



Understanding and Avoiding the Pitfalls of Fair Housing in Today's Real Estate Market

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Given the complexity of today's social environment and diversity of the New York City landscape, brokerage firms and real estate agents must ensure strict compliance with fair housing laws, which prohibit discrimination. As someone who conducts fair housing seminars on a regular basis, I assume that no real estate agent intentionally discriminates and stress the importance of understanding and avoiding unintentional discrimination or potential unintentional discrimination.

The best way for a real estate agent to do this is to assume that his or her principal or client is a member of a protected class and then tailor his or her words and actions accordingly. A question every real estate agent should ask himself/herself is: Will what I am about to say or write potentially offend the person I am communicating with? To do so, a real estate agent must briefly place himself/herself in the shoes of the other party and be sensitive to how that person may feel or react. Oftentimes, this requires a simple change in vernacular or words used.

For example, if a wheelchair-bound handicapped person wants to know how far the park is from a condominium building, then an agent should be careful to use terms such as close proximity as opposed to walking distance or steps from. If an agent is giving a property tour to two gay men and wants to describe the bathroom and/or closet, "his and hers" would certainly not be appropriate while "dual" would offend no one. I admit that these are very basic concepts but I urge you to watch HGTV one evening and count how many times these terms are used. I strongly believe that New York is the gold standard as to what fair housing laws should look like nationwide, but the rest of the country (and, in the case of HGTV, Canada) has a lot of catching up to do. It is crucial to understand that words matter and terms such as "his and hers" or walking distance have no place in real estate.

The Fair Housing Act prohibits discrimination against members of certain groups of people (i.e., protected classes) who are actively searching for housing. At the federal level, these laws were enacted to prohibit discrimination based on race, color, religion, sex, national origin, disability and familial status (having one or more children under the age of 18). New York State expanded this list to include creed, marital status, sexual orientation, age and military status. New York City further expanded the list to include partnership status, alienage or citizenship status, lawful source of income or occupation and gender identity. For purposes of the New York City

market, the federal, state and city lists are combined and represent a comprehensive list of "protected classes." Given the diversity of New York City and the wide range of protected classes, a real estate agent must be extremely careful in how he or she treats and communicates with actual and prospective clients.

Now that we have established that basically everyone is a member of one protected class or another, it is understood that no one can be discriminated against based upon his or her being a member of such protected class. The obvious cases of discrimination, although troubling, are relatively easy to understand. A seller and/or landlord cannot deny you the right to a home due to the way you look, the way you speak, or the god you pray to.

However, there are many less obvious cases of discrimination that require better understanding. For example, let's address lawful source of income or occupation. In New York City, what you do for a living and how much you make is protected information. Many real estate agents do not understand that they cannot directly ask a prospective client what his or her income or occupation is. This begs the question: "How do I know if they can afford this apartment?" In the case of a rental apartment, the solution is simple. As a wide majority of landlords have a similar policy, the answer can be obtained with the following question: "The landlord requires that you make at least 40 times the amount of monthly rent, will this be a problem for you?" In the case of a purchase, an agent should strongly consider having the prospect complete the REBNY financial statement and ask the prospect to obtain preapproval from a reputable lender. The REBNY financial statement and/or rental application can be the agent's best friend in this situation, as he or she would not be requesting the information directly.

Avoiding the loaded questions and deferring to reputable websites will help ensure compliance with fair housing laws. If a potential purchaser or tenant asks about schools, an agent must defer to suggested websites that provide various statistics about the schools. If a potential purchaser or tenant asks about the neighborhood, safety or "type of people," have them spend some time in the lobby or walking the neighborhood.

Finally, and most important of all, real estate agents should let necessary information flow to them naturally, as opposed to asking questions that may unintentionally discriminate against someone in a protected class. ■

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