

# 20

## Ethics: Laws and Practices

**Aims**  
**Fair Housing Laws**  
**Professional Practices**

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### AIMS

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The real estate industry has developed a code of professional standards and ethics as a guideline in serving the real estate needs of consumers. This professional code has emerged from three primary sources:

- ▶ federal and state legislation
- ▶ state real estate licensing regulation
- ▶ industry self-regulation through trade associations and institutes

Federal legislation focuses primarily on anti-discrimination laws and fair trade practices. State laws and licensing regulations focus on agency and disclosure requirements and regulating certain brokerage practices within the state jurisdiction. Real estate trade groups focus on professional standards of conduct in every facet of the business.

By observing professional ethics and standards, licensees will serve clients and customers better, foster a professional image in the community, and avoid regulatory sanctions and lawsuits.

Today's professional ethics are not only important for one's career; they are also legal imperatives.

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## FAIR HOUSING LAWS

Civil Rights Act of 1866  
Civil Rights Act of 1968  
Forms of illegal discrimination  
Title VIII exemptions  
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Fair Housing Amendments Act of 1988  
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Fair financing laws

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Federal and state governments have enacted laws prohibiting discrimination in the national housing market. The aim of these **fair housing laws**, or **equal opportunity housing laws**, is to give all people in the country an equal opportunity to live wherever they wish, provided they can afford to do so, without impediments of discrimination in the purchase, sale, rental, or financing of property.

**State Fair Housing Laws.** While states have enacted fair housing laws that generally reflect the provisions of national law, each state may have slight modifications of national law. For that reason, it is incumbent upon real estate students to learn their state laws and, in particular, note where these laws differ from national fair housing laws.

**Fair Housing and Local Zoning.** The Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability. The Act does not preempt local zoning laws. However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.

### Civil Rights Act of 1866

The original fair housing statute, the Civil Rights Act of 1866, prohibits discrimination in housing *based on race*. The prohibition relates to selling, renting, inheriting, and conveying real estate.

**Executive Order 11063.** While the Civil Rights Act of 1866 prohibited discrimination, it was only marginally enforced. In 1962, the President issued Executive Order 11063 to *prevent discrimination in residential properties financed by FHA and VA loans*. The order facilitated enforcement of fair housing where federal funding was involved.

### Civil Rights Act of 1968

**Title VIII (Fair Housing Act).** Title VIII of the Civil Rights Act of 1968, known today as the Fair Housing Act, prohibits discrimination in housing *based on race, color, religion, or national origin*. The Office of Fair Housing and Equal

## Forms of illegal discrimination

Opportunity (OFHEO) administers and enforces Title VIII under the supervision of the Department of Housing and Urban Development (HUD).

The Fair Housing Act specifically prohibits such activities in residential brokerage and financing as the following.

**Discriminatory misrepresentation.** An agent may not conceal available properties, represent that they are not for sale or rent, or change the sale terms for the purpose of discriminating. For example, an agent may not inform a minority buyer that the seller has recently decided not to carry back second mortgage financing when in fact the owner has made no such decision.

**Discriminatory advertising.** An agent may not advertise residential properties in such a way as to restrict their availability to any prospective buyer or tenant.

**Providing unequal services.** An agent may not alter the nature or quality of brokerage services to any party based on race, color, sex, national origin, or religion. For example, if it is customary for an agent to show a customer the latest MLS publication, the agent may not refuse to show it to any party. Similarly, if it is customary to show qualified buyers prospective properties immediately, an agent may not alter that practice for purposes of discrimination.

**Steering.** Steering is the practice of directly or indirectly channeling customers toward or away from homes and neighborhoods. Broadly interpreted, steering occurs if an agent describes an area in a subjective way for the purpose of encouraging or discouraging a buyer about the suitability of the area.

For example, an agent tells Buyer A that a neighborhood is extremely attractive, and that desirable families are moving in every week. The next day, the agent tells Buyer B that the same neighborhood is deteriorating, and that values are starting to fall. The agent has blatantly steered Buyer B *away* from the area and Buyer A *into* it.

**Blockbusting.** Blockbusting is the practice of inducing owners in an area to sell or rent to avoid an impending change in the ethnic or social makeup of the neighborhood that will cause values to go down.

For example, Agent Smith tells neighborhood owners that several minority families are moving in, and that they will be bringing their relatives next year. Smith informs homeowners that, in anticipation of a value decline, several families have already made plans to move.

**Restricting MLS participation.** It is discriminatory to restrict participation in any multiple listing service based on one's race, religion, national origin, color, or sex.

**Redlining.** Redlining is the residential financing practice of refusing to make loans on properties in a certain neighborhood regardless of a mortgagor's qualifications. In effect, the lender draws a red line around an area on the map and denies all financing to applicants within the encircled area.

**Title VIII exemptions** The Fair Housing Act allows for exemptions under a few specific circumstances. These are:

- ▶ a privately owned single-family home where no broker is used and no discriminatory advertising is used, with certain additional conditions
- ▶ rental of an apartment in a 1-4 unit building where the owner is also an occupant, provided the advertising is not discriminatory
- ▶ facilities owned by private clubs and leased non-commercially to members
- ▶ facilities owned by religious organizations and leased non-commercially to members, provided membership requirements are not discriminatory

**Jones v. Mayer** In 1968, the Supreme Court ruled in *Jones v. Mayer* that all discrimination in selling or renting residential property based on race is prohibited under the provisions of the Civil Rights Act of 1866. Thus, while the Federal Fair Housing Act exempts certain kinds of discrimination, anyone who feels victimized by discrimination *based on race* may seek legal recourse under the 1866 law.

**Equal Opportunity  
in Housing poster**

In 1972, HUD instituted a requirement that brokers display a standard HUD poster. The poster affirms the broker's compliance with fair housing laws in selling, renting, advertising, and financing residential properties. Failure to display the poster may be construed as discrimination.

**Fair Housing  
Amendments  
Act of 1988**

Amendments to federal fair housing laws prohibit discrimination based on sex and discrimination against handicapped persons and families with children.

**Exemptions.** Federal fair housing laws do not prohibit age and family status discrimination under the following circumstances:

- ▶ in government-designated retirement housing
- ▶ in a retirement community if all residents are 62 years of age or older
- ▶ in a retirement community if 80 % of the dwellings have one person who is 55 years of age or older, provided there are amenities for elderly residents
- ▶ in residential dwellings of four units or less, and single family houses if sold or rented by owners who have no more than three houses

**Discrimination  
by the client**

Fair housing laws apply to home sellers as well as to agents, with the exception of the exemptions previously cited. If an agent goes along with a client's discriminatory act, the agent is equally liable for violation of fair housing laws. It is thus imperative to avoid complicity with client discrimination. Further, an agent should withdraw from any relationship where client discrimination occurs.

Examples of potential client discrimination are:

- ▶ refusing a full-price offer from a party
- ▶ removing the property from the market to sidestep a potential purchase by a party
- ▶ accepting an offer from one party that is lower than one from another party

## **Violations and enforcement**

Persons who feel they have been discriminated against under federal fair housing laws may file a complaint with the Office of Fair Housing and Equal Opportunity (OFHEO) within HUD, or they may file suit in a federal or state court.

**Filing an OFHEO complaint.** Complaints alleging fair housing violations must be filed with the Office of Fair Housing and Equal Opportunity within one year of the violation. HUD then initiates an investigation in conjunction with federal or local enforcement authorities.

If HUD decides that the complaint merits further action, it will attempt to resolve the matter out of court. If efforts to resolve the problem fail, the aggrieved party may file suit in state or federal court.

**Filing suit.** In addition to or instead of filing a complaint with HUD, a party may file suit in state or federal court within two years of the alleged violation.

**Penalties.** If discrimination is confirmed in court, the respondent may be enjoined to cease practicing his or her business. For example, a discriminating home builder may be restrained from selling available properties to buyers. Also, the plaintiff may be compensated for damages including humiliation, suffering, and pain. In addition, the injured party may seek equitable relief, including forcing the guilty party to complete a denied action such as selling or renting the property. Finally, the courts may impose civil penalties for first-time or repeat offenders.

## **Fair financing laws**

Parallel anti-discrimination and consumer protection laws have been enacted in the mortgage financing field to promote equal opportunity in housing.

**Equal Credit Opportunity Act (ECOA).** Enacted in 1974, the Equal Credit Opportunity Act requires lenders to be fair and impartial in determining who qualifies for a loan. A lender may not discriminate on the basis of race, color, religion, national origin, sex, marital status, or age. The act also requires lenders to inform prospective borrowers who are being denied credit of the reasons for the denial.

**Home Mortgage Disclosure Act.** This statute requires lenders involved with federally guaranteed or insured loans to exercise impartiality and non-discrimination in the geographical distribution of their loan portfolio. In other words, the act is designed to prohibit redlining. It is enforced in part by requiring lenders to report to authorities where they have placed their loans.

## Exhibit 20.1 Equal Opportunity in Housing Poster

U. S. Department of Housing and Urban Development



EQUAL HOUSING  
OPPORTUNITY

**We Do Business in Accordance With the Federal Fair  
Housing Law**

(The Fair Housing Amendments Act of 1988)

**It is illegal to Discriminate Against Any Person  
Because of Race, Color, Religion, Sex,  
Handicap, Familial Status, or National Origin**

- |  |  |
|--|--|
| ■ In the sale or rental of housing or residential lots | ■ In the provision of real estate brokerage services |
| ■ In advertising the sale or rental of housing         | ■ In the appraisal of housing                        |
| ■ In the financing of housing                          | ■ Blockbusting is also illegal                       |

Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination:  
1-800-669-9777 (Toll Free)  
1-800-927-9275 (TTY)  
[www.hud.gov/fairhousing](http://www.hud.gov/fairhousing)

U.S. Department of Housing and  
Urban Development  
Assistant Secretary for Fair Housing and  
Equal Opportunity  
Washington, D.C. 20410

Previous editions are obsolete

Form HUD-928.1 (6-2011)

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### PROFESSIONAL PRACTICES

**Job performance**

**Duties to clients**

**Duties to customers**

**Disclosure**

**Non-discrimination**

**Professional relationships**

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Trade associations representing the real estate industry have instituted their own codes of ethics and professional practices covering every facet of brokerage activity. The standards of most of these codes concern the following general areas of practice.

#### **Job performance**

A professional real estate agent must understand the skills and knowledge the profession requires and make a commitment to maintain and improve expertise in these areas. Of particular importance are:

- ▶ market knowledge
- ▶ real estate laws
- ▶ evolving standards of practice

Other aspects of professional performance that are usually supported include:

- ▶ promoting exclusive listings
- ▶ promoting the professionalism of the real estate industry
- ▶ promoting arbitration of disagreements rather than litigation
- ▶ obtaining transactional agreements between parties in writing

A real estate professional must also recognize the limits of the agent's role and avoid practicing other professions beyond the agent's qualifications, such as law, investment counseling, securities brokerage, and tax advising.

### **Duties to clients**

Most codes of ethics uphold the commitment to fulfill fiduciary duties. Specific applications include:

- ▶ honestly representing market value and property condition
- ▶ respecting rights and duties of other client-agent relationships
- ▶ submitting all offers
- ▶ avoiding commingling and conversion
- ▶ keeping transaction documents current

### **Duties to customers**

Some of the guidelines for working with customers are:

- ▶ honestly representing market value and property condition
- ▶ avoiding calling a service "free" that in fact is contingent on receiving a commission
- ▶ advertising truthfully

### **Disclosure**

In compliance with applicable laws and to promote respect for the real estate profession, licensees should be careful to disclose

- ▶ that the agent is going to receive compensation from more than one party in a transaction
- ▶ property defects if they are reasonably apparent; however there is no duty to disclose a defect which it would require technical expertise to discover
- ▶ any interest the agent has in a listed property if the agent is representing a party concerning the property
- ▶ any profits made on a client's money
- ▶ the agent's identity in advertisements

### **Non-discrimination**

Real estate professionals must comply with fair housing laws in spirit and letter.

### **Professional relationships**

Professional conduct excludes disparagement of competitors. Real estate professionals also

- ▶ forgo pursuit of unfair advantage
- ▶ arbitrate rather than litigate disputes

- ▶ respect the agency relationships of others
- ▶ conform to accepted standards of co-brokerage practices

**For more Fair Housing information:**

HUD's central fair housing site:

[www.hud.gov/offices/fheo/index.cfm](http://www.hud.gov/offices/fheo/index.cfm)

Fair housing laws:

[www.hud.gov/offices/fheo/FHLaws/index.cfm](http://www.hud.gov/offices/fheo/FHLaws/index.cfm)

[www.hsh.com/pamphlets/fair\\_housing\\_act.html](http://www.hsh.com/pamphlets/fair_housing_act.html)

[www.hud.gov/fhe/fheact.html](http://www.hud.gov/fhe/fheact.html)

[www.hud.gov/groups/fairhousing.cfm](http://www.hud.gov/groups/fairhousing.cfm)

HUD local office directory:

[www.hud.gov/localoffices.cfm](http://www.hud.gov/localoffices.cfm)

Complaint procedures, with state links:

[www.hud.gov/complaints/housediscrim.cfm](http://www.hud.gov/complaints/housediscrim.cfm)

HUD Fair Housing Complaint Form (pdf):

[www.hudclips.org/sub\\_nonhud/html/pdfforms/903-1.pdf](http://www.hudclips.org/sub_nonhud/html/pdfforms/903-1.pdf)

HUD Fair Housing Brochure (pdf):

[www.hud.gov/offices/fheo/FHLaws/FairHousingJan2002.pdf](http://www.hud.gov/offices/fheo/FHLaws/FairHousingJan2002.pdf)

Advertising guidelines vis a vis fair housing:

[www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf](http://www.hud.gov/offices/fheo/disabilities/sect804achtenberg.pdf)



<b>AIMS</b>	<ul style="list-style-type: none"> <li>origins: laws, regulations, self-regulating codes</li> <li>purposes: serve clients, customers, and the public; avoid sanctions and liability</li> </ul>
<b>FAIR HOUSING LAWS</b>	<ul style="list-style-type: none"> <li>enacted to create equal opportunity and access to housing and housing finance</li> </ul>
<b>Civil Rights Act of 1866</b>	<ul style="list-style-type: none"> <li>no discrimination in selling or leasing housing <i>based on race</i></li> <li>Executive Order 11063: no race discrimination involving FHA- or VA-backed loans</li> </ul>
<b>Civil Rights Act of 1968</b>	<ul style="list-style-type: none"> <li>Title VIII (Fair Housing Act): no housing discrimination <i>based on race, color, religion, national origin</i></li> <li>certain exceptions permitted</li> </ul>
<b>Forms of illegal discrimination</b>	<ul style="list-style-type: none"> <li>discriminatory misrepresentation, advertising, and financing; unequal services; steering; blockbusting; restricting access to market; redlining</li> </ul>
<b>Jones v. Mayer</b>	<ul style="list-style-type: none"> <li>no race discrimination, without exception</li> </ul>
<b>Equal Opportunity in Housing Poster</b>	<ul style="list-style-type: none"> <li>must be displayed by brokers</li> </ul>
<b>Fair Housing Amendments Act of 1988</b>	<ul style="list-style-type: none"> <li>no discrimination <i>based on sex or against the handicapped or families with children</i></li> </ul>
<b>Discrimination by the client</b>	<ul style="list-style-type: none"> <li>agent liable for complying with client's discriminatory acts</li> </ul>
<b>Violations and enforcement</b>	<ul style="list-style-type: none"> <li>file HUD complaint, sue in court, or both; may obtain injunction, damages; violators subject to prosecution</li> </ul>
<b>Fair financing laws</b>	<ul style="list-style-type: none"> <li>Equal Credit Opportunity Act: no discrimination in housing finance based on race, color, religion, sex, marital status, age; Home Mortgage Disclosure Act: no redlining</li> </ul>
<b>PROFESSIONAL PRACTICES</b>	<ul style="list-style-type: none"> <li>self-regulating standards of conduct covering all facets of the profession</li> </ul>
<b>Job performance</b>	<ul style="list-style-type: none"> <li>maintain knowledge of market, laws, practices; recognize limits of agent's role</li> </ul>
<b>Duties to clients</b>	<ul style="list-style-type: none"> <li>fiduciary duties; truthful representation of facts; respect client relationships; submit offers; avoid illegal practices; document transaction</li> </ul>
<b>Duties to customers</b>	<ul style="list-style-type: none"> <li>truthful representation of facts; truthful advertising</li> </ul>
<b>Disclosure</b>	<ul style="list-style-type: none"> <li>compensating parties; property defects; agent's interest in property; use of client funds; agent's identity in advertising</li> </ul>
<b>Non-discrimination</b>	<ul style="list-style-type: none"> <li>compliance with fair housing laws</li> </ul>
<b>Professional relationships</b>	<ul style="list-style-type: none"> <li>no disparagement of competitors; no unfair advantage; respect for others; arbitration of disputes</li> </ul>