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Maylie & Grayson is a full service law firm providing representation to real estate brokerages, licensees, local Realtor® organizations, developers, builders, lenders and investors, providing services in all aspects of real estate including transaction review, land use planning, licensing, mediation, arbitration and court matters.

Advertising: Are you Violating Fair Housing Laws?

We all consider ourselves to be fair-minded individuals who would never discriminate against others. However, in the course of licensed real estate activities, brokers may use words or phrases which result in perceptions of unequal treatment or consideration, even though no such intentions actually exist. In some cases, such misstatements or misunderstandings result in complaints relating to fair housing laws.

One of the easiest and most common ways in which a real estate broker invites a fair housing complaint is through advertising. This article will address ways to avoid fair housing complaints.

Fair Housing Laws

Fair housing laws have been enacted on the federal, state and local levels. On the federal level, fair housing laws prohibit discrimination on the basis of protected classes involving a person's gender, race, color, national origin, religion, disability or familial status (such as presence of children or pregnancy). In Oregon, there are laws which further prohibit discrimination on the basis of marital status and source of income. As well, some local laws, such as in Multnomah County and the City of Portland, also protect classes involving age over 18, sexual orientation, gender identity and type of occupation.

Penalties for Fair Housing Violations

In addition to outlining classes which are protected under fair housing laws, federal, state and local laws also provide for penalties for violations. Complaints of fair housing violations are typically made by those who believe they have been discriminated against. Brokers may be named in such complaints as a result of their actions at open houses, interactions over the telephone, or through advertising. If a broker's actions are found to be in violation of fair housing laws, he or she may be liable to the injured party for actual damages, including damages for emotional distress, and attorney fees, in addition to civil penalties to the agency where the complaint was filed. In addition, violators may face administrative sanctions by the Oregon Real Estate Agency.

Specifically, on the federal level, a violator may be fined up to \$10,000 for a first violation, and up to \$50,000 for a third violation within seven years, in addition to damages to the harmed individual(s) and attorney's fees and costs. On the state level, a violator can be assessed up to \$1,000 per violation.

How Do I Avoid Fair Housing Violations?

Discriminatory actions which may get brokers into trouble include the following: refusing to rent, sell or finance; refusing to give information, discouraging from renting, or lying about availability; applying different rules, privileges, standards and/or qualifications; making discriminatory statements; steering to certain housing; and harassing, intimidating, threatening or coercing. Although brokers may not blatantly discriminate, they may unconsciously or inadvertently treat people differently or advertise property in such a way as to discourage buyers who are members of a protected class. It is important to note that fair housing violations are not based upon violators' intentions, but rather the harmed individual's reasonable perception. Brokers are best advised to follow a few simple rules in advertising.

First, brokers should avoid describing who they think would like to buy a property. Describing the ideal buyer for a property inevitably discourages those who do not fit the description from considering the property. For instance, suppose a real estate broker advertises a property as being ideal for a young family. Although the broker does not intend to limit potential buyers to young families, the broker's advertising may constitute discrimination on the basis of age, familial status, and marital status, all protected classes under federal and state fair housing laws.

Second, brokers should stick to what they do best: describing the features of properties. Although brokers' good intentions may tempt them into determining who might be interested in properties they are listing, they are safer allowing potential buyers to determine whether properties are ideal for their needs.

As always, there are exceptions to the rules. However, brokers are best advised to exercise caution, particularly when unsure as to whether a particular statement will be construed as being discriminatory.

When in doubt as to the acceptability of a word or phrase, brokers should consult their principal broker, as review by a fresh set of eyes may help avoid unintended consequences.

Words and phrases to avoid include the following: "handyman's special," "near churches," "great for couples," "empty nesters," "mature," "ideal for seniors," and "bachelor pad." Other seemingly harmless words such as "exclusive" or "quiet" neighborhood, or "near private school" may also be considered to be discriminatory.

Although acceptable words and phrases, such as "bargain," "charming," "master bedroom," and "family room" are more obvious, there are several amusing ones which the

federal government has specified are acceptable: “Santa Claus,” “Easter Bunny,” “St. Valentine’s Day,” “Merry Christmas,” and “Happy Easter.”

Conclusion

Brokers will benefit by describing the physical features of a property rather than who might be interested in purchasing the property. In addition, brokers should apply the same rules, standards and qualifications to all people with whom they make contact, and be very sensitive to words or phrases which may be exclusionary or pertain to particular classifications or characteristics of people. If any question arises about whether or not certain language may be discriminatory, brokers would should discuss the matter with their principal broker.

This column contains general information only and must not be construed as legal advice. Questions may be submitted directly to Maylie & Grayson by fax at (503) 775-1765, by email at joelgrayson@mayliegrayson.com or by mail at 7959 SE Foster Road, Portland, Oregon 97206.