

RACE
COLOR
NATIONAL ORIGIN
ANCESTRY
RELIGION
GENDER
GENDER IDENTITY
SEXUAL ORIENTATION
MARITAL STATUS
FAMILIAL STATUS
AGE
DISABILITY
GENETIC INFORMATION
SOURCE OF INCOME
MILITARY STATUS

PROTECT



Field Guide to Fair Housing

"When you know better, do better." – Maya Angelou

The purpose of this guide is to help you bring thought and care to the real estate services you offer. We know what blatant discrimination looks like, but it's unexamined situations in the field that can lead to unintentional bias and discrimination. These are real-life questions REALTORS® have asked, with answers to help make sure you are promoting diversity and inclusion at every turn. Fair housing means fair for all!

www.BerkshireRealtors.net

Office Meeting Material!

Throughout this guide you will find questions to spark office meeting conversations. It will allow you to discuss challenges and solutions to ensure everyone offers the same services on behalf of your office.

**Let's Talk
Fair Housing**



Fair Housing Basic Best Practices

Q. What is the number one thing I can do as a real estate agent to promote fair housing?

A. Use a system to make sure you are treating all people the same. It is important that you handle buyer leads, seller inquiries, cold calls and showings the same for every person. Use checklists, process lists or anything else that helps you interact and offer the same options to all prospective and actual clients and consumers. Respond to initial welcome emails, calls and text inquiries the same. Take the same safety precautions and record the same client data before meeting. Create your new client file on your office server with the same information. Ask all buyers for a prequalification letter within the same number days. Share with your seller a list of steps and decisions they should make in the marketing, offer, and closing process. Give the same list of lenders to any buyer asking, request the same financial information when acting as the seller's agent, etc... Standardize your practice and you will find it easy to provide the same outstanding service to all.

Further Reading: Check out Code of Ethics Case Interpretations 10-1, 10-2, 10-3.

Q. I keep hearing about testers. What exactly are they testing and what can I do to make sure I pass the test?

A. Testers are making sure that everybody who wants to list their home for sale or buy a home has the same access, opportunity and rights as all others. They are looking to see if you are steering – away or to – certain neighborhoods, towns, or areas. They are looking to see if you give the same level of service to all people. Do you give the same information about lending options, transaction processes, and preparation for the real estate transaction? Do you make assumptions because of race or religion or ethnicity or gender or accent? That is what the testers are measuring and that is why we strongly advocate for checklists and standards for your real estate services.

Office Discussion Topic:

What systems do you use to ensure all people interacting with your office are offered the same opportunity and care in the home buying / selling process? Are there document packages, checklists, or clauses the broker can share in the agents' forms platform to help keep service consistent officewide?

Language Barriers

Q. If I know a client's primary language is not English, do I have to do anything special regarding contracts?

A. All people, not just those who speak English as a second language, should be counseled that the contract is an important group of obligations that they are bound by law to fulfill. All real estate contracts produced by the local or state association clearly state that it's a **BINDING CONTRACT. IF LEGAL ADVICE IS DESIRED, CONSULT AN ATTORNEY.** Agents should review the terms of the standard contract in a no-pressure meeting to explain the clauses and to allow time for questions and discussions. Buyers and sellers should have time to independently review the agreement at their leisure and with their own legal counsel. (Add that to your checklist!) REALTORS® should always advise that legal guidance is an important step. Review of P&S language can be done at the beginning of your relationship to ensure a thorough discussion of the offer process, establish client expectations, and so you may identify any issues that would prompt you to provide additional resources to assist in your client's understanding of the terms or process. Then, when there is a "live offer", the review process will be quicker, and you will be assured that the client is making a fully informed and well considered decision.

This applies to both buyers and sellers!

Office Discussion Topic: What resources are you aware of that can assist clients who do not speak English as their primary language? Do you have a list of real estate professionals who are fluent in other languages? Do you know of any resources to assist hearing, visually or physically impaired clients?



**Mandatory
Licensee
Consumer
Relationship
Disclosure now
available in
8 languages.**

How should I handle a prospective client that does not speak English fluently and I am struggling to communicate effectively?

A. You should discuss your concerns directly with the person and talk about possible solutions to your communication issues. Have a conversation to figure out how *they* would like to proceed. Explain your concerns. Explain their options. Some things to consider:

- Do you have a policy stating that you are willing to refer any person with whom you have a communication barrier to an agent that speaks the same language?
- Have you researched availability of translators your clients might want to engage?
- Does the client plan to use a trusted person to translate for them?
- Can day-to-day communication be aided by 'Google Translate' and a lawyer that is fluent in their language is prepared to handle any legal work?

After reviewing the options to overcome communication barriers, you can work together to implement a solution that is best for all.

Handling Special Requests

Q. I have been asked by my buyers about crime rates in a specific neighborhood. I understand that “safe neighborhood” is in the eye of the beholder, but if asked specifically about crime rates, can I answer with facts and sources? Do I have to tell them to do their own research? I am their agent and getting paid to help them through the process and don’t think it’s appropriate to refuse to assist them when asked about a factual aspect they deem important. How can I be a proper fiduciary for my buyer and navigate the safety question?

A. Discussing crime statistics could be interpreted as racial steering, a violation of the Fair Housing Act, so you must direct buyers to research and reach their own conclusions about a neighborhood. Be the source of the source - direct clients to internet crime sites, local police departments, or advise them to research the neighborhood on their own. In December 2021 both Realtor.com and Redfin removed the crime data from their websites in collaboration with fair housing advocates. There is a big difference between crime and safety. It is perfectly acceptable to tell your buyers that legally you are not able to give that information and why.

“ While all of these are real situations and questions from the Berkshires, there have also been complaints received in the past from elected and school officials about REALTORS® in the region: Steering buyers away from a certain school district because “that’s a bad school” or towards a “good school” not because of test scores or teacher-student ratios, but due to diversity and socio-economic factors of the families. ”

Office Discussion Topic: Develop and practice ways to address the most common buyer questions that are fair housing landmines, according to Realtor.com: 1) Is this a good place to raise a family? 2) What’s the neighborhood like? 3) Is this area safe? 4) How are the schools here?



Office Discussion:

When clients tell you their home search criteria, how are you recording their wishes and making sure you are not excluding anything that shouldn't be? How are you suggesting they participate in the search process? We know most buyers don't naturally use our "regions", they use maps... do you? Do your clients specify all of the towns they want to search? Do you tell them about other markets that they might not be aware of if there is a very limited inventory? What are you sharing about the towns? Consistency is key!

Handling Special Requests

Q. I worked with a couple who said they cannot live within 1 mile of a cemetery. I was only sharing and showing them properties that were not near a cemetery, at their request. I respect other cultural or religious limitations my buyer clients have as well: can't have front doors that open to stairs or a home where someone passed away, for example. What is my proper role in acting as a fiduciary agent while balancing fair housing obligations?

A. In the first case, your clients made a specific geographic limitation to the homes they want to look at, so while you should endeavor to provide them with homes that satisfy that criterion, caution should be used. While you are sharing and showing them homes that match their criteria, it is wise to engage them in the home search process so they can see all of the homes available. Also, consider how your search might vary from their search. Were you measuring as the crow flies or driving distance? Do you mark all cemeteries including small private ones? You don't want them to miss out because your search criteria was a bit different from theirs.

Your buyers would be well served to understand the *full* market and investigate all homes of interest. If you share all the properties in the MLS that match their home criteria, and then explain, "There are 6 properties currently on the market in your price range, but the first two may be too close to a cemetery for your preference. Please let me know if you would like to schedule a showing for any of these homes or if there is any research I can do to help." Or "This new listing came on the market today, but check out the layout to make sure it's a good fit and then let me know if you want to set up a showing." Now, that's a good agent.

While it is good to respect their requests and the reasons for them, ensuring that buyers have a full understanding of the market is part of your job, as well.

In respecting religious requirements, have a candid conversation about buyers being involved in the home search process. Let them know upfront your concerns about not sharing all homes in their price range for consideration. Then, any special requests or restrictions should be in writing from the client.

Maintaining Neutrality

Q. I remember when COVID first hit, you said something about handling multiple offers correctly for the seller. What should I be doing to make sure no one is inadvertently discriminating?

- A. Treating all parties fairly in a multiple offer situation is important. Your seller isn't obligated to treat all buyers the same but must have valid, objective reasons for how they are making decisions. For example, if your seller received 5 offers but 2 are much higher and terms more favorable, the seller can ask all prospective buyers or just the top two for highest and best. They can negotiate with all, or they can solely counter offer the most favorable without bias. This is why NAR has strongly urged their members present offers with facts and to refuse to pass along love letters that can create bias unintentionally. Further, the board generated two multiple offer worksheets that listing agents should use to help the seller compare every offer side-by-side to make a factual decision based on terms rather than buyer attributes. It's a great tool. Search [BerkshireRealtors.net](https://www.berkshirerealtors.net) for "multiple offers" and/or love letters for information we've shared over the years.

123 Anywhere St. City, State, Zip			
Buyer Initials	OFFER 1	OFFER 2	OFFER 3
	WAC	JPK	LMC
FINANCIAL TERMS			
Initial Contract Price	\$300,000	\$350,000	\$310,000
Escalation/MAX OFFER	\$2,000 over highest, cap \$375,000		\$1,000 offer highest, \$355,000 max
Earnest Money	\$10,000	\$500	\$5,000
Seller Concessions	\$3,500	\$0	\$2,000
2nd Down Payment	\$22,000	\$20,000	\$15,000
Loan Amount	\$264,500	\$0	\$288,000
Loan Type (Conv., FHA, VA, etc.)		Cash offer	
Lender Letter Received (yes/no)			
Preapproval Lender			
DATES AND DEADLINES			
Inspection	Tue, May 25, 2021		
Appraisal	Wed, Jun 30, 2021		
Loan Objection	Sun, Jul 4, 2021		
Closing Date	Sun, Aug 1, 2021		
Possession Date/Time	Sun, Aug 1, 2021 5:00 PM		
Offer Response Deadline Date/Time	Fri, May 21, 2021		
Other Deadline			
Other Deadline			
Offer Response Deadline Date/Time			
Possession Date/Time			
Closing Date			
Loan Objection			
Appraisal			
Inspection			

Use the
worksheet even
for single offers
to help your
seller focus
on the
facts!

Office Discussion Topic:

Does everybody use an offer worksheet to help sellers stick to the facts? Have you experienced any situations when the seller's agent made assumptions or asked inappropriate questions when meeting or seeing the name of your buyer? For example, we've heard seller's agents asking, "Is she buying the home all alone"? Or, asking buyers with a certain last name to get a specific lender's approval because "if they say they qualify, then I'll believe it". Ask for proof of funds on an equal basis to reject any bias.



Maintaining Neutrality

Q. Can I continue to use natural pronouns, or do I have to ask everyone if they would prefer he /she / they? I am open-minded about gender identity and more than willing to use any pronoun someone wishes to use, but I'm concerned that asking just for the sake of political correctness (or only asking some people but not all) will be insulting.

- A. This is not an easy question, and many will answer it in different ways based on their own experience and bias. Putting anyone on the spot can create an uncomfortable pressure to provide information they might not yet be ready to share with you. The best suggestion we've heard is for businesspeople to lead in normalizing the question. If you zoom or receive emails from many non-profits, governmental agencies, or business groups in our area, you will find the person's signature or name now include their pronoun preference as well. Sandy Carroll (she/her). More people are updating their social media bios and email signatures to voluntarily to reflect this information. Seeing your pronouns displayed openly creates a safe space for others to broach the subject with you in their own time. As someone who adheres to a strict Code of Ethics that specifically addresses discrimination throughout, you can help normalize this courtesy simply as a way you do business. But at minimum, when/if someone requests you use a specific pronoun, use it.

Q. If a listing agent (or their showing service), asks for my buyer's name, what should I do?

- A. Most people wouldn't give the name of their buyer to a competitor on principal, but several have raised concerns that conveying names in the showing process could create unconscious bias by the seller's agent and potentially the seller. It is for this reason we also recommend using buyer initials if asked, and also for seller's agents to use buyer initials only in the multiple offer worksheet so that "just the facts" of all offers can be considered side-by-side with no influencing factors that inadvertently could lead to discrimination.

Private Listings

Q. Why are firms allowed to enter sales into the MLS that never had market exposure? They shouldn't be getting credit for sales when they denied buyers access and only benefited their own bottom line.

A. The reporting of off-MLS sales has been allowed in the MLS for years. It was typically used when a buyer's agent worked on a FSBO sale or assisted two parties to a sale transaction without an exclusive contract (Selling between friends or neighbors is a common example). Contrary to popular belief, we do NOT allow these listings for "credit", but rather so that future CMA's and appraisals have all information needed to help accurately portray market activity. Appraisers often discount the prices because, without market exposure, the sales price is typically lower than what would be generated on the open market. Today, we see some office exclusive listings being reported, with "Comparable Sale" in the name of one agent. This is to alert you that the sale occurred outside of the MLS. Note: Staff always follows up on each of these sales to ensure Clear Cooperation rules were followed. Fines are issued for any infraction found.

Office Discussion: What is in your policy manual about in-house listings/sales?

Q. If I suggest that my seller should consider an office exclusive strategy to have a quick sale with my in-house pool of qualified buyers, could this recommendation of keeping a property away from the general public possibly lead to a claim that I am promoting a discriminatory practice?

A. In 2021 the Boston Globe published an article called [The Ways To List Your House Article](#). In this, Meris Bergquist, executive director of the Massachusetts Fair Housing Center, said "While private, off-market home sales may not violate the federal Fair Housing Act, per se, it is a troubling practice because of the very long history of racial steering by REALTORS®. Off-market real estate transactions allow REALTORS® to withhold information about available inventory, which easily conceals intentional or unintentional racial discrimination."

While this statement doesn't vilify office exclusive listings or the companies that take them, you should proceed with caution that you are not suggesting, encouraging, or pressuring sellers to keep the listing inaccessible to most buyers. In most circumstances, this is not in the seller's best interests and could trigger scrutiny by fair housing advocates.

Private Information

Q. Am I able to share my experience working with industry professionals with my clients, even if some of that information might be negative? For example, there are some lenders, lawyers, and REALTORS® who make it difficult to get to the closing on time or make the process extremely challenging for a successful sale. Can I share that information with my client?



A. As a fiduciary of your client, a big part of your job is to provide valuable counsel and expertise. You should always share with your clients any factual information you have about transactional history you've experienced. You are supposed to help your clients get to the finish line with their best interests at the forefront. But, like everything else, you should make sure anything you share is factual and uniform. Obviously, there is a difference between, "The last 3 transactions out of 5 with that professional fell apart because we were unable to get consistent calls back" or "Unusual obstacles and requests were made at the last minute on three transactions" versus, "I like so and so better".

Article 15: REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices.

Note the words "real estate professionals includes lenders, lawyers, appraisers or other industry professionals"

Small talk

Q. We talked about common mistakes agents might make when chit-chatting at open houses or showings. Could you offer some common questions agents ask with a better way to get to know prospective and current clients without violating any fair housing laws?

- Instead of asking “Where are you from?” ask “Where are you hoping to find a home?” or “What made you want to call the Berkshires home?”
- Instead of “Do you have kids?”, say, “Tell me about yourself.”
- Instead of “I have some great places for you to look at”, say “What are you looking for?”
- Instead of “Is someone going to help you buy the house?” say “Who will be on the deed and are there any additional decision makers I should include in the process?”

Proper Meet-and-Greet

Office Discussion Topic:

What conversations do you routinely have when getting to know new clients? How can you flip the script to make sure your inquiries are neutral and get to the heart of knowing the person in front of you and not a stereotype?



Security Issues



Q. I don't want to accept checks or wire transfers from outside of the US because of security issues and opening myself up to fraud. That's not discriminatory, is it?

A. Wire transfers are one of the safest methods of sending and receiving money so long as proper precautions are taken. Always ensure that wiring instructions are independently verified and personally speak with the intended recipient to verify routing and account numbers. Simply refusing to accept international funds could result in a fair housing violation.

Q. After attending the class, I was concerned because I received several emails that I ignored or discarded because I thought they were spam. I now realize that they involved protected classes (country of origin, ethnicity, to name a few). In the email, the language was vague or not grammatically correct, and either no phone number was given or was from a foreign country. Some of these messages offered to buy a home I have listed with cash, sight unseen and asked me to write up the offer. How can we be safe from spam and not make assumptions about buyers from foreign countries or certain ethnicities?

Office Discussion Topic: How do you handle new buyers that were referred to you by a former client or friend as opposed to an online lead generator? How do you work with people from out of the area virtually? What verification of identity does your office require before creating an agency relationship? Do you video or zoom talk on the phone, text, email? What is the baseline of knowing who you are representing?

A. Remember systems? Use the same system for handling all of your buyer leads even for questionable inquiries that call or come to your inbox. (If messages land in your spam box, then leave it!) How do you engage other interested consumers? Send the message, make the call, and like everything else, keep records that you responded accordingly. Most times, scammers never meet, talk on the phone, or adhere to a typical real estate transaction process. Is your policy

to meet with prospects first before engaging in representation and drafting a legally binding contract for them? Does your firm require at least a phone call, or a verification of identity, or SOMETHING before you enter into an agency relationship? Keep it consistent and true buyers who want to work with you will honor your business process.

My Responsibility for Others



Q. Now that I am more aware, I overheard another agent give an inappropriate answer to a client. How should I handle that?

A. Blatant acts of discrimination need to be called out immediately. Many agent's instincts are to handle difficult situations agent-to-agent without clients present (professional!) but in the case of discriminatory conduct, be assertive with your correction. "No, that's not an appropriate remark." or, "That is not true." This should be your response if there is misinformation that could perpetuate steering as well.

Office Discussion: What are some things you've heard in the field that you think crossed the line? Now with more knowledge, how will you handle statements like that in the future? Has everyone taken Fairhaven?



Q. What do I do if I believe a lender is habitually refusing to lend to a specific group of buyers?

A. Any time you suspect discrimination, take appropriate action to address the situation. Have a serious conversation with the lender to express your concerns. You may also consider suggesting that aggrieved buyers speak with an attorney regarding filing a fair housing complaint.

Q. Who investigates complaints about real estate agents?

A. HUD's Office of Fair Housing and Equal Opportunity (FHEO) works to eliminate housing discrimination and promote civil rights and economic opportunity through housing. FHEO enforces fair housing laws. The MCAD (Massachusetts Commission on Discrimination) also plays an important role in the Commonwealth handling complaints and enforcement.



HUD Complaint Link

Words Matter

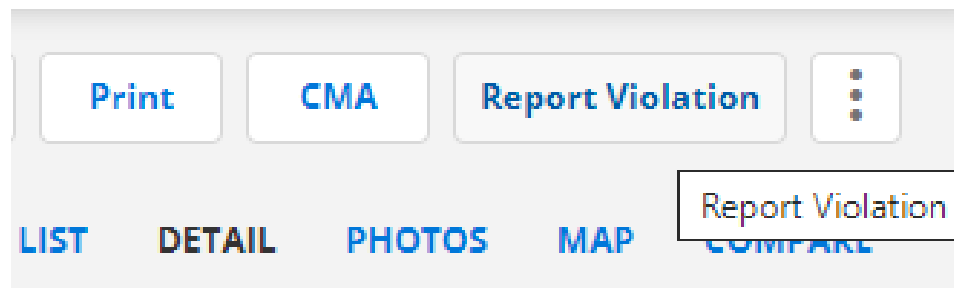


Describe the property, not the people!

Q. Will I get in trouble if I accidentally say 'master bedroom' or 'walk-in closet' or 'walk to town'?

A. No, you won't. It's good to be aware of trigger words and avoid them when possible, but there is no HUD, REALTOR® or MLS rule that says those terms are not allowed. That said, the MLS changed the term Master Bedroom / Bath to Primary Bedroom / Bath because not only does it make sense in describing the house, but it also eliminates any unintentional stigma that might be caused using the term 'master'. Also, consider "walk to town" and other descriptive phrases can be subjective... "Only 2 blocks from downtown" presents a much clearer understanding for the consumer.

[Click here for a great word list of prohibited, cautionary and accepted words](#)



Reports are sent to the listing broker, agent and MLS office.

Office Discussion Topic: Did you know if you see something in the MLS that is questionable, you are asked to report a listing to the board so we can follow up right away with the listing agent and agency on problematic descriptions? A quick, anonymous (except the board office staff) way to make sure our public displays are not discriminatory. Great for general inaccuracies as well!

Fair Advertising



Q. I heard that an investigation was done because an agent's real estate ad was discriminatory. What do I need to know about my ads?

A. HUD recommends all advertising of residential real estate for sale, rent, or financing should contain an **equal housing opportunity logo, statement, or slogan** as a means of educating the public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logo, statement or slogan will depend on the type of media used.

Take a look at your **social media** accounts, **website**, **print ads**, and **mailers** to make sure you have the Equal Housing Opportunity logo and description wherever you are sharing real estate information, listings, or advice. Talk about it, add it to your marketing. It's important.

If you use human models or stock images of people in your advertisements, they cannot indicate exclusiveness because of race, color, religion, gender, handicap, familial status, or national origin. You must use a **balance of images** that represent majority and minority groups in the area, genders, and, when appropriate, families with children. Don't forget to balance a diversity of ages, races and don't exclude people with disabilities.

Most of the images you should be using are of the structure, surroundings, and perhaps actual people in your community. Note: The MLS has a rule: No people, no kids, and no pets in photos! Just the property facts, please.

Q. I heard in class that it's a violation of the Code of Ethics for **ME** if my seller has a Confederate flag on display in their home! How is this possible when I never displayed it?

A. The Code of Ethics offers explanations of each article to help REALTORS® understand NAR's intent on each obligation you have. In this case, NAR clarified that a listing broker is indeed responsible for content displayed publicly when engaging in real estate brokerage. Using the standard of whether a "reasonable person" would think display of the Confederate flag conveyed a discriminatory preference, NAR asserts that listing broker's photos that included the Confederate flag could be reasonably construed as indicating a racial preference or illegal discrimination based on a protected class and a violation of Article 10. Why? There is a perception that display of the Confederate flag means that those in a protected class would not

be welcome in the home or the neighborhood, REALTORS® cannot violate fair housing laws or assist their sellers in doing so. Intentionally or not.

Q. I took a new listing and part of my marketing is sending a post card to all homes within a 5 block radius to let them know about the home for sale. I used a stock template from Etsy (they have great designs!) that said “Choose your New Neighbors”. I was just accused of violating fair housing laws... did I?

A. This marketing tactic should be carefully considered before implementing as it could be a violation of the REALTOR® Code of Ethics if “Choose your Neighbor” marketing letters are the only way the property is advertised. In the example of Case Interpretation #10-4, the REALTOR® did not enter the listing in the MLS, did not place a “For Sale” sign on the property and did not advertise the property online at the instruction of his client. The seller said 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.

The REALTOR® was found in violation of Article 10 of the Code of Ethics and the hearing panel’s opinion was that the exclusive use of “Choose Your Neighbor” letters to market the property was designed to circumvent the requirements of Article 10. Additionally, the panel advised that no instruction from a seller could absolve a REALTOR® from the obligation to market properties without regard to race, color, religion, sex, handicap, familial status, country of national origin, sexual orientation, or gender identity.

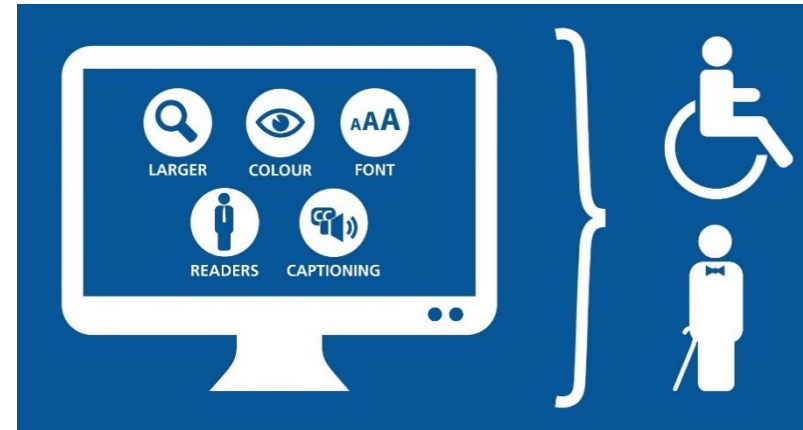
However, the use of “Choose Your Neighbor” marketing letters may not be a violation when used as one element in a larger marketing campaign. According to Case Interpretation #10-5, a REALTOR® listed the property on the MLS, used various online advertising methods, and sent “Choose Your Neighbor” marketing letters to current neighborhood residents.



The hearing panel noted that the use of “Choose Your Neighbor” letters is not a violation of Article 10, per se, but cautioned that such letters could be used in a manner inconsistent with the intent of the Article. If used in conjunction with other marketing techniques and not as a means of limiting or restricting access to property to those of a particular protected class, “Choose Your Neighbor” letters were another method of announcing a property’s availability and attracting potential purchasers.

Q. I have a very basic website and use the equal housing opportunity logo that is linked to www.HUD.gov/fairhousing. Am I covered?

- A. There are a few things every real estate website should have, and the fair housing logo is the most basic. It is suggested that you include a fair housing statement and information on where to report any issues with listing data that might appear on the site for immediate attention. This can be part of your DMCA [Digital Millennium Copyright Act] notice which allows for protection of unintentional copyright violations if addressed in a certain manner.



You should also know that sites can and should be tested for ADA accessibility compliance. There are many ways that those who are hard of hearing or visually impaired use tools to allow them to fully engage on a website. There are website accessibility options for intellectual or learning disabilities as well. It is a website designer's responsibility to make sure to use a site structure that supports the tools that make your site fully accessible to all. <https://wave.webaim.org/> is a site that can run a check of your website to see if there are any issues. The most frequent ADA issue found in modern sites is the failure to describe images so that electronic readers can share what is visible on the screen. Using colors that are difficult to see also prompts suggested alternatives. Have your web designer take a look at the accessibility of your site and suggest changes.

Article 10: REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. 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, national origin, sexual orientation, or gender identity.

Not in: Sales | Leasing | Employment | Advertising | Speech

[Please refer to Case Interpretations related to Article 10 for some insightful examples.](#)

Answering Seller Objections

Q. Shouldn't my sellers be able to sell their home to anyone they want? They had a great life in that home and want to see another young family just like them enjoy it. How is that wrong?

A. That's exactly the thinking that created segregated cities and towns. This is why sellers legally can't discriminate, just like REALTORS® can't. Wanting people who only look like you to be in your home excludes many, many people from the dream of homeownership. It excludes them from being able to live in a wonderful home they can rightfully afford, and also denies them the ability to live in neighborhoods, school districts, and communities of their choosing. And that is wrong.

Q. What should I say to my sellers about this beyond "you should do the right thing"?

A. It's not just REALTORS® who are subject to the fair housing laws. Sellers can face civil penalties up to \$16,000 for the first violation, or \$65,000 if there were two or more cases of discrimination up to seven years prior to the present case. In cases where the Department of Justice is involved, the fine for civil penalties can go up to \$100,000. Let your sellers know that you are promoting homeownership for all while protecting their best interests at the same time.



**IT IS ALWAYS THE
RIGHT TIME TO DO
THE RIGHT THING**

MARTIN LUTHER KING JR

 **Berkshire
REALTORS®**

And Multiple Listing Service, Inc.



Rental Questions

Q. Can you establish a minimum credit score requirement for an apartment rental? Is that a disparate impact? We understand culturally no credit score is different from low credit score. If a prospective landlord cannot establish a minimum for application, can it then become one factor for consideration on the application?

A. Tenant screening is a complex process and many practices must be under taken to ensure equity for all. A landlord shouldn't establish a minimum credit score for application to rent, because it could cause disparate impact on certain protected classes. Not everyone has a credit score, for example. That said, many landlords legally use credit scores as part of the screening process. For information on the screening process, click on this link:

<https://www.masslegalhelp.org/housing/lt1-chapter-2-tenant-screening.pdf>

Office Discussion:

Who is our rental go-to person?
What education do they have that makes you confident to connect them with landlords and tenants?

Q. We were taught that a landlord shouldn't say "No criminal background" when marketing a rental due to disparate impact on minorities. Can the landlord confirm with the applicant that a CORI check will be made instead? Can the landlord then deny rental based on a CORI check revealing any type of criminal history?

A. As with the above answer, we encourage you to check the PDF from Mass Legal Help on Tenant Screening. Disparate impact may play a role when seeking to exclude tenancy based on criminal history. HUD's Office of General Counsel has issued lengthy guidance on the use of criminal records by housing providers [[click here for HUD's guidance pdf](#)]. If you are renting for yourself or for others, you should undertake specialized education as there are many laws, rules and regulations that govern how you must operate legally and ethically.



'Disparate impact' adversely affects one protected group of people more than another, even though rules applied may be neutral.

Worth Mentioning

In 2020, the Board publicly responded to a complaint from the City of Pittsfield and a neighborhood group. A few vocal REALTORS® were fighting to keep a sober living house out of a neighborhood because “having these people in the neighborhood was going to destroy property values”. The Federal Fair Housing Act applies to individuals in recovery as part of the ADA handicap portion, based on the Rehabilitation Act of 1973. Note this protection applies to sober individuals. Depriving such individuals of housing, discriminating in any way or evicting them, would constitute irrational discrimination that may seriously jeopardize their continued recovery. It should be noted that federal laws do not protect individuals who are currently engaging in the illegal use of drugs.

To Do Next

Take time to set up your checklists, processes, and packages for quick and seamless client service when you're busy. Buyer inquiry, seller inquiry, buyer engagement, seller engagement, offer process, purchase process, etc.

Get your brokerage to weigh in and consider using your forms software to develop packets of material you can send in a snap. Remine is great at allowing you to upload your own documents to PACKAGES (resumes, service list, flyers along with contracts and forms), and to add relevant “checklists” through the process to any transaction file.

You can also create draft emails that you can copy and paste as appropriate with a link to the documents you want to include in each step. Not only can this assure some basic fair housing obligations are met, but it can save you so much time down the road!



Special Thanks

We thank the Massachusetts Association of REALTORS® legal staff, especially **Catherine Taylor**, Associate Counsel who not only lent her expertise in the creation of these answers but is a constant source of information and support in all of our legal and ethical endeavors. Additional thanks to **Justin Davidson**, General Counsel who never hesitates to offer his outstanding staff in support of our local projects.



To the National Association of REALTORS® for taking the lead in fair housing compliance by keeping our Code of Ethics updated annually to promote equal opportunity for all. Article 10 has been significantly expanded in recent years and all REALTORS® have clearly defined ethical duties regarding fair housing and hate speech. Thank you to our own, Berkshire REALTOR® **Debbie Dwyer** who has served with distinction on the NAR Professional Standards Committee and chaired the committee responsible for making many of these changes.

And finally, thanks to **Linda Kody**, the Massachusetts Real Estate Instructor who taught the first “Protecting the Protected Classes” program for the Berkshire Board of REALTORS® and was inundated with in-the-field questions that sparked the idea for this Field Guide.



This guide is meant to suggest ways to reexamine your business services to ensure that you are providing equal access and equal services to all. It is not a replacement for guidance directly from your Designated REALTOR®, who should instruct you on all these issues, your office policy, state and federal law and/or legal counsel guidance.

I hope this is a valuable addition to your Fair Housing training.

Sandy J. Carroll, Chief Executive Officer
Berkshire County Board of REALTORS® & MLS
99 West Street, Suite 200, Pittsfield MA 01201
(413) 442-8049 | www.BerkshireRealtors.net | www.AtHomeInTheBerkshires.com

