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Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

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Avoiding Discrimination in Advertising and Racial Steering

"We generally think of segregation as an outcome of discrimination. But while discrimination promotes segregation, segregation also promotes discrimination. Policies that aim only to end current discriminatory actions will not fully end segregation. ... Although discrimination plays an important role in supporting segregation, discrimination does not have to be overt or blatant to produce segregated outcomes. This situation occurs in part because discrimination can become institutionalized in policies, practices, and procedures and continue long after the desire or motivation to discriminate has faded. This aspect of discrimination makes both discrimination and segregation difficult to tackle because the discriminatory actions may not be explicit or intentional; that is, individuals are not necessarily aware that their actions are discriminatory." (From *The Complexity of Segregation: Why it Continues 30 Years After the Enactment of the Fair Housing Act*, by James H. Carr, Fannie Mae Foundation, 1998).

While REALTORS® surely know that they cannot advertise, "No blacks allowed," or tell a Hispanic prospect that, "You wouldn't want to live in that white neighborhood," discrimination does unfortunately continue to occur and segregation regrettably remains with us. By some reports, including a November 2002 report from the United States Census bureau, Milwaukee remains the most segregated city for blacks and whites in the country. Therefore it is impera-

tive to avoid discrimination and any other force that fosters segregation.

This Legal Update discusses two ways for REALTORS® to conform their behavior to federal and state fair housing law and at the same time do their part to contribute to a community and a state that strives to eliminate discrimination and segregation. The first sections of the Update discuss the tenets of fair housing law as it applies to advertising and provide tips for agents writing housing ads, brokers reviewing housing ads and MLS providers striving to avoid liability as publishers of housing ads. Brief summaries of some fair housing advertising cases and administrative decisions are included for additional guidance. The biggest trick when composing housing ads is not necessarily avoiding overt discrimination, but rather detecting and avoiding subtle discrimination which may appear harmless on the surface, but which resonates as exclusionary to some community or ethnic groups. The Update also includes a section on housing for persons with disabilities and highlights the Accessibility Features Report.

The Update then shifts to steering, a far more powerful promoter of segregation. Steering occurs when real estate sales or rental agents encourage, or steer, prospective home buyers and renters to communities that have high concentrations of owners and renters of their same race or ethnic group. After reviewing the basics of federal

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law, Article 10 of the Code of Ethics, and some Article 10 case interpretations, the Update summarizes the discouraging outcome of recent studies conducted to measure discrimination and steering among real estate companies across the country. Discussion of possible reasons for this illegal steering based upon race and other protected factors is followed by suggestions for avoiding illegal steering and a short section of Hotline questions and answers regarding steering.

Fair Housing Law and Advertising

Fair housing laws impact what you may or may not say when advertising property for sale or rent.

Fair Housing Law

Section 804(c) of the federal Fair Housing Act makes it unlawful to make, print or publish any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin, or an intention to make any such preference, limitation or discrimination.

Wisconsin law adds sexual orientation, marital status, lawful source of income, age and ancestry to the list of protected classes and offers similar protections in Wis. Stat. § 106.50. Counties and local municipalities may develop their own fair housing ordinances, so it is important to become familiar with all local fair housing ordinances affecting your market area. County and municipal

★ Liability for discriminatory advertisements can extend to anyone who participated in the publication of the ad, including the agent who wrote the copy, the supervising broker, the publisher (newspaper, MLS) and the property owner.

ordinances may tend to offer broader protections and may have more protected classes than federal or state law.

HUD Guidance for Real Estate Advertising

The United States Department of Housing and Urban Development (HUD) has provided guidance regarding whether certain words and phrases commonly used in real estate advertising violate the Federal Fair Housing Law.

Race, color and national origin: Real estate advertisements may not state a discriminatory preference or limitation on account of race, color or national origin. Nor may such advertisements use words describing the housing, the current or potential residents, neighbors or neighborhood in racial or ethnic terms (i.e., white family home, no Irish). Do not use Negro, black, Caucasian, Oriental, Indian, white, colored. However, it is not unlawful to use facially neutral phrases such as "master bedroom," "rare find" or "desirable neighborhood" which are deemed to be "neutral" on their face.

Religion: Advertisements that contain an explicit preference, limitation or discrimination on account of religion are prohibited (i.e., no Jews, Christian home). Do not use Protestant, Christian, Catholic, Jewish, Muslim. If an advertisement uses the legal name of an entity or landmark that contains a religious reference, for example, Roselawn Catholic Home, or a religious symbol like a cross, a religious preference could be implied. If the advertisement contains an appropriate disclaimer against such preference or limitation, it will not be held in violation of Federal Fair Housing Law.

Descriptions of the property (apartment complex with chapel) or the services (kosher meals available) are permissible. Use of terms (Merry Christmas), symbols (i.e., Santa Claus or the Easter Bunny) or images (St. Valentine's Day graph-

ics) relating to certain religious holidays does not violate the law.

Sex: It is unlawful to advertise for single-family dwellings or separate units in multifamily dwellings in a manner that explicitly indicates preference, limitation or discrimination on the basis of sex. It is permissible to use the terms "master bedroom," "mother-in-law suite," and "bachelor apartment," which are commonly used as architectural terms or physical descriptions of housing units. Gender may be specified if the housing involves shared living space.

Handicap: Real estate advertisements may not contain exclusions, limitations or other indications of discrimination based on handicap (i.e., no wheelchairs, no service animals). It is lawful to describe the property (great view, fourth-floor walk-up, walk-in closets), the services or facilities (jogging trails) or the neighborhood (walk to the bus stop). It is also permitted to describe the conduct required of residents (nonsmoking, sober). Advertisements may contain descriptions of accessibility features, such as a wheelchair ramp.

Familial Status: Advertisers may not discriminate on the basis of familial status; ads may not state an explicit preference, limitation or discrimination based upon family status. For example, advertisements that limit the number or ages of children, or state a preference for adults (unless the property meets a housing for older persons exemption), couples or singles are prohibited. On the other hand, descriptions of the property (two bedroom, cozy family room or immaculate, like new), services and facilities (exercise room, warm-water pool or no bicycles allowed) or neighborhoods (quiet streets) are not discriminatory on their face and therefore do not violate the law.

The common theme throughout the guidelines is: DESCRIBE

THE PROPERTY, NOT THE DESIRED TENANT OR BUYER, NOT THE NEIGHBORS!

Other facets of an advertisement may influence the reader's perception of what is being said or what is being implied.

Ordinary Reader Test

Whenever there is a question whether particular terms or phrases violate fair housing law, the "ordinary reader" test may be applied. The courts frequently use this standard to determine whether real estate ads violate fair housing law. This objective test asks whether the advertisement suggests to an ordinary reader that a particular class is preferred or "dispreferred" for the advertised housing. The "ordinary reader" is a reasonable person who is neither the most suspicious nor the most insensitive reader. There generally will be no liability if no potential preference is apparent to the ordinary reader. On the other hand, a violation may be found where there was no overt discrimination or intent, but the ad still happens to read in a way that an ordinary reader might find discriminatory.

Use of Human Models

Human models in photographs, drawings or other graphic media may not be used to indicate exclusiveness on the basis of race, color or any other protected class. Any models used in real estate advertising should be reasonably representative of the majority and minority groups in the community where the listed properties are located. If an ad pictures only white people, but the community has a variety of ethnic and racial groups, the ad may be found to be discriminatory.

Publication Selection

Limiting ads to publications that are distributed to a very selected audience may violate fair housing law. For instance, if you advertise only

in a publication catering to older persons, you may be discriminating against families with children.

Broker Fair Housing

Marketing Tips

Brokers should be very careful about the marketing techniques and the content of promotional copy used by the company's agents, including the remarks for an MLS listing. Advertising cannot intentionally or unintentionally state a preference for a person or the intent to exclude a person based upon membership in a protected class. This applies to advertising in all media including the MLS, newspapers, billboards, Internet, faxes, e-mail, radio, television, flyers, signs, posters, banners and application forms.

The following are some helpful marketing guidelines for associates:

Avoid strategies that target less than the whole market

- In-house exclusive: sellers who want no MLS and no yard signs may have good reasons for this approach (reduce burglary, don't let neighbors know, etc.), but be careful because it also may be indicative of a consumer with discriminatory intent.
- Do not direct an ad to only one segment of the community.
- Do not advertise in a limited geographic area.
- Do not target only particular publications or editions of newspapers.
- Do not use only small circulation publications that are designed primarily for certain religious or ethnic groups.
- Do not use only selected sales offices.

Words used in advertising

- Do not use words describing the seller, buyer, landlord or tenant, (i.e., Jewish owner, Hmong home,

adult building). DESCRIBE THE PROPERTY FEATURES!

- Do not convey the impression that one group is preferred over another.
- Avoid catchwords such as “restricted,” “exclusive,” “private,” “board approval” or “traditional.”
- Avoid symbols or logos that suggest or imply discrimination.
- When stating directions, avoid referencing racial, ethnic or religious landmarks.
- Do not use these words: “crippled,” “mentally ill,” “deaf,” “retarded,” “blind,” “adult building,” “singles,” “mature persons,” “exclusive.”

TEST YOUR ADS:

- What is the real message of the ad?
- Does it exclude any groups?
- Does it describe the property and not the target market?
- Will the people in the community perceive the ad as indicating a preference or limitation?

Use of human models

- Do not use only adult or only white models.
- Represent all races and ages, as well as families with children and persons with disabilities.
- Vary or rotate the people shown in ads so all groups in the market area are featured.
- Portray models with different traits in equal social settings.
- Indicate that housing is available to all persons on an equal basis.

Use of Equal Housing Opportunity slogan and logo

Use of the Equal Housing Opportunity slogan or logo is not

mandatory in all real estate advertising, but it alerts consumers to the concept of fair housing, shows the broker’s good faith commitment to fair housing and demonstrates intent to abide by the fair housing law.

Other traps to avoid

1. Local “Code” Words. Be aware of local standards and the perception of the local community regarding whether certain words or phrases have a hidden meaning or signify a preference or limitation. Are certain “code” words or phrases used that signify certain traits to the local market? For example, does “good schools” really mean few minorities reside in the community? Always use the most inclusive, neutral language and don’t risk offending anyone by your words.
2. Persons with Disabilities. It is permitted to indicate that a property is accessible to persons with disabilities or that the property has features that would be attractive to persons with disabilities.
3. Housing for Older Persons. An agent may advertise that the property is housing for older persons or is limited to persons 55 or older if the agent has reliable documentation to confirm this status. The National Association of REALTORS® (NAR) recommends that an MLS not publish that a property is housing for older persons unless the listing broker first provides a statement from the project association, manager or attorney asserting that the housing qualifies under fair housing law for the exemption from discrimination on the basis of familial status or age (Wisconsin law). The publisher wants to be able to rely in good faith upon reliable evidence.

For more information, visit the Fair Housing/Equal Opportunity REALTOR® Resource page, online at www.wra.org/fairhousing, and

see the April 2005 Legal Update, “Diversity and Fair Housing,” online at www.wra.org/LU0504.

MLS Fair Housing Guidelines

The federal advertising prohibitions apply to publishers, such as newspapers, directories and the MLS, as well as to the persons and entities who place the real estate advertisements. Publishers and advertisers are responsible under the Act for making, printing or publishing an advertisement that violates the Act on its face – there does not have to be intent to discriminate. It is the perception of the reasonable reader that determines whether an advertisement violates the law.

The sensitive point for an MLS is the remarks sections of the property listings. It is unrealistic to expect that an MLS can ever review every single listing posted. Instead, it is more important for an MLS to demonstrate its good faith efforts to prevent and guard against listings that contain discriminatory language.

1. One line of defense for an MLS or other publisher is to demonstrate a strong commitment to fair housing, for example, through notices and publications reminding that the golden rule of real estate advertising is to DESCRIBE THE PROPERTY, NOT THE PROSPECTIVE TENANT, BUYER OR NEIGHBOR!
2. Another important measure is to educate all MLS participants, agents and staff regarding real estate advertising and the fair housing laws.
3. MLSs should generously use the Equal Housing Opportunity logo and slogan, and place a statement declaring the MLS’ commitment to fair housing on its Web site.
4. An MLS may wish to set a screening policy for spot-checking the remarks sections of MLS listings. Some MLSs may use a computer program that

screens for questionable or prohibited words and phrases and brings these ads to the attention of staff for further review. A list of this sort may be a good starting point for electronic scanning; however, thoughtful consideration of context and the common sense of the "ordinary reader" are required.

A publisher is not responsible to investigate the truth and validity of representations made in an ad – the person placing the ad is responsible. For example, a publisher may accept an ad that indicates that a "female roommate wanted" even when the advertisement does not indicate whether the requirements for the shared living exception (see Wis. Stat. § 106.50(5m)(em)) have been met. Publishers can rely on the representations of the individual placing the ad that the ad is for shared living arrangements. Thus, the ad for a female roommate could result in liability for the person placing the ad if the housing being advertised is actually a separate dwelling unit without shared living space.

NAR recommends that an MLS not publish that a property is housing for older persons unless the listing broker first provides a statement from the project association, manager or attorney asserting that the housing qualifies under fair housing law for the exemption from discrimination on the basis of familial status or age (Wisconsin law). A publisher like the MLS that relies in good faith upon reliable evidence will be protected under the law from liability if the project is found to not qualify for this status.

Fair housing enforcement is generally reasonable and goes after actual discrimination and not just persons who accidentally use the wrong word. However, some ad writers do discriminate in ads in subtle ways, often without realizing it. Advertising runs into trouble when the language or images create a perception or imply that one type of buyer is preferred over another based upon sex, race, color, familial status, religion, disability or national origin. However, at times the standards for evaluating fair housing advertising have seemed very subjective.

The Portland Settlement

Many MLSs want to have a list of "forbidden words and phrases" that can be screened by their computer system, flagged and evaluated to see if further action is warranted. Several years ago, an MLS did just that. There are, however, concerns with such a system because a list of words can become outdated and context can change the meaning. In addition, local meanings and other factors may soon show that such a system is by no means perfect. On the other hand, it is a valuable response for many MLSs because it is efficient and provides a means of spot-checking MLS remarks.

The Fair Housing Council of Oregon filed a complaint against the Portland Metropolitan Area Boards and Associations of REALTORS® MLS in 1995 charging that a condominium listing included the phrase "adults only over 40" in the Remarks section. The MLS agreed to settle the complaint with the HUD and the Fair Housing Council after reviewing the extent of its liability (up to \$10,000 for each violation). Along

PORTLAND SETTLEMENT – WORDS THAT WILL NOT BE USED IN THE MLS

Able bodied	Older person(s)	Mosque	Integrated	Membership approval required
Caucasian	Adults only	Oriental	Smoker(s), no	Catholic
Ethnic references	Children, no	Alcoholics, no	Puerto Rican	Empty nesters
Latino	Hispanic	Couples only	Blacks, no	Singles only
Newlyweds	Mature individual	Indian	Drinkers, no	Nationality
Adult living	One child	Employed, must be	Jewish	Shrine
Chicano	African	Physically fit	Mormon Temple	Adult community
Unemployed, no	Colored	Asian	Retarded, no	Mexican-American
Married	Impaired, no	Crippled, no	Board approval required	Soc. Sec. Ins. (SSI), no
# of children	Mature person(s)	Irish	Mentally handicapped, no	Description of Tenant
Single person	One person	Mentally ill, no	Description of landlord	Handicapped, not for
Chinese	Agile	Polish	Seasonal worker, no	White
Healthy only	Couple	Bachelor		White only
Mature couple	Independent living	Deaf, no		

with the \$30,000 settlement, the Portland MLS agreed to conduct bi-weekly computerized searches for 67 discriminatory words and phrases.

The table at the bottom of Page 5 shows Portland’s list that they developed on their own – the list was not ordered by the court and HUD did not endorse this list. Obviously words not appearing on this list could be used to discriminate and words appearing on the list will not always violate the law.

NAR Guidance Regarding Discriminatory Words and Phrases

The NAR has recently provided some guidance regarding words and phrases it believes do not discriminate, as well as words and phrases that are questionable and may discriminate. (Please see the table at the bottom of this page for examples.)

One term that many REALTORS® believe that they should always avoid is “family.” Is it improper to call a home a family home? The term “family” would seem to have a fluid meaning, depending upon context, the market area and other circumstances.

Families may be composed of any combination of individuals in various relationships, so the word should not be off limits. REALTORS® should not say that “families with children” aren’t welcome to rent or buy, but it is acceptable to market features such as “family” rooms. This is all very confusing. REALTORS® clearly should make sure that they don’t use the term in a manner that suggests that certain buyers may not be welcome.

Cases and Administrative Decisions

Case law and administrative law decisions provide illustrations of advertising phraseology that is clearly illegal under fair housing laws.

- A stated preference for “mature adults” in published advertising was found to discriminate based upon family status in violation of fair housing law. *Jancik v. HUD* (1995).
- The phrase “ideal for couple,” when used to describe a two-bedroom cottage for rent, was held to not violate fair housing law. The Wisconsin Court of Appeals, applying the “ordinary reader test,” found that the ad was found to be describ-

ing the suitability of the property to the tenant, not the acceptability of the tenant to the owner. *Milwaukee Fair Housing Council v. LIRC*, 173 Wis. 2d 199 (Ct. App. 1992).

- A newspaper ad requesting that the tenant for a one-bedroom unit be a “mature Christian handyman” would be interpreted by an ordinary reader to state a discriminatory preference based upon religion. The ad also indicates sex discrimination in violation of fair housing law. (Wis. LIRC 1993).
- The phrase “retired or working couple” was found to discriminate based upon lawful source of income. The phrase used was not qualified with a phrase like “ideal for” or “perfect for” – it bluntly and unequivocally suggests a preference for retired or working persons, and at worst, an outright limitation. (Wis. LIRC 1992).
- “Perfect for Single or Couple” in Advertisement. *Guider v. Bauer*, 865 F. Supp. 492 (Ct. App. 1994). To rent an apartment, the landlord placed the following advertisement in the classified section of a local newspaper: “Perfect for single or couple.

Neutral Terms	Questionable Terms
Fourth-floor walk-up	Ideal for active, healthy person
Jogging trails	No wheelchairs
Distinguished community	Private community
Estate homes	Integrated neighborhood
Secluded, wooded setting	Condominium ownership subject to board approval
Quiet streets	All-adult living or adult building
Qualified senior housing	Singles preferred
Kids welcome	Kids O.K.
Master bedroom	Men’s sleeping room
Desirable neighborhood	No blacks
A rare find	Hispanics preferred or Hispanic neighborhood
Near six- mile exercise trail through woods	Great for joggers
3rd story walk-up overlooks a nearby park. Service elevator available	3rd story walk-up provides daily exercise for the able-bodied tenant or owner
	Exclusive, private or integrated

2 Bedroom Victorian Duplex, 2-story, smoke-free, washer/dryer." The landlord asked the tenant who would be living with her in the apartment. When the tenant replied it would be her two sons, the landlord informed the tenant that the apartment was not suitable for children because the rooms were too small and then hung up the phone.

- The court found that the language of the advertisement was not facially nondiscriminatory as a matter of law (i.e., an inference could be drawn from the clearly expressed preference for a single individual or couple). Direct evidence showed that the newspaper intended to discriminate on the basis of familial status because they failed to pull the advertisement after being given notice that the landlord refused to rent to families with children.
- "Mature Person Preferred" Used in Newspaper Ad. Jancik v. HLTD, #93-3792, 1995 U.S. Appellate LEMS 198 (CA-7 1-6-95). The Seventh Circuit affirmed an HUD Administrative Law Judge (ALJ)'s determination that an Illinois landlord violated the Fair Housing Act by publishing the words "mature person preferred" for rental housing in a local newspaper. Testers responded by telephone to the ad and were asked their race and were told that the owner did not want a tenant with children. The HUD ALJ awarded \$21,386 in damages and imposed a civil penalty of \$10,000. They also ordered the defendant to pay \$23,843 in attorney fees.
- "Single Occupancy" Used in Advertisements. Metropolitan Milwaukee Fair Housing Council v. Storm, (Wis. DILHR, 1991). The ad said, "FOR RENT, 1 bedroom, single occupancy, no pets." Applying the "ordinary reader" test, the ALJ determined that an ordinary reader would not have interpreted the phrase "single occupancy" to refer to persons whose marital status is

single, but, rather, to mean that the apartment was to be occupied by one person, regardless of the person's marital status.

Fair Housing Advertising Settlements

Fair housing case settlements also provide illustrations of advertising phraseology that is clearly illegal under fair housing laws.

- Phrase "one child" in an ad for rental of a townhouse violates Fair Housing Act by expressing a preference based on familial status. HUD v. Wilkowski, (HUD Office of Admin. Law Judges 1993).
- ALJ orders respondent to pay a \$2,500 civil penalty after default judgment on a charge that he violated the Fair Housing Act by advertising a condominium unit for sale with the phrase, "No pets or children allowed." HUD v. Lange, (HUD Office of Admin. Law Judges 10-23-95).

New Cases

HUD fair housing advertising lawsuits give good illustrations of advertising phraseology that is clearly illegal under fair housing laws.

- HUD Charges South Dakota Landlord with Violating the Fair Housing Act – A South Dakota landlord was charged today with violating the Fair Housing Act for refusing to rent to families with children and for advertising in a discriminatory manner. The charges allege that the owner and manager of an eight-unit apartment building in Vermillion, South Dakota, refused to rent to families with children and advertised that discriminatory preference several times in a newspaper. HUD's investigation showed that he placed ads in the Vermillion Broadcaster newspaper that specified, "no smokers, pets, minors, or deadbeats." Similarly, when a fair housing watchdog group had a tes-

ter with children contact him to inquire about renting the apartment, he informed her of his policy, "no pets, no smoking, no kids."

- HUD Charges Boise Publisher with Violations of Fair Housing – HUD, on September 10, 2004, charged the Want Ads of Boise, Inc., the publisher of the Thrifty Nickel, with violating the Fair Housing Act by accepting and publishing housing ads that excluded potential owners and renters because of their familial status. Between August and October 2003, the locally published Thrifty Nickel newspaper published housing advertisements that indicated a preference based on familial status that excluded children.

Typical of the illegal ads that ran were the following:

- August 28, 2003 – "FOR RENT: Small, furnished, 1 bedroom house \$500 per month, utilities paid. No children or pets..."
- August 28, September 4, and September 18, 2003 - "GREAT DEAL 2 bedroom condo with a pool Boise Beach area only \$550. 2 bedroom mobile home located in a great adult-type park in Mountain Home \$295. ..."
- September 18, 2003 – "TOWNHOUSE in newer subdivision – 2 bedroom, 2.5 bath, two car garage air, gas, fireplace, Dead end cul de sac. Private, quiet, central to downtown, airport, Micron, BSU. Ideal for the students, couples, empty nesters. ..."
- September 18, 2003 – "NEW 2 BEDROOM, single wide trailer, in country between Nampa and Meridian. Single person..."
- HUD Charges Texas Newspaper with Violating Fair Housing Act by Publishing Discriminating Ads – On July 22, 2004, HUD charged the San Antonio Express-News and

Hearst Communications, Inc., its parent company, with violating the Fair Housing Act by accepting and publishing 42 ads for rental housing that excluded potential renters because of their race, religion, sex, national origin or familial status.

Typical of the illegal ads, which ran between November 2000 and October 2002, were the following:

- “WALZEN Area, Hispanic or White male pref., to share home...”
- “2/1 House, Beautiful historic house, in Beacon Hill, See to apprec. No pets/children...”

Housing discrimination charges heard before a federal administrative law judge (ALJ) carry a maximum civil penalty of \$11,000 for a first offense – more if the respondent has committed prior violations of the Act – plus actual damages for the complainant, injunctive or other equitable relief, and attorney fees.

Persons with Disabilities – Design & Terminology

Many people, including REALTORS®, frequently become confused or embarrassed when they do not know the proper terminology to use with regard to persons with disabilities or other special needs, or the housing needed to accommodate them comfortably.

Visitable Housing

There is a national movement – for persons who do not have disabilities – to include enough accessible features in the design of their homes so that a person with disabilities or an elderly person who uses a wheelchair, walker, cane or other assistive mechanisms can comfortably visit the home. Basic visitability features include an entrance from the outside with no steps, wide doorways inside of the home and

a bathroom on the main floor with reinforced walls that will permit grab bar installation. Visitable homes are not entirely accessible when measured by Americans with Disabilities Act (ADA) or other accessibility standards.

Universal Design

Universal design means products and buildings that are accessible and usable by everyone, including people with disabilities. Universal design refers to the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. Universal design provides one solution that can accommodate people with disabilities as well as the rest of the population. Moreover, universal design means giving attention to the needs of older people as well as the young, women as well as men, and left handed persons as well as right handed persons. An entrance that is designed to be “universal” would not have stairs at all.

Accessibility Features Report

The Accessibility Features Report (AFR) is a property condition report

for features that may be desirable to a home buyer with disabilities. Too often the terms “accessible” or “accessibility” are tossed about without any underlying common understanding on what they exactly mean. Because there is no clear and concise definition, the terms may be used inconsistently and indiscriminately. What one person says is accessible may be rejected by another as having too many barriers to make it accessible.

The AFR includes an Evaluation Checklist – a listing of some different features that may be important for a person with disabilities. The AFR includes a grid where the person completing the report may check the corresponding box for either “Yes,” if the feature is present, “No,” if the feature is not present or “Easily Adaptable,” if the feature is not present but the property readily could be modified to provide the desired benefit.

Real estate agents who are listing or previewing a property and sellers who are getting ready to sell their home may use the AFR to determine if the property may be appropriate for a person with disabilities. Buyers

**I am dedicated.
I am experienced.
I am more productive.**

I am CRS

The CRS Designation is the symbol of professionalism and experience in residential real estate. More than 37,000 professionals across the country have the education and transaction requirements needed to be called a CRS. They earn an average of \$160,500 each year, nearly three times more than the \$38,300 earned by the average REALTOR® who sells residential real estate.

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may also use the AFR to identify the architectural features they find desirable in a residential property.

The AFR may be used in conjunction with an MLS. A listing broker who has listed a property that has potential for a person with disabilities may put the  symbol, "AFR" or some other symbol designated by the MLS in the remarks section of the MLS listing so that cooperating brokers will know that the property has some accessibility features and that an AFR is available.

However, the AFR is for informational purposes only to help others identify properties with accessible or adaptable components that may be appropriate to meet a person's special needs. Any person considering a property based upon an AFR should inspect and evaluate the property for him or herself.

See the sample copy of the AFR on pages 18 and 19 of this Update.

While directing or "steering" a person with disabilities to properties with features desired by that person demonstrates a high and competent level of professional real estate services. Directing or "steering" a customer to properties based solely upon the fact that the residents of those neighborhoods are of the same race or ethnicity as the buyer is an illegal action which promotes segregation and exemplifies incompetent brokerage service.

Illegal Racial Steering

"The U.S. Department of Housing and Urban Development contracted with the National Fair Housing Alliance (NFHA) to test how real estate companies treated white buyers vs. equally qualified African-American or Latino buyers. HUD had conducted tests in 2000 and found a pattern of steering it wished to investigate further. Between 2003 and 2005, the NFHA conducted 145 tests of real estate offices in the Northeast, South, and Midwest that HUD suspected of discrimination.

"NFHA says testers who viewed homes with a practitioner were often steered to neighborhoods on the basis of their race, national origin, and even, in a few cases, religion – and practitioners sometimes discouraged whites from buying in certain school districts while offering no such warnings to African-American and Latino buyers. As a result of the tests, the NFHA has filed nine complaints against real estate companies in Atlanta, Chicago, Detroit, Mobile, Ala., and Westchester County, N.Y.

"Reading the NFHA report, it's clear that many associates identified as having engaged in steering felt they were doing a service to buyers by providing unasked-for advice. Others no doubt thought they were helping protect their community's property values. But that line of thinking is insidious because when we think of and speak of factors such as race, ethnicity and national origin as having a material impact on values, we make it so. We also break the law and violate Article 10 of the REALTOR[®] Code of Ethics."

(Excerpts from Are we fair enough? by 2006 NAR President Thomas M. Stevens, REALTOR[®] Magazine, July 2006. Reprinted by permission of the National Association of REALTORS[®]. Copyright 2006. All rights reserved.)

Federal Law Prohibits Racial Steering

Racial steering is a "practice by which real estate brokers and agents preserve and encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial and ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups."

Racial steering generally refers to the practice of showing communities, neighborhoods and homes to prospects based upon their race, color or ethnicity. Buyers are steered toward

neighborhoods where the residents share the same racial, ethnic or even religious profile as the buyer. For example, if African-American buyers are only shown homes in interracial or African-American neighborhoods, and white buyers are only shown homes in white neighborhoods, then that is racial steering.

Illegal steering substitutes the judgment of the real estate agent or broker for that of the buyer and thus eliminates or restricts the buyer's choice. This conduct "denies residents the social and professional benefits of living in an integrated society." Racial steering promotes racial segregation and is illegal under federal fair housing law.

Federal Fair Housing Law

Federal fair housing law consists of the Civil Rights Act of 1866 and Title VIII of the Civil Rights Act of 1968, otherwise known as the Fair Housing Act. The Act provides that no one can be discriminated against in the sale, rental or financing of residential dwellings on the basis of these protected classes:

- Race
- Color
- Religion
- Sex
- Handicap
- Familial status
- National origin

In addition, the Civil Rights Act of 1866 provides that all U.S. citizens have the same rights as white citizens to "inherit, purchase, sell, hold, and convey real and personal property." The U.S. Supreme Court has interpreted this Act to prohibit all forms of racial discrimination with regard to real estate – even discrimination by private individuals. Penalties can include punitive as well as actual damages.

HUD's regulations implementing the federal Fair Housing Act specifically prohibit racial steering:

It shall be unlawful, because of race, color, religion, sex, handicap, familial status or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development (24 CFR Part 4, Section 100.70(a)).

Steering based on race, color, national origin, religion, sex, disability or familial status is prohibited. This may include:

- Discouraging any person from inspecting, purchasing or renting a dwelling;
- Discouraging the purchase or rental of a dwelling by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling, community, neighborhood or development;
- Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development;
- Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building (24 CFR Part 14, § 100.70(c)(1-4)).

REALTOR® Code of Ethics

Illegal racial steering also violates the NAR Code of Ethics; equal services are not being provided to each buyer when buyers are selectively shown properties based upon a REALTOR®'s assumptions or values as opposed to the stated desires and choices of the prospect. Under Article 10 of the Code of Ethics, a failure to provide equal services to all buyers and participation in any discrimination against any members of a federally protected class is unethical.

Article 10 provides, in relevant part, "REALTORS® shall not deny equal

professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin." (Amended 1/90)

Case Interpretations Related To Article 10:

The following NAR case interpretations illustrate when a REALTOR®'s conduct may or may not violate Article 10.

Case #10-1: Equal Professional Services by the REALTOR® (Reaffirmed May 1988).

A minority couple called on REALTOR® A and expressed interest in purchasing a home in the \$130,000 to \$145,000 price range with at least three bedrooms, a large lot, and a location in the Cedar Ridge area of town. Being familiar with Cedar Ridge through the handling of numerous listings in that area, REALTOR® A explained that houses in Cedar Ridge generally sold in the price range from \$180,000 to \$220,000. The couple thereafter indicated that they would then like to see "what was available" within their economic means. After further discussion with the couple concerning their financial circumstances and the maximum price range they could afford, REALTOR® A concluded that the couple could not afford more than \$137,500 as an absolute maximum. The couple was then shown homes which met the criteria they had described to REALTOR® A. However, although REALTOR® A discussed with the couple the amenities and assets of each of the properties shown to them, they expressed no interest in any of the properties shown. A few days later, the minority couple filed charges with the Secretary of the Board, charging REALTOR® A with a violation of Article 10 of the Code of Ethics, alleging that REALTOR® A had violated the Article by an

alleged act of racial steering in his service to the minority couple.

The Secretary promptly referred the complaint to the Grievance Committee, which conducted a preliminary review and referred the complaint back to the Secretary, instructing that a hearing be arranged before a Hearing Panel of the Professional Standards Committee. REALTOR® A was duly noticed and provided with an opportunity to make his response to the complaint.

At the hearing, the minority couple elaborated upon their charge of the alleged racial steering by REALTOR® A, telling the Hearing Panel that they had specifically expressed an interest in purchasing a home in the Cedar Ridge area, but were not shown any homes in Cedar Ridge. REALTOR® A responded by producing written records documenting the housing preference of the couple as they had described it to him, including price range and demonstrating that he had shown them a number of listings that met the requirements as expressed by them, although admittedly none of the properties shown were located in Cedar Ridge. However, REALTOR® A explained that he had advised the minority couple that there were no listings available in Cedar Ridge falling within the price range expressed by them. Further, REALTOR® A produced listing and sales information concerning numerous homes in Cedar Ridge which confirmed an average sales price of \$180,000 to \$220,000. REALTOR® A told the Hearing Panel that he had, in fact, offered equal professional service to the minority couple by showing them properties which met the criteria they had presented to him. He pointed out to the Hearing Panel that the couple was charging him with "racial steering" which presumably they were relating to the denial of equal professional service. REALTOR® A stated, "If there were listings in Cedar

Ridge in the \$130,000 to \$145,000 price range with at least three bedrooms and a large lot, and I had refused to show them such listings, then they might have a point in their charge. But there are no such listings available now, nor have there been at any time since the original development of the Cedar Ridge area five years ago. I could not show them what did not and does not exist."

The Hearing Panel concluded that REALTOR® A had properly met his obligation to offer equal professional service and was not in violation of Article 10.

Case #10-2: Denial of Equal Professional Service (Revised May 1988, Revised November 2001).

On a Saturday morning, REALTOR-ASSOCIATE® B, a salesperson affiliated with REALTOR® A, answered a call from Prospect C, a recent college graduate who was moving into the city to take his first teaching job at Northwest High School. Prospect C was married, had two young children, and was a veteran (VA).

After qualifying Prospect C for a three-bedroom home in the \$80,000 range, REALTOR-ASSOCIATE® B described available properties near Northwest High School and set up appointments to show houses to Prospect C. That afternoon, REALTOR-ASSOCIATE® B showed Prospect C and his wife three houses in neighborhoods near the high school.

On Monday, at a faculty meeting, Prospect C met Prospect D, who was also moving into the city to take a teaching position at the same high school and who was also in the market for a home. Prospect D was married with two young children and was also a veteran.

Prospect C told Prospect D of REALTOR-ASSOCIATE® B's knowledge of the market and VA financing and how helpful he had been. Prospect D called REALTOR® A's office that afternoon and asked for REALTOR-ASSOCIATE® B.

REALTOR-ASSOCIATE® B met Prospect D and determined Prospect D was also qualified for the \$80,000 range. Prospect

D told REALTOR-ASSOCIATE® B that he was also a new teacher at Northwest High School and had been referred by Prospect C. Prospect D was black.

REALTOR-ASSOCIATE® B showed Prospect D houses in several neighborhoods undergoing racial transition but did not show Prospect D homes in neighborhoods near the high school.

Prospect D asked about houses closer to Northwest High School. REALTOR-ASSOCIATE® B replied that he had no knowledge of any homes in that area for which Prospect D could qualify. The next day, Prospect D, while visiting Prospect C, related his problems in finding a home near the high school and learned that REALTOR-ASSOCIATE® B had shown Prospect C several homes near the high school. Prospect D filed a complaint with the Board of REALTORS® claiming that REALTOR-ASSOCIATE® B had discriminated against him and his family by not offering equal professional services.

The complaint was reviewed by the Grievance Committee. REALTOR-ASSOCIATE® B was charged with an alleged violation of Article 10, and the complaint was referred to a Hearing Panel of the Board's Professional Standards Committee for hearing.

At the hearing, REALTOR-ASSOCIATE® B admitted that he did not use the same efforts to show Prospect D properties in neighborhoods near the high school as he did with Prospect C because he felt Prospect D and his family would feel more comfortable living in a racially integrated neighborhood.

The Hearing Panel found REALTOR-ASSOCIATE® B in violation of Article 10 of the Code of Ethics.

Case #10-4: Use of "Choose Your Neighbor" Marketing Letters (Adopted November 1987).

REALTOR® A listed a property in a new subdivision. At the instruction of his client, Seller X, REALTOR® A did not file information on the listing with his Board's MLS, did not place a For Sale sign on the property and did not advertise

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the property in the local newspaper. Seller X had told REALTOR® A that he wanted the sale handled quietly, with the new purchasers being people who would “fit into the neighborhood – people with the same socioeconomic background” as the other residents of the subdivision.

Based on his conversation with Seller X, REALTOR® A's only marketing effort was mailing a letter to the other residents of the subdivision, inviting them “... to play a part in the decision of who your next neighbor will be. If you know of someone who you would like to live in the neighborhood, please let them know of the availability of this home, or call me and I will be happy to contact them and arrange a private showing.”

REALTOR® A's marketing strategy came to the attention of REALTOR® B, whose mother lived in the subdivision. REALTOR® B filed a complaint charging REALTOR® A with a violation of Article 10 of the Code of Ethics.

At the hearing, REALTOR® B told the Hearing Panel about receiving a copy of the marketing letter from his mother, who had recently moved to the subdivision. REALTOR® B advised the panel that he had checked the Board's MLS for information on the property, had driven past the house to look for a For Sale sign and had scanned the Sunday real estate section of the local newspaper for information on the property. Finding no mention of the property in either the MLS or the newspaper and noting the absence of a sign on the property, REALTOR® B concluded that REALTOR® A's marketing strategy was to limit access to the property to individuals preselected by the current residents. “In my mind,” said REALTOR® B, “this could only mean one thing. REALTOR® A was deliberately discriminating against home seekers from other areas, or those with different backgrounds,

who would never have the opportunity to learn about the house's availability. Obviously, REALTOR® A was directing all of his marketing energies into finding purchasers who would not disrupt the ethnic and economic character of the neighborhood.”

REALTOR® A defended his actions by advising the panel that he was acting on Seller X's instructions. Seller X appeared as a witness for REALTOR® A and confirmed this fact, adding that he and the other residents of his block had an informal agreement that they would try to find “suitable” purchasers for their homes if they ever decided to sell. Seller X felt that by broadening the marketing campaign to include all residents of the subdivision he had increased the chances of finding such potential purchasers.

The Hearing Panel found REALTOR® A in violation of Article 10 of the Code of Ethics. In their decision, the panel advised REALTOR® A that no instruction from a client could absolve a REALTOR® from the obligation to market properties without regard to race, color, religion, sex, handicap, familial status or country of national origin, as expressed in Article 10. There was no doubt, in the panel's opinion, that the exclusive use of “Choose Your Neighbor” letters to market the property was designed to circumvent the requirements of Article 10.

The National Fair Housing Alliance Report on Housing Discrimination and Steering

In April 2006, the National Fair Housing Alliance released its fair housing trends report, *Unequal Opportunity – Perpetuating Housing Segregation in America*.

In general, whites in the study were shown homes in largely white neighborhoods, while African Americans were shown houses in primarily African-American neigh-

borhoods, and Latinos in mostly Latino neighborhoods. Among the most frequently cited illegal practices is steering by real estate agents based on race or national origin.

In the investigation, teams of testers were used, one white and one African-American or Latino. Teams would contact the same real estate firm, having previously been assigned similar information regarding housing needs, employment history and financial information. The African Americans and Latinos presented themselves to agents as more qualified than the white testers because they had a higher income or more money for a down payment. 73 firms were tested nationally in 12 market areas.

The results of the study shockingly revealed that white shoppers routinely were steered away from houses in predominantly minority or racially mixed neighborhoods, even when they expressed interest in seeing houses in those areas. African Americans and Latinos routinely were steered to minority neighborhoods and away from more affluent, white neighborhoods, even when they asked to see houses there. The rate of steering, according to the study, was 87 percent. Some steering was blatant, some was subtle and it all was too common in many of the offices tested.

Other results of the study demonstrated that:

- Different levels of service were provided to white testers compared with minority testers. Nearly 20 percent of the time, according to the report, African-American and Latino testers “were refused appointments or offered very limited services.”
- In Marietta, Georgia, a white tester asked to see a home in Stone Mountain, a predominantly black community. “The tester was told by the agent that she would not want to live in Stone Mountain,” according to the NFHA report. The

tester was shown “eight homes in predominantly white communities” instead. On the other hand, an African-American tester who visited the same real estate office was urged to consider Stone Mountain, and the agent “drove the tester around the area pointing out For Sale signs.”

- Minority testers, more frequently than whites testers, were required to provide a lender’s pre-approval letter or other financial data before agents would show them houses. They were also more frequently told to do further shopping on their own, using local newspapers or the Internet.
- Agents more frequently offered white testers financial incentives, such as reduced closing costs and lower mortgage rates through affiliated lending and settlement services companies, while the same incentives were not offered to the minority testers.
- African-American and Latino testers received poor customer service as compared to the white testers. Almost a quarter of the time, African-American and Latino testers were refused appointments or were offered only limited service by the agents. In some cases, messages left for agents were never returned. In other instances, appointments were made, but the agent did not appear.
- White testers were shown numerous homes, whereas Latino or African-American testers were shown few or none. White testers were shown an average of nearly eight properties per test, while minority testers were shown about five properties per test.

The following describes the NFHA testing results in Chicago, Brooklyn and Detroit.

Chicago

White buyers consistently were shown only homes in white neighborhoods while Hispanic buyers were repeatedly only shown homes in minority areas.

African-American buyers received very poor service: white testers were

shown a total of 36 homes while an equal number of African-American testers were shown only seven. One of the African-American testers was told that he should rent instead of buying and was shown no properties even though his financial status was better than that of his white counterpart tester who was shown 21 properties.

Agents also made derogatory comments about predominantly African-American neighborhoods to white testers. For example, one agent in the Chicago area study said that she would not recommend uptown because “it hasn’t turned yet.” She then went on to say that she had an ethical obligation “not to slam a neighborhood – it’s just that it has some crime.” This example demonstrates that agents are aware that such steering conduct is inappropriate and illegal, but they seem compelled to engage in this behavior anyway.

Brooklyn

The Brooklyn study turned up the most egregious act of racial steering, when an agent produced a map of Brooklyn and drew a red outline of the areas where the white prospect should consider living. The agent also described the predominately white areas as having high-quality schools. Shanna L. Smith, NFHA president and CEO, described this as the most “literal and blatant example of sales steering” the NFHA had ever seen.

Detroit

A white buyer who worked downtown told his agent he wanted to live near his workplace, but he was shown only homes in the white suburbs some distance from his job. On the other hand, a black buyer who worked downtown and who told his agent he did mind a reasonable commute was shown only two homes in downtown black neighborhoods.

White buyers were told the taxes and insurance were too high to dis-

courage them from homes in Old English Village, and were told the taxes were lower and schools were good in Harper Woods to encourage them to look there. Black buyers, on the other hand, were encouraged to look in Old English Village because the homes were larger and they could get more house for their dollar and be able to attend the same school serving Harper Valley.

Schools the New “Code” for Race

Real estate agents in the NFHA studies used remarks about schools or the quality of a school district as a proxy, or code, for the racial or ethnic composition of a neighborhood. Agents asked white buyer prospects whether they had children, and if they did, emphasized school quality in the selection of houses they showed. “Instead of making blatant comments about the racial composition,” the NFHA study reported, “many real estate agents told whites to avoid certain areas because of the schools.”

Thus, some agents told white testers to avoid certain areas because of the schools alone. Some of the most blatant school-based steering occurred in Tarrytown, N.Y., which has a large Latino population. Whites were told that schools there were “bad” despite excellent graduation and college acceptance rates. Latino home seekers were told that these same schools were “good.”

Why Do Agents Steer?

Steering may be caused by ignorance, bias, financial incentives or other factors.

- Steering can be a way for an agent to generate a reputation for preserving the neighborhood racial composition in tact and thus secure more listings in white neighborhoods by referral and word of mouth. This is a financial motivator.
- Some agents have received nasty calls after having shown homes in white neighborhoods to African-American

buyers, threatening that the company will not get any more listings in the neighborhood if it happens again. The neighbors have violated the law, but the agents don't report them, and instead succumb to the threats. This involves intimidation and giving in to neighborhood bias in order to facilitate future business.

- Other agents (hopefully very few) are racially biased and believe that segregation, not integration, is the best policy. Preserving or changing the composition of a neighborhood based on any given characteristic is not the mission, responsibility or business of a licensee.
- This discriminatory viewpoint at times takes the form of "blockbusting" – showing and selling a home in a white neighborhood to an African-American family and then soliciting listings from other white homeowners with the pitch that they don't want to be the last whites in the neighborhood after the home values drop. This panic selling technique is distasteful and illegal under both federal and Wisconsin law (Wis. Stat. § 106.50(2m)).
- Steering can also be the result of well intentioned agents trying too hard to be helpful, and in the course of this eagerness to provide assistance, skipping those moments when the agents ask buyers, "what is your preference, what is your choice?" They think that they are being helpful when, in reality, they are making assumptions based upon the consumer's perceived membership or affiliation with a protected class, usually connected to race, religion or ethnicity. An affiliation, connection to or membership in a particular socio-ethnic group is first assumed, followed by the assumption that these consumers would wish to live with those of the same race or ethnicity. The first assumption is dangerous enough and could, at minimum, lead to an embarrassing faux pas. The second assumption is far worse because now the agent – the real estate pro-

fessional – is throwing everything they learned about customer service (seeing what the consumer wants and what he or she is qualified for money-wise) out the window, and is substituting his or her judgment for that of his or her customer or client and pre-selecting or pre-judging where this person will and will not want to live.

Do We Steer?

If an agent restricts a person's choices to perpetuate segregated housing patterns based on membership in a protected class – taking African-American families, for example, only to predominantly African-American neighborhoods – the agent is steering. Consider the following examples that any agent might observe in just about any market area:

- An agent shows the parents of a blind toddler a house for sale at the end of a quiet cul de sac, and does not show them another house a block away on a busy corner, even though that house meets their specifications.
- A property manager shows a young, single woman a top-floor apartment when there is a first-floor unit available, assuming that would be the preference of a single female living alone due to personal safety concerns.
- An agent describes the location of a property as "across the street from a little bodega and a block away from Roberto Clemente High School." This word choice indicates that many of the neighborhood's residents are Hispanic and that this agent has assumed that this would be attractive to the buyer.
- If an agent tells a Hispanic buyer who is seeing homes in an integrated area, "I am sure that you will feel very comfortable here," and is telling a white buyer seeing properties in that same integrated neighborhood, "Are you sure that you want to live here?" then that agent is discriminating and steering based upon race.

- If an African-American buyer asks to see homes in a white neighborhood and is told, "I think that a minority family was firebombed or had a KKK cross on their front yard a couple of years ago," the agent is violating federal fair housing law by steering based on race.
- An agent remarks, "I know how important it is for you to find a church congregation you can belong to. Let me show you two houses near the African-American Baptist Church on Second Street. I think that church would suit you." This agent is making presumptions about the prospect and steering on that stereotypical basis.

However well intentioned these agents might have been, these are examples of illegal steering. Any effort to influence a person's housing choices based on race and other protected factors violates federal fair housing law.

Steering Example From the Courts

Facts: Over a one-year period, sales associates for Matchmaker Real Estate showed black testers several Chicago homes that were below their price range in racially mixed areas and showed white testers homes that were above their price range in white neighborhoods. The broker had a written fair housing policy and required his sales associates to attend fair housing training, but he did not monitor their actions by keeping documentation relating to prospects' desired locations, locations actually shown or price range.

Findings: The trial court found Matchmaker, its owner and four sales associates guilty of steering prospective home buyers according to their race. But because the broker had actively supported the fair housing laws, the appellate court overturned the trial court's punitive damage award against him and the company. However, the compensatory award was upheld.

Trying to Do the Right Thing

Even agents that are well aware of fair housing law find that sometimes it is not so easy to avoid illegal steering.

REALTORS® should all remember that one of the focal points of the profession is providing good customer service. The job of real estate professionals is to help promote and responsibly fulfill the American dream of homeownership, and to help people find the home of their dreams with a mortgage they can afford in the neighborhood and community of their choosing, not the neighborhood or community someone assumed they would prefer. The American dream involves free choice on the part of the consumer, not a prejudged assumption based upon race, religion, country of origin, gender, disability, family status, sexual preference or any other protected class characteristic.

REALTORS® MUST provide professional and equal service to all buyers.

- Use systematic procedures to qualify buyers and match them to properties.
- Obtain objective information.
- Let the customer set the limits.
- Provide the same wide variety of choices to all buyers.
- Document the service provided.
- Do not encourage or discourage prospects based upon race, religion or ethnicity.
- Never give an estimate or opinion, or discuss the racial, religious or ethnic composition of a neighborhood – refer the buyer to an appropriate agency or community group.

Buyers should be provided with information about a variety of neighborhoods and homes within their price range and then be permitted to choose where to look and, ultimately, where to live. REALTORS® should never assume that any area

is off limits to anyone based upon their race, color, national origin, ethnicity, religion, disability or any other factor that is treated under fair housing law as a protected class. REALTORS® may “steer” buyers to properties, as long as they are guiding buyers to properties that match the buyers’ qualifications, search parameters, property features and specified needs that the buyers have designated. Fair housing is about choice.

How should REALTORS® handle those tough questions that buyers and sometimes sellers throw their way? Often times there may be no easy answer or magic solution. Try to focus all situations upon proper factors such as price and property features. The following examples include additional suggestions.

 The buyer asks, “What is the racial composition of this neighborhood?”

REALTOR® TIPS:

- Make note of the buyer’s statements.
- Never give an opinion or estimate the racial, ethnic or religious composition of a neighborhood.
- Refer the prospect to the library or local municipal offices so he can research the questions himself.

 The buyer asks, “Are there good quality schools in the area?”

REALTOR® TIPS:

- Limit any comments to objective information from a credible source, i.e., “I read in the newspaper that this school district scored the highest in the Madison area on the standardized testing of eleventh graders.”
- Refer the consumer to the school board, school district office or Web site or, if desired, maintain uniform statistics for schools in the area such as student-teacher ratios, number of

national Merit Scholars, graduation percentages, and percentage from graduating class who will be attending college, and use this data if asked about schools.

- This might be a professional tester trying to elicit inappropriate comments about schools.

 The buyer asks, “This neighborhood looks more integrated than I remember. Where are all of the whites moving to?”

REALTOR® TIPS:

- DO NOT agree with any of these assertions or you risk block-busting or steering accusations.
- Reply that many people are always moving in and out of this area for a whole array of reasons: want a larger home, transferred to a different job, be closer to family, etc.
- Indicate you were not aware of unusual selling in the area and try to refocus the customer on property features.

 The buyer asks, “Will my children have other kids to play with in this neighborhood?”

REALTOR® TIPS:

- This is a natural question for parents to ask, and it may be answered honestly in a factual manner, without any references to race, color, religion, and national origin and without expressing any statement that may be interpreted as restricting the buyer’s choice based upon family status.
- Don’t volunteer information about the family status of the neighbors. It is perhaps best to provide contact information for the school district or census bureau.

 The buyer asks, “Would you live here?”

REALTOR® TIPS:

- This question may be answered honestly in a factual manner, without any

references to race, color, religion, national origin, disabilities, family status or the ethnic make-up of the neighborhood.

- Answer the question based upon the property features, location and personal preferences. For instance, "I would not live here because all the trees make it too shady - I like lots of sunshine." "I like the architectural style and the fact that it is so close to the health club my family belongs to." "The house has a staircase that would wreak havoc with my spouse's bad knee."

Demographic Inquiries

Standard of Practice 10-1 indicates, "When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information. (Adopted 1/94, Amended 1/06)"

When buyers ask to be shown properties in a particular ethnic or religious community, it may be best to turn the request around and ask them to tell you what geographic areas they are interested in. Explain that you do not evaluate property on that basis because it is potentially discriminatory and promotes segregation, and instead you would be happy to help them find homes based upon price and property features, and neighborhood, if the buyer so specifies. Direct them to public sources of demographic information such as the census bureau, school district, government agency or an appropriate Web site. When they have done their research and found what they needed, ask them again what geographic areas meet their criteria. Never hesitate to remind them that the Fair Housing Act prohibits you from showing them properties based upon discriminatory preferences.

Another approach to this type of inquiry is to prepare a comprehensive community resource sheet or booklet. Start with service provider referral lists that include at least three competent home inspectors, lenders, appraisers, contractors, painters, environmental companies, exterminators, etc. To this add contact information for different community and ethnic groups, a guide or resource for locating different places of worship, school board data, law enforcement resources, the sex offender registry, etc. Try to think of all the questions you have been asked, try to contemplate all of the other questions you might be asked and then provide different objective resources (telephone numbers, Web sites, addresses, etc.) where these questions might be answered. The idea is to show customers that you are organized and attendant to their needs, while at the same time avoid being put on the hot seat and asked questions you cannot or should not answer. When the consumer asks where the Hmong neighborhood is or the Jewish retirement area, the agent may provide them with the community resources he or she has compiled.

Referrals to Agents/ Assignment of Walk-Ins

Brokers and office managers would be well advised to ensure that the assignment of new customers to agents and referrals to other agents should be done on the basis of some pre-established neutral system, and not according to race, color, religion, disability, family status or language unless the consumer makes a request for an agent who speaks a particular language. If an agent does not speak the consumer's primary language, an interpreter may need to be called in. All agents should be prepared to provide good customer service to all consumers unless the customer or client makes a request to the contrary.

Legal Hotline – Steering Questions and Answers

The following are some recent Legal Hotline questions regarding steering issues.

A sales associate has a client that is asking about area demographics. The agent knows that by law she is not allowed to tell him to stay away from "this" area or that "that" area is known for a certain race. However, she also believes that there is a way to give him a Web link where he could look up area demographics and ethnic diversity himself. Is that correct?

The agent might check the local government census site, the library or the school district Web site.

An offensive e-mail is sent to a broker by a customer regarding racial demographics of a neighborhood where the broker had shown the customer a property. How should the broker respond to the customer?

It is proper to tell the buyer that it violates federal and state fair housing laws to select properties based upon the racial composition of the neighborhood and that the broker will not provide this type of information to the buyer. It may be adequate to warn the buyer that the broker would not evaluate properties on this basis or supply this information, and if the buyer persisted in such discussion, that the broker would be forced to stop working with the buyer. Immediately ceasing brokerage services with the buyer is not necessarily required.

The NAR's Fair Housing Compliance reference booklet gives suggestions about what to do if faced with such a situation: Never give an estimate or opinion on the racial, religious or ethnic composition of a neighborhood. Refer the buyers to sources of information such as the library or local municipal offices so they can look for information on their

own. Respond with positive and accurate comments about the house.

Suggested response: "We don't keep racial, religious or ethnic statistics in our office, and I wouldn't like to guess. If you'd like to research this matter, I can refer you to the city's planning department of Bureau of Census. They may have that information."

What exactly is steering? If a licensee is working with a buyer, and they want to be involved in their church, parish or synagogue and they say they want to look at homes within a one-mile radius of it, is this steering if the licensee complies with this?

Steering is the illegal activity of directing buyers toward or away from certain areas. This can be distinguished from a situation where the buyer dictates that they only want to see properties within a certain radius of a certain church, synagogue, etc. Based upon the buyers requirements, a real estate licensee searching for homes that are in that geographic range would not be steering.

A Nigerian friend was refused a two-bedroom apartment she wanted to rent – in fact she was not even shown the unit even though she specifically asked to see it. Instead, the apartment manager indicated the unit was too small for the woman and her three children and that is was too far away from the elementary school and the Boys and Girls Club. Can the friend sue the apartment manager?

The rental agent unfortunately made assumptions about where and how the friend wanted to live and in the process apparently violated fair housing laws by pre-judging the unit as being too small for the family. While the rental agent may have been ignorant, biased or even well intentioned, all that matters in the end is that the agent steered the woman away from a unit she may very well have been perfectly qualified for. In

addition to the assumption about the size of the unit, the rental agent also concluded that the friend's children frequented the Boys and Girls Club, an assumption that might have been ethnically or racially grounded.

The friend may wish to look for a local tenant or fair housing agency or organization to assist her with this situation. It will likely be a case of one word against the other unless additional evidence or confirmation can be found.

A broker is working in a transaction with buyers who are Asian. The FSBO seller said she is concerned about selling to this family with eight children because it will disturb the neighbors. The buyer heard the seller's statements and is asking what should be done if the FSBO discriminates against them. What should the buyer's broker tell them?

The buyer may proceed to submit an offer to the seller. To avoid a fair housing discrimination claim, the seller's determination to accept or reject may not be based upon the family status of the buyer or the buyer's ethnicity.

If the buyer believes discrimination has occurred, it may be most helpful if someone can speak with the offending party, discuss fair housing law and see if that will cause the offensive behavior to end. If that fails, the buyer may seek assistance from HUD, the Wisconsin Equal Rights Division, a local equal housing opportunity provider or private legal counsel.

- Complaints of a federal fair housing law violation may be filed with HUD. Visit www.hud.gov/complaints/housediscrim.cfm.
- For violations of Wisconsin's fair housing law, contact the Equal Rights Division of the Wisconsin Department of Workforce Development at 608-266-6860 or 414-227-4384, or visit www.dwd.state.wi.us/er/discrimination_civil_rights/publication_erd_9523_pweb.htm.

- There also are some regional, county or local equal opportunity organizations and agencies that provide assistance with fair housing complaints. These include the Metropolitan Milwaukee Fair Housing Council, which can be reached by phoning 414-278-1240 or by visiting www.fairhousingwisconsin.com/index.htm.
- There is also a Fair Housing Center of Northeast Wisconsin, which may be reached by phoning 920-733-4717; a Fair Housing Center of Greater Madison, which may be reached by phoning 608-257-0853; and a toll-free statewide complaint intake hotline at 877-647-3247.
- If a licensee discriminates in violation of fair housing law, a complaint may be filed with the Department of Regulation and Licensing. See the information online at drl.wi.gov/dept/complaint.htm. If the licensee is also a REALTOR®, an ethics complaint may be filed with the local or regional REALTORS® association.
- Additional resources are available on the WRA Resource Page at www.wra.org/fairhousing.

Accessibility Features Report

Evaluation Checklist and Completion Guidelines

1/1/01 (c) Thomas Hirsch, AIA

Property Location : _____

Agent & Firm: _____

MLS #: _____ **Date:** _____

* THIS REPORT IS FOR GENERAL INFORMATIONAL PURPOSES ONLY. ALL INFORMATION SHOULD BE VERIFIED.*

	Explanation	Yes	No	Easily Adaptable
Exterior				
Walkways wider than 4 ft.	Maneuverability for wheelchairs			
Ramp or No-step at bldg. entry	Slope of incline less than 1:12; 3-5' landing at top			
Maneuvering space at entry door	18" min. at latch side of door			
Emergency exit pathway(s)	Two no-step pathways, at least 36" wide			
Patio/Deck	If wood, no spaces between boards wider than 3/8"			
Planters/gardens	Raised to 30" for seated access			
Fenced yard for service animal				
Interior				
Entry: Air lock and/or vestibule	Energy efficient, switch chairs, escape bad weather			
Closet with Double Hanging	Lower rod 41" above finished floor			
Storage for equipment	Bulk storage, wheelchairs, etc.			
General:				
Wider doors (3' or 2'10" vs. 2'-8")	Interior doors			
Thresholds	1/2" max. height on Interior; 3/4" max. height at Ext.			
Slider vs. Swing Doors	Sliders use less area			
Useable Door Hardware	Lever handles			
Kickplates	Especially on push sides of doors			
Window operation	Cranks are easier to operate than sliders			
Elevator/Lift	Existing or space for future installation			
Personal safety feature(s)	Flashing fire alarm, door bell, etc.			
Hallways:				
Extra width (42" min.)	Enough width to install wall reinforcements & handrails			
Durable Flooring	Smooth, able to withstand frequent wheelchair turns			
Bedroom(s):				
Lower storage space	Easy access to supplies and equipment			
Durable Flooring	Smooth, able to withstand frequent wheelchair turns			
Doors & hardware	2' 10" clear opening, levers			
Hoist & Track	Structurally adequate? Can reinforcement be added?			
Bathroom(s):				
Single lever plumbing controls	Lever or Loop handle (no crystal ball)			
Maneuvering space	5' circle or area for T turn			
Reachable cabinetry & hardware	Dropped counters, loop handles			
In-wall blocking & Grab bars	If fiberglass, blocking applied to module			
Slider Door(s)	Uses less space than swing doors			
Hoist & Track	Structurally adequate? Can reinforcement be added?			
Shower with sloped floor	Best if no curb; curbs up 2" OK if both sides sloped			
Flooring	Water resistant, non-skid			
Lighting	Motion detector activation			
Lower storage space	Easy access to supplies and equipment			

Accessibility Features Report

Evaluation Checklist and Completion Guidelines

1/1/01 (c) Thomas Hirsch, AIA

		Explanation	Yes	No	Easily Adaptable
Kitchen:					
Special cabinetry: dropped counters		34" finished counter height			
Pullout boards		For working space, cutting board			
Durable flooring		Non-skid, vinyl or ceramic tile best for wheelchairs			
Kitchen Appliances:					
Wall-mounted oven					
Cooktop w/ kneecap		Controls at front or side			
Side-by-side refrig./freezer		Freezer under refrigerator also works.			
Refrig. w/ exterior water/ice		Easy access to water and ice without opening door			
Utility:					
Washer/dryer		Maneuvering space & touch controls			
Circuit breaker location & height		Maneuvering space & 48" - 54" to top breaker			
Garage:					
Extra size		12' x 22' for car or van, plus aisles for WC maneuvering			
Extra height (overhead door, walls)		If raised top van is used			
No step into house					
Heating, Ventilating & Air Conditioning:					
Special needs		Extra heat in Bathroom			
Indoor Air Quality		Filters, air/air exchanger			
Central air conditioning					
Controls within reach		48" - 54" to top operating control			
Plumbing:					
Space for transfer to Toilet & Shower					
Knee space under sink		Insulate all water supply & drain piping			
Curbless/low curb shower		No more than 2" high curb			
Raised tub with step		Rim 17-19" above finished floor			
Whirlpool tub		Controls accessible, no tight finger grip			
Grab bars in Tub/Shower		Reinforcement in wall to receive grab bars			
Controls in reachable locations		Can reach both from outside and inside			
Single lever controls/Anti-scald		Anit-scald in hot water heater or at fixtures			
Electrical:					
Rocker Switches					
Switches & Controls within reach		Top 48-54" max. above finished floor, at least 12" high			
Motion detector		Lights go on when someone walks in room			
Special Circuits		Recharge wheelchair, oxygen equip., ventilators, etc.			
Signal Systems:					
Visual		Light signals for doorbell, fire, telephone			
Audible		Loud, distinctive-sounding alarms			
Security System		Monitored/Automatic call			

Additional Comments:

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