

# Fair Housing Myths – Busted!

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## Myth #1

Advertisements for housing are subject to less stringent Fair Housing requirements when placed online or via social media.



# Advertising & Social Media

- Any advertisement for housing must comply with the basic requirements under the law, and online advertising is no exception.
- Online advertisements are not exempt from federal, state and local fair housing laws.
- Real estate licensees cannot make or publish an advertisement for housing that discriminates based on a protected classification.



# Be Proactive!

- Brokerages are encouraged to implement some type of social media policy.
- Having a social media policy in place won't necessarily absolve a brokerage from all liability, but...
- It pays to be proactive!
- ***“If you're explaining yourself, you're already losing.”***
- Social media policy can be a great risk aversion tool.



# Social Media Policy – Purpose and Scope

- Model Social Media Policy
  - Available at MR “Legal Resource” page.
  - Designed for brokerage use; can be adopted by local associations as well.
- The Policy offers a framework to guide real estate professionals in keeping their social media usage compliant under the law.
- Monitoring social media is more important than ever! (SOP 10-5).



## Myth #2

It's ok to target market available housing directly to (or away from) members of a protected class.



# Target Marketing

- Advertisements for housing cannot be marketed directly to or away from members of a protected class.
- Real estate professionals should also avoid marketing in such a way that restricts or limits a protected group's ability to see available housing. A Realtor® may not place an ad for housing and then select viewer criteria that is based on protected classifications such as race, sex, disability, etc.
- ***NFHA v. Facebook (2018)***



# Facebook Woes

## ***NFHA v. Facebook (2018)***

- FB's online advertising platform allowed advertisers to exclude certain individuals from viewing ads for housing based on their membership to a PC.
- FB argues, "We're not the publisher!"
- DOJ said that FB was liable as a publisher.
  - Doing more than just acting as a passive ISP.
  - Participating in the creation of discriminatory advertising.
  - FB's data collection/algorithm facilitated this new form of discrimination.
- Case settled and FB agreed to make comprehensive changes to its advertising platform and pay \$1.9 million in damages.



## Myth #3

A broker is not responsible when one of their agents violates the Fair Housing Act so long as the broker has taken steps to ensure that their agents understand Fair Housing, such as implementing written policies and hosting education sessions.



# Broker Supervision

- If an agent violates the Fair Housing Act, the agent's firm is liable for that action. This is true regardless of how much time, money, or effort the firm has put into training its agents.
- The best defense against a Fair Housing claim is the fact that a broker has **meaningful internal policies** in place that address Fair Housing.



# It all Circles Back to Broker Supervision...

- Requiring the **identification of the broker** as the primary point of contact and supervision dovetails with the fact that the **employing broker is responsible for any liability, including fair housing issues**, arising from the practice of agents within that brokerage.
- Incentive for brokers to adopt standards for fair housing compliance and training!
- Consider utilizing the Fair Housing Checklist, Social Media Policy, training requirements, etc.



## Myth #4

Because gender identity and sexual orientation are not recognized as protected classes under state or federal Fair Housing law, Michigan Realtors® are not obligated to recognize these as protected classes in their practice of real estate.



# Protected Classes

- **Federal Fair Housing Act**
  - Race
  - Color
  - Religion
  - Disability
  - Familial Status
  - Sex
  - National Origin
- **Michigan Elliott-Larsen Civil Rights Act (1976)**
  - Age
  - Marital Status
- **Check your local ordinances!** Many local governments have added additional protected classes

# Sexual Orientation & Gender Identity

## ***Rouch World, LLC v. Michigan Department of Civil Rights***

- Suit to expand the definition of “sex” in the MI ELCRA to include:
  1. Sexual Orientation; and
  2. Gender Identity.
- The MI Supreme Court agreed to hear the case, bypassing the MI Court of Appeals.
- Oral arguments heard in early March 2022.
- This case sets up a potential landmark ruling that would extend housing protections to LGBTQ individuals.



# NAR Code of Ethics

## Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, **sexual orientation, or gender identity**. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, **sexual orientation, or gender identity**. REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, **sexual orientation, or gender identity**.

## Myth #5

The Fair Housing Act only applies to real estate professionals...not buyers and sellers.



# Seller Obligations

- The Fair Housing Act applies to everyone who takes part in the real estate transaction (sellers should be particularly aware of Fair Housing laws when selecting/rejecting offers).
- A seller is not required to treat all competing buyers “equally”, but...
- Sellers cannot accept or reject one buyer over another based on a protected classification under Fair Housing law.
- **Beware of buyer love letters!**



# A Precarious Position

- Sellers who receive “love letters” from multiple buyers are in a difficult position.
- Sellers must be careful to treat the competing buyers equally – giving no consideration to protected classification status.
- **Any choice to accept/reject an offer must be based on objective criteria!**



# Best Practices

- Discuss this practice with your seller-clients at the time of listing (do not wait until your seller actually receives a love letter).
- Sellers should understand the concerns involved and be reminded that the law prohibits them from choosing (or rejecting) a particular buyer based upon any protected class.
- Realtors® are discouraged from agreeing to “preview” love letters on the seller’s behalf in order to filter out problematic ones.
- A well-informed seller may wish that they do not wish to see any “love letters” and instruct the listing agent not to forward any such letters to them.





## Myth #6

An agent who violates the Fair Housing Act will not be held liable if the agent's violation was unintentional or made by mistake.



# Lack of Intent is Not a Defense

- The lack of intent is not a defense to a Fair Housing violation.
- Agents should understand the implications of non-compliance and brokers should be supervising behaviors that might unintentionally violate Fair Housing law.
- This is one of the many reasons why education and training play such a crucial role in Fair Housing compliance.

