

Unit 18: Fair Housing

LECTURE OUTLINE

- I. Equal Opportunity in Housing—all real estate professionals must be aware of federal, state, and local fair housing laws.
 - A. Purpose of the laws is to create an open, unbiased housing market.
 - B. Failure to comply with the laws is not only a criminal act, it may also be grounds for disciplinary action against a licensee.
 - C. Civil Rights Act of 1866 prohibits any type of discrimination based on race, without exception.
 - D. US Supreme Court 1896 decision of *Plessy v. Ferguson* established the "separate but equal" doctrine that created classes among citizens but separate was rarely equal. In 1954, *Plessy* was overturned by *Brown v. Board of Education*.
 - E. Presidential Executive Orders were used to prohibit racial discrimination in the national defense industry in WWII, end racial discrimination in the U.S. armed forces, and protect voting rights.
 - F. *Jones v. Mayer*, 1968 Supreme Court decision, upheld the Civil Rights Act of 1866; where race is involved, *no* exceptions apply
 - 1. Supreme Court interpretation expanded definition of race to include ancestral and ethnic characteristics.
 - 2. Affords due process of law for complaints
- II. Fair Housing Act (Title VIII of the Civil Rights Act of 1968) prohibits discrimination in housing. It was amended by the Housing and Community Development Act of 1974 and the Fair Housing Amendments Act of 1988.
 - A. Protected classes (Including people who are associated with these individuals)
 - 1. Race
 - 2. Color
 - 3. National origin
 - 4. Religion
 - 5. Sex
 - 6. Familial status
 - 7. Disability

- B. Housing for Older Persons Act (HOPA) provides that housing can be designated as housing for older persons if at least 80% of occupied units have at least one person age 55 or older living in them
- C. Definitions
 - 1. Housing (dwelling)—any building or part of a building designed for occupancy as a residence by one or more families
 - 2. Family/familial status—one or more individuals who have not reached the age of 18 living with a parent or guardian
 - a. All properties available under the same terms and conditions as for others
 - b. Cannot use advertising or occupancy standards with the intent or effect of restricting families with children
 - 3. Disability—physical or mental impairment (or having a history of same) that substantially limits one or more major life activities
 - a. Does not include current illegal use of or addiction to a controlled substance nor conviction of the illegal manufacture or distribution of a controlled substance
 - b. Does protect individuals in addiction recovery programs
 - c. Does protect individuals who have AIDS
 - d. Must provide accommodation and allow reasonable modifications that are necessary, at tenant's own expense
- D. Exemptions to the Fair Housing Act
 - 1. The sale or rental of a single-family residence when the home is the following:
 - a. Owned by an individual who does not own more than three such homes at one time (and does not sell more than one every two years)
 - b. A real estate licensee is not involved
 - c. Discriminatory advertising is not used
 - 2. The rental of rooms or units in an owner-occupied one- to four-family dwelling
 - 3. Dwelling units owned by religious organizations may be restricted to people of the same religion if membership in the organization is not restricted on the basis of the protected classes.

4. A private club that is not open to the public may restrict the rental or occupancy of the lodgings that it owns to its members as long as the lodgings are not operated commercially and membership is not restricted on the basis of the protected classes.
 5. Housing for older persons is exempt from the familial status protection.
 - a. If intended for persons at least 55 years old
 - b. At least 80 percent of the units are occupied by at least one person at least 55 years of age
- E. Americans with Disabilities Act provides for nondiscriminatory employment procedures and accessibility to goods and services by people with disabilities.
1. Title I covers employment of qualified job applicants regardless of disability by providing reasonable accommodations
 2. Title III covers accessibility to businesses, goods, and public services

III. Fair Housing Issues

- A. Blockbusting is inducing homeowners to sell by claiming negative impacts on property values from the entry or prospective entry into the neighborhood by people in the protected classes
- B. Steering is channeling homeseekers into or away from particular areas on the basis of race, color, religion, national origin, or other protected class; the effect of limiting choices
- C. Advertising violates fair housing law if language indicates a preference or limitation that is discriminatory, such as:
 1. Trying to attract one population to exclusion of others
 2. Selection of media that targets one population to the exclusion of others (see Table 18.2)
- D. Appraising cannot consider factors related to the protected classes when preparing valuations or appraisals
- E. Redlining is refusing to make mortgage loans or issue insurance policies in specific areas for reasons other than the economic qualifications of the applicant
- F. Intent and effect are considered because even without intention to discriminate, certain activities can have that effect; effects test is applied.

- G. Response to concerns of terrorism has meant that landlords and property managers need to take care that security procedures designed to protect against terrorism do not violate fair housing rights

IV. Enforcement of the Fair Housing Act

- A. Administered by the Office of Fair Housing and Equal Opportunity (OFHEO) under the direction of the Secretary of HUD.
 - 1. A complainant has one year after the alleged act of discrimination to file a charge with HUD or two years to bring a federal suit.
 - 2. HUD will investigate to see if discrimination actually occurred. HUD will attempt to resolve by conciliation.
 - 3. Unless someone connected with the charge requests that it be heard in federal district court, an administrative law judge from HUD will hear the case.
 - 4. The administrative law judge has the authority to issue an injunction, award actual damages, and impose civil penalties. As of April 15, 2021, fines (in addition to actual damages and attorney's fees and costs) are:
 - a. Up to \$21,663 for first offense
 - b. Up to \$54,157 for second offense within 5 years
 - c. Up to \$108,315 for further violations within 7 years
 - 5. Cases heard in federal court can result in the award of actual and unlimited punitive damages.
 - 6. Complaints brought under Civil Rights Act of 1866 are taken directly to federal court.
- B. State and local enforcement agencies
 - 1. Many states and municipalities have own fair housing laws.
 - 2. All complaints filed with HUD are referred to local enforcement agencies if their laws are substantially equivalent with federal law.
- C. Threats or acts of violence—the Fair Housing Act protects those who seek or encourage the exercise of open housing rights

V. Implications for Real Estate Professionals

- A. Real estate industry largely responsible for creating and maintaining open housing market.
 - 1. Social as well as legal responsibility
 - 2. Licensee's activities affect reputation and can have serious legal consequences.