



Why You Need to Know About Fair Housing

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In order for real estate brokers, associate brokers, and salespersons in New York to renew their license they must complete at least three credit hours of continuing education approved by the Department of State specifically related to fair housing training. This required training is to familiarize brokers and salespersons with the Fair Housing Act to ensure that they do not violate the Act and subject themselves and their brokerage house to liability.

Purchasers and renters are provided fair housing protections, and may seek legal redress on each the federal, state and local levels (together the "Fair Housing Laws.") The Fair Housing Laws were enacted to penalize discrimination against certain groups who are actively seeking housing. The Fair Housing Laws prevent individuals from arbitrarily discriminating against those in protected classes from renting or purchasing housing. The laws also provide a procedure for individuals to file claims against a discriminating party and pursue civil, and sometimes, criminal charges.

The Amendments to the Fair Housing Act of 1988, together with Title VIII of the Civil Rights Act of 1968, work together to prohibit discrimination in sales, rentals, leasing or financing of property against those individuals considered to be in a protected class. These classes include race, color, religion, sex, national origin, disability and familial status (having one or more children under the age of 18 years of age). New York State has additional protected classes including creed, marital status, sexual orientation, age and military status. The NYC Human Rights Law goes even further and prohibits discrimination based on partnership status, alienage or citizenship status, lawful source of income or occupation and gender identity.

In the event a potential purchaser, tenant, landlord or seller believes that they have a claim under the Fair House Act they can pursue a claim by filing a complaint with the U.S. Department of Housing and Urban Development (HUD). After interviewing the complainant and investigating the claim, if HUD determines there may have been a violation, the party accused of the violation, the respondent, is notified that a complaint has been filed and HUD will interview the respondent and any witnesses to obtain any relevant information. HUD is then mandated by the Fair Housing Act to attempt to bring the parties together for a consolation. If the parties then agree to settle the issue or if HUD, after investigation, finds there is no reasonable cause for the complaint, the matter is closed. In the event that HUD finds that discrimination has occurred, then the respondent will be charged with having violated applicable law. A HUD Administrative Law judge will then hear the case unless the parties choose to have the case heard by a federal civil court. The HUD Administrative Law Judge can award a maximum civil penal-

ty of \$11,000 per violation for the first offense. If the parties elect to have the case heard in federal civil court, the Department of Justice takes up the complaint and in the event the respondent is found to have violated the Fair Housing Act actual and punitive damages as well as attorneys' fees may be awarded.

New York City has its own procedure for perceived violations of the NYC Human Rights Law. An alleged victim of discrimination may file a complaint with the Law Enforcement Bureau of the NYC Commission on Human Rights. The Commission is authorized to assess fines and obtain cash settlements on behalf of those who are victims of the NYC Human Rights Law violations. The filing of a claim is similar to the filing of a complaint with HUD. A complainant must begin the process within one (1) year of the last alleged discriminatory act. After meeting with a staff attorney from the Commission, a complaint is filed. The parties are provided an opportunity to mediate the issue, but if mediation fails, an investigation takes place. If the commission makes a determination of "probable cause" an attorney is assigned to prosecute the case. If the determination is "no probable cause" the case is dismissed and the complainant is given the opportunity to appeal the determination.

Ultimately, if an administrative law judge determines that the respondent engaged in unlawful discriminatory practices the relief may be through induction or fines. The commission has the power to order a civil penalty of up to \$250,000 if it determined that the discrimination was a result of willful or malicious acts.

It is fairly easy to violate these laws without the intention to do so. For instance, a broker shows a property to a potential tenant and the tenant then asks to submit an application. During completion of the application the potential tenant mentions that she is a single mother with three children. The broker responds "wow, that is a lot of kids." Then, despite being an interested and capable renter of the property, the application was denied. The potential tenant could make a claim that the real estate broker, and possibly the owner, refused to rent after the potential tenant made an application because of her familial status. What seemed like an innocent comment, when combined with the fact that the potential tenant did not receive a lease, can lead to a claim and violation of the Fair Housing Laws.

Real estate brokers and salespersons need to keep in mind that what they mean to say when they are talking to a purchaser, seller, tenant or landlord, may be interpreted differently by those parties. There are methods to insulate brokers, salespersons and their firms from liability. They should standardize procedures for qualifying all clients, maintain accurate records by utilizing an equal service report form, avoid discussions on any topic related to any of the protected classes with anyone, including colleagues, and if there is ever a question, consult a lawyer. ■

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