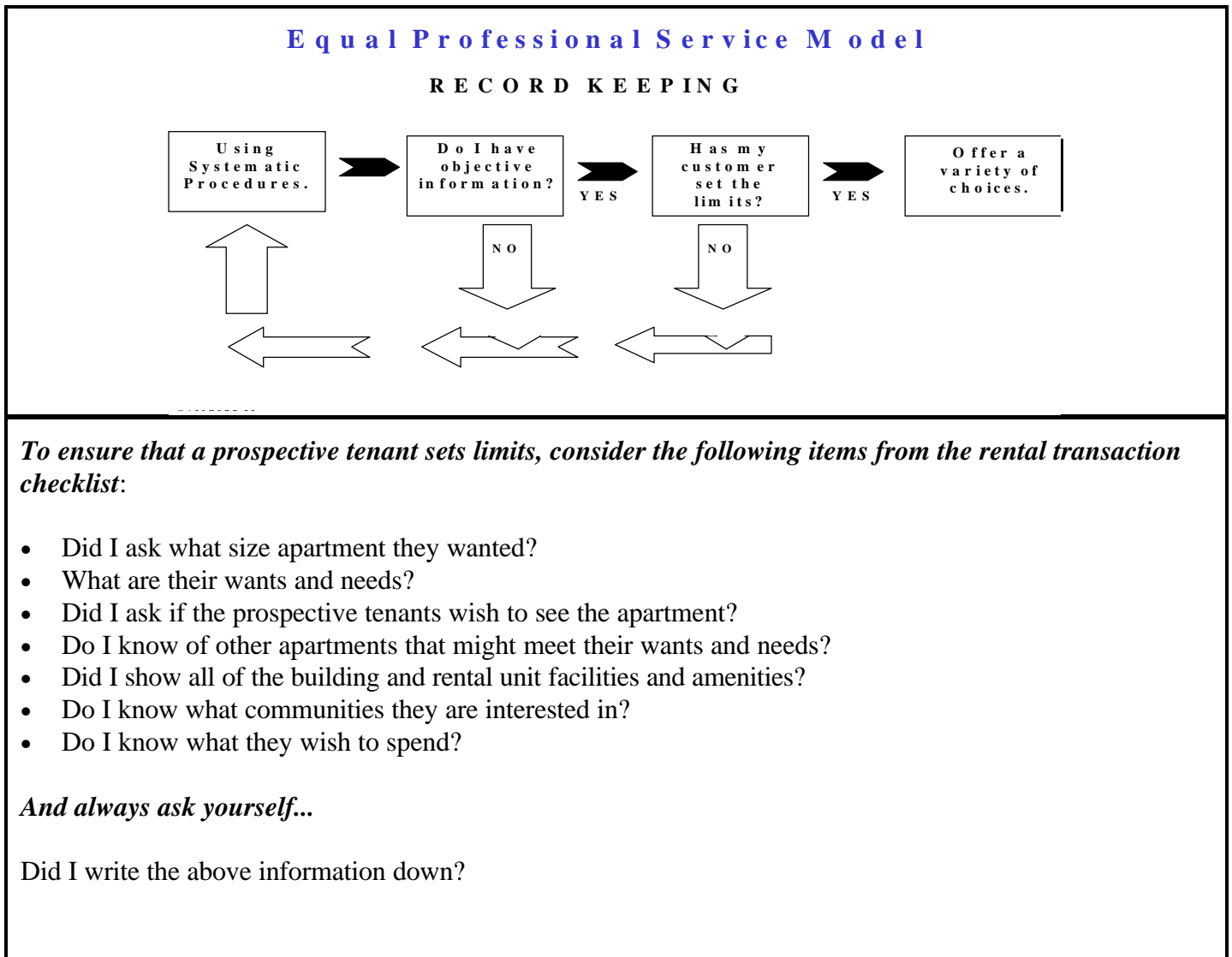
As a real estate professional, your success is based on using a set of skills with which you are comfortable. You do not have to replace your particular style with the Equal Professional Service model. Rather, you and others in your firm should use this model to establish a documentation system. Use the model consistently, and perfect your system.

Provide equal service by developing systematic procedures, allowing the customer to set limits, and keeping good records. The Prospect Equal Services Report is one of the job aids you can use for keeping records.

If you have a form similar to this and a procedure in place for using and filing it, you will be in a better position to defend a fair housing complaint.

EQUAL PROFESSIONAL SERVICE MODEL

The Equal Professional Services Model is the basis for systematic information gathering and documentation. Look back at the Prospect Equal Services Report and think about how objective information from prospective tenants can help you obtain clear, specific, complete information. This is beneficial because it protects you and positions you as a problem solver for the prospective tenant, not a decision-maker.



The NATIONAL ASSOCIATION OF REALTORS® publishes a Fair Housing Handbook which can help you and your office staff develop an office procedures manual. This handbook serves as a tool to assist office managers and owners to comply with fair housing law.

FAIR HOUSING PARTNERSHIP AGREEMENT

In 1997 the NATIONAL ASSOCIATION OF REALTORS[®] and the U.S. Department of Housing and Urban Development (HUD) entered into a Fair Housing Partnership Agreement to replace the Voluntary Affirmative Marketing Agreement (VAMA) that had existed between HUD and NAR for more than two decades. The 1997 agreement represents a voluntary partnership between the two organizations to identify fair housing issues, concerns, and solutions. It is a progressive plan that applies a proactive approach to fair housing issues.

Using the REALTOR[®] Fair Housing Declaration

REALTORS[®] are not asked to sign a document with HUD to demonstrate a commitment to fair housing. That commitment is part of the REALTOR[®] Code of Ethics, real estate license requirements and the laws of the land. Because there is no document to sign, there is no list or form outlining what every REALTOR[®] should do. Instead, NAR and HUD developed a declaration of general fair housing principles. This Fair Housing Declaration is available to any REALTOR[®] to use to promote fair housing to the public and within the firm. The declaration contains the following principles:

- Provide equal professional service without regard to the race, color, religion, sex, handicap, familial status, or national origin of any prospective client, customer, or of the residents of any community.
- Keep informed about fair housing law and practices, improving my clients' and customers' opportunities and my business.
- Develop advertising that indicates that everyone is welcome and no one is excluded; expanding my client's and customer's opportunities to see, buy, or lease property.
- Inform my clients and customers about their rights and responsibilities under the fair housing laws by providing brochures and other information.
- Document my efforts to provide professional service, which will assist me in becoming a more responsive and successful REALTOR[®].
- Refuse to tolerate noncompliance.
- Learn about those who are different from me, and celebrate those differences.
- Take a positive approach to fair housing practices and aspire to follow the spirit, as well as, the letter of the law.
- Develop and implement fair housing practices for my firm to carry out the spirit of this declaration.



FAIR HOUSING PARTNERSHIP AGREEMENTS

At Home with Diversity: One America Certification

NAR and HUD have entered into an agreement to certify real estate professionals who have been trained to work more effectively with today's increasingly diverse population. Real estate professionals who complete the course, are free of Fair Housing Act violations, and commit to a set of diversity principles will be eligible to receive the NATIONAL ASSOCIATION OF REALTORS® Certification. For more information, contact your local or state association of REALTORS® or visit the NAR website at One Realtor Place®.

SELF TESTING

The Fair Housing Partnership Agreement between HUD and the NATIONAL ASSOCIATION OF REALTORS[®] calls for promotion of self-testing as an effective tool for educating real estate professionals and internal monitoring of compliance with the Fair Housing Act. Self-testing is a valuable method for measuring voluntary compliance with and commitment to fair housing. Methods for self-testing are similar to enforcement testing, however, they do not need to meet the exacting standards for proof for court cases. In self-testing, the emphasis is on evaluating compliance and uncovering potential problem areas. Through self-testing, firms can discover problem areas, before enforcement agencies and groups do, and take corrective action.

Testing can be initiated by a firm, or by the local association of REALTORS[®]. If a local association stages the testing, the results are usually referred to a grievance or professional standards committee for review and determination of sanctions resulting from actions that violate Article 10 of the Code of Ethics. The results of firm-initiated self-testing provide a basis for corrective action. A policy to act on the results demonstrates good faith in improving the firm's fair housing compliance.

Before initiating a program of self-testing, the firm or local association of REALTORS[®] should assure that agents have been trained or have ready access to fair housing training. Fair housing procedures, such as the Prospect Equal Services Report, should be in place, and actions that will be taken as a result of the test outcome should be determined, e.g., corrective action, referral to a grievance committee. The attorney for the firm or association should be involved in initiating the testing process and analyzing the results. The testing can be organized and planned by the firm, an attorney (self-testing could be part of the services of the firm's attorney), the local association of REALTORS[®], a fair housing group, or a consultant.

Private fair housing organizations are usually the most experienced in the conduct of testing. Their testers are usually trained and have a good understanding of when and where fair housing violations are occurring. There is usually a fee for this service. Consultants, such as shopper services, can stage the testing, and may be a good alternative in areas where a past adversarial relationship with local fair housing groups could influence the process. However, shopper services may lack fair housing or real estate experience, and may not be attuned to the community's fair housing concerns. A low-cost source of testers may be a nonprofit organization, such as a university, however their testers may have little fair housing experience.

SELF TESTING

In order to institute a program of self-testing, the firm or local association of REALTORS® should execute a written agreement with the organization providing the testing services. The agreement should cover how the testing will be conducted and what will be done with the results. Specific points the agreement should cover are:

- who the testers will be.
- how the testers will be compensated.
- safeguards on comparisons among and between testers.
- safeguards to keep the results “in-house”.
- ownership of the data gathered.
- future use of the data.
- how long records will be kept, or will they be destroyed.
- record of corrective action taken and the restrictions on the testing service in use of tests.
- time frame for the testing - - when will it start and end -- and ongoing obligations.

As stated above, self-testing is an evaluative, not an enforcement process, with the potential to expose discriminatory behavior. Therefore, safeguards must be put in place to prevent testers, and testing services, from sharing data and assure that test results will not be used for subsequent enforcement purposes.

FAIR HOUSING AND ADVERTISING

Fair Housing and Advertising

As previously stated, one of the principles of the Fair Housing Declaration is to develop advertising that indicates everyone is welcome and no one is excluded. Clearly, the law prohibits discriminatory advertising, however, you can take this a step further by using inclusive advertising that expands prospective tenants' housing opportunities.

Advertisements, notices, and statements in connection with the sale or rental of a dwelling, including comments in a listing, are subject to the Fair Housing Act. The Fair Housing Act prohibits the making, printing, or publishing of any statement, notice, comments in a listing, or advertisement in connection with the sale or rental of housing that indicates any preference, limitation, or discrimination, or an intention to make any such preference, limitation, discrimination based on race, color, religion, sex, handicap, familial status, or national origin. It is important to note that the phrase "indicates any preference, limitation, or discrimination" means that violation of the law can occur without intent. It is the perception of the "reasonable" reader that determines whether the notice or ad violates the law. The "reasonable" reader, who is a member of the group alleged to have been discriminated against by the ad, determines whether it indicates a preference, limitation or discrimination.

In evaluating your ads and marketing strategy, ask yourself:

- Do you want to limit the housing to certain groups, or do you prefer certain prospects, based on race, color, religion, sex, handicap, familial status, or national origin? If so, you are on your way to violating the Fair Housing Act.
- Do people in your community perceive the ad or marketing efforts to indicate such a preference or limitation? If so, you have probably violated the Fair Housing Act.
- Can you demonstrate a good faith effort to implement fair housing in your business practices? If so, this may assist you in your defense of a fair housing claim.

If you have questions about the way an ad or marketing strategy will be perceived by someone, consider using alternative language or a more inclusive strategy. It makes good sense to be inclusive in your ads; you don't want to turn a valued prospective tenant away because she or he might be offended by the words in an ad. Likewise, you might miss reaching a prospective tenant because of your targeted efforts.

Fair housing matters relating to advertising and marketing are often subject to interpretation. Some guidance on interpretation of federal guidelines is given in a 1995 HUD memorandum in the Appendices section of the Participant Guide. This memorandum from the Assistant Secretary for Fair Housing and Equal Opportunity provides guidance regarding advertisements. In addition to Federal HUD guidelines, some states and municipalities have guidelines for promotional pieces and advertising. Some local publications also have written advertising guidelines.

FAIR HOUSING AND ADVERTISING

Advertising Language Guidelines

Language used in advertising should focus on describing the property and its architectural features, not the tenant, community, or neighbors. In describing the location, geographic references should be used, for example, close to the train, overlooking a golf course, unless such descriptions make a direct, or indirect, reference to a protected class or express a preference, limitation, or discrimination, such as close to a synagogue, next to a private school. When promoting or advertising your firm, describe the features and services of the firm. You may also want to describe any special services that agents can provide, such as languages spoken.

Anyone who participated in the publication of a discriminatory ad or notice is liable for that discrimination. This includes the person who developed the ad, the broker, the ad agency, the publisher, i.e., the newspaper or magazine, the multiple listing service, and the owner of the property. They can all be held responsible and, therefore, face a liability risk for publishing anything that expresses a preference, limitation, or discrimination. Some newspapers have created lists of words they will not accept in ads. Use their lists as a warning that some members of the community believe the words indicate discrimination in housing. It is the newspaper's right not to publish certain language in real estate ads, even if such language does not violate the Fair Housing Act.

Some of the ways that you can learn about, and become sensitive to, language that may express a preference, limitation or discrimination in advertising are:

- Use the checklist in the Appendices to review your ads
- Ask questions of co-workers, especially if there is a diverse office environment.
- Use word lists developed by newspapers to identify words that commonly indicate an illegal preference or limitation.
- Use HUD's advice reference and guidelines in the Fair Housing Handbook.
- Refer to the memo from Assistant Secretary for Fair Housing and Equal Opportunity, Roberta Achtenberg (January 9, 1995).

How do you know if an ad meets fair housing requirements? If you have some question about the way an ad will be perceived by someone, consider using alternative language or a more inclusive approach.

VISUAL IMAGES IN ADVERTISEMENTS

Visual Images in Advertisements

The Fair Housing Act applies to the use of human models in photographs, drawings, or other graphics used in advertising if such use indicates a preference or limitation based on race, color, religion, sex, handicap, familial status, or national origin. When human models are used in display advertisements, the models should indicate inclusiveness by featuring diversity and reasonably representing majority and minority groups in the community, as well as person of both sexes, families with children, and people with disabilities. Advertisements should portray persons in equal social settings to indicate to the general public that housing is open to all. The law also prohibits symbols or logos that imply or suggest discrimination. It is important to keep these principles in mind not only during the development of advertising for newspapers and magazines but also during the development of brochures and other print and electronic media used for promotional purposes.

Consider an advertisement for a community of townhomes that runs in the local newspaper. The same advertisement runs every Sunday for almost eight months. The advertisement shows multiple photographs of elderly, Caucasian, married persons. Does it convey discriminatory intent? Most fair housing officials would say that it likely conveys a discriminatory preference or limitation. Several questions must be considered to determine if the advertisement violates fair housing laws. First, assuming there is no intent to discriminate, would people of different races than those pictured in the advertisement or families with children consider the advertisement discriminatory? Second, does the advertisement show a preference for Caucasians or people without children? Third, does the advertisement in any way show a preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin? It is clear that this type of advertisement would be considered discriminatory.

VISUAL IMAGES IN ADVERTISEMENTS

Million Dollar Views

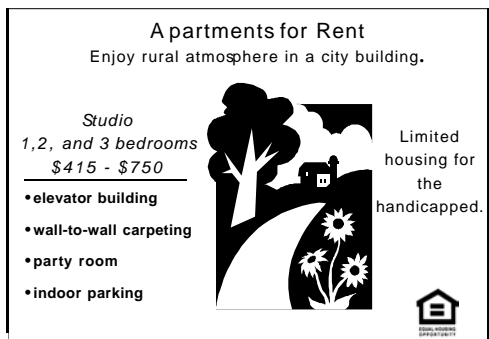
The words “singles” and “newlyweds” could discourage someone in a protected class from living in a particular apartment complex. This advertisement could be considered discriminatory against families with children, because it notes a preference for newlyweds and singles. In many locations this advertisement could also be considered discriminatory under a “marital status” protection.



As is illustrated by this advertisement, using human models in advertising is a potentially troublesome area. Over a significant period of time, exclusive use of Caucasian-appearing models might indicate discriminatory intent. Models should be representative of all races and age groups in the area, including families with children and handicapped persons.

Coastal Westside Highrise

The phrase “no children” violates the law. If this apartment complex is housing for older persons, the correct terminology is “55-and-over housing.” Property owners and managers are permitted to have a “no pets” policy.



Handicap

All rental property must be made available to individuals with disabilities; specific rental units cannot be singled out. It would be more appropriate to use the phrase “apartments accessible for individual with disabilities.”

Church Augustine

In general, written directions that refer to well-known ethnic, religious, or racial landmarks or any other landmark that could signal a prohibited preference should be avoided. Street names or parks are preferable as directional locators.



VISUAL IMAGES IN ADVERTISEMENTS

Ultimate Urban Home

It is unclear what the word “families” represents in this advertisement. Does this indicate that the building has only eight units total? If not, this should be viewed as discrimination based on the “familial” status protection. If a housing provider limits the number of dwellings he or she is willing to rent to families with children, there is likely a violation of the Fair Housing Act. For example, if the building has 12 units, but the owner is willing to rent only eight to families with children, there is discrimination based on familial status. Occupancy standards, which may limit the size of a household, will be covered in Lesson 4.

**Ultimate Urban Home
&
Perfect for the Family**

3 bedroom start at \$850 4 bedroom start at \$1050

Recreation & Laundry Facilities

ALL UNITS: Dining room Living room
 Fireplaces Sun room

ONLY 8 families per building

Residential Development

“Intended and operated as housing for older persons” is safe terminology when advertising an apartment development under the housing-for-older-persons exemption.

Residential Development
Rental Units

\$420 \$550 \$650

*golf *pool *recreation
*social director *maid service

**Garden Suites
Spacious Townhomes
Two and Four Flats**

Intended & operated as housing for persons over 55 years of age according to the fair housing law.

Call now
1-123-456-7890

Apartments for Rent
Enjoy rural atmosphere in a city building.

Studio
1, 2, and 3 bedrooms
\$415 - \$750

- elevator building
- wall-to-wall carpeting
- party room
- indoor parking

Apartments accessible for individuals with disabilities.

Enjoy a Rural Atmosphere

This advertisement include the proper wording for promoting a building that is accessible to individuals with disabilities.

Residential Tree-lined Street

In this advertisement, the building location is marked by streets. In the earlier version, a church marked the location.

On bus line **RESIDENTIAL** Security door
Tree-lined Street at State Pkwy & City Blvd

Hardwood Floors New Appliances

**One bedroom from \$350
Two bedrooms from \$450**

Several one & two bedroom apartments available NOW!

Call
1-123-456-7899

TARGET MARKETING AND FAIR HOUSING

Target Marketing and Fair Housing

Marketing is much more than just writing advertisements. Developing a good marketing plan is an important step toward renting a property and expanding one's customer base. The way a firm and/or property is marketed is also covered by the Fair Housing Act. Any marketing plan, including the selection of media and publications for advertisements, that indicates a preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin is a violation of the Fair Housing Act.

Although target marketing is an effective strategy for reaching a specific market, use caution in developing a media plan that excludes a certain group. Target marketing should not be construed as permission to choose to serve a particular group and exclude others. Targeting, for example, ethnic and racial groups is illegal under fair housing law unless it is to assure that underserved groups receive equal service.

For example, a real estate professional speaks several languages including English. The real estate professional advertises in the general newspaper and includes in the advertisement a list of languages spoken. This is an example of expansion of opportunity, so it is generally acceptable under fair housing law.

The real estate professional then decides to take out ads in several non-English publications. As long as there is no distinction in the properties or communities offered in those ads, and the general publication ads continue, this would also be generally acceptable. If the real estate professional then decides to really target one of the language groups by tailoring a marketing campaign specifically to that group and offering special services, that would likely cross the line and not be permissible under the Fair Housing Act. If another real estate professional in the same community also speaks one of the same non-English languages and places ads only in that language or only in a non-English language publication, this would likely be a violation of the Fair Housing Act.

TARGET MARKETING AND FAIR HOUSING

Examples of illegal target marketing include, but are not limited to, the following:

- advertisements that appear only in select editions of the local newspaper.
- advertisements that appear only in geographically limited areas that are populated by particular racial, ethnic or religious groups of people.
- advertisements that are limited to small papers or free journals, as opposed to general circulation papers, if these publications cater to particular racial, ethnic, or religious groups of people.
- use of only “niche” publications that do not have general readership and that cater to particular racial, ethnic or religious groups
- properties that are promoted only in select rental offices.

NAR Code of Ethics

In addition to fair housing laws, REALTORS® must also abide by the NAR Code of Ethics as it relates to fair housing. Article 10 of the Code states that “REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin.

REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin. (Amended 1/90)”

Standard of Practice 10-1 states that “REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood and shall not engage in any activity which may result in panic selling. REALTORS® shall not print, display, or circulate any statement or advertisement with respect to the selling or renting of a property that indicates any preference, limitations, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.”

LESSON 3: HANDICAPS/DISABILITIES

Lesson Objectives

- State the meaning of the word handicap, as defined by the Fair Housing Act.
- Recognize conditions, barriers, obstacles, rules, and regulations that impact disabled persons and the fair housing implications.
- Discern reasonable accommodations and reasonable modifications as described by the Fair Housing Act.
- Comply with fair housing laws on disabilities when interviewing prospective tenants.
- Recognize the conditions and diseases that are and are not covered under the handicap protection

HANDICAPS/DISABILITIES

Whether someone is permanently or temporarily disabled barriers and obstacles do exist. Barriers can be part of the physical environment, such as curbs, stairs, doors, and elevators. A property's rules can also present barriers, such as a "no pets" policy, if a disabled tenant is reliant on a dog for guidance or companionship.

As previously noted, "handicap" is one of the seven federally protected classes. The word "handicap" is used throughout the Fair Housing act. This word is used:

with respect to a person who has a physical or mental impairment which substantially limits one or more major life activities, a record of such an impairment, or a person being regarded as having such an impairment.

Federal Register, Vol. 54, No. 13, Monday, Jan. 23, 1989, Rules and Regulations, 100,201 Definitions

Note: Individuals with disabilities, social service agencies, and advocacy groups prefer the word "disability" instead of the term "handicap."

According to the law, a handicap is a condition that limits major life activities. These activities include:

- self-care
- manual tasks
- walking
- breathing
- seeing
- hearing
- speaking
- learning
- working

HANDICAPS/DISABILITIES

The Fair Housing Act requires two specific actions concerning housing for persons with handicaps: reasonable accommodation and reasonable modification. These are referred to as “affirmative requirements” of the law.

Reasonable Accommodations

Housing providers are required to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person the equal opportunity to use and enjoy a dwelling. Despite a property owner’s obligation to provide reasonable accommodation, it is not a reasonable accommodation to allow a tenant to stay who causes substantial harm to other persons or property.

Reasonable Modifications

Housing providers are required to allow reasonable modifications, at the tenant’s expense, of existing premises occupied or to be occupied by a handicapped person, if the modification is necessary to afford the person full enjoyment of the premises. The housing provider may, where it is reasonable to do so, condition permission for a modification on the tenant agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

A 1998 U.S. District Court case involved the issue of whether a landlord’s refusal to make the entrance of an older apartment building wheelchair-accessible violated the Fair Housing Act, which makes it 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...” Moreover, the court stated that even if the FHA could be construed to require the landlord to make the requested modification, an accommodation must be reasonable, and not “pose an undue hardship or burden.” It explained that while a reasonable accommodation often means the landlord will incur some expense, it does not require something to be done that would constitute an undue hardship or substantial burden. In this particular case, the court noted that the installation of a ramp at a minimum cost of \$25,000 would not be reasonable, especially in view of the fact that the landlord had experienced financial losses in the operation of the building for the three prior years.

Asking Questions

In addition to the two affirmative requirements, housing providers should be consistent when talking to prospective tenants, whether handicapped or not. Housing providers may not ask unlawful questions with respect to the existence, nature, or severity of a handicap, unless it is necessary to qualify that person for a special government housing unit. Although property managers and owners are not allowed to ask these types of questions, they must be prepared to accommodate requests as defined in the affirmative requirements noted above. In most cases, if a tenant requires special accommodations or modification, he or she will ask for it.

The Fair Housing Act does not require a housing provider to accept all handicapped applicants without regard to their abilities to meet standard, nondiscriminatory tenant selection and screening criteria. Housing providers are required to use the same objective criteria to evaluate the applications of all tenants. You must ask every prospective tenant the same questions in the same manner. Permissible inquiries are limited to whether a tenant can meet the obligations of tenancy, the status of previous rental history, and whether the prospective tenant is a current user and/or distributor of illegal drugs. If such questions are to be asked, they must be asked of all prospective tenants, not just a few, or those who “look suspicious.”

ACCOMMODATIONS AND MODIFICATIONS

Use of Standard Forms

It is important to document all requests for accommodations or modifications made outside of the terms of the lease. Tenant requests should be documented, preferably by use of a standard form. A standard form should state that the building makes reasonable accommodations and allows reasonable modifications for individuals with handicaps, under the federal law. The following questions might be on the form:

- 1) What is your request?
- 2) Why is this accommodation or modification necessary?
- 3) Can you provide evidence that the request is necessary because of a handicap?

Note: The NATIONAL ASSOCIATION OF REALTORS® has not created a standard “reasonable accommodation/modification” form.

Housing providers should also consider a standard notification at the time a tenant signs a lease. This written or verbal notification may state:

We make reasonable accommodations in rules, policies, procedures, or services and allow reasonable modifications to the existing premises if a request pertains to a handicap/disability and is stated in writing. A procedure exists for all of our rental properties in making such requests. The procedure is:

PHYSICAL AND MENTAL IMPAIRMENTS

Protection is given to those individuals with the following physical or mental impairments. It is illegal to discriminate against these individuals, as well as against anyone associated with that person.

Any physiological disorder or condition affecting the following systems:	Any mental or psychological disorder such as:	Diseases and conditions such as:
<ul style="list-style-type: none"> • Neurological • Musculoskeletal • Special sense organs • Respiratory (including speech organs) • Cardiovascular • Reproductive • Digestive • Genito-urinary • Hemis or lymphatic • Skin • Endocrine 	<ul style="list-style-type: none"> • Mental retardation • Organic brain syndrome • Emotional or mental illness • Specific learning disabilities (dyslexia, attention-deficient, hyperactive disorders, etc.) 	<ul style="list-style-type: none"> • Orthopedic • Visual • Speech and hearing • Cerebral Palsy • Autism • Epilepsy • Muscular Dystrophy • Multiple Sclerosis • Cancer • Heart Disease • Diabetes • Human Immunodeficiency Virus (HIV) • Alcoholism • Drug addiction (other than addiction caused by current illegal use of a controlled substance).

The term, “handicap,” does not include current illegal users of, or addiction to, a controlled substance, transvestites, or smokers.

CASE STUDY #4: BARRY GETS A LIFT

A light breeze swirled the autumn leaves into a flurry of bright color as Barry sped his wheelchair down the broad sidewalk. Vintage homes and turn-of-the-century brownstone courtyard buildings, festooned with leaded glass and carved trim, lined the street. A chubby gray squirrel scampered across Barry's path, stopped to eye him warily, and scurried to safety up the trunk of a century-old maple tree.

"This is just the kind of neighborhood I'm looking for," Barry said to himself. It reminded him of the small town where he grew up. Up ahead, he saw Dave, the rental agent waiting in front of a gracious four-flat building.

Barry wheeled his chair to Dave's side and extended his hand. "Hi. You must be Dave from the rental agency? I'm Barry Harte. I called about two-bedroom apartment for rent."

The expression on Dave's face betrayed his surprise. No one at the agency told him that Barry used a wheelchair to get around. Dave stammered briefly and then regained his professional composure.

"Well, ah, well, good morning! Yes, I'm Dave Winston. So, you must be interested in the ground floor apartment, right?"

Barry shook his head and replied, "No. I'm interested in the two-bedroom apartment."

"But the ground floor apartment is on a level grade. It only has one less room. I think you'd be better off on the ground floor, don't you?" Dave quizzed.

Barry repeated, more emphatically this time, "No. I'm interested in the two-bedroom apartment. The agency told me that the ground floor apartment only has one bedroom. My consulting business is growing fast and I really need the extra room. I'm interested in the two-bedroom apartment on the second floor."

Dave had never worked with a prospective tenant with a mobility impairment, and wasn't quite sure what to say next. "But, there's no elevator in the building. Won't you have a problem accessing the second floor?"

Barry was ready with a reply. "No, not really. I could install a chair lift in back. There seems to be plenty of room."

That sounded expensive to Dave. "You know the agency won't pay for installing a chair lift and I doubt the building owner will be willing to cover the expense either. It's got to be pretty expensive?"

"Oh yeah," replied Barry knowingly. "But, I'll pay for the chair lift."

Dave just didn't get it, "It's got to be a lot of money. Why don't you want to spend the money --"

CASE STUDY #4: BARRY GETS A LIFT

“To live where I want to?” Barry interrupted. “Don’t you think you might want to do the same if you were in a wheel chair?”

Dave nodded slowly in agreement.

“There’s another thing I’d like to request, Dave,” Barry continued. “There’s a parking space in back that is right next to the walkway. Could you assign me that one?”

“We don’t assign parking spaces,” Dave answered.

“Well, could you assign me one so I can get to my chair lift?” Barry asked.

Dave’s growing consternation was obvious. “Look. I don’t know if I can do that, Barry. Even if I could there’s still the issue of the lift itself. I just don’t know if we can do that? It not like we don’t have this nice unit right on the ground floor.”

Barry sighed with impatience. Even though he had experienced this lack of understanding before, it was still irksome. “Dave, I know you mean well, but frankly I’m getting tired of you trying to push me to rent that ground floor apartment. I mean, would you do that to someone who wasn’t in a chair?”

“I’m sorry Barry,” Dave replied. “It’s just that I don’t know if we can make the adjustments you are asking for.”

Barry saw the opportunity to enlighten Dave. “I’ll tell you something else you don’t know. Those adjustments are guaranteed to me under the Fair Housing Act. Reasonable accommodations and reasonable modifications, at my own expense, are the law. And, when I move out, restoring the apartment to its original condition is my responsibility too, that is if the modifications interfere with a next tenant’s use of the property.”

Dave didn’t know how to handle the situation. “Quite honestly, this is all new to me. Can I talk to some people down at the main office and get back to you tomorrow?”

“Sure,” Barry agreed. “I’ll look forward to your call tomorrow.”

CASE STUDY #4: DISCUSSION

Discussion Questions

1. What are some possible fair housing violations?
2. What reasonable accommodations and modifications did Barry request?
3. What discriminatory acts are illustrated in this story?
4. What if Barry required a roll-in shower?
5. What if the dwelling was in a owner-occupied building of four units?

Reasonable Accommodations

In the story of “Barry Gets a Lift” there is potential for discrimination, based on the handicap protection of the law. The agent was not initially willing to make reasonable accommodations, such as an assigned parking space or to allow for reasonable modifications, the chair lift. A housing provider may have reservations that a chair lift is a reasonable modification under the law. In this example, Barry would probably not leave an expensive item such as the lift behind. If he does remove the lift when he leaves, he is responsible for any remodeling that is necessary. The tenant is responsible for restoring the premises once he or she moves out. If the lift interferes with a future tenant’s use and enjoyment of the premises, Barry has to remove the lift, at his own expense. A roll-in shower is another example of a reasonable modification that a tenant has a right to make. This story also demonstrates that a tenant has a right to choose a second-floor residence. If the dwelling was an owner-occupied building of four units, Mrs. Murphy’s exemption could apply.

PROSPECTIVE TENANTS WITH DISABILITIES

The next few pages of the Participant's Guide contain scenarios that illustrate various aspects of working with prospective tenants with disabilities. These scenarios feature conversations between rental agents, administrative staff, and prospective tenants. This exercise gives you an opportunity to think through situations involving disabilities.

Time permitting, some of these scenarios may be discussed during the class. If not, you may wish to study these examples on your own.

SCENARIO ONE

A prospective tenant is partially deaf. He has limited speech, but can read lips, and cannot hear. During the interview and a tour of the building, he requests that a phone, doorbell, and smoke alarm with flashing lights be installed if he moves in. He says that he is hearing-impaired and is currently reading the agent's lips. In addition, he asks if the building has a telecommunications device for the deaf (TDD), or a similar device, he can use to communicate through the security phone outside. During the meeting the agent, tells the prospective tenant about quarterly tenant meetings held there and asks how the tenant will communicate with others during these meetings. The prospective tenant responds that he can read lips fairly well if people are willing to slow down and face him directly as they speak. He also asks for a chalkboard that he can use to communicate his ideas during these meetings.

Questions

1. How should the agent respond to these requests?
2. Are the requests reasonable?
3. If so, what accommodations should the agent make for this prospective tenant?
4. For what items and modifications should the property owner be prepared to pay?
5. If there is no security phone at the front entrance, what additional accommodations might have to be made for this tenant?
6. If this tenant's credit is approved and if he has good references, would you offer the apartment to him?

Discussion

Each tenant deserves to receive service and amenities equal to those of other tenants. Modifying the interior of the apartment would be paid for by the tenant. Modifications in the common areas, or those services provided to all tenants, e.g., doorbell, smoke alarm, must be supplied by the property owner. If these special services are more expensive than those for other tenants, it would be reasonable to ask the tenant to pay the additional cost. If there is a security phone in the entrance of the building, the tenant may ask for a telecommunications device for the deaf (TDD) or similar device. Other tenants use the phone service, so the property owner must accommodate this request. However, the building owner is not obligated to install a TDD at the entrance. He or she may find another way to accommodate the tenant. For example, a door attendant may be available to greet visitors and escort them to the tenant's unit. The agent should offer to buy a chalkboard and, if necessary, offer to provide an interpreter for formal occasions, such as meetings. Some cities have agencies that contact and schedule interpreters. (See the resource list in the Appendices.) If, on a regular basis, the tenant has difficulty communicating with building staff, it may be advantageous to provide reasonable modification by increasing the staff's knowledge and understanding of deafness. If the prospective tenant's credit and references are approved, by law, you should offer the apartment to that person.

SCENARIO TWO

A tenant in a highrise building has AIDS and needs a live-in caretaker. The apartment lease states that only two keys are to be distributed. Currently, a family member has one of them. The tenant phones the management office and asks for a third key. The property manager explains that there is a building policy restricting unrelated adults from living together in a unit. The tenant explains that he is not well and needs full-time, live-in care. The property manager says that despite the existing policy, other written policies and procedures exist for making accommodations in a case such as this. The property manager tells the tenant that a form will be forwarded. According to the manager, when the tenant submits the request in writing, it will be considered, then another key “most likely” will be issued.

Questions

1. What inquiries can the property manager make in reference to this request?
2. Should the property manager ask the live-in caretaker to sign a lease?
3. Why is the use of a standard request form a good idea?
4. What questions might be found on this form?

Discussion

The property manager should not ask any more questions about the nature of this person’s health. The manager should offer to provide a key. The live-in caretaker is not a tenant and does not have to sign a lease. The property owner or management company must continue to offer the unit under the same terms and conditions that apply to an applicant or tenant who is not disabled. In order to assure equal treatment, the “reasonable accommodation” form should be standard, not developed for each specific case. If the form already exists, it should state that the building makes reasonable accommodations and allows reasonable modifications for individuals with handicaps, under the federal law. The building manager should explain that in order to assure equal treatment for all tenants, it is important to document all requests for accommodations made outside of the terms of the lease. The following questions might be on the form:

1. What is your request?
2. Why is this accommodation necessary?
3. Can you provide evidence that the request is necessary because of a handicap?

SCENARIO THREE

A prospective tenant is qualified to rent a particular property, but is concerned about the chemicals used to clean hallways and exterminate bugs. She tells the agent that she cannot tolerate pesticides as previous chemical exposure impaired her immune system. She could be in danger if she is exposed to a wide variety of chemicals. The agent asks if less hazardous, but equally effective chemicals are available. The agent is concerned that if different chemicals are used, or if the building is not treated for pests, health hazards may be posed to the other tenants. The prospective tenant offers to provide information about chemicals that are the least toxic, but asks that no chemicals be used within 100 feet of her apartment. If it is absolutely necessary to use chemicals near her apartment, she wants to have 48 hours' notice. The tenant also asks that the carpet be removed from her unit and that exhaust fans be installed.

Questions

1. How would you respond to this situation?
2. How should the agent or building owner determine responsibility for costs?
3. What questions should the rental agent ask the prospective tenant?
4. What information should be documented at this time?

Discussion

The agent might ask the tenant, "Why do you need to know what types of chemicals are used here?" However, it is unlawful to ask if this request is related to a handicap. It is reasonable to allow the prospective tenant to modify the unit at her own expense, but she may be required to restore the premises at the end of her tenancy. The building owner must accommodate the tenant's request to use less toxic chemicals or give the tenant 48 hours' notice of the use of any chemicals. If, for example, the tenant wants to paint her unit, she is responsible for purchasing a less toxic paint to be used in and around it. It may be argued that the property owner should pay for the paint, if paint is commonly supplied to all tenants. Many leases contain details about the brand and color of paint supplied by the property owner and used by tenants and if tenants want to supply their own paint it must be approved by building management. As long as these are the terms in all tenant leases for that building, it may be valid to ask this tenant to pay for special paint or pay the difference according to the paint the landlord usually uses. The rental agent should write down the prospective tenant's requests on a standard form used for all prospective tenant requests. Remember, it is important to be consistent when documenting requests from all prospective and residing tenants.

SCENARIO FOUR

While an agent shows a prospective tenant a rental property, the prospective tenant mutters in an unusual fashion, asks for some water, and takes some medication. The agent asks, “Can I get you anything?” After giving this person some water, the agent asks if he needs anything else. The agent is concerned because it is not clear why the man is behaving this way. The agent reminds herself that she should stay calm, because references are required and checked for every prospective tenant. However, after the prospective tenant completes his application, the agent sees that he is unemployed and has left the “references” section blank.

Questions

1. In this scenario, what types of questions can the agent ask the prospective tenant?
2. What should an agent do when references are not provided?
3. What types of information should be documented for a meeting such as this?

Discussion

Housing providers are not to ask unlawful questions with respect to the existence, nature, or severity of a handicap. It is also assumed that housing providers are unaware of whether a tenant with a disability takes medication prescribed to ease or relieve a mental condition or control behavioral manifestations such as muttering, as in this case. In situations such as this scenario, the agent should remind herself not to ask unlawful questions such as:

Unlawful questions

Why are you taking that medication?

What kind of medication is it?

Can I contact your doctor to make sure that you are all right?

A housing provider may ask questions and request information designed to determine whether a person meets the basic requirements that govern admission to the rental property and that are normally applied to all applicants. Acceptable inquiries include those about an applicant’s past performance in meeting financial obligations and past behavior with regard to disturbing neighbors, destruction of property, and living or housekeeping habits.

When an applicant with a disability cannot provide tenant, or comparable references that demonstrate an ability to fulfill the obligations of tenancy, that person must be given an opportunity to provide alternative evidence. The references may come from any individual who is able to provide an objective evaluation of the applicant’s ability to pay rent on time, maintain a rental unit, and be a quiet, rule-abiding tenant. Doctors, therapists, agency personnel, neighbors, friends, or other nonmedical sources could act as references. If references are uniformly required and if the applicant does not provide them, the applicant may be rejected.

Despite a property owner’s provision of reasonable accommodations, it is not a reasonable accommodation to allow a tenant to stay who causes substantial harm to other persons or property.

SCENARIO FIVE

After seeing an advertisement in the paper, a prospective tenant calls to inquire about an available apartment. She wishes to request an evening appointment. The office receptionist understands that the caller is looking for an apartment, but has difficulty understanding her specific request because the caller's speech is garbled. Four or five times, the receptionist asks the caller to repeat her request, but still cannot understand what the caller wants. The receptionist even asks the caller to use an alternative word or phrase to ask the question. The receptionist is still confused and wonders whether this person is under the influence of alcohol or illegal drugs. The receptionist asks if the caller could come to the office to inquire about the unit in person.

Questions

1. What else can be done to assist this caller?
2. What information should the receptionist write down when taking a message from this caller?

Discussion

Consider the possibility that the caller has cerebral palsy, or another condition that makes talking difficult. To make other attempts to understand the caller's request, the receptionist could ask someone else in the office to try, or take the caller's phone number and return the call as soon as possible. The receptionist could also ask the caller if someone else can assist with the conversation. It is important that every attempt be made to accommodate this individual's request. There should be no speculation or assumptions about why the caller does not speak clearly.

SCENARIO SIX

The janitor of a 16-unit building discovers that a tenant has a dog. The janitor, who also manages the building, asks the building owner to file a notice of termination for this tenant's failure to comply with the "no pets" rule. An eviction notice is served. The tenant responds to the eviction notice by asking that the building not proceed with it because she is handicapped and relies on the dog for companionship. This is the first time a tenant has requested an accommodation and modification of the "no pets" policy for this building.

Questions

1. What questions may be asked of this tenant in reference to her handicap and need for a dog?
2. What type of reasonable accommodations, if any, for the tenant could be made by the building owner?
3. What steps should be taken by the janitor or building owner to make these accommodations?
4. If the building owner allows the dog and tenant to stay, what restrictions can they impose on the tenant? In case any tenants are allergic to dogs, should the janitor or owner notify them?

Discussion

It is sometimes difficult to determine when a pet should be considered "just a pet." It is common for individuals who are blind to use guide dogs. Individuals who are deaf or mentally or physically disabled also can benefit greatly from the assistance and companionship of animals. In this case, it may be necessary for the janitor or building owner to investigate the case further to find out why this tenant relies on the dog to assist her. However, the janitor should not inquire about the tenant's handicap. Since this has never happened, the current lease does not accommodate individuals with disabilities. To eliminate a misunderstanding, as in this story, property managers and owners should consider a standard notification at the time a tenant signs a lease. This written or verbal notification may state:

A procedure exists for all of our rental properties in making such requests. The procedure is: we make reasonable accommodations in rules, policies, procedures, or services and allow reasonable modifications to the existing premises if a request pertains to a handicap/disability and is stated in writing.

If the owner is concerned about damages incurred by the dog, he should rely on the fact that a security deposit was most likely required when the unit was rented. If the landlord accommodates the tenant by allowing the dog to stay on the premises, the janitor or building owner should take care when communicating this information to other tenants. It might be a good idea to add a clause to the lease saying that reasonable accommodations are made for those individuals with mental or physical handicaps.

LESSON 4: OCCUPANCY STANDARDS

Lesson Objectives

- Describe the purpose of occupancy standards
- Name factors to be considered when determining the reasonableness of owner and manager-determined occupancy standards
- Develop occupancy standards that conform to HUD guidelines, and comply with state and local laws

OCCUPANCY STANDARDS

Occupancy standards exist to:

- protect tenants from unsafe and unhealthy conditions.
- avoid overcrowding.
- protect government subsidies.
- protect physical assets.

Local laws may define occupancy standards for rental properties in your local areas. This information can be obtained by contacting the local association of REALTORS[®], or one of the other resources provided in the resource lists in the Appendices of the Participant Guide.

In the absence of local laws, building owners and managers may wish to develop occupancy standards in order to limit the number of people who can live in rental properties for the reasons noted above. Although no national standards for setting these limits exists, the following aspects of the dwelling should be considered in developing standards:

- size of the unit
- number of bedrooms and their dimensions
- configuration of the unit, e.g., a bedroom is not considered a bedroom if you have to walk through another sleeping room to access it
- physical limitations of the dwelling, e.g., number of bathrooms
- state and local laws
- capacities of the building, such as septic, sewage, or other building systems
- amenities

Owners and managers may set occupancy standards as long as they do not unreasonably exclude families with children under the age of 18.

HUD GUIDELINES

HUD Guidelines

A 1991 memo by HUD General Counsel Frank Keating provides guidance for determining whether neutral occupancy limits are reasonable under the Fair Housing Act. The Keating Memo states that, as a general rule, HUD believes that an occupancy policy of “one person per bedroom plus one” (i.e., two persons per bedroom) is reasonable under the Fair Housing Act. Owners and managers may develop and implement reasonable occupancy requirements based on such factors as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit.

When reviewing occupancy cases, HUD will consider the size and number of bedrooms and other special circumstances. Following are some examples:

- configuration of the unit
example: In the case of a family of five wishing to rent a unit of two bedrooms plus den, a strict two person per bedroom occupancy standard could be regarded as over-restrictive if the rooms are spacious and the den is a separate room.
- size of bedrooms and unit
example: If a mobile home is advertised as a “two bedroom” home, but one bedroom is extremely small, it could be reasonable for the property manager to limit occupancy to two people.
- age of children
example: It may be an acceptable standard to allow two adult parents to rent a one-bedroom apartment with their infant child, but not if the child is a teenager.
- other physical limitations of the housing
example: In setting an occupancy standard, the capacity of septic, sewer, and other building systems can be considered.
- state and local laws (each state may be different. In Delaware, for example, four unrelated persons in a unit is the maximum limit)
- other relevant factors, such as discriminatory statements, discriminatory rules governing use of common facilities, actions taken to discourage families with children, enforcement of standards only against families with children

If HUD reviews a case, it will interpret the guidelines and consider this information on a case-by-case basis. Occupancy standards that represent a subterfuge for excluding a substantial number of families with children are a violation of the Fair Housing Act.

CASE STUDY #5: FOUR EQUALS FOUR

“Do you think this apartment will be big enough for all of you?” Joy asked.

When Joy received a promotion from maintenance coordinator to rental agent, she couldn’t wait to get out in the field. Showing apartments to prospective tenants just had to be more enjoyable than juggling repair problems and maintenance complaints. But she didn’t know what to do in this situation. The two-bedroom apartment she was showing had a stated occupancy limit of four people, but the prospective tenant, Lisa Webster, was a single parent with three boisterous kids.

“Oh, I think this will fit our needs just fine,” replied Lisa, looking around the empty apartment.

“How old are your kids?” Joy asked.

“Six, nine, and, thirteen, and quite a handful sometimes,” Lisa answered jokingly.

Joy could easily imagine the hubbub. She remembered how noisy her own household had been when her two boys were growing up, and they had a backyard to play in. Three growing kids in a two-bedroom apartment? How would this prospective tenant manage it?

“How much is the rent for this apartment?” Lisa asked. “If it’s in my budget, I’d like to sign a lease.”

Joy stammered. “Uh, uh, uh, silly me. I don’t have that information with me. Can I get back to you?”

“Is there a problem renting this apartment to me?” Lisa asked warily.

“I don’t think so. I’m sorry, I don’t really know. I’ll have to check on it and get back to you. We may not be able to take three kids in a two-bedroom apartment.”

When Joy returned to the office, she was happy to see that Christine Jacobs, the office manager was available. Christine always seemed to have the right answers to situations like this.

“Christine, would you have a minute to look at this rental application?” Joy handed her Lisa Webster’s application.

Christine glanced quickly over the application. “Ms. Webster has a good credit history, and it looks like she can afford the rent, what’s the hold-up?”

“I know I’m new at this,” Joy said. “But I just don’t think we should rent a two-bedroom apartment to her. She’s got three kids and there’s just not enough room. I mean, maybe we should offer her the three bedroom apartment.”

CASE STUDY #5: FOUR EQUALS FOUR

“Joy, Joe and I were very careful when we developed occupancy standards for all of our buildings. We took the wear and tear of overcrowding into consideration. We also took into consideration all applicable fair housing laws, the unit size, building amenities, and zoning codes. An occupancy standard of four means four people,” Christine explained.

“Yeah, I understand that,” replied Joy. “But that means two adults and two children, right? Everything changes when there are three children.”

Christine explained patiently. “That doesn’t change anything. Four people means four people. We can’t limit the number of children or their ages. If we did we would be breaking the law.”

“Well, I think that standard is a mistake,” Joy countered.

“I hope not,” replied Christine. “We developed it.”

Christine continued. “Lisa Webster’s rental application looks fine to me. Let’s give her a call and offer the two bedroom apartment.”

“Okay,” Joy sighed. “I hope this works out.”

Christine made a mental note to enroll Joy in the fair housing course next week at the local association of REALTORS®.

CASE STUDY #4: DISCUSSION

Discussion Questions

1. What are possible fair housing law violations?
2. What factors might have been considered in developing occupancy standards for the unit?

In the case study, “Four Equals Four” there is a possibility of discrimination based on familial status. Although well-intentioned, the rental agent’s understanding of the occupancy standard was four persons equals two adults and two children; in this scenario, a family comprised of one adult and three children meets the standard for occupancy by four persons. As Christine stated, “four means four people”, regardless of their ages or family relationships. When Joe and Christine developed occupancy standards for the buildings’ units they considered the following aspects:

- unit size
- building amenities
- federal, state, and local laws
- zoning codes
- fair housing laws

Then they developed a written policy.

Occupancy Standards Exercise

On the following pages are floor plans for various sizes of rental units. Compare and contrast the units by answering the following questions:

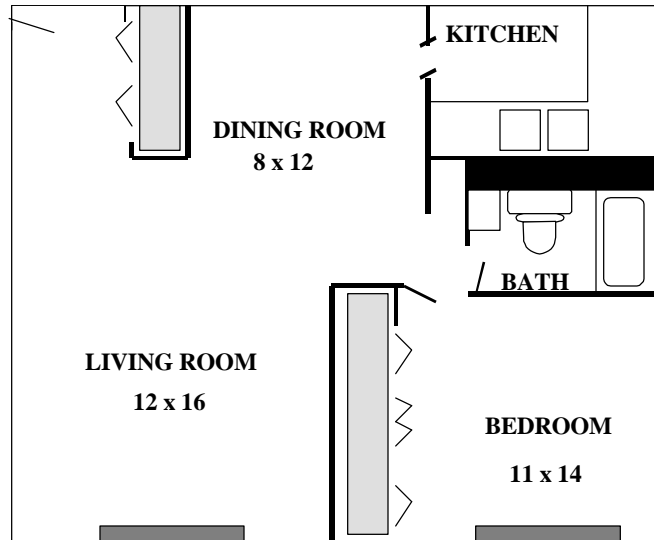
- How many people could live in this unit?
- If a one-bedroom unit, could three people live there?
- If a two-bedroom unit, could five people live there?
- How are you determining this standard?

For more practice in researching, planning, and writing reasonable occupancy standards, refer to the optional exercise in the Appendices section. If this exercise is not included in the course, you may wish to complete it as a self-study test.

Occupancy Standards Exercise

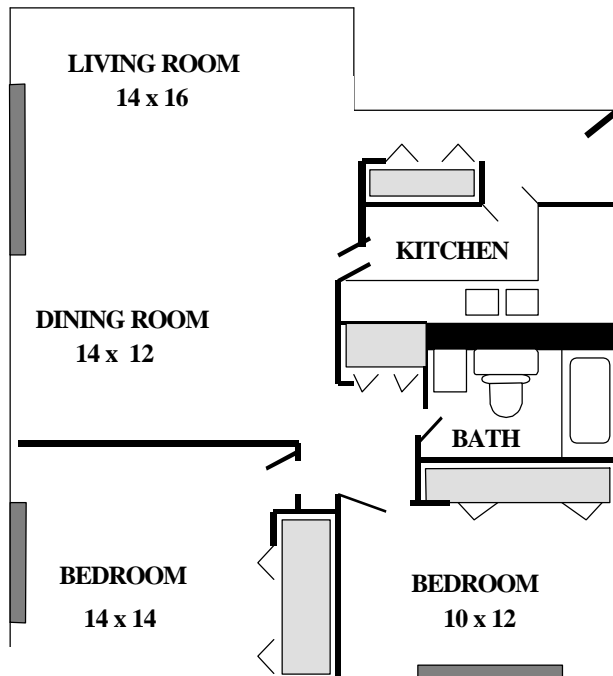
Floor Plan #1

700 square feet



Floor Plan #2

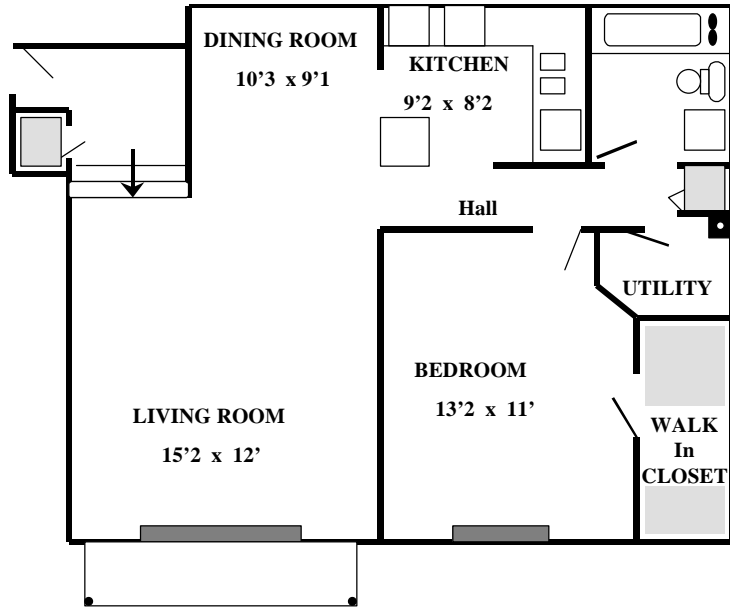
1,000 square ft.



Occupancy Standards Exercise

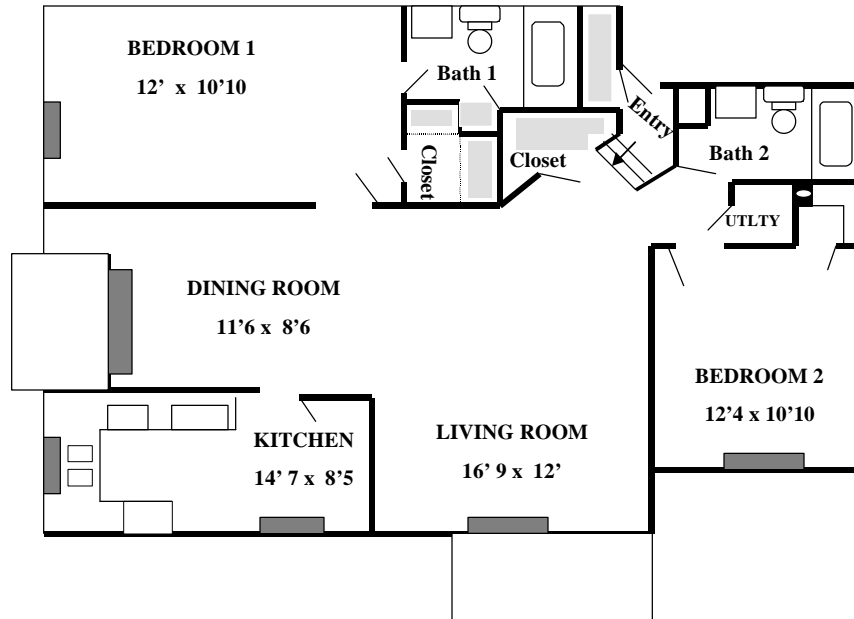
Floor Plan #3

562 square feet



Floor Plan #4

868 square feet



COURSE REVIEW

Compliance

Implementing a comprehensive fair housing compliance program is the most effective action a property owner, manager, or firm can take to assure consistent compliance with fair housing laws and minimize risk. A compliance program should include these basic components:

- Public commitment to fair housing compliance program.
- Involvement with the local association of REALTORS® Equal Opportunity Committee and community programs.
- High priority on agent education and training about methods that ensure compliance with fair housing laws.
- Do not tolerate noncompliance with your firm's fair housing program.
- Inclusion in contracts with property owners notification that property will be offered without regard to race, color, religion, sex, handicap, familial status, or national origin.
- Regular and systematic efforts to provide equal opportunity and equal professional service by use of tools such as the Equal Services Report, Rental Transaction Checklist, Advertising Guidelines Checklist.
- Identification and prompt correction of any failures in performance.