



Fair Housing

by
Natalie Danielson

This 7.5 hour course will cover the Federal and State Fair Housing and Discrimination Laws as they relate to real estate. Learn the history of fair housing laws, what are protected classes, the conduct that violates the laws and the consequences for violation.

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1. You will be provided with a booklet of with the class material. The tuition for the course. The booklet is the property of Professional Direction, Inc. and cannot be copied for any reason without permission.
2. The course has been divided up into sessions. In Washington State a “clock hour” is 50 minutes. There are questions about each session. They can be answered while reading the material, at the end of the session, or at the end.
3. ***Answer*** the questions on the quiz answer sheet.
4. If you have any questions regarding the material or the questions, don’t hesitate to call or email Natalie Danielson.
5. ***Mail Answer Sheet and Evaluation*** with Tuition for \$50.
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Disclaimer.. the course materials and questions are not to be used for legal advice. Information can change over time. Real estate transactions are handled different ways in different regions in the State of Washington. If you have any comments or concerns about the material contact Professional Direction.

Thanks!

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Fair Housing Curriculum

Session Hours	Major Topics Learning Objectives	Method of Instruction	Materials Required	Assignment
1 1 hour	Learn about the history of the Federal Fair Housing Laws. Complete the Quiz in small groups.	Lecture Discussion	Handout Quiz	Take Notes Complete quiz
2 1 hour	Be able to identify the 7 protected classes under the Federal Fair Housing Act. Learn the definitions of familial status and handicap. Recognize what exemptions apply to the law.	Lecture Discussion	Handout	Take Notes
3 2 hours	Identify the prohibited acts under the Federal Fair Housing Act. Learn about the Washington Discrimination Law. Be able to identify the protected classes.	Lecture Discussion	Handout	Take Notes
4 2 hours	Understand the regulations regarding advertising under the laws. Be able to identify advertising violations of the laws.	Lecture Discussion	Handout	Take Notes
5 .5 hours	Learn the consequences of violation of the laws.	Lecture Discussion	Handout	Take Notes
6 1 hour	Identify conduct that is in violation of the laws through case studies and discussion.	Lecture Discussion	Handout Case Studies and Examples	Take Notes

Fair Housing

Introduction

This 7.5 hour course will cover the Federal and State Fair Housing and Discrimination Laws as they relate to real estate. Learn the history of fair housing laws, what are protected classes, the conduct that violates the laws and the consequences for violation. The consumer rights include, but certainly are not limited to the following:

Course Objectives

As a result of taking this class the agent shall be able to:

- Know the history of the Federal Fair Housing Laws.
- Be able to identify the 7 protected classes under the Federal Fair Housing Act.
- Learn the definitions of familial status and handicap.
- Recognize what exemptions apply to the law.
- Identify the prohibited acts under the Federal Fair Housing Act.
- Learn about the Washington Discrimination Law
- Identify the protected classes in Washington State and Seattle.
- Understand the regulations regarding advertising under the laws.
- Be able to identify advertising violations of the laws.
- Learn the consequences of violation of the laws.
- Identify conduct that is in violation of the laws.

Introduction

The following article from Market Watch discusses the most current statistics available from HUD regarding housing discrimination.

The Fair Housing laws are Federal. In Washington State we have Anti Discrimination laws. In your city and county laws are created to help make housing available to all regardless of their protected class. As a real estate agent you are bound by the Federal, State and Local fair housing and anti-discrimination laws.

Complaints to the HUD are up 65% over the past 10 years. Only a small number of those that have experienced discrimination file complaints.

Treat all others in our industry whether they are buyers or sellers.. whether they are landlords or tenants... whether they are staff in the office or prospects at a house... the way you would want to be treated.

This class is designed to give you an overview of the laws and the kind of conduct that can violate those laws.

Housing discrimination complaints at record high

But government says high number is sign that it's reaching consumers

By Ruth Mantell, MarketWatch

Last Update: 4:37 PM ET Apr 4, 2007

WASHINGTON (MarketWatch) -- A record number of Americans are complaining about housing discrimination, with disability and race as the leading reasons for filing a complaint, according to the government's annual fair housing report released this week. In 2006, the Department of Housing and Urban Development and Fair Housing Assistance Program agencies received 10,328 housing discrimination complaints, up 65% from the 6,270 complaints received in 1996, according to the report.

Although only a small fraction of those who think they have experienced discrimination actually file a complaint, HUD sees the record level as an accomplishment, according to Kim Kendrick, HUD's assistant secretary for fair housing and equal opportunity.

"We think it's due to our enforcement and education and outreach...getting the word out," Kendrick said. "People have more faith in their government...they want to file complaints with us. Getting more complaints shows you that the education is working."

For fiscal 2006, HUD said the basis of 40% of the complaints was disability, 39% was race, with familial status and national origin each accounting for 14%. Other reasons for complaints included sex, religion and retaliation. Complainants most often alleged discrimination in the terms and conditions of the sale or rental of housing, or refusal to rent.

The number of complaints should rise again, Kendrick said, noting that the aging population could translate to more disability complaints. More complaints could lead to improved housing service for consumers, she said.

"The more complaints we get, the more realtors and real estate agents we get to talk to. The more housing providers we get to talk means these issues won't reoccur," Kendrick said.

Although education is important to help uphold the Fair Housing Act -- which prohibits housing discrimination based on race, color, religion, national origin, sex, disability, or familial status -- enforcement is key, experts said. The act also requires HUD to investigate complaints, and attempt to conciliate.

In fiscal 2006, the share of HUD complaints that closed with a determination of no reasonable cause was 40%. Conciliation, or settlement, the second most common way in which HUD closed complaints, representing 36% of all closures. Also, HUD referred 1% of complaints to the Department of Justice, and another 1% resulted in a charge. The other 22% met with an administrative closure, which occurs in instances such as those in which a complaint is withdrawn, or a complainant doesn't cooperate or can no longer be located.

John Taylor, president and chief executive of National Community Reinvestment Coalition, a nonprofit aiming to unite efforts to increase private capital in traditionally underserved communities, said he'd like to see federal agencies such as HUD spend more time on enforcement.

"Financial education is important, but first and foremost we need to protect consumers from unscrupulous people," he said. "Race discrimination continues to be at unacceptable levels. Those people who say race doesn't matter anymore...simply don't know what they are talking about."

Since fiscal 2003, HUD's fair housing staff has steadily declined 20% to 598 in fiscal 2006. During that same time period, funding for fair housing has remained fairly flat, dipping less than 1% to \$110.5 million in fiscal 2006.

"For us it's a shame that Congress has not appropriated more money," said Shanna Smith, president and CEO of the National Fair Housing Alliance, an organization that aims to end discrimination in housing.

To make best use of its resources, HUD is increasingly making Secretary-initiated discrimination investigations, which are initiated by the department, even if no one has filed a complaint. The investigations focus on housing providers, lenders, and others that HUD suspects of unlawful discrimination.

For example, in January of 2006 HUD began a Secretary-initiated investigation of allegations that the City of Manassas in Virginia tried to discourage Hispanics from living in the city by selectively enforcing an ordinance restricting households to immediate relatives. HUD filed a complaint against Manassas, and eventually referred its own complaint, as well as those from others, to the Department of Justice after conciliation efforts failed.

HUD has brought about 15 Secretary-initiated cases in the past 18 months, according to Bryan Greene, deputy assistant secretary for enforcement & programs with HUD.

"Whenever we have a chance to make a case we want to be proactive as opposed to reactive," he said. End of Story

Ruth Mantell is a MarketWatch reporter based in Washington.

History of Fair Housing

Not surprisingly, the beginning of housing discrimination in America can be traced to the first colonial settlements. Even in the early 1600's, in the Jamestown Colony, there were differences in the treatment of black and white indentured servants. As the colonies grew, slavery of people of African descent became increasingly common. For the most part, slavery was not considered immoral by society.

Neither the Declaration of Independence nor the American Revolution produced any rights or freedom for the black man. Even Article I of the U.S. Constitution treated slaves as 'three fifths' of a person for purposes of determining a state's population for representation in Congress.

Prior to the Civil War, the courts refused to recognize any rights for persons of African descent, whether they were slaves or free. The federal government did nothing to prohibit discrimination, and even those states that had abolished slavery treated blacks as inferior. The ideology of the time is well illustrated in the 1857 U.S. Supreme Court case entitled *Dred Scott v. Sanford*, in which the Court held that persons of African descent were not "citizens" of the United States entitled to any rights. According to the Court, the black man had no rights the white man was bound to respect. The Court stated that this principle applied to all black persons, slave or free:

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

Shortly before the Civil War, the abolitionist movement gained strength. Abraham Lincoln's emancipation proclamation -at least on paper- marked the end of slavery, although it did little to advance modern day civil rights. At the end of the Civil War, the Thirteenth Amendment was enacted to abolish slavery and to give Congress authority to enact appropriate legislation to enforce the abolishment of slavery. In 1866, the Reconstruction Congress passed the Civil Rights Act of 1866, which guaranteed property rights to all citizens regardless of race. The act specifically provides that all citizens shall have the same rights as white citizens to inherit, purchase, and sell real and personal property. Governmental discrimination was also prohibited by the Fourteenth Amendment (enacted in 1868) and the Fifth Amendment's due process clause that applies to the federal government.

But soon thereafter, the nation's commitment to civil rights deteriorated. In retrospect, the 1866 Civil Rights Act guarantee of equal rights to all races was, unfortunately, an empty promise. For over a century, the courts prohibited racial discrimination only with regard to "state" (governmental) discrimination, such as racial zoning or the court enforcement of racially restrictive covenants governing real property. Therefore, the 1866 Act was essentially ineffective in combating private discrimination.

The first major setback to the legal rights of African Americans came in the U.S. Supreme Court's decision in the *Civil Rights Case* (1883). In that case, the Court held that the equal protection clause of the U.S. Constitution (i.e., the 14th Amendment) did not prohibit private acts of discrimination, rather it merely prohibited discrimination that was the product of government action. A few years later, the U.S. Supreme Court made its infamous ruling in *Plessy v. Ferguson* (1896), which held that the enforcement of racial segregation of private or public facilities did not violate the U.S. Constitution as long as the separate facilities were "equal." This ruling permitted

institutionalized segregation in the United States. The Plessy case was not overruled until 1954, almost six decades later.

On the other hand, some of the more blatant forms of racial discrimination by the government were outlawed by the Court. In 1917, in *Buchanan v. Warley*, the U.S. Supreme Court struck down a local zoning law that limited African Americans and other minorities to specific areas of town. The Court held that governmental zoning laws that discriminate, based upon race, violate the equal protection clause of the Fourteenth Amendment. This court case did not, however, ban any form of private discrimination. Again, private persons were free to discriminate based upon race.

In 1948, in *Shelley v. Kraemer*, the U.S. Supreme Court held that state court enforcement of a private racially restrictive covenant constituted a sufficient “Government involvement” so as to violate the equal protection clause of the Fourteenth Amendment. Therefore, persons could not use the court system to enforce racial deed restrictions.

Although some states and municipalities enacted fair housing laws, the federal government neglected to pass any laws to prevent housing discrimination. In fact, to a certain extent, the federal government was counterproductive in efforts to defeat segregation. For example, the Federal Housing Administration (FHA) instructed its staff and appraisers to consider the racial makeup of a neighborhood. Also, it is important to note that discrimination in housing was certainly not limited to African Americans. Other minorities and religious groups were commonly discriminated against, as were women.

Finally, in 1954, the U.S. Supreme Court rendered its landmark decision in *Brown v. Board of Education*, reversing the “separate but equal” decision in *Plessy*. The *Brown* case outlawed segregation in schools and marked the beginning of the end of the era of legalized segregation.

In November 1962, President Kennedy signed an executive order, entitled “Equal Opportunity in Housing” prohibiting discrimination in housing that is owned, operated or assisted by the federal government. The order required federal agencies to take action to prevent discrimination based upon race, color, creed or national origin. Although the executive order was the first federal anti-discrimination initiative of the 20th century, it had limited impact on the housing market.

Two years later, Congress enacted Title VI to the Civil Rights Act of 1964, which prohibited discrimination in programs receiving federal financial assistance. Once again, this Act had little effect since it did not prohibit discrimination in the private housing market.

The real change in fair housing came in 1968, a year that is considered the birth of modern fair housing. In addition to the assassination of Rev. Martin Luther King, Jr., two historic events occurred that year that forever changed the housing market.

First, in April, Congress enacted the Fair Housing Act (Title VIII of the Civil Rights Act of 1968). This Act bans discrimination on the basis of race, color, religion and national origin in most types of housing transactions. The Act also contains a variety of remedies to attack housing discrimination, including private discrimination. Second, in June, the U.S. Supreme Court rendered its decision in *Jones v. Alfred H. Mayer Co.*, and held that the Civil Rights Act of 1866 banned private, as well as government, racial discrimination in housing. Thus the 1866 Act was given new life, and could be used to fight racial discrimination.

The Fair Housing Act outlaws a variety of private discriminatory acts, including refusal to rent or sell, discrimination in the terms of sale or rental, blockbusting, and discrimination in advertising and in the use of real estate services. In 1974, the Fair Housing Act was expanded to include prohibition of gender discrimination, and Section 8 programs were created. In the same year,

Congress passed the Equal Credit Opportunity Act, which prohibited credit discrimination in housing on the basis of race, color, religion, national origin, gender or marital status, and age.

In the 1970's, various federal legislation was enacted to prohibit discrimination in federal programs, and to include additional protected classes. Congress enacted Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against handicapped persons in all federally assisted programs, including housing. Later, Congress enacted the Age Discrimination Act of 1975, which prohibited discrimination on the basis of age in programs receiving federal financial assistance. In 1980, President Carter expanded Kennedy's executive order to include gender-based discrimination, and to grant HUD additional authority to issue regulations to further fair housing in federal programs.

After the enactment of the Fair Housing Act, the U.S. Supreme Court rendered several important decisions favorable to attacking housing discrimination. In 1972, the Court held in *Trafficante v. Metropolitan Life Insurance Co.* that the Fair Housing Act should be broadly construed, and that HUD's interpretation of the act should be given great weight. As a tremendous practical importance, the Court also upheld the right of housing organizations and other residents to sue persons or municipalities that violated the Fair Housing Act. In 1982, the Court rendered an important decision entitled *Havens Realty Corp. v. Coleman*, which permitted housing organizations and "testers" to sue in racial steering cases. These court cases enable private and public organizations to investigate fair housing violations and to file actions for civil penalties and damages.

On September 13, 1988, former President Ronald Reagan signed the Fair Housing Amendments Act of 1988. The Amendment became effective March 12, 1989. The 1988 Amendment was enacted to expand the coverage of the Fair Housing Act and to enhance enforcement of the act.

The 1988 Amendment made major changes to Title VIII, including adding two protected classes to the Fair Housing Act: (1) families with children and (2) handicapped persons. The Amendment also modified the administrative process for HUD complaints, and essentially provides that HUD has a higher degree of authority to enforce the Fair Housing Act. The Amendment removed the cap on punitive damages and increased the available damages and civil penalties. The Amendment also extends Title VIII to other discriminatory practices, relating to real estate loans for repairs and improvements, certain secondary market activities, and real estate appraisals.

Protected Classes under the Federal Fair Housing Act

The following list are the criteria that the discrimination law is based upon. It is illegal to discriminate against a person who is considered in one of the protected classes or meets these criteria.

1. Race
2. Color
3. Religion
4. Sex
5. National Origin
6. Handicap
7. Familial Status

Familial Status and Handicap

In 1988 these two classes were added to the 1968 law.

- Familial Status prohibits discrimination against a person because they have children. Parents, legal guardians, and those in the process of obtaining custody of children under the age of 18. This group also includes pregnant women. "Adults only" complexes are forbidden unless they qualify as housing for older persons.

According to regulations, property owners may not establish dual purpose facilities where certain sections of a housing complex are reserved for adults only and other sections for families with children.

SITUATION: John will rent his apartments on the first floor to families but, the apartments on the second floor he will only rent to adults. His reason is that the children might hurt themselves on the balcony.

Discussion

Senior Housing

The Federal law specifically authorizes the exclusion of children from housing for older persons, notwithstanding the prohibition of discrimination against families with children. This exemption includes:

Housing provided pursuant to a state or federal program designed to accommodate the needs of senior citizens.

Housing occupied solely by persons sixty-two years or older or...

Housing where 80% of the units are (at all times) occupied by at least one person fifty-five years or older per unit, and...

The development is intended for, and market as, housing for older persons and it provides significant facilities and services specifically designed to meet physical or social needs of older persons.

- Handicap covers persons that have a physical disability or mental impairment that substantially limits one or more major life activities. This includes people suffering from chronic alcoholism, mental illness, or AIDS. It doesn't cover those that are a danger to others or those using illegal drugs.

SITUATION: Mary has a listing whereby the husband has died because of complications due to AIDS. The buyers ask Mary why the husband died.

Discussion

Important Exemptions and Limitations to the Fair Housing Act

The Fair Housing Act covers most types of housing. The Act contains several important exemptions, including single-family homes sold or rented without the use of a real estate broker, and housing operated by religious organizations and private clubs that limit the sale or occupancy to its members. Listed below are the basic exemptions and limitations to the FEDERAL Fair Housing Act but they may not be exemptions under state and local laws! This is important to note!

- (1) The Private Owner. Other than the prohibitions against discriminatory advertising, the Act does not apply to:

Single-Family Homes. (single family homeowner is NOT exempt in Wash State!)

- The sale or rental of any single family house by an owner, provided that the following conditions are met:
 - (i) the owner does not own or have any interest in more than three single family houses at any one time.
 - (ii) the house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings).
 - (iii) if the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption applies to only one sale in any 24-month period.

SITUATION: Hank has his house for rent while he is temporarily relocated to California. He advertises that he is looking for a married couple with no children. Is he exempt?

- “Mrs. Murphy’s Boarding House,” Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.
- (2) Religious Organizations. The Act does not prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale or rental or occupancy of dwellings which it owns or operates for other than commercial purpose to persons of the same religion, or from giving preference to such persons. If membership in such religion is restricted because of race, color, or national origin, then this exemption does not protect such religious organization.
- 3) Private Clubs. The Act does not prohibit a private club, (not in fact, open to the public), which, incident to its primary purposes, provides lodgings that it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

- (4) **Occupancy Standards.** The Act does not limit the applicability of any “reasonable” local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. The Act also does not prohibit owners and property managers, in certain circumstances, from developing reasonable occupancy requirements. But, an owner cannot limit the number of occupants, for example, from a rental so as to eliminate families. There is no federal, state or local occupancy standard! The most common rule of thumb from H.U.D. is two people per bedroom... or two people per bedroom plus one.
- (5) **Drug Conviction.** The Act does not prohibit discrimination against a person because that person has been convicted, by any court of competent jurisdiction, of the illegal manufacture or distribution of a controlled substance.
- (6) **Health and Safety.** The Act allows a landlord to refuse to rent to a “handicapped” person if that person’s occupancy constitutes a threat to the health and safety of other persons.
- (7) **Housing for Elderly.** The Act provides that the provisions regarding “familial status” do not apply to duly qualified “housing for older persons.”

Are you a member of a “protected class?”

Protected Classes are NOT “minorities” per se. EVERYONE is a member because of his or her race, color, religion, sex, national origin, familial status, and/or handicap. People have been discriminated because of their background or heritage, so therefore, protected classes have been created to help stop discrimination.

SITUATION: Have you ever felt discriminated against? Why?
Discussion

Summary of Prohibited Acts under the Federal Fair Housing Act

1. Any refusal to sell or rent, or otherwise make unavailable, a dwelling after receiving a bona fide offer, or refuse to negotiate for the sale or rental of a dwelling, because of race, color, religion, sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.
2. Discriminating in the “terms, conditions, privileges, or services of the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin.
3. Engaging in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.
4. Make, print, or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. This advertising prohibition applies to private owners who may otherwise be exempt from the Act.
5. Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
6. Engaging in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.
7. Denying access to, or participation in a multiple listing service, brokers association or other organization to the business of selling or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin. This also includes creating terms or conditions on membership based on a prohibited criteria.
8. For persons whose business includes engaging in the business of residential real estate related transaction, to discriminate in making available, or in the terms or conditions of, any residential real estate related transaction because of race, color, religion, sex, handicap, familial status or national origin
9. “Coerce, intimidate, threaten, or interfere with” any person exercising a fair housing right or on account of a person having assisted others in exercising such rights.

Discriminatory Representations on the Availability of Dwellings

Under the Fair Housing Act, it is unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental. HUD's regulations specifically list the five following prohibited actions, if such actions are done because of race, color, religion, sex, handicap, familial status, or national origin. These five items are only examples and the Act also prohibits other activities not necessarily listed below:

- (1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented.
- (2) Representing that instruments such as deeds, trusts, CC&R's, or leases, which purport to restrict the sale or rental of dwellings because of a protected class, preclude the sale or rental of a dwelling to any person of a protected class.
- (3) Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of a protected class.
- (4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental.
- (5) Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether they are actually seeking housing.

SITUATION: An Asian woman wants to rent an apartment near her office. The Agent knowing the racial makeup of the neighborhood near her office is different, says that there isn't anything available in her price range in that area. Is this a violation? What if there isn't an apartment available?

BLOCKBUSTING

The Fair Housing Act provides that it is unlawful for a person to engage in "blockbusting." This occurs when a person, such as a real estate broker, for profit, induces or attempts to induce a person to sell or rent a dwelling by making representations regarding the entry (or prospective entry) into the neighborhood of persons of a particular race, color, religion, sex, handicap, familial status, or national origin. Most blockbusting cases involve a real estate broker's uninvited solicitation of homeowners to sell or rent their homes. It is sometimes referred to as "panic selling." According to HUD's regulations, blockbusting occurs in the following two examples (but, of course, is not limited to these two examples):

- (1) Engaging, for profit or the availability of a profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing a change, or is about to undergo a change, in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.
- (2) Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry (or prospective entry) of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

SITUATION? Bill tells homeowners that this is the time to sell because the neighborhood is changing and the gang activity is increasing.

Steering

Steering is a practice whereby a real estate agent influences a person's housing choice based on prohibited criteria. The classic example is that of directing minority or all minority neighborhoods.

SITUATION: Steve assumes his clients would "feel more comfortable" in certain areas because others of their background live there. Maybe his clients are Jewish and he directs them to neighborhoods near the synagogue where other Jewish people are living. Is this steering?

Discrimination in Brokerage Services

The Fair Housing Act provides that it is unlawful to discriminate in the provision of real estate brokerage services. Specifically, the Act prohibits the denial of any person, based upon a protected class, access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings. The Act also prohibits discrimination against any person in the terms or conditions of such access, membership or participation, if such discrimination is based upon race, color, religion, sex, handicap, familial status, or national origin.

SITUATION: Doug sends all his prospects that do not speak the English Language well to other agents. He says that they can be better served by them.

Prohibitions Against Discrimination Because of Handicap

The Fair Housing Amendments Act of 1988 extends Title VIII to the physically and mentally disabled. The Fair Housing Act provides that it is unlawful to discriminate in the sale or rental of a dwelling, or to otherwise make unavailable or deny a dwelling, to any buyer or renter because of a handicap of:

- (1) that buyer or renter.
- (2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available.
- (3) any person associated with that buyer or renter.

The Act also prohibits discrimination against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of such handicap. The disabilities covered include hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS and AIDS related illness, and mental retardation.

How to Refer to People with Disabilities

Language is sometimes used to separate or undermine the disabled from the so-called "normal person." Always emphasize and recognize the person first, before any limiting factors.

DEHUMANIZING

Disabled person
A blind person
A deaf person
He is crippled
She is arthritic
She is afflicted
Retarded, feebleminded, retard
Confined to a wheelchair
Crazy or mentally ill
Birth defect

APPROPRIATE

A Person with a disability
A person who is blind
A person who is deaf
He has a disability.
She has arthritis
She has polio, or is a victim stricken with polio
A person with mental disabilities
The person uses a wheelchair.
Person with an emotional disability
Person with congenital disability

REASONABLE MODIFICATIONS OF EXISTING PREMISES

The Fair Housing Act prohibits any person, such as a landlord, from refusing to permit, at the expense of a handicapped person, “reasonable” modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises. The premises covered by the Act include the dwelling and common use areas. In the case of a rental, the landlord may, where it is reasonable to do so, require the renter to agree to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. Also, the landlord is prohibited from refusing to make reasonable accommodations in rules, policies, practices or services if necessary for the handicapped person to use the housing.

SITUATION: Ezekiel wants to rent a house. He is in a wheelchair and he needs ramp to get up to the front door. Can he require the landlord to construct the ramp?

Reasonable Occupancy Standards Under the Fair Housing Act

Governmental Occupancy Standards

The Act does not limit the applicability of any reasonable “Local, State or Federal” restrictions on the maximum number of occupants permitted to occupy a dwelling unit. According to HUD, this exemption is intended to allow “reasonable” governmental limitations on occupancy as long as such limitations are applied to all occupants, and do not operate to discriminate on the basis of race, color, religion, sex, handicap, familial status, or national origin.

The preamble to HUD’s final rule implementing the Fair Housing Amendments Act of 1988 provides some insight into the use of governmental occupancy standards. Although the Act specifically provides that nothing in the law limits the applicability of any reasonable “Federal” restrictions regarding the maximum number of occupants, HUD has determined that there is no support in statute or the legislative history of the Act which indicates any intent on the part of Congress to provide for the development of a national occupancy code.

HUD has further stated that, although HUD has developed occupancy guidelines for use by participants in HUD housing programs, these guidelines are designed to apply to only those types and size of dwellings in HUD programs. Therefore, these guidelines may not be reasonable for dwellings which have different available space and configurations than those dwellings found in HUD-assisted housing.

In HUD’s rules, HUD states its opinion that there is no basis to conclude that Congress intended that an owner or manager of housing should be unable to restrict the number of occupants who could reside in that dwelling. Thus, HUD’s rules permit, in appropriate circumstances, owners and managers to develop and implement “reasonable” occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms, and the overall size of the unit. HUD cautions, however, that HUD will carefully examine any such non-governmental restriction to determine whether it operates unreasonably to limit or exclude families with children, or discriminates against other protected classes of persons.

The most common rule of thumb quoted by HUD is two persons per bedroom or two persons per bedroom plus one. By limiting the number of occupants based on a number, the landlord could be accused of discriminating against families.

SITUATION: Chuck owns a small two bedroom apartment. A couple with two children applies to rent the apartment but Chuck turns them down because that is too many people in the apartment. Could Chuck be turning them down because he is discriminating against families in his unit?

Housing Exemptions for Older Persons

The Fair Housing Amendments Act of 1988 prohibits discrimination against families with children. The 1988 Amendment exempts certain housing projects designed for senior citizens.

- **62-Years-of-Age-or-Over Housing**

The prohibitions against discrimination based upon “familial status” do not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing will qualify for this 62 years of age and over exemption even though:

1. There are persons residing in such housing on September 13, 1988, who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;
2. There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over; and
3. There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

- **55-Years-of Age-or-Over Housing**

Housing projects that do not meet the age 62 exemption may qualify for the age 55 exemption. The prohibitions against discrimination based upon “familial status” do not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the 55-years-of-age-or over housing satisfies each of the following three requirements:

1. (a) The housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons.

(b) It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons.
2. At least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit, except that a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with this section until 25% of the units in the facility are occupied.
3. The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

SITUATION: Madeline owns three duplexes in town. They are close to the stores, library and senior center. She decides they are perfect for retired folks and advertises them as such. She decided that they are “senior housing” and will only let seniors rent the units. Can Madeline just decide to have seniors only?

CONSEQUENCES OF FEDERAL FAIR HOUSING VIOLATION

The potential penalties for violation of fair housing laws are so severe that responsible real estate brokers simply cannot assume the risk. Furthermore, fair housing cases are almost always excluded from errors and omissions policies.

An aggrieved person is one who claims to have been injured by a discriminatory housing practice or believes that such person will be injured by a discriminatory housing practice that is about to occur. A person can be one or more individuals, corporations, partnerships, or associations. An aggrieved person who believes to be a victim may bring an action directly in federal court or may file a complaint with HUD. If HUD finds reasonable cause, the case may be tried before a HUD Administrative Law Judge (ALJ) or before a federal district judge. If state or local law is deemed by HUD to be substantially equivalent to title VIII, HUD will refer all complaints from that jurisdiction to the state or local agency for processing.

Both ALJ's and federal courts may award actual damages, attorneys fees and issue injunctions to prevent any further discriminatory practices. An ALJ may also assess civil penalties, limited to \$10,000 with not prior offense, \$25,000 with one prior offense within five years, and \$50,000 with two prior offenses within seven years. A federal court judge may also impose an unlimited amount in punitive damages plus attorneys fees and costs.

Also, the U.S. Attorney General may bring an action where a pattern of practice of discrimination has occurred, as opposed to a single isolated act and secure injunctive relief and damages, together with civil penalties of \$50,000 for the first offense, and \$100,000 for any subsequent offense.

One example of the importance of complying with federal fair housing laws, in July of 1992 a judge ordered a Washington D.C. area property management company to pay \$2.41 million in damages to a woman who said the company refused to rent an apartment to her because she has children. In 1990, after being told for the second time that the building in which she and her children had hoped to rent was an "all adult" building plaintiff Carrie H. Timus sued the management company, claiming it violated federal fair housing laws that prohibit discrimination on the basis of familial status.

The damages award underscores the seriousness with which juries are viewing cases that involve discrimination against families with children. The extraordinary amount of the damages award send a message that society is not going to tolerate discrimination against families with children, " said NAR General Counsel Laurence K. Janik.

WASHINGTON DISCRIMINATION LAW

Washington State Law in RCW 49.60 prohibits discrimination in employment, credit, and insurance transactions, in public resort accommodation or amusement and in real property transactions because of race, creed, color, national origin, sex, marital status, age, or the presence or any sensory, mental, or physical disability or the use of a trained guide dog or service dog by a disabled person. The law applies to ALL real property transactions including sale, appraisal, brokering, exchange, purchase, rental, or lease of real property or applying for a real estate loan. The word “handicap” was amended to read “disability.” Individuals with HIV or perceived HIV infection shall be evaluated in the same manner as other claims of discrimination based on sensory, mental, or physical disability. Landmark legislation was passed and became effective in 2006 making Sexual Orientation a protected class in this state.

Freedom from discrimination includes, but is not limited to:

- The right to obtain employment.
- The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement.
- The right to engage in real estate transactions without discrimination, including discrimination against families with children. Families with children include a person who has a child (children) under 18 years old living with them. Parents, legal guardians, and those with written permission of parent or guardian are included. It also applies to any person who is pregnant or in the process of adoption or guardianship. Housing for seniors as in the Federal Fair Housing Act is exempt.
- The right to engage in credit transactions.
- The right to engage in insurance transactions with health maintenance organizations.
- The right to engage in commerce free from any discriminatory boycotts or blacklists.

The Washington State Human Rights Commission was created to administer the law. It is to formulate policies and make recommendations to government agencies. It is composed of 5 members appointed by the Governor with the advice and consent of the Senate.

Unfair Real Estate Practices

Discrimination in real estate transactions, facilities, or services is prohibited whether acting for himself, herself, or another. It is unfair to:

- Refuse to engage in a real estate transaction with a person.
- Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith.
- Refuse to receive or to fail to transmit a bona fide offer.
- Refuse to negotiate for a real estate transaction for a person.
- Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact so available, or to fail to bring a property listing to his or her attention, or to refuse to permit the person to inspect real property.
- Discriminate in the sale or rental or make unavailable a dwelling to a person or a person associated with the person buying or renting because of a disability.
- Make, print, circulate, post or mail a statement, ad, or sign which indicates directly or indirectly to discriminate. To use a form of application or to make a record or inquiry in an attempt to discriminate in a real estate transaction.
- Offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction.
- Expel a person from occupancy of real property.
- Discriminate in the course of negotiating, executing or financing a real estate transaction or services including title insurance.

Complaint and Relief

Any person claiming to be discriminated in Washington State must file a complaint with the Commission within 6 months after the alleged act of discrimination. If the complaint is alleging an unfair practice in a real estate transaction, it must be filed within one year after the alleged unfair practice in a real estate transaction has occurred or terminated.

The Chairperson of the Commission refers the complaint to staff for investigation. The staff can endeavor to eliminate the unfair practice by conference, conciliation and persuasion, and if eliminated, the agreement can be reduced to writing. If agreement is not made, then a hearing is scheduled with an Administrative Law Judge. Any complainant can elect for civil action in lieu of a hearing.

When an unfair practice in a real estate transaction has been committed and a finding has been made, the Administrative Law Judge shall promptly issue an order for relief which can include actual damages, an injunctive or other equitable relief. Such order may assess a civil penalty against the respondent:

- A. In an amount up to \$10,000 if there was no previous unfair practices
- B. In an amount up to \$25,000 if the respondent committed one other unfair practice in a five year period
- C. In an amount up to \$50,000 if the respondent had committed two or more unfair practices

Discriminatory Provisions in Documents

The legislature found that some real property deeds and other written instruments contain discriminatory covenants and restrictions that are contrary to public policy and are void. If a written instrument contains a provision that is void by reason of discrimination, the owner, occupant, or tenant of the property may cause it to be stricken from the public records by bringing an action in superior court.

SITUATION: Greer wanted to purchase a home in Real Plain Estates. But the CCR's are specific that people that from his background cannot own property in that development. So, can Greer still buy the house?

Requirements to comply with the Laws for those Disabled

In order to comply with fair practices with regard to the disabled:

- A person can, at their own expense make reasonable modifications of existing dwelling. A landlord, may require tenant to restore the interior of the dwelling to the previous condition.
- To accommodate the disabled, exceptions need to be made to rules, policies, practices, or services. Example: A person cannot refuse to rent if there is a "no pets rule" to a person with a seeing-eye dog.
- New dwellings must be designed in conformance with Federal Fair Housing amendments of 1988 making the accessible by persons with any disability. This includes accessible routes in building accessible light switches and controls. Reinforced bathroom walls to allow installation of grab bars and sufficient space in bathrooms and kitchens. It applies to multi-family housing with four or more units.

LOCAL FAIR HOUSING AND DISCRIMINATION LAWS

Cities and counties across the country are developing their own guidelines and laws. It is important to remember that the most laws in the county or city must be adhered to because often they include more stringent rules and a larger list of protected classes. Note the following list from the Puget Sound Area.

King County

Fair Housing Ordinance
K.C.C. 12.20
King County Office of Civil Rights and Compliance
Department

The protected classes in King county include:

Race
Color
Religion
Sex
National Origin
Disability & Guide Dog
Parental Status
Marital Status
Age
Sexual Orientation
Section 8 (housing Subsidy)

Administered by OCRC
E-224 King County Courthouse
516 Third Ave
Seattle WA 98101
(206) 296-7992

City of Seattle

Open Housing Ordinance
SMC 14.8
Seattle Human Rights

The protected classes include:

Race
Color
Religion
Sex
National Origin
Disability
Parental Status
Marital Status
Age
Sexual Orientation
Ancestry
Political Ideology
Section 8

Administered by SHRD
Arctic Building Rm 250
700 Third Ave
Seattle, WA 98104
(206) 684-4500

In addition to these, there are other jurisdictions that have discrimination laws

The City of Bellevue, Department of Community Development,

The City of Tacoma, Tacoma Human Rights Department

The City of Spokane

Other Protected Classes

NOTE in other States and cities there are a variety of protected classes. Learn from this, that at no time do you discriminate when in the real estate industry! They can include:

Personal appearance, military discharge, dishonorable military discharge, source of income, matriculation, etc.

ADVERTISING AND FAIR HOUSING

Introduction

The Fair Housing Act outlaws almost every discriminatory notice, statement, and advertising that relates to the sale or rental of housing. This advertising rule applies even to those persons otherwise exempted from the Act. For the first two decades after 1968, there were few reported court cases involving discriminatory advertising. Beginning in the early 1970's, HUD issued Advertising Guidelines, which are now published in HUD's regulations.

The Fair Housing Act makes it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage and appraisal services, because of race, color, religion, sex, handicap, familial status, or national origin. The Fair Housing Act makes it unlawful to make, print, or publish, (or cause to be made, printed, or published), any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that shows an intention to indicate any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin.

The prohibition against discriminatory advertising applies even to those homeowners who are otherwise exempted from the Fair Housing Act. The prohibitions of the Act regarding familial status generally do not apply with respect to qualified "housing for older persons."

Discriminatory Advertising Court Case

In 1972, the 4th Circuit Court of Appeals rendered a decision in *U.S. v. Hunter*, which is still today the most important court case regarding discriminatory advertising under the Fair Housing Act.

The *Hunter* case was important for three reasons.

1. The Court made it clear that The ACT applies to newspapers and other media, even if the ad was actually drafted by someone else.
2. The court held that The Act does not violate the freedom of speech clause in the first amendment.
3. The court held that whether a particular ad violates The ACT must be determined by how an ordinary reader would interpret that ad, including implicit indications of a discriminatory preference or limitation.

Subsequent court cases have held that a plaintiff need not establish that a defendant intended to express a racial preference, although a few courts have required some showing of intent to indicate a racial preference.

The first federal appellate decision dealing with the issue of human models was the 1991 2nd Circuit Court of Appeals case entitled *Ragin v. The New York Times Co.* The Times was accused of running real estate ads that showed predominately white males. In *New York Times*, the court adopted the "Ordinary" standard, and held that the Times could be liable even if the advertiser did not intend to discriminate, if the ads would discourage readers of a particular race from answering the ad.

HUD's Regulations Regarding Advertising

HUD has issued regulations (Part 109) to assist real estate brokers, persons involved in the advertising media, and other persons who make, print or publish advertising with respect to the sale, rental, or financing of dwellings. These regulations are explained below. HUD's regulations contain both specific and general guidelines concerning discriminatory advertising. Due to the lack of reported court cases concerning advertising, HUD's regulations are the primary source of law covering discriminatory advertising.

Use of Words, Phrases, Symbols, and Visual Aids

It is unlawful to make, print, or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation, or discrimination because of a protected class or criteria. This applies to all written or oral notices or statements or any documents by a person engaged in the sale or rental of a dwelling.

According to HUD's regulations, the following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations:

- (a) Words Descriptive of Dwelling, Landlord, and Tenants. White private home, Colored home, Jewish home, Hispanic residence, adult building.
- (b) Words Indicative of Race, Color, Religion, Sex, Handicap, Familial Status, or National Origin
 - (1) Race-Negro, Black, Caucasian, Oriental, American Indian.
 - (2) Color-White, Black, Colored.
 - (3) Religion-Protestant, Christian, Catholic, Jew.
 - (4) National Origin-Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.
 - (5) Sex-the exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. This regulation does not restrict advertisements of dwellings used exclusively for dormitory facilities by educational institutions.
 - (6) Handicap-crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. This regulation does not restrict the inclusion of information in advertising about the availability of accessible housing.
 - (7) Familial Status-adults, children, singles, mature persons. This regulation does not restrict advertisements of dwellings which are intended and operated by occupancy by senior citizens and which constitute "housing for older persons."
 - (8) Catch Words-Words and phrases used in a discriminatory context should be avoided, such as restricted, exclusive, private, integrated, traditional, board approval or membership approval.

- (c) Symbols or Logotypes-Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.
- (d) Colloquialisms-Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.
- (e) Directions to Real Estate for Sale or Rent (Use of Maps or Written Instructions)Directions can imply a discriminatory preference, limitation, or exclusion. Specific directions which make reference to an area which is significant to a certain race or national origin may indicate a preference. References to a synagogue, congregation or parish may also indicate a religious preference.
- (f) Area (Location) Description-Names of facilities which cater to a particular racial, national origin or religious group, such as a country club or private school designations, or names of facilities which are used exclusively by one sex may indicate a preference.

SITUATION: Peter has a for sale sign in front of house that has a religious symbol on it. His intent is to show that he is "honest."

SITUATION: In order to make it easier to find Joe's listing, the flyer and advertising say that it is "next to the synagogue."

Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of a protected class.

SITUAION: Jane tells her agent that she would like to sell the house to a nice family. She knows the neighbors and would like to keep the cul-de-sac family oriented.

Advertise the Property, Not the People who Live there or the Neighborhood

But, the words listed by HUD are not considered and exclusive list. The intent of the list is to give examples. **There is no actual list.** The wording of any advertisement whether it is directed at the general public through magazines or newspapers, or whether it is a listing in the Multiple Listing must not discriminate by being directed at or by referring to persons of any particular race, color, religion, sex, handicap, familial status, or national origin.

The issue of advertising is becoming increasingly complex.

- Does mentioning a "mountain view" violate the fair housing protections of those with sight disabilities?
- Does mentioning a "backyard with space for a swing set" discriminate against those without families?
- Does describing a smaller home as "perfect for a retired couple or empty nesters" discriminate based on age?

These are typical of cases currently before judges all over the country, and increasingly the expectation is for gender neutrality, and language which limits the creativity of the salesperson.

But using NON DISCRIMINATORY language does NOT hurt your ability to describe and market a property in its "best" light. Sell the features and benefits without placing a limitation on who can live there.. who would feel most comfortable... who you think would "fit."

Use of Words that May indicate Discrimination

The following is a list of words that could be taken to offend, appear to discriminate or put a limitation on the prospective buyers or tenants. They are words that should be avoided in advertisements.

When advertising, bear in mind that you cannot use words that are discriminatory in nature.

Seattle Times Case

A case was won against the Seattle Times newspaper where an ad said, "two blocks from St. Mark's cathedral." These words can include, but are not limited to:

Adult	Sex	Integrated	Senior Citizens*
Bachelor	Single	Membership	Physically Fit
Couple	Two people	Approval	Person
Family	Christian	Mentally Ill	Private
Mature	Executive	Religious	Race
No Children	Exclusive	Religious	Restricted
One Person	Handicap as in	Landmark	Senior Discount*
Retired	not suitable for...	Older Persons*	

*Housing for elderly may be exempt from the Fair Housing Act if specific criteria have been met.

Other Words to Avoid

This list gives a sampling of words that may indicate a preference, limitation, or discrimination towards a member of a protected class. Remember that it is NOT the intent of the real estate agent, the copywriter, or the publisher. It is the EFFECT!

Able-bodied	Employed	Mom	Retire
Active living	Empty nesters	Mother-in-Law	No seasonal worker
Adult living	Exclusive	Newlyweds	No Section 8
Adults only	Executive	No play area	Secure
Agile	Gentlemen's retreat	Non-smokers	Singles only
Alcoholics	Grandma or	Number of children	Single person
Bachelor	Grandpa	Physically fit	Stable
Board approval	Not for	Private	Students
Children or No children	handicapped	Near Private school	Synagogue
Near Church	Healthy only	Quality neighborhood	Temple
Couple	Integrated	Quiet	Two people
Dad	Kids	Quiet tenants	No unemployed
Desirable neighborhood	Mature couple	Responsible	Walking distance
Discriminating buyer	Mature persons	No retarded	Young
	Membership approval required		

Selective Use of Advertising Media or Content

According to HUD, the selective use of advertising media or content, when particular combinations are used exclusively with respect to various housing developments or sites, can lead to discriminatory results and may indicate a violation of the Fair Housing Act. The following are examples specified in HUD's regulations concerning the selective use of advertisements which may be discriminatory:

- (a) Selective Geographic Advertisements. Selective use may involve the (1) strategic placement of billboards; (2) brochure advertisements distributed within a limited geographic area by hand-delivery or in the mail; (3) advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or (4) displays or announcements available only in selected sales offices.
- (b) Selective Use of Equal Opportunity Slogan or Logo. When placing advertisements, the real estate broker should not selectively use the equal housing opportunity slogan or logo. For example, it is improper to use the slogan or logo in advertising reaching certain geographic areas, but not others, or with respect to certain properties but not others.
- (c) Selective Use of Human Models When Conducting an Advertising Campaign. Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial segment of the population (or other classes of persons such as families without children), without a complementary advertising campaign that is directed at other groups.

Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities.

SITUATION: Sam only advertises units available in his apartment building in local media in the adjoining town hoping to change the racial mixture in the building by targeting another racial group.

Refusing to publish advertising

Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of a protected class.

SITUATION: Debbie charges more for advertising on her listings that are on the other side of the freeway because the neighborhood has a larger population of minorities of color.

Guidelines for Advertising

- Avoid using words that describe the neighborhood, the landlord, the seller, the prospective buyers. Describe the property and its features.
- Do not use directions to the property or in written ads that refer to landmarks that are religious, racial or ethnic in nature. They could signal a preference or a limitation.
- Do not use catchwords, such as restricted, exclusive, private, integrated, tradition, conservative, board or membership approval.
- Do not use symbols or logotypes that imply or suggest discrimination. When listing a property for sale watch to make sure that there are no symbols that could indicate a preference or limitation toward buyer of a protected class. Make sure there are no logos or symbols that indicate that you, as an agent, have a preference for, or against working with clients of a protected class.
- Do not target ads to one particular segment of the community.
- Do not use models in photo ads that are only of one race or color, for example, over a significant period of time or for a specific development.
- Do not advertise in:
 - (a) A strategically limited geographic area
 - (b) Particular editions of newspapers to reach a particular segment of the community
 - (c) Only small papers that cater to particular ethnic or religious groups rather than general circulation papers
 - (d) Only to selected sales offices
- Do indicate that a property is accessible or intended for older persons as defined in the law.

Fair Housing Policy and Practices

Use of Equal Housing Opportunity Logotype, Statement, or Slogan.

According to HUD's regulations, all advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan. This acts as a means of informing the public that the property is available to all persons.

Do your flyers have the Equal Housing Opportunity Logo?

Fair Housing Poster.

HUD's regulations require certain businesses (including brokerage companies and any business providing federally subsidized housing) to display a fair housing poster in their office. A court can view the failure to display the poster as an element in finding a person in violation of the Fair Housing Act.

Is there a Fair Housing Poster in your office?

Affirmative Advertising Efforts

HUD's regulations do not restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

Is there a policy in your office?

GLOSSARY OF TERMS FOR FAIR HOUSING

Blockbusting-Blockbusting occurs when a person, such as a real estate broker, induces or attempts to induce an owner of a dwelling to sell or rent that dwelling, by making representations regarding the entry or prospective entry into the neighborhood of persons of a particular race or other protected class. The main purpose of the ban on blockbusting is to prevent the real estate industry from preying on the fears of property owners, especially in racially transitional areas, and thereby inducing panic selling.

Broker or Agent-Any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

Discriminatory Housing Practice-An act that is unlawful under section 804, 805, 806, or 817 of the Fair Housing Act.

Dwelling-Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families. This also includes any vacant land which is offered for sale or lease for the construction of any such building, structure, or portion thereof.

Exclusionary Zoning-This occurs when local governments, such as cities or counties, use zoning or other local land-use laws to inhibit housing projects that are likely to include racial minorities or other persons who belong to a protected class.

Fair Housing Act-Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3600-3620).

Person-Individuals and also corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under the Bankruptcy Code, receivers, and fiduciaries.

Redlining-Refers to mortgage credit discrimination based upon the racial makeup of the neighborhood where the home is located. The term redlining is derived from the practice of certain lenders that used maps with integrated and minority neighborhoods outlined in red, as an indication of a poor risk area. Redlining also refers to similar discrimination in the insurance industry with regard to home insurance.

Steering-Occurs when a person, such as a real estate broker, directs prospective home buyers or renters to different areas according to their race, or based upon the fact that the person belongs to another protected class.

Tester-A person or organization who, without an intent to rent or purchase a dwelling, pose as renters or purchasers for the purpose of collecting evidence of unlawful discriminatory practices, such as steering or refusal to rent or sell. Testers have standing to sue even though the tester may have had no intention to rent or purchase the dwelling.

To Rent-Includes to lease, to sub-lease, to let and otherwise to grant for a consideration the right to occupy a premises not owned by the occupant.

APPENDIX

Discussion Questions

Do these examples tend to violate the Fair housing and Discrimination laws?

Peter, a real estate licensee, has a “For Sale” sign with a religious symbol on the front posted in front of a house he has listed for sale. His intent is to show that he is “honest.”

In order to make it easier to find Joe’s listing, the flyer and advertising say that it is “next to the synagogue.”

Carol has owned her home for almost half a century. She wants to make sure that it sells to a family just like the one she raised in the home. She sells it “by owner” and includes in her ads, “A home perfect for a family with small children.”

When George advertises his listing he includes the following description. Could these words show a preference, limitation, or discrimination?

- Incredible view home
- Master suite opens to expansive deck
- Near shopping and schools

Clara has a unique home listed for sale in an upscale neighborhood. She advertises with the following words. Could these words show a preference, limitation or discrimination?

- Traditional neighborhood
- Perfect for your most discriminating purchaser
- Master suite has adjoining nursery
- Maids quarters on lower level
- Walking distance to the temple

Jane tells her agent that she would like to sell the house to a nice family. She knows the neighbors and would like to keep the cul-de-sac family oriented.

Mike advertises a house as “perfect for an extended Asian family.”

A complex that is designed for “older persons” runs advertisements. Could these words show a preference, limitation, or discrimination?

- Perfect for a retired couple
- Quiet complex
- For the active senior life

Yoshiko markets a small condominium next to the library as “a retired couples dream.”

A landlord is insistent to his agent that he will not accept an application from a tenant on Section 8 housing subsidy program.

Discussion Questions

Opera Singer

Landlady Jones refuses to rent a townhouse to Opera Singer Smith because she thinks the opera singer's afternoon practice sessions will disturb the other residents. Opera Singer Smith feels that she has been illegally discriminated against and files a Fair Housing Complaint.

1. *Has Opera Singer Smith been discriminated against? Why or Why Not?*
2. *Has Opera Singer Smith been illegally discriminated against? Why Not?*

Bald is . . .

Landlord Harry refuses to rent to Bob Billiard Ball because he is bald. Landlord Harry explained to Bob that in the past when ever he has rented to bald men they would have wild parties and caused damage to his property. Therefore Landlord Harry will not rent to any more bald men. Bob feels that he has not been treated fairly and files a Fair Housing Complaint claiming that he has been illegally discriminated against.

1. *Has Bob been discriminated against? Why or Why Not?*
2. *Has Bob been illegally discriminated against? Why or Why Not?*

No Children Allowed

Owner Owen instructs Broker Jane, after giving her the a listing to sell his home, not to show this house to any family with children because it is located in an adult community. Two weeks later Broker Jane receives a telephone call from a couple who have a five year old daughter and they would like to see Owner Owen's property. Broker Jane informs the couple that she will not show the house to them because they will not be able to purchase the house because of their daughter. This family feels they are being illegally discriminated against and file a Fair Housing Complaint.

1. *Has this family been discriminated against? Why or Why Not?*
2. *Has this family been illegally discriminated against? Why or Why Not?*
3. *If you were the agent would you have done anything differently than Broker Jane? If so what would it have been?*

Oh What a Beautiful House:

A luxury four bedroom single family home is being offered by the owner as a rental. The house is furnished with expensive light colored furniture. The house has a white carpet. We show the house to a family that has a one year old, a three year old, a six year old and an English Bulldog. They complete a rental application. We verify the information and find out that they do meet our financial requirements and have excellent employer and personal references. We present this information to the owner who asks us to find a way not to rent to this family.

1. *Will this come under the Federal Fair Housing Act? If you answered yes, what protected class?*
2. *What reason(s) could we give to deny the rental to this family?*
3. *If we refused to rent to this family would we be in violation of the Federal Fair Housing Act? Why or why not?*

Naked Pool

A single family home has a swimming pool in the backyard. The swimming pool has no fence around it. The windows do not have any locks. The Arcadia door has a handle lock but no other special locking mechanism. The home is located in a town that has not pool ordinance requirements for single family homes. A family with a two year old and four year old wants to rent the home. Their two children do not know how to swim and they feel this home with the pool will give them an opportunity to teach them. The family qualifies financially and has excellent references.

1. *What would you do to reduce the risks of this rental?*
2. *What reasons could you give the family for not renting to them? Would they be in violation with the fair housing acts?*

FAIR HOUSING QUESTIONS

How would you respond to the following questions from a building owner?

1. What color are the prospects? Are they Christian? Do they have children? Are they married?
2. I do not want the resident to change the apartment. It is my property and I do not want any changes? It doesn't matter that they need a ramp for the wheelchair!
3. Please do not rent my house to any children?

How would you respond to the following statements or questions from a prospective buyer or tenant?

4. I only want to see properties in black neighborhoods.
5. What is the racial composition of this community?
6. I will rent (buy) this house if you install an elevator to make the second story more accessible for my wheelchair.

How would you respond to the following statements from another real estate agent?

7. I know just where that nice Anderson family would love to live. It is a cute four-bedroom house in that family subdivision south of town.
8. I have been in this business a long time and I can spot a tester a mile away. I am always prepared for them.

Answers

Question 1: What color are the prospects?

When this question is asked, either you have failed to communicate to the owner that a decision to rent or sell cannot be based on the prospect's race, or the owner refuses to accept the consequences of illegally discriminating under the fair housing laws.

This type of question should alert you to problems that may become very serious when marketing this owner's property.

Explain that that is the kind of question that by law you are not allowed to answer. There are consequences if you do answer it. In addition an owner/landlord can be in violation of the laws and could be subject to consequences also. So, you, as their agent, are helping to protect them from violating the laws!

Question 2: I do not want the resident to change the apartment. It is my property and I do not want any changes.

The Fair Housing Act prohibits refusal to permit at the disabled person's expense, reasonable modifications of existing premises occupied or to be occupied by a disabled person, if the modifications are necessary for this person to fully enjoy the premises.

The property owner may require the renter to:

- Submit a reasonable description of the modification
- Have the modifications completed in a workmanlike manner
- Obtain required building permits
- Restore the interior of the premises to the condition existing before modifications
- unless the modification does not interfere with the next renter's use and enjoyment of the premises.
- Suggest that the owner establish written policies and procedures for making modifications or accommodations for the disabled.

Question 3: Please do not rent my house to any children?

When the question is phrased in this manner you can add a little humor to the moment by assuring the owner that you have never rented to children.

Explain to the owner that refusing to rent or sell housing to a family because they have children is a violation of the familial protective class of the Fair Housing Act. The owner should be informed that a common myth is that children do damage to property. The reality is that the serious damage to property is more frequently done by adults not children.

Adult communities are exempt from the familial protective class.

Question 4: I only want to see properties in black neighborhoods.

Real estate agents often work with prospects and home seekers who have a preference for a neighborhood with a specific racial, religious or ethnic character. Federal law prohibits you from marketing property based on the racial or ethnic makeup of the neighborhood.

If the prospect insist on restricting the housing search on the basis of race, color, religion, sex, handicap, familial status or national origin of a building or neighborhood's residents, you should specifically note this on the prospects Equal Service Report or rental application. Have the prospect tell you the neighborhood or area. You as an agent do not know the racial, religious, etc. background of the neighborhood.

Question 5: What is the racial composition of this community?

Never estimate or give an opinion about the racial, religious or ethnic composition of a neighborhood or building. Refer prospects to sources of information, such as the library or the local municipal offices, so they can research the questions themselves.

Question 6: I will rent (buy) this house if you install an elevator to make the second story more accessible for my wheelchair.

Owners must be aware of the handicapped protective class of the Fair Housing Act. They should also know the limitations of this provision. The handicapped provision does not require an owner to install an elevator in a two story rental property.

The owner may install an elevator if he or she elects to. It may be a favorable thing to do to attract and keep disabled residents longer but it is not required by the Federal Fair Housing Act.

Question 7: I know just where that nice Anderson family would love to live. It is a cute four bedroom house in that family subdivision south of town.

Real estate agents must always let their clients tell them what they want to see and where they want to live. To assume that a family wants to live in an area with other families may not be a correct assumption. Let members of the family tell you what they are interested in.

Ask open ended questions that begin with what, when, where, and why. Then listen to their responses.

Experienced agents who have developed efficient techniques in qualifying their prospects must guard against falling into the “steering” trap. The real estate agent must be effective with people and efficient with things.

Question 8: I have been in this business a long time and I can spot a tester a mile away. I am always prepared for them.

A well trained tester does not look or act any differently than a regular prospect. They are not easily detected. Testers do not have to reveal their status to you even if they are asked.

Therefore you will probably never know if you are dealing with a tester.

The real issue is not if a person is a tester but that you do not illegally discriminate against anyone in housing. If you treat everyone fairly and in accordance with the fair housing laws everyone of your prospects could be a tester.

Learn from these Lawsuits

Can agent answer questions about the race of prospects?

In 1992, Sylvia Arias was a licensed real estate agent working for Annette and Janos Banai, a New York couple hoping to rent their single family home in Hollywood, Florida. The couple Arias found for the house, former Princeton Florida residents Betty Brinson and Steve Times were, like many in Dade County at the time, left homeless in the wake of Hurricane Andrew. As they began their search for alternative housing, Brinson and Times soon discovered just how acute South Florida's housing shortage was following the storm. They were particularly delighted, therefore, when they noticed the newspaper advertisement that Arias had placed for the Banais' house. Arias met with them and determined that they were qualified tenants. She then telephoned the Banais in New York to tell them she had found a "very nice couple" who wanted to rent the house. During that call, Mrs Banai Asked Arias "Are they Hispanic?" Arias replied "no." Mrs Banai then asked "are they black?" to which Arias replied "yes." Based on the information, the Banais refused to rent the house to Brinson and Times, instructing Arias to "find someone else."

Arias reported that conversation to her supervising broker Linda O'Brien, who terminated the listing with the Banais immediately.

The Atlanta HUD office filed a charge of discrimination against the Banais and Arias, the real estate agent. The trial lasted two and half days in Miami in 1999.

Should Arias have answered the questions about the race of the prospective tenants?

Can the Owners of the property in New York have the right to choose the tenants for their rental house they owned?

The judge in the trial in Miami found that Sylvia Arias, the real estate agent, had violated the Federal Fair Housing Act by answering Banai's questions about the race and national origin of the prospective tenants. The judge wrote that the \$100 civil penalty assessed against Arias for that violation would demonstrate to the real estate world "that questions concerning the race and color of applicants must remain unanswered."

As for the Banais, the judge ordered them to pay Brinson and Times a total of \$70,000 in damages and an additional \$10,000 for fines.

HUD v. Banai, HUDALJ no. 04-93-2060-8 Office of Administrative Law Judges, Feb 3, 1995.

Learn from this case that it is important to not answer questions regarding protected classes. The Federal Fair Housing act lists 7 protected classes. They include:

Race, Color, Religion, Sex, National Origin, Familial Status, Handicap.

In the city of Seattle and King County, there are a number of other protected classes that include: Age, marital status, section 8, sexual orientation, etc. Check with your local jurisdiction as to the protected classes.

Can an association limit the number people in condo?

Charles Sullivan of Shelton Connecticut wished to sell in November 1999 his 3 bedroom condominium unit to Patricia Kelley, a single mother with four children ages 7-13. At that time, Mr. Sullivan requested that the condo association allow the sale to go through. However, the response he received from Ms Hasselbacher was that the sale could not go forward due to the fact that occupancy by the Kelley family of 5 family members would be in violation of condominium by laws which only permit a maximum of four family member per unit. Ms. Hasselbacher did indicate that Mr. Sullivan could request an amendment of these bylaws but such would require 90 days to carry out and any expenses incurred by the amendment process would have to be borne by Mr. Sullivan. Sullivan contacted Joe Wincze of the Fair Housing Association of Connecticut.

Joe Winze of the Fair Housing Association informed Mr. Sullivan that under the fair housing guidelines, limiting the number of occupants to a particular unit of less than two people per bedroom (in most instances) would be considered too restrictive and discriminatory and presumed to exclude families with minor children. His efforts to reason with the condominium and its attorney were apparently futile. Not only was Colonial Village unwilling to change the by laws on their own and not backing off their position that sale of the unit to the Kelley family would be violation of he bylaws; but to make matters worse, the condo President, Ms. Hasselbacher, had informed Ms Kelly that if she occupied the unit in violation of these bylaws she might be subject to a \$25 per day fine. Needless to say, the sale fell through when Kelley did not want to run the risk of incurring a daily fine.

Can the condominium association have a restriction as to the number of occupants in the unit?
Is there an occupancy standard?
Was the 90 day amendment time putting a hardship on the seller of the unit?

In March 2001 a cause finding was made by the Connecticut Commission on Human Rights & Opportunities following a full investigation indicating that they believed Colonial Village and their President, Hasselbacher, committed an act of discrimination against both Sullivan and Kelley. Subsequent to the cause finding, settlements were negotiated with Colonial Village, which resulted in \$3750 being paid to Kelley and \$11,000 paid to Sullivan. The by-law in question was changed and is now in compliance with the law. Fair Housing Association of Connecticut, Bridgeport, CT. , March 2002.From the National Fair Housing Advocate Online.

Learn from this case that occupancy issues are difficult. They arise in home sales in condominiums, as well as, rental apartments and rental houses. Often property managers will use a rule of thumb of 2 persons per bedroom plus 1.... or just 2 persons per bedroom. Be very careful when you come across an occupancy limit that may appear to discriminate against families.

FAIR HOUSING BUSINESS PRACTICES QUESTIONS

Multiple Choice

1. During the initial contact with the customer you should do all of the following except:
 - a. Find out what the needs of the customer are
 - b. Explain the services offered by your company that are relative to their needs
 - c. Offer refreshments if they do not have children
 - d. Keep records of these contacts

2. When letting the customer set the limits in the housing search you should allow them to choose:
 - a. Communities or areas
 - b. Features in the house or apartment
 - c. Price
 - d. All of the above

3. When an agent asks how many children a prospect has the agent is:
 - a. Trying to determine how many bedrooms the prospect will need
 - b. Violating the Fair housing Act
 - c. Not in violation of the Fair Housing Act
 - d. None of the above

4. When your client asks you not to rent their home to children. Your response will be:
 - a. Do not worry we have never rented to a child
 - b. Why do you not want us to rent to a family with children?
 - c. That would be a violation of the Fair Housing Act
 - d. All of the above

5. Appropriate criteria in selecting a tenant would include all of the following except:
 - a. Use of drugs or alcohol
 - b. Rent-to-income ratio
 - c. Credit record
 - d. Rent payment pattern

6. ____Property rights for all citizens have been an issue in the U.S. for ONLY the last decade.

7. ____Regardless of the effect, if the agent did not *INTEND* to discriminate there is NO violation.

8. ____Housing qualified as for “older persons” can exclude children under the law.

9. ____Local fair housing laws can include more protected classes than the federal laws.

10. ____ There is no actual complete list of all the words that could show discrimination.
11. ____ The Equal Housing Opportunity Logo must be on all real estate display advertising.
12. ____ Familial status includes pregnant women.
13. ____ AIDS is considered a disability under the federal fair housing act.
14. ____ The Federal Fair Housing Act does not violate the freedom of speech clause in the first amendment of the constitution.
15. ____ Sellers are allowed to discriminate in their ads if they don't list with an agent.
16. ____ Fair Housing only applies to minorities.
17. ____ The Federal Fair Housing Act was signed shortly after Martin Luther King was shot.
18. ____ In 1988, "age" was added as a protected class under the Federal laws.
19. ____ The Federal Fair Housing Act only applies to the sale of residential houses and not apartments.
20. ____ The Fair Housing Act does not cover those people that are using illegal drugs.
21. ____ Handicapped covers persons that have a physical disability or mental impairment.
22. ____ The U.S. government and H.U.D have set occupancy standards for all apartments.
23. ____ "Housing for older persons" can discriminate against those of certain religions.
24. ____ It is lawful to enforce a covenant that excludes people of a certain race in the area.
25. ____ Federal Fair Housing Laws only apply to sellers and owners and NOT to agents.

26. Which of these is NOT one of the protected classes under the Federal Fair Housing Act?
 - a) Race
 - b) Color
 - c) Age
 - d) Religion

27. Familial Status includes the following, EXCEPT;
 - a) Pregnant women
 - b) Parents with children
 - c) Guardians with children
 - d) Only children under 13

28. If a one level home with a level entry is accessible, the agent can advertise using which headline?

- a) Wheelchair Buyers Call Today
 - b) Accessible Home
 - c) Perfect for Seniors
 - d) Dwelling for Disabled
29. A two story home with a bonus room and play equipment in the backyard can be advertised with which headline?
- a) Bring the Kids
 - b) Perfect Family Home
 - c) Children will Jump for Joy
 - d) Two Story Charmer on Cul de Sac
30. Examples of “catch words” that can be discriminatory include the following, EXCEPT:
- a) Split Level
 - b) Exclusive
 - c) Private
 - d) Traditional
31. A small apartment with one bedroom can be advertised with which headline?
- a) Bachelor Pad
 - b) One Bedroom, Low Rent
 - c) Singles Retreat
 - d) No Kids
32. Directions to real estate for sale cannot show a discriminatory preference. The following are examples, EXCEPT:
- a) Near Pine Tree Park
 - b) Walk to the Synagogue
 - c) Hear the Church Bells Chime from St. Paul’s Parish
 - d) Tiptoe to the Temple
33. A small rambler can be advertised using which headline?
- a) Empty Nesters Delight
 - b) Small Home with Garden
 - c) Retire in Style
 - d) Singles Retreat
34. Which of the following headlines does not violate fair housing laws?
- a) Oriental Flavor
 - b) Spanish Hacienda
 - c) Cajun Influence
 - d) Classic Decoration
35. Choose the advertising that may show a preference or limitation.
- a) Mountains in the background
 - b) For Your Most Discriminating Buyer
 - c) First Time Buyer Call Today
 - d) Instant Equity
36. A religious symbol on a “For Sale” sign;
- a) Shows that the agent is “honest” and is therefore not in violation of fair housing.

- b) Could show a preference for those of that religion therefore violates the law.
 - c) Is not in violation because it is on a sign and not in the newspaper ads.
 - d) Does not violate the law if the symbol is Christian.
37. Advertising that falls under the fair housing laws includes the following:
- a) Newspaper classified ads
 - b) Flyers on listings
 - c) Web site advertising
 - d) All of the above
38. Avoid using words that describe the following, EXCEPT;
- a) The features of the house
 - b) The neighborhood
 - c) The prospective buyers
 - d) The sellers
39. When advertising for a tenant it can be acceptable to specify gender in which situation?
- a) College dorm rooms
 - b) A spare bedroom in a home for rent
 - c) Neither of the above
 - d) Both of the above
40. The following can be liable if they violate the fair Housing laws, EXCEPT;
- a) Sellers
 - b) Newspaper publishers
 - c) Real estate agents
 - d) Store owners



Answer Sheet... Fair Housing

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I attest that I have read the materials and have answered the questions.

Date Course Started _____ **Date Course Completed** _____

Print Name _____ **Company** _____ **Signature** _____

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	No			Yes	
Will the material you learned improve your performance?	1	2	3	4	5
Were the course materials easy to follow?	1	2	3	4	5
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Was the course material interesting?

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- 1.
- 2.
- 3.

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