



Develop Diverse Leadership

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Legally Develop Diverse Leadership

Potential Legal Pitfalls and How to Avoid Them

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Overview

- Applicable federal law
 - Fair Housing Act
 - HUD Regulations
- Cases under the Fair Housing Act
 - Fair Housing Act cases
 - Affirmative action cases



Overview (continued)

- Tips to help avoid liability
- NAR resources available to state and local associations



Federal Fair Housing Act

Section 806 of the Fair Housing Act:

[I]t shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, *real estate brokers' organization* or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.



Federal Fair Housing Act

HUD Regulations (24 C.F.R. § 100.90):

(b) Prohibited actions under this section include, but are not limited to:

...

(2) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin.



Federal Fair Housing Act

HUD Regulations (24 C.F.R. § 100.90):

(b) Prohibited actions under this section include, but are not limited to:

...

(3) Imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, handicap, familial status, or national origin.



Federal Fair Housing Act

HUD Regulations (24 C.F.R. § 100.90):

(b) Prohibited actions under this section include, but are not limited to:

• • •

(4) Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, because of race, color, religion, sex, handicap, familial status, or national origin.



Federal Fair Housing Act

Who is covered by the Act?

- MLS
- “real estate brokers’ organization”
- Organization related to “selling or renting dwellings”
- National, state, and local REALTOR® associations covered by the Act



Federal Fair Housing Act

What type of conduct is prohibited when based on the prohibited factors?

- Denying access to, or membership or participation in, the organization
- Discriminating in the “terms or conditions” of access, membership, or participation in the organization



Federal Fair Housing Act

What type of conduct is prohibited when based on the prohibited factors?

- Denying or limiting benefits accruing to members of the organization
- Imposing different standards or criteria for membership in the organization



Federal Fair Housing Act

What type of conduct is prohibited when based on the prohibited factors?

- Establishing geographic boundaries or office location or residence requirements for access to, or membership or participation in, the organization



Federal Fair Housing Act

Who is protected?

- Prohibited factors (protected classes)
 - Race
 - Color
 - Religion
 - Sex (gender) (*not* sexual orientation)



Federal Fair Housing Act

Who is protected?

- Prohibited factors (protected classes)
 - Handicap
 - Familial status (children under 18; pregnant women)
 - National origin



Federal Fair Housing Act

Every case interpreting this
provision of the Fair Housing Act:



Analogous Cases

Affirmative Action Cases:

- *Parents Involved in Community Sch. v. Seattle Sch. Dist. No. 1*, 127 S.Ct. 2738 (2007)
 - Use of race struck down
- *Grutter v. Bollinger*, 123 S.Ct. 2325 (2003)
 - Use of race upheld
- *Gratz v. Bollinger*, 123 S.Ct. 2411 (2003)
 - Use of race struck down



Tips to Help Avoid Violating the Fair Housing Act

- Eliminate the protected class as a decisive factor
- Protected category is a “plus” factor
- Rely on individual explanation of ability to contribute to diversity
- Articulate your own reason for the desire to increase diversity



Tips to Help Avoid Violating the Fair Housing Act

- Make a commitment to diversity (part of strategic plan)
- Consider neutral alternatives
- Know your statistics *BUT* avoid quotas and automated systems
- Conduct period evaluation of your program(s) and successes



Tips to Help Avoid Violating the Fair Housing Act

- Realize that diversity means more than race/national origin
- Targeted recruiting campaigns acceptable
- Data to support under-representation of specific groups in your community



NAR Diversity Resources

- www.realtor.org/diversity
- Community Outreach Department
Diversity Initiative Grants
- NAR Book: *Developing Diversity in Leadership of REALTOR® Associations*
- Fair Housing and Cultural Diversity
Strategic Plan



NAR Diversity Resources

- Diversity Toolkit for *REALTORS®*
- Diversity Planning and Training for REALTOR® Associations: *What Every Association Member Needs to Know*
- Diversity/Fair Housing Proclamation

