

Federal Fair Housing and Hawaii Anti-Discrimination

Chapter 8

Two Federal Laws

- Civil Rights Act of 1866 which makes racial discrimination illegal anywhere in the United States.
- Fair Housing Act of 1968 which makes discrimination based on race, color, sex, religion, handicap, familial status, or national origin illegal in connection with the sale or rental of most housing and any vacant land to be used for residential construction.
- Does Not Apply to Commercial Transactions

Federal Protected Classes:

- Race,
- Color,
- Religion,
- National Origin
- Handicap,
- Sex,
- Familial Status

Discriminatory Practices

- Refusing to sell or rent
- Discrimination in terms or conditions;
- Retaliation against someone who complains;
- Discriminatory advertising
- Denying housing is available
- Steering, Blockbusting, Redlining
- Denial of participation in MLS
- Denial of modifications to dwelling unit
- Refusal to sell or rent due to presence of children
- Refusal to deal with handicapped persons.

Exempt from 1968 Fair Housing Law:

- Sell one single-family house etc.
- Rentals under “Mrs. Murphy exemption”
- Religious organizations
- Private clubs
- Housing for older persons
 - Solely occupied by 62 and over
 - 80% of the housing for at least one 55+

FFH Advertising Regulations:

- Use of code words
- No discriminatory advertising
- Give directions to real estate for sale by referring to Catholic church etc.
- Exclusive use of English language paper.
- Selective use of equal opportunity logo.
- Using models of only one race, sex etc.

FFH Enforcement

- File complaint with HUD within one year.
- File a lawsuit within two years.
- Burden of proof on complainant; shifts to respondent if HUD equal housing poster is not displayed in his office.
- HUD charges; Federal court; \$100,000 fine
- ALJ hearing; fines up to \$50,000
- Criminal penalties for those who coerce or intimidate.

Americans with Disabilities Act

- ADA effective since 1992
- It affects real estate licensees in four ways:
 - Employment practices.
 - Design of real estate office.
 - Disclosure of ADA compliance.
 - Providing serviced to disabled clients.

ADA Administered by EEOC

- State employment law is administered by the Hawaii Civil Rights Commission.
- Federal law does not cover employers with less than fifteen employees.
- Hawaii law applies to employers with one or more employees.
- Employers must make reasonable accommodations in hiring disabled.

Sexual Harassment

- Both federal and state laws prohibit harassment based on sex:
 - Unwelcome sexual favors.
 - Verbal or physical conduct.
- Employers can be held liable.
- Should have written policy expressing strong disapproval and appropriate remedies.

HRS 515 - Hawaii Anti-Discrimination

- Covers all prejudice in real estate transactions and financial practices based on:
 - Race
 - Sex
 - Sexual Orientation
 - Color
 - Religion
 - Ancestry
 - Marital status
 - Age
 - Familial status
 - Disability
 - Blind or deaf
 - Using a guide dog
 - HIV or AIDS

§515-3 Discriminatory Practices.

- Refuse to negotiate, sell or rent.
- Terms to buy, sell or rent.
- Refuse to submit an offer to buy or rent.
- Represent that a property is not available.
- Discriminatory advertising.

- Listing or management if discrimination involved.
- Refusal to deal with persons with disability.
- Refusal to allow reasonable accommodations.
- Denial to MLS membership.

§515-7 Blockbusting.

- It is a discriminatory practice for a person, for the purpose of inducing a real estate transaction from which he may benefit financially:
 - (1) To represent that a change has occurred or will or may occur in the composition with respect to race, sex, color, religion, ancestry, handicapped status of the owners or occupants in the block, neighborhood, or area in which the real property is located, or
 - To represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

§515-4 Exemptions:

- Rental of a duplex if the lessor resides in one of the units;
- Rental of not more than four rooms in an owner's residence.
- Preference given by religious institutions to members of the same religion.

§515-9 Enforcement by Civil Rights Commission

- Receive, initiate, investigate, conciliate.
- Compel & exam witnesses and documents.
- Notify parties a civil action may be filed in lieu of an administrative hearing.
- Furnish technical assistance.
- Make studies and disclose their results.
- Annual report to governor & legislature.

§515-13 Remedies

- Cease and desist order.
- Force sale or lease.
- Extend full and equal privileges.
- Report on compliance.
- Post notices at respondents business.
- Cancel contracts.
- Pay injured party \$500.
- Thirty days after an order is issued, publish name of respondent.

§515-16 Other Discriminatory Practices

- Retaliate or threaten for filing a complaint.
- Aid, abet, incite, or coerce a person to engage in a discriminatory practice.
- Interfere with rights granted by this chapter.
- Obstruct, prevent someone from complying.
- Intimidate or threaten a person

§515-19 Public Contractors

A contracting agency may:

- Terminate a contract
- Condition respondent's compliance
- Refrain from entering into further contracts.

§515-20 Prima facie evidence.

- Review comparison chart.

Agency

Chapter 9

Three Party Relationship

- Fiduciary
- Two Main Categories of Agents:
 - General Agent (condo property manager)
 - Special Agent (listing or sales)

Creation of Agency Relationship

Principal may be:

- Owner or Seller
 - Owner in property management agreement.
 - Seller in listing agreement.
- Buyer in Buyer Representation Agreement
- The broker is an agent for the principal.
- Broker can delegate to salesperson; salesperson is a sub-agent of the broker.

Duties & Obligations of Agency Relationship

Principal to Agent and Third Parties:

- Perform in good faith.
- Don't mislead or interfere.
- Pay the broker.
- Reimburse authorized expenses.
- Provide disclosure statement for the buyer.

Agent to Principal and Third Parties

- Act in fiduciary manner.
- Obediently perform duties.
- Exercise reasonable skill and care.
- Account for all monies and property.
- Ascertain and disclose facts to principal.
- Present all written offers.
- Treat all parties fairly.

Agent to Buyer Client

- Fiduciary responsibilities to buyer;
- Obtain best price for buyer;
- Disclose facts that affect value or desirability of the property;
- Transmit buyer's offer to seller;
- Disclose agency relationships;

Agency Choices:

- Single Agency
 - Broker only represents seller or buyer; not both in the same transaction;
- Dual Agency
 - In house sale;
 - Agent buys company listing;
 - Buyer relies on agent for professional advice; Seller wants to buy a company listing
- Subagency
 - Sales agents are sub-agents of the broker.

Agency Relationships in Other States

- Designated Agency
- Transactional Agency
- Facilitation Agency

Agency Disclosure Timing:

- When broker obtains a listing.
- Prior to preparing contract between buyer and seller.
- Prior to presenting contract between buyer and seller.
- Failure to make required disclosures is a license law violation.

Termination of Agency

- Mutual agreement.
- Revocation by principal.
- Renunciation by agent.
- Accomplish objective.
- Expiration of time limit.
- Death, insanity, bankruptcy
- Destruction of property or change of law.

Power of Attorney

- Written instrument.
- License law exception.
- General and Special.
- Should be recorded.
- Dower rights and power of attorney.
- Death revokes unless military.
- Agents should not act as attorney-in-fact.

Broker Compensation

- The listing contract shows rate of commission;
- Commission negotiable, based on sale price;
- Written employment;
- Broker found ready, willing & able buyer;
- Broker has acted in good faith;
- In buyer default, broker gets ½ of deposit;

Broker Gets Paid Even If:

- Owners change their minds.
- Spouse refuses to sign.
- Defects in owners title.
- Owner's fraudulent acts.
- Possession not delivered.
- Seller changes terms in listing contract.
- Owner and buyer cancel purchase contract.

Commission is Negotiable Between:

- Owner and listing broker.
- Listing broker & listing salesperson.
- Listing broker & selling broker.
- Selling broker & selling salesperson.
- A good salesperson can earn as much as their broker.

If Employee Broker Must:

- Withhold federal, state and FICA taxes.
- Pay ½ FICA taxes.
- Provide Workers Comp and TDI.
- Assume liability for auto accidents.

Independent Contractor

- Written IC agreement.
- Active real estate license.
- Compensation based on performance.
- Licensee pays own taxes and expenses.
- Key factor is “control”.
- Possible IRS audit.

NAR Code of Ethics

- NAR was founded in 1908.
- NAR Code of Ethics first adopted in 1913.
- The Realtor Code of Ethics is the standard of behavior for all licensees.
- Many of the rules of conduct of Hawaii state laws are based on Code of Ethics.
- State law prevails over Code of Ethics.

Article 1

- When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly.

Article 2

- REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law.

Article 3

- REALTORS® shall cooperate with other brokers except when cooperation is not in the client’s best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker.

Article 4

- REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner’s agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser’s representative.

Article 5

- REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6

- REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.
- When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation.

Article 7

- In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR®'s client or clients.

Article 8

- REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

Article 9

- REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing.

Article 10

- REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. 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, or national origin.
- 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, or national origin.

Article 11

- The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.
- REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.

Article 12

- REALTORS® shall be careful at all times to present a true picture in their advertising and representations to the public. REALTORS® shall also ensure that their professional status (e.g., broker, appraiser, property manager, etc.) or status as REALTORS® is clearly identifiable in any such advertising.

Article 13

- REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14

- If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes.

Article 15

- REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices.

Article 16

- REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients.

Article 17

- In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.
- In the event clients of REALTORS® wish to arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall arbitrate those disputes in accordance with the regulations of their Board, provided the clients agree to be bound by the decision. The obligation to participate in arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to arbitrate and be bound by any award.

Listing Contracts

Chapter 10

A Listing Needs:

- To be dated;
- Names of seller;
- Name brokerage;
- Agent preparing contract;
- Address of listing;
- Term of listing;
- The right, if any to cancel early;
- Asking price;
- Term of protection period;
- Commission amount;
- Agency Disclosure;
- Signatures of parties

Major Types of Listing Contracts

- Net Listing
- Open Listing
- Exclusive Agency Listing
- Exclusive Right to Sell
- Exclusive Buyer Representation Agreement

Net Listing

- One where the owner specifies a net price he wants for the property;
- Any amount over is the commission paid to the broker;
- Though not prohibited by Hawaii law, a net listing is discouraged.

Open Listing

- Allows the seller to list the property with more than one broker;
- Allows the seller to sell it himself;
- Broker selling the property gets the full commission;
- Sale cancels all other listings;
- It is a unilateral contract;

Exclusive Agency

- Owner hires one brokerage firm;
- Owner reserves the right to sell it himself;
- Broker might find himself competing with the owner;

Exclusive Right to Sell Listing

- Broker is the exclusive agent for the seller;
- Assures the broker he will receive the commission, even if the owner sells the property himself;
- Most common type of listing agreement used in Hawaii;
- Recommended for use by the Hawaii Association of Realtors

Termination of Listing

- Expiration of time period;
- Death, Insanity, Bankruptcy;
- Mutual Agreement;
- Regulation;
- Destruction of property;
- Revocation or Renunciation;
- Accomplishment of Objective;

Commissions Earned

- If buyer & seller sign DROA;
- If seller refuses a full price offer on seller's terms & conditions;
- If seller signs contract with broker's prospect during protection period;
- If seller withdraws listing without broker's consent;

Multiple Listing Service

- Members submit listings to MLS.
- Owner may request no MLS.
- "Listing Agent" or "Seller's Agent" represents the seller.
- "Buyer's Agent" or "Selling Agent" usually represents buyer.
- Benefits to Listing and Selling Agent
- Review sample listing contract.