

FAIR HOUSING: ARE WE THERE YET?



Although the FAIR Housing Act (FHA) has been the law of the land for 52 years, illegal discrimination still happens under the radar.

In 2019, *Newsday* chronicled widespread discrimination against minorities who wanted to buy or rent properties in suburban Long Island, New York. This potentially provides insight into why the national rate of homeownership for people of color is so low: 41 % for black Americans and 45% for Hispanics versus 71% for white Americans. And though people of Asian descent have a homeownership rate second only to whites, openly anti-Asian bigotry is surging during the COVID-19 pandemic. Inevitably, this kind of overt behavior can spill into the more subtle realm of real estate. While it's comforting to think that Minnesota holds to a higher standard, the data shows we have a long way to go before achieving FHA's mandate to eliminate discrimination in the sales, rental, and financing of housing based on race, color, religion, sex, handicap, familial status or national origin.

Last year, a Minnesota rental-home owner and a realty company agreed to pay a \$74,000 settlement after allegations that they refused to rent the house to a family of Native American and Hispanic people. In the suit filed by the Department of Housing and Urban Development (HUD), the homeowners and real-estate broker were accused of discouraging the family from renting by increasing the rent by \$1,000 a month.

While such a high-profile case might seem an outlier in Minnesota, the reality is that discriminatory practices persist in the 21st century.

"We don't see a lot of overt discrimination in Minnesota. That is, we don't see many lawsuits, but that doesn't mean it

doesn't exist," said Chris Galler, CEO of Minnesota Realtors®.

A study by Housing Link, a non-profit organization working to improve housing conditions, found ongoing challenges for FHA-protected classes who want to buy or rent a home in the Twin Cities seven-county metro. Obstacles include:

- **Higher rates of loan denial for homebuyers of color**
- **Predatory lending practices toward immigrants, people of color, and disabled people**
- **Greater rates of denial for rental applications from people of color and those with disabilities**
- **Regulations by local governments that limit construction of affordable housing and accessible housing for those with disabilities**

The report concludes these practices bar people from communities with high-quality education, closeness to jobs, safe and environmentally healthy neighborhoods, access to social services and necessities like supermarkets. Over the long term, the lack of opportunities for advancement and improvement perpetuates disadvantage and poverty.

Although solutions to many of these issues are beyond the scope of individual agents and brokerages, Galler says there is much Realtors® can do to help level the playing field and create more opportunities for home ownership.

"It all starts with the Code of Ethics," Galler said. "Under Article 10, you are obligated to treat everybody the same. That means you provide everyone with the same information and the same level of service regardless of their race, sex, or other protected class."

(continued on next page)

Galler reminds Realtors® that they also must educate their seller clients about the FHA.

“Let them know that it’s against the law for you to answer questions about the race or protected-class status of prospective buyers, nor can they as sellers discriminate based on those attributes.”

And if you encounter a seller who blatantly refuses to sell to a member of a protected class, you must inform them that doing so violates federal and state law.

“If the client still won’t agree to abide by the law, then it’s likely in your best interest to request a mutual cancellation of the representation contract,” said Susan Dioury, Minnesota Realtors® senior vice president of Risk Management. “Either way, a listing agent does not have to carry out unlawful instructions of a client.”

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Accommodating the needs of buyers is a little trickier, according to Galler, because the FHA doesn’t prevent them from discriminating about where they want to live. However, it does prevent Realtors® from facilitating their discrimination against protected classes.

“So, if a retired couple doesn’t want to buy a home in a neighborhood filled with noisy kids, that is certainly their right. But you, as a Realtor®, can’t assist them by providing targeted information about the age demographics of the neighbors. Doing so could violate the Minnesota Human Rights Act.”

Further, Article 10, Standard of Practice 10-1 of the Realtors® Code of Ethics prohibits Realtors® from volunteering information about the racial, religious, or ethnic composition of any neighborhood, and they cannot engage in any activity that could result in panic selling.

The FHA is a complex law with a lot of depth and nuance. It takes time to understand how it impacts your real estate practice. That’s why the state of Minnesota requires all Realtors® to complete a one-hour module every two years as part of their coursework for license renewal.

The wide-ranging class follows 100 years of history ranging

from the first Civil Rights Act of 1866 to the Fair Housing Act of 1968. Then it delves into every aspect of the FHA and the related Minnesota Human Rights Act, exploring each category of protected class, and your responsibilities in upholding the law and your duties under the Code of Ethics.

“What it all boils down to is that everybody is better off if they’re treated with dignity, respect and equality in every transaction,” Galler said. “That’s what’s best for our community, our profession, and our industry.”

Quiz: Are You Advertising Your Bias?

When it comes to the FHA, advertising is a potential minefield. Under the Act, it is illegal for ads to indicate preferences or discriminate against protected classes. Complying with this is not as easy as it appears. Check out these two versions of an ad for a townhome below.

Which ad violates the FHA?



Urban Hotspot!

Close to transit lines, bike and jogging trails, health clubs, theaters, galleries, top-flight restaurants and nightclubs, this charming townhome is in the perfect community for young, single, white-collar professionals with no children. No scooters or wheelchairs allowed.



Urban Hotspot!

Close to transit lines, bike and jogging trails, health clubs, theaters, galleries, top-flight restaurants and nightclubs, this charming townhome is in a vibrant neighborhood at the center of the bustling metro area.

See the next page for answer and details!

Quiz Results:

Which Ad Violated the FHA?

Answer: You're on target if you chose A.

This phrase was the giveaway: The perfect community for young, single, white-collar professionals.

“By identifying a demographic group—young, single, white-collar professionals with no children—the ad excludes other groups,” explained Susan Dioury, Minnesota Realtors® senior vice president of Risk Management. It appears to leave out single or married parents, couples, and the handicapped.

When describing a property or a community, stick to the home's features and perks of the surrounding area—as shown in Example B—without making assumptions about the type of person who might want to live there, Dioury advises. “Once you indicate a preferred class of people, you risk violating the FHA,” she said.



Urban Hotspot!

Close to transit lines, bike and jogging trails, health clubs, theaters, galleries, top-flight restaurants and nightclubs, this charming townhome is in **the perfect community for young, single, white-collar professionals** with no children. No scooters or wheelchairs allowed.

For more details about the FHA and advertising, see The Legal Companion, an exclusive membership benefit brought to you by Minnesota Realtors®.

DOJ SAYS RENTERS CAN KEEP EMOTIONAL SUPPORT ANIMALS

Fair Housing cases recognize rights of tenants with special needs



A trio of Minnesota cases found the Department of Justice (DOJ) ruling in favor of plaintiffs fighting for the right to live with emotional support animals in their rental units. In each instance, property owners threatened to evict the renters if they did not comply with their no-pets policies. The court found the property owners in violation of the Fair Housing Act and ordered them to pay the renters monetary settlements and let them live with their animals.

In the most recent case, which was settled in January, a

woman filed a complaint with the Department of Housing and Urban Development (HUD) charging that the owner and property manager of a rental property in Foley, MN, refused to let her live with an emotional support animal. She had adopted the German Shepherd puppy to assist with the special needs of her son, a minor with Down Syndrome. Under the terms of the settlement, the defendants had to pay \$33,450 to the renter, and provide her with a neutral rental reference. They will also have to attend fair-housing training if they continue in the rental business.

Late last year, the court ruled against the owners of a rental property in Ottertail, MN that terminated the lease of a renter whose daughter had an emotional support cat. The defendants had to pay the renter \$23,500, attend fair housing training, and adopt a reasonable accommodation policy for emotional support animals.

In an earlier precedent-setting case from 2018, the owners of an apartment complex in St. Paul refused to allow a veteran with post-traumatic stress disorder to live with an emotional assistance dog in his apartment. In the settlement, the owners paid the tenant \$15,000, attended fair housing training, and revised their policies to allow assistance animals.