

BROKERAGE

FEDERAL LAWS GOVERNING REAL ESTATE ACTIVITIES

FEDERAL FAIR HOUSING LAWS

- ◆ Civil Rights Act of 1866 prohibits discrimination on basis of *race*.
- ◆ Fair Housing Act of 1968 (Title VIII) prohibits discrimination by: Sex, Race, Color, Religion and National Origin. Fair Housing Act of 1988 Amendments (effective March 1989) adds: Disabled (mental and physical) and Children (familial status).
- ◆ Equal Employment Opportunity Commission (EEOC): federal commission that makes policy and approves most litigation.
- ◆ Americans with Disabilities Act of 1990 (Title 111) (**ADA**) addresses places of public accommodations, workforce accommodation and some rentals.

In regard to the protected classes, an agent (and principals of transaction) cannot:

- ◆ Refuse to sell, rent to, negotiate or deal with someone.
- ◆ Differentiate on terms or conditions (no disparate impact allowed where gatekeeping condition affects a protected class greater than others).
- ◆ Discriminate in **advertising**.
- ◆ Falsify availability.
- ◆ Solicit for sale or lease residential property on the grounds of **alleged change of value** due to presence or the prospective entry into the neighborhood of persons in a protected class. This is **blockbusting** creating **panic-selling** (panic peddling).
- ◆ Steer prospective purchasers/renters away from/to certain market areas - **steering**.
- ◆ Prohibit anyone the use or participation in any realty services, such as agent organizations and multiple listing services (MLS).

Redlining is presenting different terms or conditions if you are a commercial lender. Equal Credit Opportunity Act (ECOA) prohibits discrimination in credit/lending.

Appraiser may not write an appraisal report with any language which may indicate a protected class has played a **negative** (or positive) role in the estimate of value.

No discrimination allowed in *corporate-owned* housing.

Landlord may not refuse to permit, at **disabled person's expense**, reasonable modification of premises. After 3/13/1991, new (or rehab) residential construction of four-family or more units must include handicapped-accessibility and design features for all *first floor* units and any upper floors if they are served by elevators.

State/federally-approved age-restricted housing developments for elderly homeowners (only 62 or 80% occupancy by 55 years or older) are exempt from housing laws.

- ◆ Grab bars are a reasonable modification.
- ◆ Support animals must be allowed, but disabled tenant is responsible for damages.

- ◆ Disabled tenant must be given convenient parking and first floor units if available.
- ◆ Apartment complexes cannot be segregated into all adult or all family areas.
- ◆ Agent saying: “We can sell your home quickly while prices are still high” **may** be guilty of **blockbusting**.

Exemptions (situations in which Fair Housing Laws will not apply)

- ◆ A private individual who owns 3 or fewer single-family houses. Limited to one sale of income house every two-years.
- ◆ Rentals in **owner-occupied** two - four family houses.
- ◆ Sale, rental or occupancy to its own members of dwellings owned or operated by a **religious organization** for non-commercial purposes if membership in that religion is not based on exclusion of protected classes.
- ◆ Sale, rental or occupancy to its own members of lodgings owned or operated by a **private club** for non-commercial purposes. (If the private club owned a motel or convention facility, the club’s commercial activities are under the Fair Housing laws.)
- ◆ **No** exemptions allowed on basis of **race**. No refusal for family in rentals because of lead paint. **No** exemptions allowed if a **real estate agent** is used in the transaction. **No** exemptions allowed if discriminatory **advertising** is used

Enforcement

- ◆ A federal complaint must be made within **one year**; anyone, including real estate agent can bring complaint; “testing” is allowed; investigated by Office of Fair Housing and Equal Opportunity (FHEO), part of Department of Housing and Urban Development (HUD), and/or bring action in local, state or federal court. One procedure provides for a hearing before an Administrative Law Judge (ALJ) who may award actual damages and legal relief. **Penalties: up to \$19,787** for the first offense, **\$49,467** for the second offense, and **\$98,935** for the third offense
- ◆ An Equal Housing Opportunity poster: Supplied by HUD and **must** be posted conspicuously in every real estate office (any place where a dwelling is offered for sale or rent).

Do-Not-Call, Privacy, Anti-Trust

- ◆ FTC National Do-Not-Call Registry (Do Not Call Implementation Act of 2003) allows buyer agent to call for sale by owner (FSBO), but not to solicit residential seller for hiring. List of numbers protected from disclosure for other reasons under **Privacy Act of 1974**. Fines of up to \$16,000. Existing relationships (under 18 months) are exceptions.
- ◆ Commissions are determined by the seller and broker (not multiple listing service). Uniform commissions among agencies imply price fixing which is against the **Sherman Anti-Trust Act**. Legally there can be no such thing as a set or standard commission among agencies. Price matching (lowering your price to meet a competitor’s is legal).

TRUTH-IN-LENDING (REGULATION Z OR TILA)

A law enforced by Federal Trade Commission (FTC).

Purpose: To provide full disclosure by lenders of all costs of credit. This gives public a method of comparing various lenders.

Method: It informs borrower of total cost of credit expressed in total dollars. These dollars are then expressed as an ANNUAL PERCENTAGE RATE (APR).

Annual percentage rate (APR) includes: interest rate, points, loan fees, finder's fees, and disclosure of any mortgage prepayment penalties. The APR does not include municipal taxes and attorney fees, credit reports, appraisal fees, survey fees, and other closing expenses.

The law covers any person or firm offering to extend credit in the ordinary course of business. Middlepersons such as mortgage brokers are also included.

Truth-In-Lending (TIL) law applies only to **consumer** loans.

Allows rescission by consumer within 3 business days for certain loans (not first mortgages for homes).

EXCLUDES:

- Commercial loans
- Construction loans to builders
- RE agents do not come under this law unless they receive a fee for arranging credit
- P&S because it is a realty contract, not instruments of credit
- Seller financing
- Buyer buying subject to existing mortgage

ADVERTISING

If specific credit terms are used, all terms and APR must be disclosed. Example: Financing available with 10% down. Advertising which does not trigger the APR requirements are: liberal terms, low downpayment, VA/FHA available, financing available at low interest rates

REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)

Covers nature and costs of settlement services. It includes a Loan Estimate for TILA and RESPA given to potential borrowers within three working days of loan application (working days based on lender being open substantially for business). Closing Disclosure (all known charges under TILA and RESPA) must be given to buyer at least three working days before closing (working days based on federal recognized days). Combined forms known as TRID (TILA-RESPA integrated disclosures). Kickbacks and unearned fees through referrals are prohibited. The lender is responsible for reporting the transaction to the IRS.

ESCROW/TRUST ACCOUNTS

- ◆ The only person legally entitled to hold a deposit is **seller**. Usually parties agree seller's broker will hold it in escrow until closing. Broker does not have to do this – it is an accommodation for client. Deposits must be immediately deposited. Broker shall be responsible for such money with proper accounting, but has no personal claim to it. The account may be interest or non-interest bearing. If interest bearing, parties agree who gets the interest.
- ◆ Escrow records shall indicate the date and from whom broker received the money, date deposited, check number, date of withdrawal and name of the person receiving it, and other pertinent information concerning the transaction. Every broker shall also keep a copy of each check deposited into and withdrawn from the account for **three years** from the date of issuance. All funds and records shall be subject to inspection by the Board.
- ◆ A salesperson shall immediately turn over all deposit money received to the employing broker. No salesperson shall at any time hold client funds.
- ◆ A rejected or withdrawn offer and deposit must be returned to offeror.
- ◆ The form of deposit (cash, check, note or anything of value) must be clearly shown on all offers and sales contracts.
- ◆ Broker may not bring uncashed checks to closing. That means the checks have not cleared. Broker may not **commingle** escrow money with broker's own accounts.
- ◆ Escrow funds held by broker as **escrowee** or **escrow agent** have absolutely nothing to do with broker's commission, although seller and buyer can give permission for some or all of the deposit to be converted at closing to commission money.
- ◆ Both buyer and seller must agree when money is removed from escrow. A dispute requires a court order or settlement by the parties, not the discretion of the broker.

ADVERTISING

- ◆ Includes all written and verbal communication – newspapers, flyers, circulars, business cards, signs, internet/social media, and verbal statements
- ◆ A broker shall not engage in false or misleading advertising. Records of advertising must be kept to prove property was available – no bait and switch.
- ◆ **Blind Advertising Prohibited** - Broker ads must include name of broker. Salespeople are prohibited from advertising under their own name but ads may name a salesperson as the contact for the agency.
- ◆ **Discriminatory Advertising Prohibited** - No ad shall indicate directly or indirectly unlawful discrimination against a protected class.

THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (ESIGN)

- ◆ Federal law recognizes electronic signature for contracts and other transactional documents
- ◆ Allows for the electronic storage of documents and retention of records

ETHICAL AND LEGAL BUSINESS PRACTICES

MISREPRESENTATION - MASS GENERAL LAWS CHAPTER 93A

- ◆ Originally enacted in 1967 to protect against unfair and deceptive business acts and practices; revised in 1969 to allow private right of action. Does not apply to consumer-to-consumer (buyer against seller) law suits.
- ◆ Intent to deceive not required. Liability for failing to disclose what is required or providing false or misleading information, including opinion.
- ◆ Provides for up to triple damages and attorney's fees.
- ◆ Puffing is gross exaggeration (also not allowed).

IMPLIED DUTY OF GOOD FAITH

- ◆ The law requires agents to engage in ***fair and honest dealing*** with the principals (seller, buyer, landlord, tenant).
 - **Misrepresentation** - a misstatement of fact without intent to deceive.
 - **Fraud** - a deliberate misrepresentation of a material fact.
- ◆ An agent cannot offer property for sale or lease without permission of owner or on terms or conditions other than those authorized by owner.
- ◆ Seller must agree to accept vicarious liability (indirect liability) for actions of subagents (those agencies and agents working indirectly for seller through hired broker).

DUE DILIGENCE

- ◆ Seller's agent should obtain written information from seller about property's condition to ***avoid litigation***.
- ◆ Buyer's agent has a duty to disclose information about buyer which will adversely impact buyer's ability to purchase, such as buyer is about to declare bankruptcy.

UNAUTHORIZED PRACTICE OF LAW/SECURITIES

- ◆ A person must have a ***securities license*** to market/sell an interest in an investment (securities regulated by federal/state law) (Securities and Exchange Commission (SEC)).
- ◆ Agent ***cannot*** bind principal. Agent may accept or reject an offer/counteroffer on behalf of client ***only*** if agent holds written power of attorney and is now attorney-in-fact.
- ◆ No real estate agent shall advise against the use of the services of an attorney or provide legal advice/services (always recommend all parties to seek legal counsel).