



April 2005

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Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

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Diversity and Fair Housing

The federal Civil Rights Act of 1866 states, "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." The United States Supreme Court in *Jones v. Mayer* (1968) held that this act prohibits public and private racial discrimination in the sale or rental of real estate. In the 1950s and 1960s, fair housing law was generally thought of in terms of prohibiting housing discrimination against African-Americans who were refused housing because of the color of their skin, their ancestry and their race. Prejudiced Americans who had been taught to fear the unknown excluded African-Americans from their housing and neighborhoods. Regrettably, discrimination against African-Americans is not just an ugly memory from the past, as evidenced by the cases of racial discrimination against African-Americans handled by the U.S. Department of Housing and Urban Development (HUD) even today.

For the real estate professional of the 21st century, avoiding discrimination based upon race, color, national origin and ancestry has taken a new twist as a result of the ever-growing diversity in our country and in our state. As the data from the 2000 United States Census Bureau confirms, Wisconsin is becoming increasingly diverse. The growing Latino and Southeast Asian populations in Wisconsin constitute a

growing proportion of first-time homebuyers. The number of persons from other countries and cultures in Wisconsin also seems to be on the rise. For example, Somalian refugees are settling in northwest Wisconsin and Minnesota. The fair housing emphasis for the successful and profitable REALTOR® entails not only guarding against discrimination, but also being prepared to provide an equal opportunity for housing to people with different cultures and customs who may not speak English.

Demographic data also indicates that a large segment of the overall population in this country and in this state is aging. Many of these older persons may develop special needs or disabilities as they mature, increasing the demand for housing and services that readily accommodates persons with disabilities. A successful and profitable REALTOR® will also be equipped to capably serve both the growing elderly population and others with special needs or disabilities.

This *Legal Update* looks at how REALTORS® may avoid discrimination by providing equal access to brokerage services and housing to Wisconsin's diverse population. The *Update* reviews the basics of fair housing law, as well as U.S. Census information and other data reflecting the growing cultural diversity in the United States and Wisconsin. This issue reviews cultural, historical, religious and other information helpful

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when working with persons from Southeast Asian, Latino, Muslim and Somali cultural backgrounds. The *Update* also examines recent fair housing concerns relating to discrimination against Muslims since September 11, companion animals, accessibility requirements for new construction, housing for older persons and the use of Section 8 housing vouchers.

REALTORS® Working in a Diverse Society

The increasingly rich diversity in culture, religion and tradition found in our society in the 21st century means that persons who successfully interact with these different populations may need to become aware of different values, manners and gestures that may need to be observed in order to successfully interact with people from various ethnic groups.

REALTORS® may need to make adjustments to succeed in this diverse climate. Language can be a major obstacle unless provisions are made to hire agents from different cultural backgrounds or provide competent translation and interpreter services. Learning and respecting various value systems, manners, customs and traditions may also enhance the prospect of a successful interaction.

Diversity in Wisconsin also includes, in broad terms, persons with disabilities and the growing number of older persons. Serving this population may require ensuring that offices and properties are accessible, while also providing auxiliary aids to promote successful communication and understanding among the parties.

Protected Classes under Fair Housing Law

The 1968 federal Fair Housing Act prohibits discrimination in the sale, renting, or financing of housing on the

basis of race, color, religion, gender and national origin. The 1988 Fair Housing Amendments Act created new protected classes based upon handicap and familial status. Additional protected classes under Wisconsin law include those defined by ancestry, age, lawful source of income, marital status and sexual orientation.

Housing discrimination continues to occur. It is sometimes difficult to gauge the frequency because many consumers may not recognize housing discrimination or may not wish to complain. For instance, some Latinos may hesitate to file discrimination complaints for fear their legal status may be investigated. Some observers believe that discrimination against Latino and African-American homebuyers has decreased, while others believe that housing discrimination is rampant against persons with disabilities, Native Americans and Asian Americans.

Buying Power of Ethnic Groups

The results of a recent survey by the Real Estate Center shows variances among ethnic groups in their experience purchasing real estate. Latinos have the least experience with real estate agents or home ownership, are very financially conservative and turn to family as the primary source of information and advice. Many Spanish-speaking Latinos want or need a real estate agent who speaks Spanish because they do not feel comfortable conducting transactions in English. The survey indicated that African Americans are often receptive to real estate agents, are likely to seek information and advice from them, and are also financially conservative. Asian Americans were shown to be receptive to real estate agents, to rely upon them for information and advice, to show interest in expensive homes, and to be most likely to prefer new construction and feel fairly comfortable

Key Terms

Race: a person's membership in a group possessing characteristics and traits transmitted by descent, e.g. White, African-American, Latinos, etc.

Color: A person's skin color

National Origin/Ancestry: The country where a person or his or her ancestors originated or came from. Ancestry means a person's racial and ethnic background.

Religion: A person's religious or spiritual beliefs and practices, or his or her denominational affiliations.

Handicap/Disability: Whether a person has a physical or mental disability that substantially limits one or more major life activities, has a record of about a disability, or is regarded as having such a disability. Examples include: hearing, mobility and visual impairments; chronic alcoholism or mental illness; AIDS/HIV; mental retardation; multiple sclerosis; and epilepsy. In Wisconsin, it does not include a person who currently uses illegal drugs/controlled substances unless the person is in a supervised drug rehabilitation program.

Familial/Family Status: Whether persons are members of families in which one or more children under 18 years old live with a parent, a person with legal custody, or the designee of the parent or legal custodian (with written permission). It also includes preg-

nant women and persons seeking legal custody of a minor. Wisconsin law also includes person seeking physical placement or visitation rights of a minor child; and persons whose household includes one or more adults or minors in their legal custody, or pursuant to physical placement, visitation rights, or a court-ordered guardianship.

Sex: Gender; whether a person is male or female.

Age: The age of persons at least 18 years old. Children under 18 years of age are protected on the basis of family status. (Wisconsin law)

Lawful Source of Income: The source of a person's income provided that it is legal. This includes lawful compensation or remuneration in exchange for goods or services; profit from financial investments; and any negotiable draft, coupon, or voucher representing monetary value such as food stamps, Social Security, public assistance, unemployment compensation, or worker's compensation payments. (Wisconsin law)

Marital Status: Whether a person is single, married, divorced, separated or widowed. (Wisconsin law)

Sexual Orientation: Whether a person has a preference for heterosexuality, homosexuality or bi-sexuality; has a history of such preference; or is identified with such a preference. (Wisconsin law)

with the overall home buying process.

Buyers from these groups comprise around 40 percent of first-time homebuyers and it is projected that they will account for more than 50 percent of first-time homebuyers by 2010.

The buying power of Latinos and Asian Americans is expected to increase by over 50 percent from 2002 to 2007. By 2009 the overall buying power of African Americans, Asian Americans and Native Americans will more than triple from its \$242 billion level and exceed \$1.1 trillion, according to a study by the Selig Center for Economic Growth at the University of Georgia. In 2009, African Americans will account for

almost nine cents out of every dollar spent, due in part to improving employment opportunities, increasing numbers of black business owners and a population growing faster than the total population. Forty-eight percent of African-Americans are homeowners compared to 67 percent for white and other households. Native Americans will account for only 0.6 percent of U.S. buying power in 2009 although Native American buying power continues to grow due to gradual improvement in employment opportunities.

To effectively assist this growing group of first-time homebuyers, it may be necessary to provide home-

buying education and credit counseling. Providing information about mortgage options or obtaining financing despite poor credit can help these groups become confident about becoming homeowners.

Working with People from Asian Cultures

The household size of Asian Americans is larger than the household size of the total population by approximately one person. Asian Americans live in overcrowded conditions in a greater proportion than the overall population. Asian Americans are better educated than the average American and many hold top-level jobs.

Census Shows Wisconsin Becoming Older and More Diverse

Wisconsin, once predominantly white except for Native Americans, became more Asian and more Latino during the 1990s, according to U.S. Census Bureau.

The number of Latinos in the state doubled from 93,194 in 1990 to 192,921 in 2000. Asians totaled 52,782 in 1990; in 2000, 88,763 listed Asian as their only race and a total of 102,768 chose Asian as one of their races, an increase of over 50 percent. Native Americans totaled 39,387 in 1990; in 2000, 47,228 listed Native American as their only race and a total of 69,386 chose Native American as one of their races. However, African Americans still outnumber Latinos and Asians combined. In 1990, the state's black population was 244,539. In 2000, 304,460 people chose black as their single race, and a total of 326,506 chose black as one of their races. By contrast, the white non-Hispanic population rose from 4.5 million to 4.7 million, but as a share of the state's total population, declined from 91 percent to 89 percent.

A 2004 study by the Asian American Real Estate Association of America and the 2000 United States Census show that Asian Americans are the second fastest growing racial group after Latinos and now comprise 4.2 percent of the total United States population. This is a diverse population with many ethnic, language, cultural, historical and religious differences. The three largest Asian American groups nationally are Chinese, Filipino and Asian Indian. Asians have larger median household incomes than the total US population, but also tend to have lower median per capita incomes. One area with high Asian median household incomes is the Kenosha/Chicago/Gary area. Median per capita incomes are especially low for Cambodians, Hmong, Laotians and Vietnamese. The 2000 U.S. Census data shows that about 31 percent of Asian Americans were natives, while 34 percent were naturalized citizens and 34 percent were not citizens.

Census data from 1994-2002 indicates that in the Midwest, naturalized citizens were more likely to be homeowners than those born in the United States or to American parents. Seventy-four percent of those born in the U.S. were homeowners, compared to 78.2% of the naturalized citizens. On a national basis, naturalized citizens born in Europe had a 74.5% homeownership rate in 2002 compared to a 69.9% rate for those born in Asia and 61.7% for those born in Latin America for the same year. In addition, the United States population continues to age. In 1860, half of the population was under age 20; in 1994, half were age 34 or older; and by 2030 at least half could be 39 years or older. The elderly population growth rate for the 1990-2010 will be modest, but from 2010 to 2030, this population will grow dramatically as the Baby Boomers reach 65.

Many Asian homebuyers are not familiar with first-time homebuyers' programs, and may have undocumented income that could be used to help them qualify for a loan. The top five barriers facing Asian American homebuyers are language (not fluent in English), lack of familiarity with the home buying process, unverifiable income, lack of credit, and fear of being ripped off. HUD studies report that Asian Americans face housing discrimination at approximately the same rate as African Americans and Latinos.

When selecting a lender, Asian Americans will tend to base their decision primarily on the broker/agent relationship, language/cultural affinity and referral. Around half of Asian homebuyers are foreign-born.

Asian Americans may benefit from home-buying education and financial literacy classes presented in a language or cultural manner that they can readily understand. Attention should also be paid to unverifiable income and lack of credit as they impact the ability to obtain reasonable financing.

The largest Southeast Asian population in Wisconsin is the Hmong.

Hmong Culture

There are estimated to be over 160,000 Hmong in the United States, concentrated in Wisconsin, Minnesota and California. The Hmong in the United States came mainly from Laos as refugees after the Vietnam War, however there are Hmong remaining in China, Thailand and Laos.

The traditional Hmong culture is agrarian. Many were subsistence farmers who grew rice. Traditionally, Hmong are animists who believe in the existence of spirits associated with their house, nature and ancestors, as well as evil spirits. Many animist homes have an altar that serves as the focus of spiritual rituals. They rely heavily upon Shamans or healers to perform rituals to keep their families healthy and to satisfy their ancestors. Hmong believe in reincarnation.

The Hmong traditionally do not shake hands, and shaking hands with a male may embarrass a Hmong woman. When speaking with a Hmong family, one may wish seek the head of the household, who is usually the father. Many Hmong have a limited English vocabulary, so using a sim-

ple vocabulary may be appropriate. Hmong individuals may look down or away from you during conversation because direct eye contact is considered to be rude and inappropriate. Smiling connotes a warm welcome and friendship, but laughing or making rough comments is considered rude.

Males should keep a modest distance from Hmong females because it is inappropriate for the opposite genders to sit too closely in conversations. Traditional Hmong elders will not want strangers to touch their heads or their children's heads due to religious and personal beliefs.

The Hmong tend to be humble. They may say "maybe" or "I will try" instead of telling you that the answer is no. They may say "yes" or "OK" when pressured even though the real answer is no. The Hmong may take a while to reach a decision because they like to think about their responses and to consult with other family members before making a decision of importance. The Hmong value confidentiality.

Hmong households may consist of large, extended family units. It is unwise to assume the relationships among various family members because it will be quite rude and embarrassing to incorrectly label a Hmong family member. It is also unwise to make comments about Hmong children because traditional Hmong believe that if the bad spirits hear comments such as "your child is cute," they may come and take the child's soul.

Working with People from Latino Cultures

When working with persons from Latino cultures, it is helpful to be aware of some general cultural characteristics and tendencies that may help you make a more favorable impres-

sion. Keep in mind, however, that every individual is different in his or her way of thinking and conducting business, and the degree to which they abide by traditional customs.

Terminology & Cultural Identity

- The term "Spanish" correctly refers only to the native people of Spain.
- "Hispanic" refers to people with a lineage or cultural heritage originating in Spain, not to all persons who speak Spanish. The term is controversial and may mean different things to different people; it may even be offensive to some. Other Latinos may see no difference between the terms Hispanic and Latino.
- "Latino" refers to people with a lineage or cultural heritage originating in Latin America.
- "Mexican" is the nationality of the people of Mexico. United States citizens who are descendants of Mexicans may be referred to as "Mexican-Americans."
- "Hispano" is a term mostly used in the U.S. Southwest to refer to descendants of Spanish settlers.
- "Chicano" is a term that has had a derogatory, discriminatory connotation; it is used to refer to Mexican descendants.
- "Hispanic" and "Latino" don't refer to one single ethnic group or culture, but rather a group of sub-cultures where the common denominator usually is the Spanish language.

A national survey of Latinos in 2002 reports that more than half of Latinos identify themselves with their country of origin, one-fourth said they are Hispanic or Latino, and one-fifth said they are American. Eighty-two percent said that they are blocked from success by discrimination, and a

majority said there was Latino discrimination against other Latinos.

Latino Buying Power

More than one person in eight who lives in the United States is of Latino origin and by 2009 it is projected that nearly one person out of six will be Latino. The Latino population is growing more rapidly than the total population due to high rates of natural increase plus strong immigration. Latino buying power is projected to grow faster than African-American and Native American buying power and about at the same pace as Asian-American buying power. Latinos statistically are younger than the overall population, have lower average income levels, larger households, more children and increasing numbers of business owners. Forty-eight percent of Latinos are homeowners compared to 68 percent of non-Latinos.

Latino Business Culture

Cold-calling and conventional advertisements are not effective ways to reach the Latino market. Latino business culture has a warm, friendly atmosphere and operates at a slower and more thoughtful pace. A great deal of time may go into decision making.

Friendly, confident handshakes are expected and physical contact such as arm touching or shoulder patting is common. Conversation is conducted in close proximity – up close and personal. You may offend if you back away or do not maintain good eye contact.

Latinos value personal relations and prefer to do business with people they know or someone referred by an acquaintance. Take them in your car, give your personal phone numbers and give a house-warming gift (such as a plant). Give references from other families you've helped into homeownership. Inquire about their family and

remember what they told you the last time you met.

Give Latino clients intelligent and personalized advice. The key word here is HELP. Share your knowledge of the real estate market.

Helpful Tips

- Consider having your business card translated in Spanish on the opposite side of the card.
- Always be polite, friendly and open.
- Saying “no” is impolite, so you may be told, “I’ll try” or “we’ll see” when the real answer is “no.”
- Age and rank are held in high esteem.

Conducting Business with People of Islamic Faith

Although estimates do vary, there are approximately seven million Muslims residing in the United States. The Islamic faith is the fastest growing religion in the United States and in the world, and is projected to be the second largest religion in the United States by 2010. Much of this growth is attributed to persons who convert to the Islamic faith. Approximately 64 percent of new converts to the Islamic faith are African Americans. It is very helpful to have some information about the Islamic religion and culture when conducting business with Muslims.

Religion

The Quran is the prime source of every Muslim’s faith and practice. The framework for Muslim life is based upon the “Five Pillars” of Islam: faith, prayer, concern for the needy, self-purification by fasting, and the pilgrimage to Makkah for those who are physically and financially able. Islamic beliefs vary based on a person’s country of origin, sect and other factors.

Muslims pray five times a day at dawn,

noon, mid-afternoon, sunset and nightfall and it is extremely rude to interrupt Muslims who are praying. The Muslim holy day is Friday; no business is conducted (many people take off Thursday, too), so the Islamic workweek is often Saturday through Wednesday. Chief among the Islamic holidays is Ramadan, a month of religious observance and fasting that takes place in late fall/early winter.

Family

The family is the foundation of Islamic society. A harmonious social order is created by the existence of extended families; children are treasured and rarely leave home until they marry. Muslim women, whether single or married, are considered individuals in their own right, with the right to own and dispose of property and earnings. However, Orthodox Muslims do not discuss female members of their family.

Manners and Customs

When interacting with traditional Muslims, it may be beneficial to avoid certain mannerisms and activities that may be offensive. Allow your Islamic contact to initiate any physical greeting. Do not impose your Western-style handshake, hug, or kiss on anyone from the opposite sex if you are in an Islamic environment. Do not cross your legs and display the sole of your feet towards someone because Arabic tradition holds that the foot is unclean. Pork and alcoholic products are prohibited. Do not use your left hand, particularly when eating because it is considered unclean in parts of the Middle East. Modesty is an important virtue among Muslims. Clothing, especially for women, must cover not only the skin, but the profile of the body should also be obscured.

Business and Finance

The Islamic economic system values personal property, freedom of activity,

and the right of money. Islamic law, or Sharia, prohibits Muslims from paying or receiving interest. More banks are entering a niche market that offers financing acceptable to traditional Muslim homebuyers.

Somali Refugees in Wisconsin

Somalia, a long, narrow country on the Horn of Africa, has experienced a great deal of chaos and upheaval in recent years. In 1969 the oppressive military dictatorship of Siad Barre, allied with the Soviet Union, took control. After a costly war with Ethiopia, Barre’s government collapsed and he was exiled in 1991. Different factions engaged in violent and bloody struggles for power and Somalia experienced years of flood, famine and drought. The U.S. Army estimated in 1992 that 25 percent of all children under five has died of malnutrition. More than 900,000 Somalis fled to neighboring African nations, and from there, to Europe and the United States. Over 15,000 Somali refugees have settled in Minnesota and some Somali have begun to settle in northwestern Wisconsin.

Most Somalis are Sunni Muslims. Somalis believe strongly in independence, democracy, egalitarianism and individualism. Saving face is very important to them, so indirectness and humour are often used in conversation. The Somalis have a reputation for honesty.

Somalis deeply value the family with the strength of family ties providing a safety net in times of need. Somali families are particularly large, sometimes 10 or more individuals. Birthdays are not particularly celebrated by Somalis, and it is not uncommon for people to not know the exact date of their birth.

Somalis warmly greet each other with handshakes, but shaking hands with the opposite sex is avoided. Somalis

use sweeping hand and arm gestures to dramatize speech. A swift twist of the open hand means “nothing” or “no.” Snapping fingers may mean “long ago” or “so on.” It is impolite to point the sole of one’s foot or shoe at another person or to use the index finger to call somebody. The American “thumbs up” is considered obscene.

Discrimination Concerns Following September 11, 2001

In response to the widespread concern of future terrorist attacks, landlords and property managers throughout the country have been developing new security procedures to protect their buildings and residents. At the same time, landlords and property managers must make sure their efforts do not infringe on the fair housing rights of current or potential residents. Since Sept. 11, 2001, persons who are, or are perceived to be, Muslim or of Middle Eastern descent have reported increased discrimination and harassment. HUD has provided guidance for landlords and property managers to help them avoid fair housing violations when interacting with Muslims or persons of Middle Eastern descent.

Screening and Rental Procedures

It is unlawful under federal fair housing law to screen housing applicants on the basis of race, color, religion, sex, national origin, disability, or familial status. In the wake of the attacks of Sept. 11, 2001, landlords and property managers have inquired about the legality of screening housing applicants on the basis of their citizenship status. Discrimination based solely on a person’s citizenship status is not prohibited. Accordingly, asking housing applicants to provide documentation of their citizenship or immigration status during the screening process would not violate the Fair Housing Act as long as they are uni-

formly applied to every applicant. If it is not applied to every applicant, and the information is requested on criteria such as national origin, the Fair Housing Act would be violated.

Tenant Issues

A landlord must make sure he or she enforces the rules of tenancy in a nondiscriminatory manner. A landlord may not impose more severe penalties because the person is Muslim, or of Middle Eastern or South Asian descent. While landlords must be responsive to complaints from tenants, they should be careful to take action against residents only on the basis of legitimate property management concerns. A landlord also cannot limit the use of building amenities such as community rooms, gyms, etc. based on person’s race, religion, or national origin.

Landlords also do not have to rent to persons who do not financially qualify for the housing and may evict tenants who are delinquent in their payments. As long as the landlord uses the same standards to determine if an applicant is financially suitable and takes the same action against all persons who fall behind in payments, the landlord’s actions would not violate the Fair Housing Act.

Conducting Business with the Disabled

Assistance/Companion Animals

Federal Jury Overrules Apartment’s No-Pet Policy

A federal jury awarded more than \$300,000 to a mentally ill woman after a Michigan apartment complex refused to let her have a dog. The woman suffers from a severe bipolar disorder marked by debilitating depression that causes her to neglect herself. The dog is an emotional-assistance dog. The woman had requested a waiver of the apartment complex no-

pet rule, but the cooperative apartment board turned her down despite letters from her psychiatrist and psychologist supporting her request. The woman moved to a more expensive apartment that allowed her to have a dog. She then filed a discrimination complaint against the apartment complex with HUD. Housing complexes routinely waive no-pet rules so that deaf or blind tenants can have assistance dogs, but they have been slow to do the same for people suffering from mental illness and emotional disabilities.

Legal Hotline Q & A - Companion Animals

A disabled client has a dog that is not a service animal. The client bought a condominium and is trying to keep the dog despite the condo’s no-pets policy. The client thinks she can call the dog a service animal. She has been in contact with consumer protection agencies. How do you define a service animal?

Under Wisconsin law, the dog would have to have certification papers from a school approved by the Wisconsin Department of Workforce Development for training assistance animals. Wis. Stat. § 106.50(2r)(bm) addresses animals assisting persons with disabilities and states:

“1. If an individual’s vision, hearing or mobility is impaired, it is discrimination for a person to refuse to rent or sell housing to the individual, cause the eviction of the individual from housing, require extra compensation from an individual as a condition of continued residence in housing or engage in the harassment of the individual because he or she keeps an animal that is specially trained to lead or assist the individual with impaired vision, hearing or mobility if all of the following apply:

- a. Upon request, the individual

shows to the lessor, seller or representative of the condominium association credentials issued by a school recognized by the department as accredited to train animals for individuals with impaired vision, hearing or mobility.

b. The individual accepts liability for sanitation with respect to, and damage to the premises caused by, the animal.

2. Subdivision 1 does not apply in the case of the rental of owner-occupied housing if the owner or a member of his or her immediate family occupying the housing possesses and, upon request, presents to the individual a certificate signed by a physician which states that the owner or family member is allergic to the type of animal the individual possesses.”

Under federal law pertaining to reasonable accommodations, if the person with disabilities provides documentation that he or she has a physical or psychiatric disability that substantially limits a major life activity and that because of the person’s disability a companion animal is necessary to enable the person to equally enjoy the unit, the companion animal must be allowed. This requires documentation of the both the disability and the need for the accommodation.

The client may be referred to the Wisconsin Coalition for Advocacy (414/342-8700 or 1-800/708-3034) or to the Metropolitan Milwaukee Fair Housing Council, Inc. (414/278-1240) for information and assistance. She should also retain an attorney to advise and assist her, particularly given the short time until closing.

Accessibility Requirements

Disabled Testers Check For Access Compliance

In San Francisco, a person with polio

who uses a wheelchair has investigated multifamily apartment housing developments as part of a program organized by the local Disabled Rights Action Committee. Wherever he found that he couldn’t get into the building, or reach the thermostat, or get through the doors, a suit has been filed against the developer for discrimination. He discovered discriminatory design and construction in several developments. The defects included inaccessible interior doorways, hallways and location of thermostats as well as doors too heavy to open or close, knobs instead of levers on exterior doors, and light switches too high to reach from a wheelchair. “Testers” have the legal right to sue real estate developers for failure to comply with the accessibility requirements of the Fair Housing Amendments Act of 1988 (Fair Housing Act) that are applicable to certain multifamily dwellings designed and constructed for first occupancy after March 13, 1991.

The Fair Housing Act applies to all units in buildings consisting of four or more dwelling units if such buildings have one or more elevators, and ground floor dwelling units in other buildings consisting of four or more dwelling units. This includes one-story homes (sometimes called single-story townhouses, villas, or patio apartments) regardless of ownership, even though such homes may not be considered multifamily dwellings under various building codes, even if the units are separated by firewalls. Covered multifamily dwellings with a building entrance on an accessible route must also be designed so that common areas are readily accessible to persons with disabilities.

Strictly residential facilities are not considered places of public accommodation and therefore would not be subject to the ADA, nor would amenities provided for the exclusive use of

residents and their guests. However, common areas within residential facilities may be considered places of public accommodation if they fall within one of the ADA public accommodation categories and if they are open to persons other than residents and their guests. Rental offices and sales office for residential housing, for example, are by their nature open to the public, and are places of public accommodation and must comply with the ADA requirements in addition to all applicable requirements of the Fair Housing Act.

Legal Hotline Q & A - Accessibility in New Construction

A buyer is asking if the builders can ramp the exterior entrance of the new construction townhome condominium. The builder offered the possibility of a portable ramp in the attached two-car garage because the garage is not quite big enough for an average size car and a permanent ramp. It is for the owner’s father when he visits. What is the builder required to do for handicap accessibility?

If they are multistory townhouses, accessibility is not required. A single structure consisting of two-story townhouses is not a covered multifamily dwelling under the federal Fair Housing Act new construction standards if the building does not have an elevator, because the entire dwelling unit is not on the ground floor. In contrast, a structure consisting of five single-story townhouses would be a covered multifamily dwelling.

The route leading from inside a private attached garage to the dwelling unit does not have to be accessible. Under Requirement 1 of the HUD Accessibility Guidelines, there must be an accessible entrance to the dwelling unit on an accessible route. However, this route and entrance need not originate inside the garage. Most units

with attached garages have a separate main entry, and this would be the entrance required to be accessible. Thus, if there were one or two steps inside the garage leading into the unit, there would be no requirement to put a ramp in place of the steps. However, the door connecting the garage and dwelling unit would have to meet the requirements for usable doors.

Similarly, Wis. Stat. § 101.132(2) provides that no person may design or construct covered multifamily housing unless it meets all of the following standards:

1. There is at least one accessible entrance for each building and that entrance is on an accessible route. All other entrances that are at grade level shall be accessible to the greatest extent feasible. The department shall promulgate rules that define “to the greatest extent feasible” to ensure maximum accessibility in a way that is not disproportionate to the entire project’s cost and scope. If the covered multifamily housing units are at grade level and are served by separate entrances, each unit shall be on an accessible route. If the units have a minimum number of required exits, as determined by rules that shall be promulgated by the department, all required grade-level exits shall be accessible.

2. Public and common use areas are accessible to persons with disabilities.

3. Interior and exterior doors, and interior passages, are sufficiently wide to allow passage by persons with disabilities who use wheelchairs.

4. Light switches, electrical outlets, circuit controls, thermostats and other environmental controls are all located in accessible locations; reinforcements in bathroom walls are installed to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, when such facilities

are provided; kitchens and bathrooms allow an individual in a wheelchair to maneuver about the space; and, upon the request of a renter and without cost to a renter, lever door handles are on all doors and single lever controls, or other controls that are approved by the department by rule, are on all plumbing fixtures used by residents.

Family Status and Age

Housing for Older Persons

The Fair Housing Act protects all citizens from discrimination on the basis of race, color, national origin, religion, sex, handicap or familial status (families with children under the age of 18 living with parents or legal custodians; pregnant women and people securing custody of children under 18). Congress, however, also intended to preserve housing specifically designed to meet the needs of older persons. Housing that meets the Act’s definition of “housing for older persons” can legally exclude families with children. Housing for older persons means housing that falls into one of the following categories:

- HUD has determined that the housing is specifically designed for and occupied by elderly persons under a federal, state or local government program;
- The housing is occupied solely by persons who are 62 years of age or older; or
- At least one person who is 55 years of age or older occupies at least 80 percent of the occupied units, and the project adheres to a policy that demonstrates an intent to operate as housing designed for persons who are 55 or older.

Housing for Persons who are 55 Years of Age or Older

Housing projects that meet the requirement for housing for persons

55 years of age or older under federal and Wisconsin fair housing laws are exempt from the prohibitions against discrimination based upon familial status under federal law, and are exempt from the prohibitions against discrimination based upon age and family status under Wisconsin law. In other words, the owners and operators of these projects are permitted to discriminate against families with children. Each housing project that meets the requirements for 55 or older housing may prohibit occupancy by families with children and also may have age restrictions for units that are not occupied by at least one person 55 years of age or older.

A housing project designated for older persons may be any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions, such as a condominium association, a cooperative, a property governed by a homeowners’ or resident association, a mobile home park and a manufactured housing community. Occupied unit means a dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed or a temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis. Occupied by at least one person 55 years of age or older means that on the date the exemption is claimed, at least one occupant of the dwelling unit is 55 years of age or older or if the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.

A project may satisfy these requirements even though:

- There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at

least one person 55 years of age or older.

- There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the housing project.
- There are units occupied by persons who are necessary to provide reasonable accommodations to disabled residents and who are under the age of 55.

Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older. For example, if a housing project contains 63 occupied units, 80 percent of 63 units would be 50.4 units. Under the rules, 51 units of the units would have to be occupied by at least one person 55 years of age or older.

Housing that is newly constructed first occupancy after March 12, 1989 need not comply with these requirements until at least 25 percent of the units are occupied. Housing vacant for at least 90 days for remodeling or rehabilitation also need not comply with the 80 percent occupancy requirement until 25 percent of the total units are occupied.

Intent to operate as housing designed for persons who are 55 years of age or older

In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate the intent to operate as housing for persons 55 years of age or older. The following factors are considered

in making this determination:

1. The manner in which the housing project is described to prospective residents;
2. Any advertising designed to attract prospective residents;
3. Lease provisions;
4. Written rules, regulations, covenants, deed or other restrictions;
5. The maintenance and consistent application of relevant procedures;
6. Actual practices of the housing facility or community; and
7. Public posting in common areas of statements describing the project as housing for persons 55 years of age or older.

Phrases such as “adult living” or “adult community” in written advertisements or a prospectus are not precise enough to demonstrate an intent to operate as housing for persons 55 years of age or older.

Verification of occupancy

In order for a housing project to qualify as housing for persons 55 years of age or older, it must be able to produce verification of compliance with the 80 percent rule through reliable surveys and affidavits. A facility or community must develop procedures for routinely determining who is occupying each unit and verifying whether at least one occupant is 55 years of age or older. The project must also have policies requiring occupants to comply with these verification procedures. Such procedures may be part of the normal leasing or purchasing process, but must also provide for regular updates at least once every two years of the occupancy and age information.

Any of the following are reliable documentation of an occupant’s age:

1. Driver’s license;

2. Birth certificate;
3. Passport;
4. Immigration card;
5. Military identification;
6. Any other state, local, national, or international official documents containing a birth date of comparable reliability; or
7. A certification in a lease, application, affidavit, or other document signed by any member of the household age 18 or older asserting that at least one person in the unit is 55 years of age or older.

A project will have met the verification of occupancy requirement if all new leases, new purchase agreements, or new applications contain a provision directly above the signature whereby the signer asserts that at least one occupant of the dwelling will be 55 years of age or older. These documents might have a provision indicating, “I, (name), am 18 years of age or older and a member of the household that resides at (housing project name), (unit number or designation). I hereby certify that I have personal knowledge of the ages of the occupants of this household and that at least one occupant is 55 years of age or older.” In addition, the community needs to periodically survey the ages of current residents in compliance with the 55-or-older age verification requirements.

If the occupants of a dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, still consider the unit to be occupied by at least one person 55 years of age or older. Sufficient evidence may include:

1. Government records or documents, such as a local household census;
2. Prior forms or applications; or

3. A statement from an individual who has personal knowledge of the age of the occupants, setting forth the individual's basis for this knowledge and be signed under penalty of perjury.

Good faith defense against civil money damages

A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified for the 55 or over exemption. To claim a good faith belief, a person must have actual knowledge that the housing project has, through an authorized representative, asserted in writing that it qualifies for the exemption. An authorized representative of the community or facility must also certify in writing and under oath or affirmation to that person that it complies with the requirements for the exemption as housing for persons 55 years of age or older in order for the person to claim the defense. A person cannot claim the good faith defense if the person has actual knowledge that the project does not qualify as housing for persons 55 or over.

Legal Hotline Q & A - Housing for Older Persons

A buyer wants to purchase a unit in a condominium that has recorded covenants that prohibit children. Is this legal? In the offer to purchase, the cooperating agent indicated in additional provisions that the buyers have two children living at home, and that if the condominium association does not allow children, the offer is null and void and all earnest money must be returned to the buyer. The listing agent says that because the covenants don't allow children, she doesn't have to present the offer, as it is void before it is even presented. Is this correct?

Under both Federal and Wisconsin

fair housing law, it is unlawful to refuse housing to any family with children under the age of 18 (including women who are pregnant) unless the housing project meets the definition of housing for older persons. There are three categories of housing for older persons:

1. Housing that is provided under state and federal programs specifically for the purpose of accommodating elderly persons;
2. Housing that is "intended for, and solely occupied by persons 62 years of age or older;" and
3. "55 and over housing" where at least 80 percent of units must be occupied by at least one person who has attained the age of 55, and policies are published and procedures are adhered to that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

If the condominium does not meet the requirements for housing for older persons, the covenants would appear to be illegal and unenforceable. The listing agent is in violation of licensing law for refusing to present the offer. Wis. Admin. Code § RL 24.13 requires the prompt, objective and unbiased presentation of all offers unless contrary to the specific instructions of the seller.

Lawful Source of Income

Section 8 Vouchers

Within broad guidelines as to procedure and certain economic formulas promulgated by HUD, the Section 8 program is a federal subsidy program run by individual local housing authorities. A prospective tenant must qualify as having a very low income, and typically must also have children, be elderly or be a person with disabilities. The tenant is then issued a voucher and other documents and sent out to find a rental unit. If the

landlord agrees to accept a Section 8 applicant, a proposed rental agreement is prepared. This is turned into the local housing authority, which determines whether the rent is within HUD guidelines, inspects the property to ensure it is habitable, then executes the housing assistance payments agreement, a document separate from the lease. Fair-market rent is established by HUD on a countywide basis, but local housing authorities may fix a price anywhere from 90 percent to 110 percent of that figure. If this is all acceptable to the landlord, the tenant will pay 30 to 40 percent of his or her income and the housing authority will pay the balance of the rent. The landlord's only requirement is to fulfill the lease and housing assistance agreement he has signed. Participation in the program is voluntary, and the fact that the landlord has accepted one Section 8 applicant does not mean the landlord has to accept more.

Legal Hotline Q & A - Source of Income

Can the landlord turn someone down that has Section 8 vouchers?

Landlords can choose whether to participate in the Section 8 voucher program, which provides rent assistance to tenants. If a landlord rents to a qualified tenant who receives Section 8 subsidies and fills out the necessary paperwork required by the Public Housing Authority, the landlord has entered the Section 8 program.

Landlords do not have to participate in the Section 8 program. It is not a violation of fair housing laws to refuse to rent to a Section 8 tenant, because Section 8 payments are not considered a source of income for the purpose of Wisconsin fair housing law. Even if a landlord has rented to Section 8 tenants before, the landlord is not required to accept additional Section 8 tenants. The nearest Public Housing

Authority can provide further information. Local ordinances may also impact landlords renting to tenants with Section 8 vouchers.

Resources

Cultural Resources

- For additional information about the Islamic faith and Latino, Southeast Asian and other cultures, be sure to visit the Cultural Diversity Resources located at www.wra.org/culturaldiversity. This resource page features information regarding various cultures, business practices, mannerisms, terminology and other customs that may be helpful for REALTORS® and others conducting business with clients and customers from a variety of ethnic backgrounds. Census data and real estate resources in Spanish and other languages are also included for easy reference.
- HUD's post-September 11 guidance for landlords and property managers to avoid fair housing violations when interacting with Muslims or persons of Middle Eastern descent is available at <http://www.hud.gov/offices/fheo/library/sept11.cfm>.
- For real estate transaction materials in Spanish and other languages, and for information about translation and interpretation issues and a "Consent for Interpretation Services" form, visit *Legal Update 01.03* at www.wra.org/LU0103 and the WRA Translation Resource Page at www.wra.org/Translation.

Resources for Persons with Disabilities

- For additional information on assisting persons with disabilities and older persons, visit the WRA REALTOR® Resource page for working with customers with disabilities at www.wra.org/disabilities.

- For additional information relating to discrimination against persons with disabilities, the HUD web site has a wealth of helpful information at <http://www.hud.gov/groups/disabilities.cfm>.

- Wisconsin Coalition for Advocacy – call (800) 708-3034 or visit <http://www.w-c-a.org/>.

Resources for Housing for Older Persons

- For additional information regarding senior housing and the HUD rules for 55 and over housing, visit <http://www.hud.gov/offices/fheo/seniors/index.cfm>.

Section 8 Voucher Programs

- For additional information about Section 8, visit <http://www.hud.gov/offices/pih/programs/hcv/about/factsheet.cfm>.

Other Fair Housing Resources

- Metropolitan Milwaukee Fair Housing Council, Inc. – phone (414) 278-1240 or visit <http://www.fairhousingwisconsin.com/>.
- Fair Housing-Equal Opportunity in Housing Resources at www.wra.org/FairHousing.

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