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# RELEVANT FAIR HOUSING ISSUES ENCOUNTERED BY NYC REAL ESTATE AGENTS TODAY

*By Michael J. Romer, Esq. of Romer Debbas LLP*

Given the complexity of today's social environment and diversity of the New York City landscape, brokerages 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 I 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 their principal or client is a member of a protected class and then tailor words and actions accordingly. A question every real estate agent should ask themselves is: Will what I am about to say or write potentially offend the person I am communicating with? Often, this requires a simple change in vernacular or words used.

For example, if a wheelchair user wants to know how far the park is from a condominium building, 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 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 has a lot of catching up to do.

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 New York City, 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 basically everyone is a member of one protected class or another, it's understood that no one can be discriminated against based upon their being a member of such protected class. However, there are many less obvious cases of discrimination that require better understanding. For example, let's address lawful source or 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 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 a purchase, an agent should strongly consider having the prospect complete the REBNY financial statement and ask the prospect to obtain pre-approval from a reputable lender.

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 the local 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, real estate agents should let necessary information flow to them naturally as opposed to asking questions which may unintentionally discriminate against someone in a protected class.