

RE111RC20: Protecting the Protected Classes in Real Estate

Objective:

The purpose of this class is to help Real Estate Agents better understand the impact of human behavior when interacting with other people, as to prevent them from unintentionally discriminating against a protected class. Though we may not realize it, our reactions, assumptions, and unconscious thought processes can lead us into treating people differently. To help prevent discrimination agents must not only be fully familiar with the protected classes, but also understand the impact of implicit bias and disparate impact on their behavior and activities. Only then can they provide equal service, equal treatment, and equal access to all.

This course will also help real estate agents create strategies for providing equal service, to better understand the protected classes, and identify areas that may be affected by implicit bias.

Outline

1. Laws

The intent of this course is not to focus on the fair housing laws but the classes it protects. Limited time should be spent covering the laws themselves.

- a. Civil Rights Act of 1866
- b. Federal Fair Housing Laws, overseen by HUD, covers residential properties
- c. MA Civil Rights Laws (MGL 151B), covers residential and commercial transactions, as well as employment and lending

2. Human behavior and cognitive thinking

- a. Bias
 - i. General definition: automatic reaction/ answer to a situation, cognitive shortcuts, based on knowledge but also stereotypes
 - ii. Bias can be explicit and/or implicit, not necessarily negative, although the term has a negative connotation
 - iii. Explicit bias is deliberate, intentional, within our conscious
 - iv. Implicit bias is an unconscious automatic brain process
 - v. Real estate licensees cannot let biases (implicit or explicit) interfere with their obligation of equal services/treatment
- b. Explicit bias
 - i. Definition: as defined by the Perception Institute, explicit bias refers to the attitudes and beliefs we have about a person or group on a conscious level.
 - ii. Characteristics of explicit bias
 - (1) Deliberate and therefore can be controlled
 - (2) Impacted by social norms
 - (3) Illegal expression of explicit bias
 - (a) Discrimination
 - (b) Hate speech

- c. Implicit bias
 - i. Definition: The perception institute defines Implicit Bias as the term to describe when we have attitudes towards people or associate stereotypes with them without our conscious knowledge.
 - ii. Some characteristics of implicit bias:
 - (1) Everyone has them!
 - (2) Carried out outside of our knowledge
 - (3) Fast, automatic, reactionary
 - (4) We tend to favor our own ingroup
 - (5) Influenced by upbringing, experience
 - (6) May create barriers to opportunity
 - iii. How implicit bias affects our actions and decisions: through assumptions, short cuts, gut reactions
 - iv. Examples:
 - (1) How do you greet a person based on who walks in the door? (Office/ Open house, other)
 - (2) Your choice to follow-up based on name/ language

- d. Cultural association
 - i. Culture definition: identity of a group
 - ii. Role of the real estate licensee:
 - (1) respecting the cultural background of the consumer without steering, and still meeting the consumer's real estate need
 - (2) providing information without discriminating
 - iii. Cultural impact
 - (1) Communication: language usage, form of communication
 - (2) Expectation of the consumer
 - (3) Steering is illegal (more later)
 - iv. Suggested discussions:
 - (1) Working as a buyer's agent with buyers requesting information on people of the same or other culture
 - (2) Working with a seller with cultural opinions

- 3. Disparate impact (adverse impact) concept:
 - a. Definition: practice that would affect members of a protected group disproportionately
 - b. Legal doctrine under the Federal Fair Housing Act (Confirmed in 2015 by the US Supreme Court)
 - c. Suggested discussions:
 - i. Rental application requires a full time job – discriminates against part-time employed disabled person
 - ii. No tenant with any criminal background – has a disproportionate impact on minorities
 - iii. Requiring a minimum credit score or industry equivalent- potentially discriminates. For example receiving public assistance does not mean you have low credit.

4. Important areas to consider when practicing

Agents must balance equal treatment along with fiduciary obligations/client expectations and requests

a. Protected classes

	Civil Rights Act	Federal Fair Housing	MA Civil Rights Laws
Race	X	X	X
Color		X	X
National Origin		X	X
Ancestry			X
Religion		X	X
Sex		X	X
Sexual orientation			X
Gender Identity			X
Marital status			X
Familial status		X	X
Children			X
Age			X
Disability		X	X
Genetic Information			X
Rental assistance			X
Military status			X

- i. Review the difference between national origin and ancestry
- ii. Discuss how Genetic information can be connected to Disability and National Origin

b. Reasonable accommodation requirement for handicap/ disability

- i. Owner's obligations
- ii. Real estate licensee's obligations (include discussion on web/digital accessibility)
- iii. Reference sources:
 - (1) MA Architectural Access Board - <https://www.mass.gov/orgs/architectural-access-board>
 - (2) WCAG - Web Content Accessibility Guideline

c. Section 8 vouchers or other rental assistance vouchers.

Example of illegal activities:

- i. Pre screening potential tenants for the use of a voucher
- ii. Failing to follow up once you know
- iii. Property inspection requirement as a reason not to accept the tenant
- iv. Simply refusing to accepting a lease as a way to discriminate against a tenant receiving section 8 rental vouchers

d. Steering

- i. Consciously or unconsciously providing information in only certain areas
- ii. Sharing opinions/ information about neighborhoods selectively
- iii. Always illegal

- iv. Suggested examples to discuss:
 - (1) Safety: refer to police department, don't encourage to visit at night
 - (2) Neighborhood information: real estate facts would be trends in the market, type of housing available, not the population (do not suggest to some people to drive around/ hang out by the school or other)
 - (3) School info: refer to school boards or MA "School and District Profile"
- v. Best practice suggestions:
 - (1) Information provided is factual not opinion: reputation is not a fact, but an opinion, safe is an opinion
 - (2) Refer to the primary source of info
 - (3) Same info to all: information provided upfront to all clients, or provided upon request, but cannot be given on a selective basis (such as encouraging a buyer to get crime stat from police and not discussing this with other buyers)
- e. Children
 - i. Cannot exclude or target children
 - ii. Occupancy limits form Sanitary Code is on number of people, not age related
 - iii. Suggested areas to discuss:
 - (1) Application forms
 - (2) Buyers/ tenant's letters/ "Love Letters" – discouraged by National Association of REALTOR and Boston Fair Housing
- f. Age verification for contractual ability only
 - i. Tenant application questions
 - ii. Presence of lead paint is not a reason to not allow children under 6
 - iii. 55+ and 62+ certified housing development exemption
- g. Overall reaction/ response
 - i. To the person you are seeing
 - ii. To the voice/tone you are hearing
 - iii. To the names of people (examples: likelihood to be offered a job or a rental based on your name)
 - iv. Use of pronouns
 - v. Obligation: same behavior to all, no consumer is more interesting than another, follow-up is the same for everyone
- 5. Strategies to equal services
 - a. Systematic approach
 - i. Use checklists/ scripts/ specifically identified parameters
 - ii. Thresholds required to provide services
 - iii. List of services provided to consumers
 - iv. Include safety considerations when establishing service parameters
 - b. Examples:
 - i. Listing presentation script/ outline used consistently
 - ii. Services and resources you provide to a seller/ landlord
 - iii. What do you require from a prospective buyer/ tenant
 - (1) Requirements to show a property
(pre-approval/pre-qualification/buyer agreement/ proof of ID/ content of an application)
 - (2) Services and resources you provide to a buyer
 - iv. Template emails/ correspondence

- c. Educate the owner of the property before listing for rent or for sale
 - i. Explain the MA Civil Rights Laws to the owner and be prepared to address questions/ scenarios
 - ii. Owners want to make discriminatory choices, you cannot get involved
 - iii. (fiduciary obligations say I follow instruction and work in the best interest of the client, but it stops when it is not legal anymore!)
 - iv. Suggested examples: landlord and rental assistance vouchers, children
 - v. Any decision has to be based on objective measures not opinions
(discuss arbitrary objective measure to cover up discriminatory intentions such as high rent/ criminal record, back to disparate impact)
- d. Consider the use of a Fair Housing Declaration/Pledge

Reference material

- HUD Case Studies: https://www.hud.gov/program_offices/hearings_appeals/cases/fha
- Newsday Report: <https://projects.newsday.com/long-island/real-estate-agents-investigation>
- Boston Study: <https://www.tbf.org/-/media/tbf/reports-and-covers/2020/housing-voucher-report-20200701.pdf?la=en>
- Perception Institute: <https://perception.org/>
- National Fair Housing Alliance – Disparate Impact, <https://nationalfairhousing.org/disparateimpact/>
- MAR Fair Housing Act Resource: <https://mass.realtor/>
- MAR Fair Housing Resource, including Implicit Bias Webinar: Part 2 of Fair Housing and Diversity webinar series - <https://www.marealtor.com/fair-housing/>
- NAR: Bias override: overcoming barriers to fair housing <https://www.nar.realtor/videos/bias-override-overcoming-barriers-to-fair-housing>
- Fair Housing Uncomplicated by GM Filisko, Sept/Oct 2020, Real Estate Business (REBI)
- FairHaven simulation for REALTORS: <https://fairhaven.realtor/>
- NAR Window to the Law – Multiple offers: <https://www.nar.realtor/videos/window-to-the-law/how-to-handle-multiple-offers>
- Real Estate brokerage essentials <https://www.nar.realtor/fair-housing/excerpt-from-real-estate-brokerage-essentials>
- Digital downloads <https://www.nar.realtor/right-tools-right-now/free-fair-housing-digital-downloads-available-for-members-from-the-realtor-store>