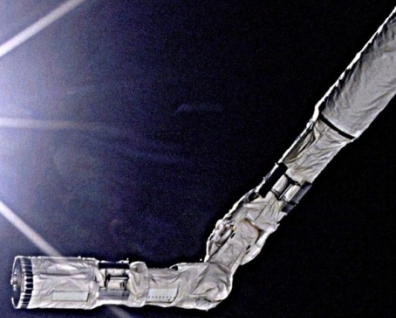


*Twilite
Technology
Center*



**Professional
Responsibilities
Fair Practice
Administration**

HIGH SPEED INTERNET COMMUNICATION FROM A CLASSROOM SETTING
THAT REACHES AROUND THE STATE, THE COUNTRY & THE WORLD

Instructor

Cees Halcombe

Professional Responsibilities/Fair Practice/Administration

Professional Responsibilities and Fair Practice

1. Brokerage relationships
 - a. listing
 - b. selling (buyer brokerage, concealing a contact)
 - c. property management (landlords, tenants)
2. Laws and Rules
 - a. Americans with Disability Act (ADA)
 - b. Federal Fair Housing (Civil Rights) laws and rules
 - c. IRS Form 8300 cash payment reporting requirement
3. Resolving misunderstandings among parties to real estate transactions
4. Need to seek expert advice (tax, legal, appraisal)



REAL ESTATE BROKERAGE HISTORY

1950's – one office - small staff – family run – caveat emptor “let the buyer beware”

1960's – Sharing information increased - MLS's created – more rules – everyone worked for seller

1970's – Seller Agency - Buyer Agency – Dual Agency – Statutory Agency was added

All 50 states & DC license real estate sales persons based on ARRELO (The Association of Real Estate License Law Officials)

PURPOSES OF REAL ESTATE LAWS – PROTECT THE PUBLIC

- (1) Establish basic requirements for obtaining a real estate license & establish continuing education requirements**
- (2) Defining activities in real estate that then determine who must have a real estate license**
- (3) Establish acceptable standards of conduct and practice for licenses**
- (4) Enforce the standards with a disciplinary system.**

NOTE: The laws and regulations are not designed to interfere with licenses conducting their business successfully or to interfere with legitimate transactions. The rules and regulations have the same force and effect as law.

BROKERAGE BROKER – SALESPERSON RELATIONSHIP

The business of bringing parties together, for example: mortgage brokers match lenders with borrower's, Real Estate Brokers bring buyers & sellers or tenants and owners together.

A real estate broker is a person who is licensed to buy, sell, exchange, or lease real property for others and to charge a fee for the services.



AMERICANS WITH DISABILITY ACT (ADA)

Signed into law in 1990 and became effective in 1992. It is not a housing or credit law, it does effect the real estate industry. It is *concerned with the rights of individuals with disabilities in employment and public Accommodations.*

Title I of the ADA state that *employers make reasonable accommodations that enable an individual with a disability to perform essential job functions.* The provisions of the ADA apply to any employer with 15 or more employees.

Title III of the ADA *provides for accessibility to goods and services for individuals with disabilities*

Equal access to ** public accommodations, * jobs, * public transportation, * telecommunications and * government services*

Private Clubs & Religious organizations are exempt

DISCRIMINATION LAWS

FAIR HOUSING (EQUAL OPPORTUNITY IN HOUSING)



The goal is to insure that everyone has the same opportunity to live where they choose to live.

Civil Rights Act of 1866

“All citizens of the United States shall have the same right in every state and territory as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property” – This law prevents any discrimination based on race period.

Federal Fair Housing Laws

Plessy v Ferguson, 1896 - “separate but equal” – lasted until 1968

Title VIII of the Civil Rights Act of 1968 (called the federal Fair Housing Act – prohibited discrimination based on race, color, religion, or national origin.

1974 – The Housing & Community Development Act – added sex to the protected classes & prohibited discrimination of individuals who associate with persons in a protected class

1988 – The Fair Housing Amendments act – included disability & familial status (presence of children)

ALL OF THESE LAWS ARE KNOWN AS THE FAIR HOUSING ACT & PROHIBIT DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL (people 55 and older) STATUS OR NATIONAL ORIGIN.

NOTE: Failure to comply with fair housing laws is both a civil and criminal violation and constitutes grounds for disciplinary action against a licensee in both monetary fines and jail time. The laws are administrated by HUD which must be reported within one year from the time the incident occurred. Brokers should display a equal housing opportunity poster.

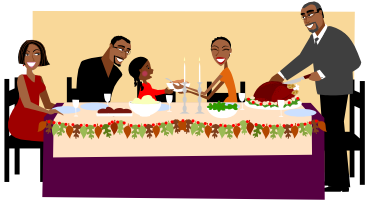
Specific Discriminatory Practices That Are Illegal

- (1) **Steering** – directing a buyer who is a member of one of the protected classes to a specific area to purchase a property based on race, religion, national origin, or some other consideration. (Good or Bad)
- (2) **Blockbusting** – Promoting the idea that a protected class is buying or leasing a home in the neighborhood and prices are going to decline. “You better sell quick”
- (3) **In the sale or rental of housing or residential lots**
- (4) **In advertising the sale or rental of housing**
- (5) **In the financing of housing**
- (6) **In the provision of real estate brokerage services**
- (7) **In the appraisal of housing**
- (8) **Advertising** – No advertisement of property for sale or rent may include language indicating a preference or limitation.
- (9) **Redlining** – The practice of refusing to make mortgage loans or issue insurance policies in specific areas for reasons that are not based on economic qualifications of the person applying.

The intent and effect based on the actions taken are the primary concern of the agencies governing discrimination. Not meaning to do or cause something that is against discrimination laws is no defense.

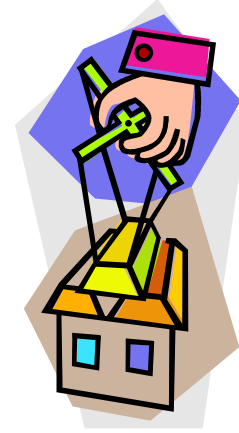
Familial Status

Protects the head of a household from discrimination when she or he is responsible for a minor child or children.



Exemptions To the Fair Housing Act

- (1) Owner occupied buildings with no more than 4 units
- (2) Single family housing sold or rented without the use of a broker
- (3) Housing operated by organizations and private clubs that limit occupancy to members
- (4) The single family home sale or lease that is owned by an individual who does not own more than three such homes at one time & who does not sell more than one every two years
- (5) A real estate broker or salesperson is not involved
- (6) Discriminatory advertising is not used.
- (7) Housing for older persons



Complaints of Violations

Filed with the Department of Housing and Urban Development (HUD). Or taken directly to federal district court. The Attorney General of the United States may take action. Complaint must be *filed within one year*.

Penalties

- (1) A fine of up to \$100,000 and jail for up to one year for failure to attend or provided testimony at a hearing
- (2) Fine of up to \$11,000 for the 1st offense, \$27,500 for 2nd offense within 5 years, and up to \$55,000 3rd offense within 7 years.
- (3) Fine of up to \$1,000 and/or 1 year in jail for intimidation
- (4) Fine of up to \$10,000 and/or 10 years in jail for bodily injury or death, the penalty can be life in jail





Affirmative Marketing



Inform all buyers in a minority community of the home for sale without discrimination.

- (1) No discriminatory preference or limitation on account of race, color or national origin.**
- (2) Advertisements should not contain an explicit preference or imply any limitation or discrimination on account of religion**
- (3) No explicit preference, limitation or discrimination based on sex.**
- (4) Should not contain explicit exclusions, limitations or other indication of discrimination based on handicap**
- (5) May not state an explicit preference, limitation or discrimination based on familial status.**

Do-Not-Call List



- Databases that should be checked:
 - Federal Trade Commission (FTC)
 - Brokerage Firm Database
- Complaints may be filed with FTC, the US Justice Department, the State Attorney General's office, or private parties
- Consumers may bring private suit where actual damages can be \$50,000 or more
- Civil fine up to \$11,000 per violation
- Telemarketers are required to check the do-not-call list every 31 days

Do-Not-Call List Cont

- Telephone Solicitation – live or recorded communication sent by a telephone, fax, paging number, auto dialer, etc.
- Reasons include:
 - Sale of consumer goods or services, offering an investment, business, employment opportunity, or consumer loan
 - Obtaining information that will or may be used for solicitation of a sale of consumer goods or services, offering an investment, business, employment opportunity, or the offering of a consumer loan
 - Offering a prize, gift, or anything else of value. If payment or other consideration is required



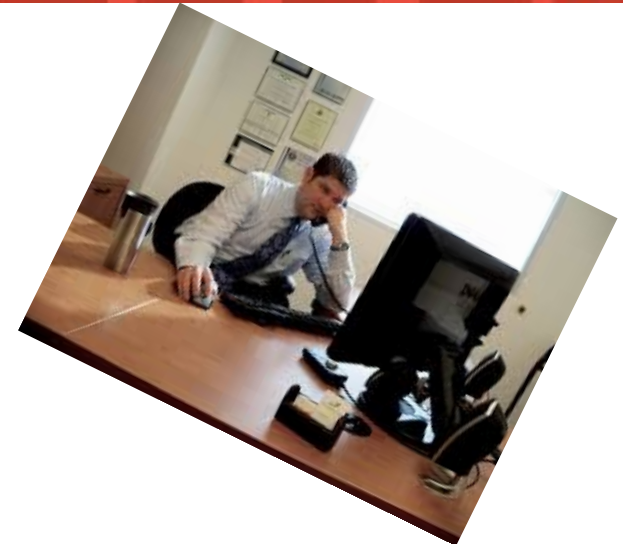
Do-Not-Call List Cont.



- Telemarketers can call for the following reasons:
 - There is or has been an existing business relationship with someone
 - There is an express request for someone to call
 - There is an existing debt or contract with the company
 - They are soliciting only donations for charities
 - They are promoting a political candidate
 - They are calling a business

Do-Not-Call List Cont.

- Special Notes:
 - Licensee can call FSBO who is on DNC list if buyer is interested in property
 - Licensee can NOT call FSBO to solicit the listing
 - If listing expired – broker and agents in company may contact for up to 18 months after expiration date



Do-Not-Call List Cont.

- Do-Not-Fax
 - Sender must have established business relationship with recipient or written consent is received
 - Sender must have voluntarily received recipients fax number
 - Fax must include opt-out process to prevent receiving future unsolicited advertising faxes
 - If opt-out is received, must be honored within 30 days



CAN-SPAM Act



- CAN-Spam Act – controlling the Assault of Non-solicited Porn and Marketing Act
 - Established guidelines for sending unsolicited e-mails
- If an e-mail is commercial in nature, then:
 - Heading information cannot be false or misleading
 - Subject line cannot be deceptive
 - Message must be identified as an advertisement
 - Must include valid physical postal address
 - Opt-out from receiving future emails must be prominent
 - Opt-out requests must be honored within 10 business days
 - If using a 3rd party, you must monitor actions

CAN-SPAM Act Cont.

- Penalties

- There can be a fine up to \$16,000 for each piece of mail
- Damages are up to \$250 per violation
- There are treble damages for willful violations
- A max fine of \$2 million
- Punishable by up to 5 years in prison



Equal Credit Opportunity Act (ECOA)

Prohibits discrimination based on race, color, religion, national origin, sex, marital status, source of income or age in the granting of credit

IRS FORM 8300 – Cash Payment Reporting Requirements

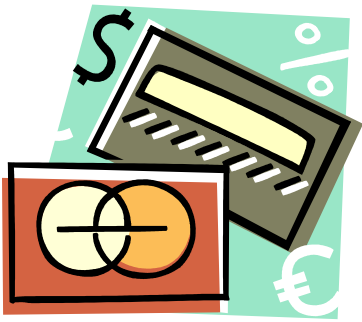
Receipt of \$10,000 in cash in one transaction or in two or more related transactions must file Form 8300

RESOLVING MISUNDERSTANDINGS

Disputes between broker and salesperson, realtors from other offices should be resolved as soon as possible. Buyers and sellers look to agents for advice. Agent should be careful in furnishing the advice.

NEED TO SEEK EXPERT ADVICE

**Agent should not give his or her opinion unless they are attorneys, etc.
Agent should know when to advise an expert's opinion.**





TERMS OF CONTRACT BETWEEN LICENSEE AND BROKER



For a salesperson to be active, a broker must hold the salesperson's license.

INDEPENDENT CONTRACTOR VERSUS EMPLOYEE

- (1) A real estate salesperson is any person licensed to perform real estate activities for a licensed real estate broker. May only receive funds from employing broker**
 - (2) Normally a salesperson is an independent contractor.**
 - (a) The individual must have a current real estate license**
 - (b) Must have a written contract with the broker that states the fact that the person will not be treated as an employee**
 - (c) at least 90% of the person's income must be based on sales production not hours worked.**

NOTE: The broker must be careful in dealing with Independent Contractors so that the IRS definition is met. Independent contractor receives a Form 1099 not a W-2 to show the year's earnings

SALES FORCE TRAINING

Real estate office or company success depends on the skill and knowledge of the sales force. At minimum the training should cover the following topics:

- * Law of agency, state laws ethical standards**
- *Transaction documents; listings, sales, and disclosures**
 - *Listing presentation**
 - *Market analysis**
 - *Seller and buyer prospecting**
 - *Handling objections**
 - *Paper flow management**
 - *Key and yard sign procedures**
 - *Advertising and open houses**
 - *Contact database**
- *Follow through and follow up procedures**
- *Qualifying buyers, showing properties, and writing offers**
 - *Contract negotiations**
 - *Telephone communications**
 - *Internet marketing**

COMPLETE AND ACCURATE RECORDS

State laws determine the length of time that brokers must retain complete and accurate records of all business transactions. A real estate salesperson is any person licensed to perform real estate activities for a licensed real estate broker. May only receive funds from employing broker

COMPANY POLICIES, PROCEDURES AND STANDARDS

Company policies, procedures and standards are set to establish a clear understanding of the relationship between the broker and sales associates, to communicate the “rules of the game”.

CALCULATING COMMISSIONS FOR REAL ESTATE TRANSACTIONS

Antitrust laws prohibit two or more brokers fixing commission rates. Fees are to be negotiated between the seller and the broker. Contracts should state who is responsible for the real estate fees.

In order to earn a commission an agent must be licensed at the time of the transaction, have an employment contract (listing) and be the procuring cause of the sale. When a brokerage firm secures a qualified buyer on the seller’ terms, the broker is due a commission.



NOTIFICATION AND REPORTS

Broker must supply any notification or report that the real estate commission or federal or state regulations require.

TRUST ACCOUNTS

A trust account also known as an escrow account or impound account. The account is set up by a broker to hold the money of others, until a transaction is closed.

Should the broker deposit the client's money into his or her personal, operating or general account, commingling has occurred. Should the broker spend the client's money, embezzlement has occurred. Embezzlement is illegal.

ACCOUNTING PROCEDURES FOR THE OFFICE

A broker operating a real estate office must maintain accurate accounting records.