

You're Always Being Tested

This past April we celebrated Fair Housing Month. While this important observance typically serves as a marker for reflection, education, and continued aspiration, there is no doubt that 2020 has a much different and more solemn feeling. With the horrific killings of George Floyd, Breonna Taylor, and Ahmaud Arbery, we remain in the midst of various expressions of outrage over police brutality. These expressions have also sparked important discussions about systemic inequalities under the law. As Realtors®, this spotlight on inequality is particularly disturbing. Such injustice flies in the face of the personal and heightened commitment to equality under Article 10 of the Realtor® Code of Ethics. As standard bearers, Realtors® regularly challenge and hold themselves responsible to engage in training and self-assessment within the brokerage. Sadly, some Realtors® have also been involved in troubling examples of disparate treatment of home buyers and sellers based on protected classifications.

In November of 2019, *Newsday* published an expose after a three-year investigation into the real estate market in Long Island, New York. The findings, established through matched fair housing testing, strongly indicate the existence of racial bias, steering, and other discriminatory behavior by real estate licensees and sellers. For anybody reading this article, I would strongly urge you to read and watch the report. It can be found at <https://projects.newsday.com/long-island/real-estate-agents-investigation/>. It is a compelling case study not only due to the findings – but it is also compelling for the subtle ways that some of this behavior can occur. And while Long Island, New York is a long way from Anytown, Michigan, the investigation and the findings present Realtors® everywhere with a moment of

pause to reflect upon measures to protect and promote equal service, while guarding against instances of bias.

Some years ago, I wrote an article for the “Michigan Realtor®” magazine about fair housing testing and education. It was written from the perspective of a new attorney seeking a knowledge base on fair housing education, compliance, and enforcement. At that time, one thing stood out to me that still resonates to this day. It centers on the notion that some real estate licensees believe that they can “spot” a fair housing advocate that is testing for compliance. After reviewing the *Newsday* investigation and the number of instances where testing found unequal treatment, this notion of trying to spot a tester remains a confounding one. That is, as a guiding principle, a Realtor® is always best served by engaging with customers and clients as though the Realtor® is always being tested and not trying to spot a tester. The brokerage would be well served by instilling the “you’re always being tested” mindset as a business principle. Such an approach to service, whether with a customer or client, strikes me as an important one for a brokerage because it speaks to fair housing, but also strong customer and client service overall.

Acknowledging that such a constant state of self-awareness can be difficult to sustain, brokerages are very much encouraged to implement compliance programs and reminders. One such tool is the implementation of a *Fair Housing Checklist* within the office. It should be a document that is reducible to a single page. However, it should identify in a very straightforward manner the things that a typical compliance program would address.

The Checklist

1. **COURTESY** – It is important to work through exactly how a prospective client is received by either the office support staff or the salesperson. This is true, regardless of whether the venue is an office or in the field. Are all prospective clients offered the same reception? How long must they wait before someone offers them services? How responsive are agents when they receive a voicemail or an email from a prospective client? In the initial meeting or discussion, are prospective clients offered brochures and/or literature? Are they offered immediate services regarding showings of homes or are they told that someone will phone them either that day or the next day for potential showings? With regard to courtesy, the law requires that all clients and home seekers be treated alike. If equal professional services are offered to all, there should be no problems. Customer service is a truly universal concept and it should be well-executed when it comes to fair housing law. From a broker's perspective, an agent's responsiveness should be consistent and exceptional.
2. **INTERVIEWING** – Getting a handle on the housing market that the prospective client is hoping to enter is a particularly sensitive situation. During the interview process, it is imperative that every prospective client is being asked the same questions concerning price range, type of housing preference, type of features desired. If the prospective client takes charge of the interview and narrows the housing search on their own accord then the agent should attempt to search accordingly and within the law – always remembering, however, to document the search process. Additionally, if the agent mostly facilitates the search, remember, if specific inquiries are made of some, they should be made of all.

And perhaps most importantly, educate agents of the dangers of making assumptions about the housing needs of a customer or client. In the real estate context, these assumptions are at the heart of nearly every instance of unconscious bias. Unconscious bias (aka implicit bias) is often defined as prejudice or unsupported judgments in favor of or against one person or group. These biases can present themselves without warning and with even the best intentions. An agent should always be mindful of the way they approach an interview and avoid interjecting assumptions, remembering that such assumptions are going to be born out of the agent's perspective – not that of the customer or client. An illustration of this misstep would be an agent telling a client or customer "this neighborhood you're looking at is great, but I think you may be more comfortable in..."

3. **HOUSING AVAILABILITY** – It is important for a salesperson to be aware of the number of available housing choices that are ready for immediate viewing. This is especially true with low inventory levels. For many agents, this comes down to entering criteria into the computer and receiving a detailed list of options. Be certain to include all homes that fit within the criteria given to you by the client. Also, do not assume that the client understands the way in which the search may be altered by the slightest variable. If a home meets the buyer's preference, do not omit showing it. Be careful to suggest the identical number and types of homes to all persons regardless of background – or take care to explain the reasons why the given criteria may have created limitations in possible listings. Note: The content, quality and quantity of the information provided as

well as the level of service provided to all prospective clients should be equal – or well documented as to any deviation. Consistency is key.

4. **LOCATION** – Show all prospective clients the same locational choices unless you are specifically requested to show homes only in certain areas. All homes that fit the buyer's preferences must be shown to give as wide a freedom of choice of housing as possible. It should be the buyer's request and not your suggestion that determines the areas in which housing is sought – otherwise, you open the door for a potential fair housing claim. Requests for information and comments related to area schools should be objective and prospects should be referred to source documents to do their own inquiry.
5. **FOLLOW-UP PLAN** – This is arguably the most important thing to keep in mind. Out of sight should not be out of mind. Make sure the plan is consistent regarding all. If your brokerage has the practice of requesting contact information for a call back and receives the information but doesn't make a call back to a prospective client then it is necessary to look at the function of that internal policy. If the request is made for contact information and the prospective client does not have a phone or does not wish to give that information then it should be noted by the salesperson that the prospective client did not leave information for a follow-up.

Embrace Training and Different Perspectives

Upholding Fair Housing Law, along with the Realtor® commitment to equal housing opportunity, is not as simple as common sense. The *Newsday* investigation is a sobering

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reminder that brokerages should never take compliance for granted. Regular education and ready reminders are helpful in fostering a culture of compliance within the brokerage.

In early June, the National Association of Realtors® partnered with the Perception Institute to develop a powerful training video to address unconscious bias. As we strive for continued progress and housing opportunity, I encourage you to have the entire brokerage watch “Bias Override: Overcoming Barriers to Fair Housing.” That video is available on NAR website at the following link: <https://www.nar.realtor/videos/bias-override-overcoming-barriers-to-fair-housing>. A brokerage’s openness to new ideas and teaching methods will go a long way towards ensuring that fair housing education and awareness is part of the brokerage culture. If you have any difficulty accessing the resources suggested in this article, please don’t hesitate to contact me at bwestrin@mirealtors.com.