

Discrimination Under Fair Housing Laws

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As a New Jersey Realtor®, it is important to stop and consider your own possible biases and make sure that you do not discriminate against anyone who is protected under fair housing laws. For example, can you advertise that a landlord does not accept Section 8 tenants? Should you use credit reports and background checks to screen tenants? Is it appropriate to show an Orthodox Jewish buyer homes in what many consider to be an Orthodox Jewish community?

Discrimination, whether intentional or unintentional, comes in many forms. Let's talk about who is protected and who is not protected and what can be done under the New Jersey Law Against Discrimination ("LAD") and federal Fair Housing Act ("FHA").

Law Against Discrimination

What groups are protected under LAD?

In the real estate context, LAD prohibits landlords, sellers and real estate licensees from discriminating against people based upon race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, pregnancy or breastfeeding, sex, gender identity or affection, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, nationality or source of lawful income used for a rental or mortgage payment.

What is a source of lawful income?

As an example, although many landlords like to rent to tenants who are receiving Section 8 funds because they are comfortable that the rent will be paid, some landlords for some reason do not want to rent to Section 8 tenants. However, since Section 8 funds are a lawful source of income, a landlord cannot refuse to rent to a tenant solely because the tenant is receiving Section 8 funds. As a result, if you are representing a landlord, you cannot state or imply to a tenant, whether in advertising or otherwise, that the landlord does not want to rent to a tenant who is receiving Section 8 funds.

Fair Housing Act

What groups are protected under the FHA?

The FHA provides that it is unlawful to discriminate in the sale or leasing of dwellings based on race, color, religion, sex, familial status, national origin or disability.

Are there exceptions to the FHA?

There are. The FHA generally does not apply to single-family houses that are sold or rented by an owner who does not own more than three-single family houses, does not reside in the house and was not the most recent resident prior to the sale. However, it applies if such an owner retains a real estate broker.

There also is the "Mrs. Murphy" exception if the owner lives in the building and there are no more than four families living there. In addition, private clubs and religious organizations typically are exempt, as are governmental maximum occupancy requirements.

One final exception is for housing for older persons, which is an exception from "familial status" protection and applies to housing developments for persons who are 55 years of age or older where 80 percent of the occupied units are occupied by at least one person who is 55 or older and for developments solely occupied by persons 62 years of age or older.

This only applies to intentional discrimination, right?

Not really. The United States Supreme Court decided that the FHA not only can be violated if there is intentional discrimination but also if there is a "disparate impact" on one of the protected groups.

What does disparate impact mean?

Let me give you an example. If a landlord directs you not to rent to anyone who has been convicted of a crime, that may seem to be an evenhanded approach to avoid any

discrimination. However, since African Americans are jailed at a rate nearly three times the general population, there would be a disproportionate impact on African Americans if all people who had a criminal record were excluded from consideration. Whether or not you use criminal background checks in evaluating a tenant, you therefore have to be very careful not to rely upon any one basis when you are deciding who is a viable tenant and should rely upon as many different criteria as you can.

Could a licensee be charged with discrimination by showing homes to a family in a neighborhood where people from a similar background live?

Yes. That is known as steering and is prohibited under LAD and the FHA. You always should focus on the property and the physical amenities in the community, such as the schools, shopping, and proximity to highways and other transportation, not the people who live in the community, when recommending homes for a buyer.

What about tenants who want to have an assistance animal live with them but the landlord has a strict no pet policy? How is that handled?

LAD and the FHA require that a landlord allow a tenant to have an assistance animal regardless of the landlord's policy concerning pets. An assistance animal can be a service animal, which must be trained to provide a service, like a seeing eye dog, or can be an animal that will do work, perform tasks, provide assistance and/or therapeutic

emotional support for individuals with disabilities, which typically are called support animals. An animal that does not qualify as an assistance animal is subject to the landlord's policy concerning pets, including a no pet policy. A landlord may not charge a fee or deposit for an assistance animal but may charge the tenant for any damages that are caused by the assistance animal.

Who enforces all of this?

In New Jersey, the New Jersey Division on Civil Rights enforces it and, on the federal level, the United States Department of Housing and Urban Development enforces it. Not only can the penalties they impose be severe but the New Jersey Real Estate Commission also could sanction you for violating LAD or the FHA, including taking away your real estate brokerage license.

What advice can you give to licensees to adhere to these policies?

The most important suggestion I can give to you is that you should be very careful what you say and do. Your words and conduct have an impact on people, many of whom have suffered discrimination in their lives and may take your comments or what you do in the wrong way. Of course, any time a landlord or seller indicates a preference to deal with a person in any protected group different than a person in another group, let them know that you are not permitted to do that. If they persist, immediately get advice about how to handle the situation. ■

