# Putting the "Fair" back into housing!

## Putting the "Fair" Back into Housing!

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**Putting the "Fair" back into Housing!**

## Course Goal:

"To enable you to comply with fair housing laws by approaching all customers and clients in the same manner regardless of race, color, religion, sex, handicap, familial status, or national origin."

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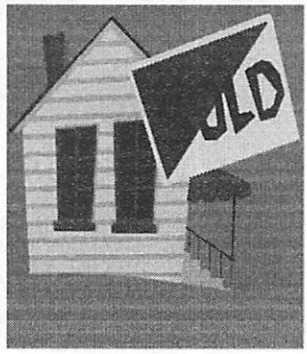
# Putting the "Fair" back into housing!




The Fair Housing Act
Title VIII

## What is the Fair Housing Act?

The Fair Housing Act **makes it illegal to discriminate** based on race, color, national origin, religion, sex, disability or familial status, and applies to housing and housing-related activities, including apartment and home rentals, real estate sales, mortgage lending, and homeowners insurance.

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# Putting the "Fair" back into housing!

## Fair Housing laws prohibit:

- Refusal to sell/ rent a property after making a bona fide offer
- Discrimination in the terms, conditions or privileges of sale or rental of a dwelling
- Steering people toward or away from particular neighborhoods
- Blockbusting

## Fair Housing laws prohibit:

- Redlining or reverse redlining
- NIMBYism (not in my backyard)
- Discriminatory advertising or statements
- Threats, coercion, intimidation or interference with a person's fair housing rights.

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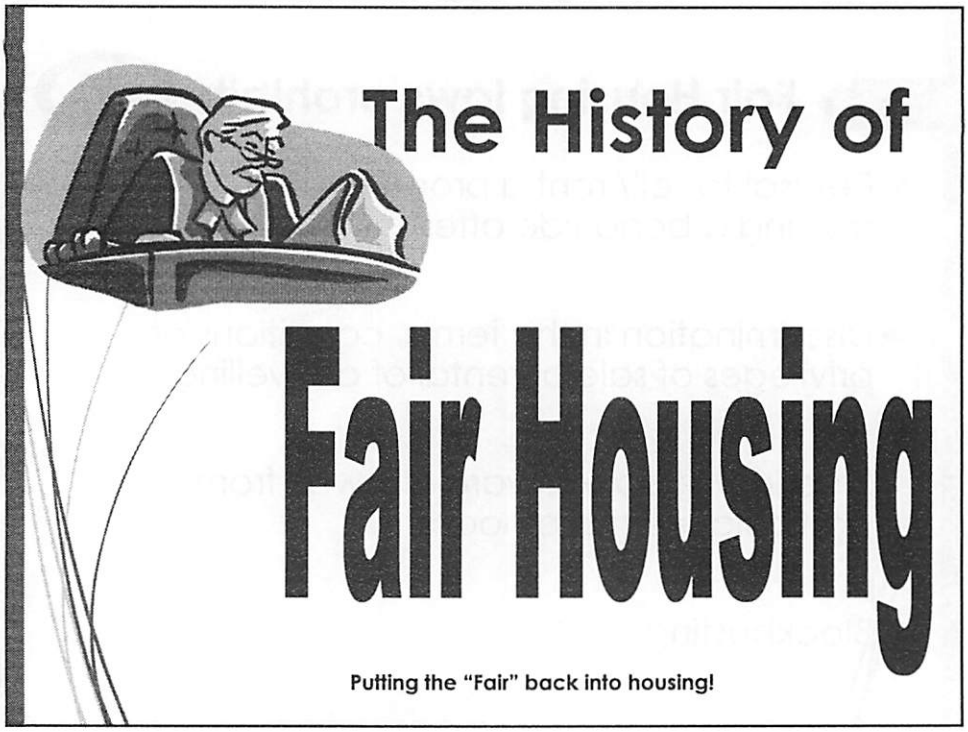


**The History:**


Since the emancipation of the slaves, **the United States has struggled to overcome a history of prejudice and discrimination** in an effort to live up to its highest ideals of equality for all.

That struggle is an integral part of the fight for fair housing.

Let's take a brief look at how fair housing policy has evolved in the United States.

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## The History:


- After the Civil War, a flurry of legislative activity granted full citizenship to black Americans and former slaves. Specifically, the **13th Amendment** abolished slavery, and the **14th Amendment** guaranteed all persons due process and equal protection under the law.
- To further help ensure equal treatment under the law, **Congress passed the Civil Rights Act of 1866, which guarantees that "all citizens of the United States shall have the same right to inherit, purchase, lease, sell, hold and convey real and personal property as is enjoyed by white persons."**

## The History:

- **What was promised on paper, however, was never actually granted in practice.**
- The **racist Jim Crow laws** that were **created in the decades directly following the abolishment of slavery continued to target black Americans.**
- The laws established **"separate but equal"** status for black Americans that **legalized discrimination and denied equal access and opportunity in all aspects of society, including owning a home.**
- These **laws endured for nearly 100 years**, well into the 20th century.
- **The last Jim Crow law was abolished in 1968.**

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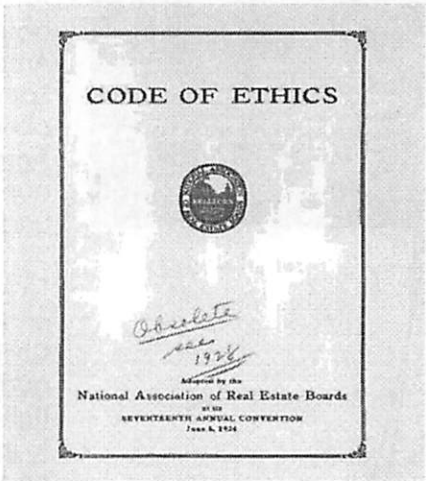
Early 20th Century: Housing discrimination was an ethical mandate for REALTORS®


CODE OF ETHICS

Obsolete

Adopted by the
National Association of Real Estate Boards
at its
SEVENTEENTH ANNUAL CONVENTION

ARTICLE 32.

Before the closing of a transaction, the Realtor should recommend the examination of title and conveyancing papers.

ARTICLE 33.

All contracts and agreements to which a Realtor is a party should be made in writing and should be complete and exact.

ARTICLE 34.

A Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood.

ARTICLE 35.

No instructions nor inducements from any client or customer relieve the Realtor from his responsibility strictly to observe this Code of Ethics.

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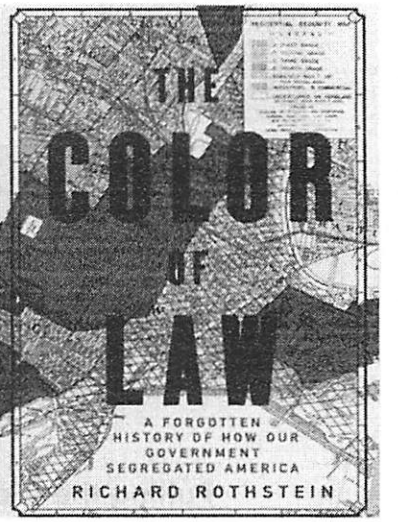
## Suggested Reading




# The Protected Classes

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# Putting the "Fair" back into housing!

HUD is now using the terms ***"Prohibited Bases for Discrimination" or "Prohibited Characteristics."***

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- HUD is making this change because, in fact, **everyone is protected by the FHA** (an individual who is white could sue an individual who is black if refused housing because of race).
- **HUD believes "protected classes" makes it sound as if only certain people are covered.**

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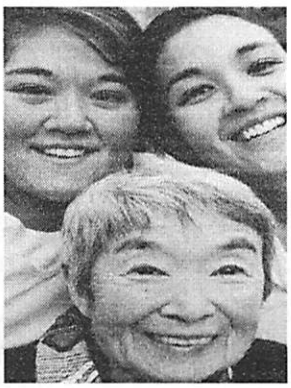
# Putting the "Fair" back into housing!

## Classes Protected by Federal Law

The Fair Housing Act and its amendments identify these protected classes:

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



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## *Easy way to remember the protected classes*

| | |
|---|---|
| REALTORS® | Race |
| Can | Color |
| Really | Religion |
| Sell | Sex |
| House | Handicap |
| Fast | Familial Status |
| Now | National Origin |

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# Putting the "Fair" back into housing!

**Fair housing issues legislated by:**

Your state and local laws- (often increase the number of protected classes, creating broader coverage than federal)

CODE *of* ETHICS
*and* STANDARDS *of* PRACTICE
NATIONAL ASSOCIATION OF REALTORS®

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. (Amended 1/14)

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. (Amended 1/14)

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NOTE: To date, the Fair Housing Act "does not specifically include sexual orientation and gender identity as prohibited bases

However, discrimination against an LGBTQ+ person may be covered by the Fair Housing Act if it is based on non-conformity with gender stereotypes."

Check state and local laws to determine if the LGBTQ+ community is a protected class in your market.

**The Fair Housing Act uses the term "handicap" with respect to a person who:**

- Has a physical or mental impairment that substantially limits one or more major life activities
- Has a record of such impairment
- Is regarded as having such an impairment

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# Putting the "Fair" back into housing!

**The Fair Housing Act uses the term "handicap" with respect to a person who:**

The term "handicap" is being replaced in several conversations with the new term "disability/ disabilities".

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**Examples of people who are considered handicapped are individuals with:**

- Impairments in walking, seeing, or hearing
- A history of mental illness, heart disease, cancer, cerebral palsy, multiple sclerosis, diabetes, AIDS, HIV, IBD, Crohn's.
- To simplify this area it is now deemed, if the physician says it's a handicap… then it is!
- Individuals who have successfully completed or are participating in a drug treatment program and are not currently using illegal drugs.

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# Putting the "Fair" back into housing!

**Examples of people who are considered handicapped are individuals with:**

- Limited protections are extended to those recovering from alcoholism and substance abuse.
- The law also allows housing providers to adhere to reasonable occupancy standards for the number of people who may live in a dwelling.
- The Fair Housing Act does not protect people who have been convicted of manufacturing or distributing illegal drugs.

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**Examples of people who are considered handicapped are:**

## Hoarders

- 4 -5 million affected by Alzheimer's
- 6 -15 million affected by Hoarding Disorder
- Became a Disability in May 2013, therefore protected and landlords have the duty to reasonable accommodations.
- Landlords have a duty to put in place a manageable plan/ goal with the goal to keep the resident.

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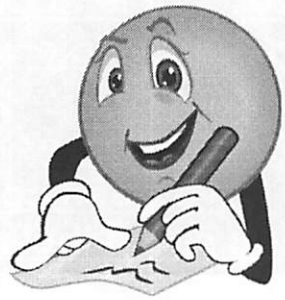
# Putting the "Fair" back into housing!

## Fair Housing Exemptions



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## Fair Housing Exemptions

There are **no exemptions** for ***race*** or ***color***.

The Fair Housing Act exempts the following from its coverage:

- ~~FSBO~~ – Single-family homes
- ~~"Mrs. Murphy's"~~ – Houses or living quarters
- Religious organizations and private clubs
- Housing for older persons.

- **Let's look at each of them separately…**

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## Single-Family Homes Exemptions

- The owner does not own, or have ownership interest in, more than three single-family houses at any one time
- The house is sold or rented without the use of a real estate agent, broker, or any other person in the business of selling or renting dwellings



## Single-Family Homes Exemptions (cont.)

- The owner does not reside in the property at the time of the sale or was not the most recent resident prior to the sale (This exemption applies to only one such sale in a **24** -month period.)
- The house must be sold or rented without the use of discriminatory advertising.

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## Housing or living quarters Exemptions

- This is the common description of the exemption that applies to an owner-occupied building with four or fewer units.

- The house must be sold or rented without the use of discriminatory advertising.

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## Religious Organizations Exemption

***Religious organizations, associations, or societies*** – can show preference if membership in the religion is not based on race, color, or national origin.

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## Private Club Exemption

***Non-profit organizations or private clubs*** – can give preference to members when, in addition to their primary purposes, provide lodgings that they own or operate other than a commercial purpose.



## Housing for older persons refers to three types of housing:

- Senior housing that is provided under federal or state programs
- Housing that is intended for and solely occupied by persons 62 years of age or older
- Housing intended and operated for occupancy by persons 55 years of age or older

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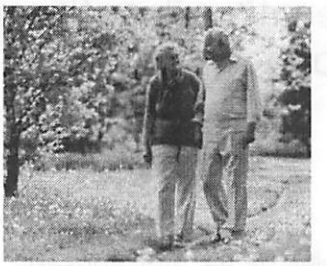
**To qualify as 55 and over housing:**

At least 80 percent of the occupied units must be occupied by at least one person who is 55 years of age or older.



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**To qualify as 55 and over housing:**

- The housing facility or community must publish and adhere to policies and procedures that demonstrate this intent to be housing for older persons

- The housing facility or community must comply with rules issued by the Secretary of HUD for verification of occupancy.

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# Putting the "Fair" back into housing!

**Fair housing issues legislated by:**

Your state and local laws- (often increase the number of protected classes, creating broader coverage than federal)

- Gender
- Age
- Sexual orientation
- Income

There is a difference between the Housing Act of Protected Classes vs. the Labor Act of protected classes.

**Finally, it's important to note that <u>some federal exemptions are actually protected under state laws</u>, so make sure to check with your State Fair Housing Agency for details that pertain to the market in which you do business.**

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JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

- Service Animal Policy
- Reasonable Accommodations
- Reasonable Modifications

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***SERVICE ANIMAL POLICY***
***(WHAT IS A SERVICE ANIMAL?)***

- The most common service animals are dogs, but sometimes other species are used (for example, a cat or a bird).
- May be any breed, size or weight.
- Some, but not all, wear special collars and harnesses.
- Some, but not all, are licensed or "certified" and/or have identification papers.

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# Putting the "Fair" back into housing!

*SERVICE ANIMAL POLICY*
*(WHAT IS A SERVICE ANIMAL?)*

- However, **there is no legal requirement for service animals to be visibly identified or to have documentation**.
- In addition, there are many types of service animals with different names which are not certified and don't have special training.
- For example, companion animals, which don't perform specific tasks, are considered service animals.

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## New Service Animals Guidelines 2020

- While many people have valid reasons for the use of service animals and are protected under the FHA, some people have tried to take advantage of this protection by claiming a medical need when there is none.
- **To help address this issue HUD, released new guidance to assess the validity of the need for service animals.**
- **As of 2020, landlords and property managers "can require reliable verification of the tenant's need for an assistance animal and can require documents other than an online certification."**
- **For more on the details of this guidance, you can go to: hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf**

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**Modifications/ Accommodations for People with Disabilities**

**The FHA requires two types of changes to make existing housing more accessible to people with disabilities:**

Under the Fair Housing Act, prohibited discrimination includes a refusal to permit, **at the expense of the person with a disability**, reasonable modifications of existing premises occupied or to be occupied by such person **if such modifications may be necessary to afford such person full enjoyment of the premises.**

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## *Reasonable Modifications (Physical changes)*

- **Paid by the tenant**
- Must be changes necessary and having something to do with their disability.
- Examples include:
  - installation of a ramp into a building,
  - lowering the entry threshold of a unit, or
  - installation of grab bars in a bathroom.
- Do not have to remove ramps (part of the property)
- Do not have to removed widened doors
- Do have to remove grab bars but not the studs.

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# Putting the "Fair" back into housing!

**Modifications/ Accommodations for People with Disabilities**

The FHA requires two types of changes to make existing housing more accessible to people with disabilities:

A **reasonable accommodation** is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with disabilities to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces, or to fulfill their program obligations.

## (Examples)

- Assigning an accessible parking space for a person with a mobility impairment
- Permitting a tenant to transfer to a ground-floor unit
- Adjusting a rent payment schedule to accommodate when an individual receives income assistance
- Permitting an applicant to submit a housing application via a different means
- Permitting an assistance animal in a "no pets" building for a person who is deaf, blind, has seizures, or has a mental disability.
- The law requires both sides to talk to work it out or the courts will rule against the landlord.

# Putting the "Fair" back into housing!

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

- Service Animal Policy
  - HUDAsstAnimalNC1-28-2020.pdf
- Reasonable Accommodations
  - huddojstatement.pdf
- Reasonable Modifications
  - Joint Statement on Reasonable Modifications - March 5, 2008 (hud.gov)

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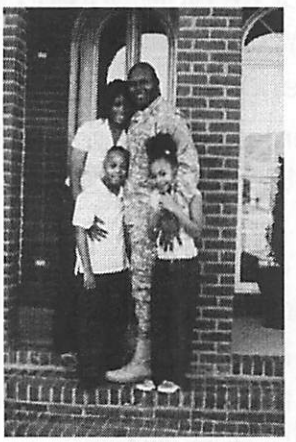
## Working with Sellers



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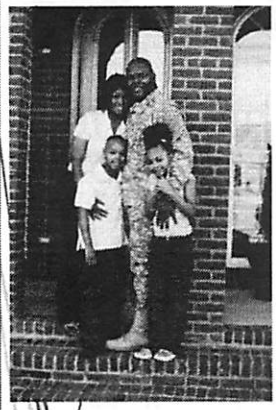
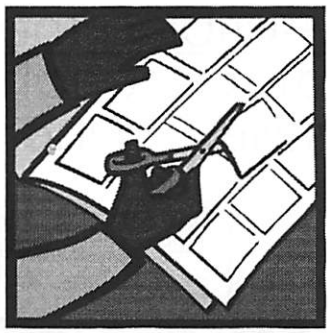
## Listing Procedures



- Take advantage of your opportunities to educate a seller about the fair housing laws before the listing agreement is signed.
- Express a commitment
- Obtain seller's written commitment to abide by the law (This may be achieved with the listing agreement.)
- Read and discuss the listing agreement.



## Advertising and Promotion



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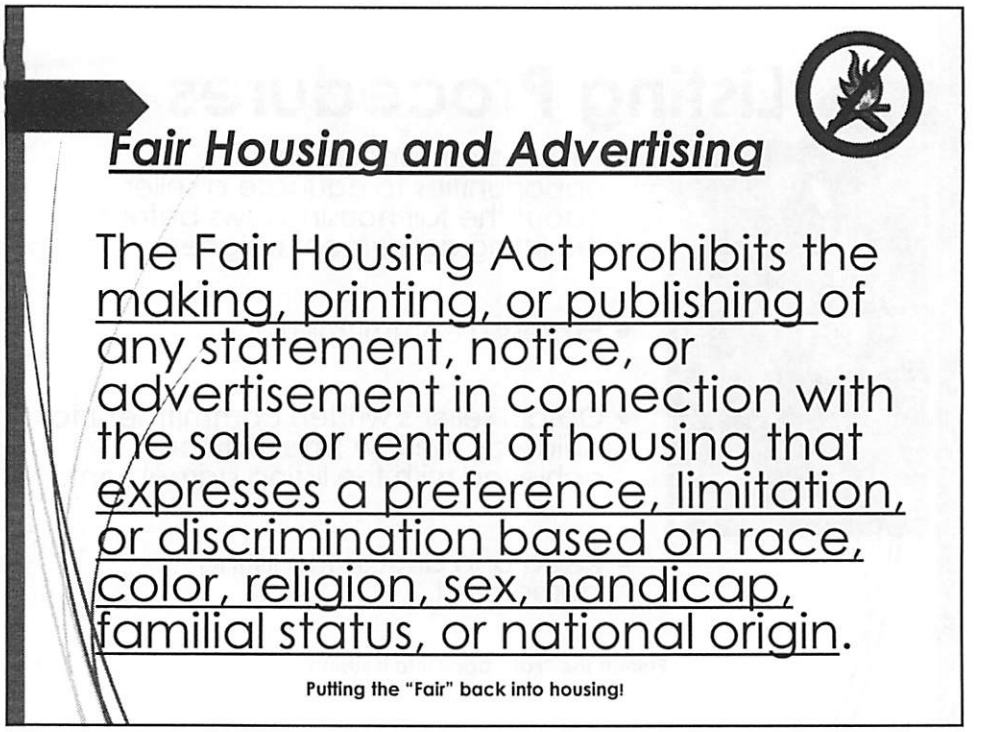


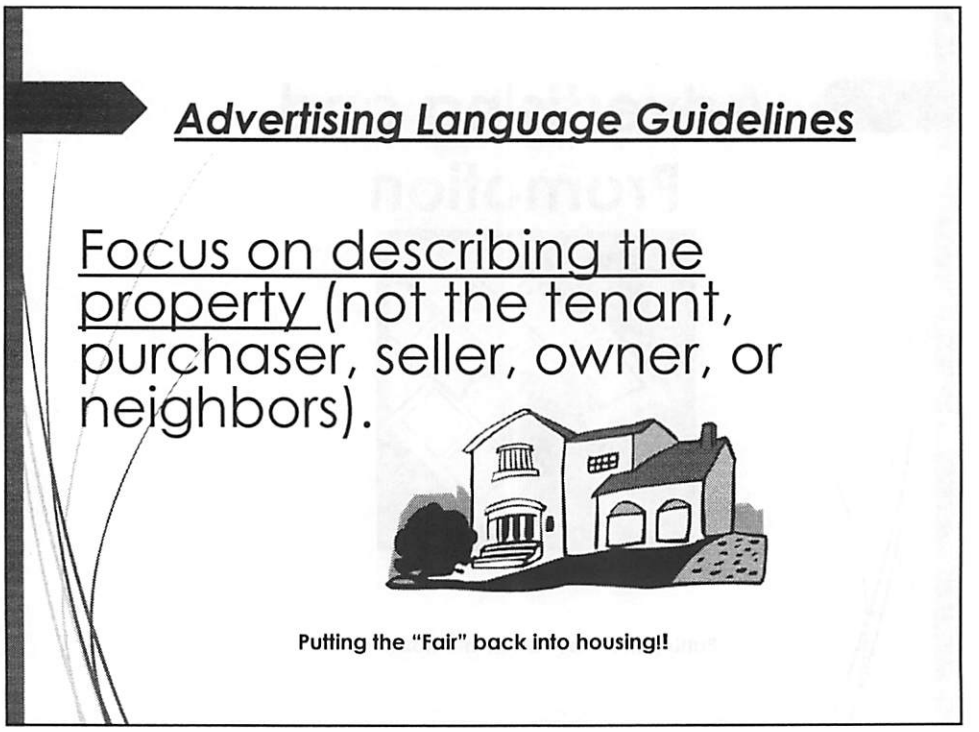

## Working with Buyers

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## ***Why collect & document information?***

- A prospect database is created
- Follow-up information is recorded
- Information is readily available
- Documentation provides a defense against claims that fair housing laws have been violated
- Activities are recorded for future reference
- Fair housing compliance is monitored to make corrections (as necessary)

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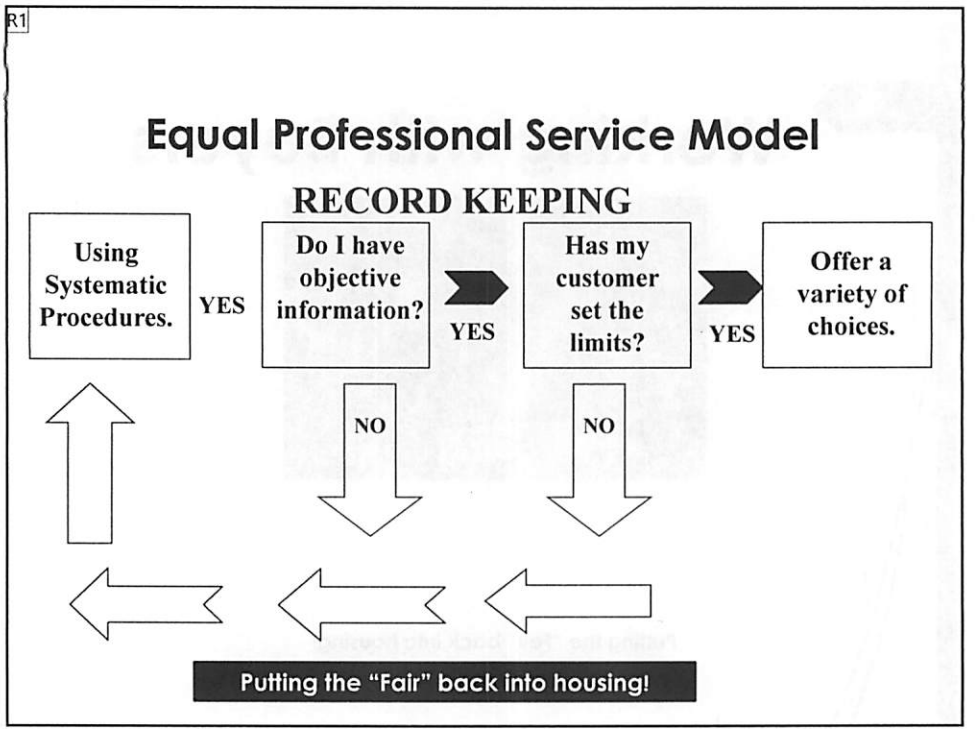


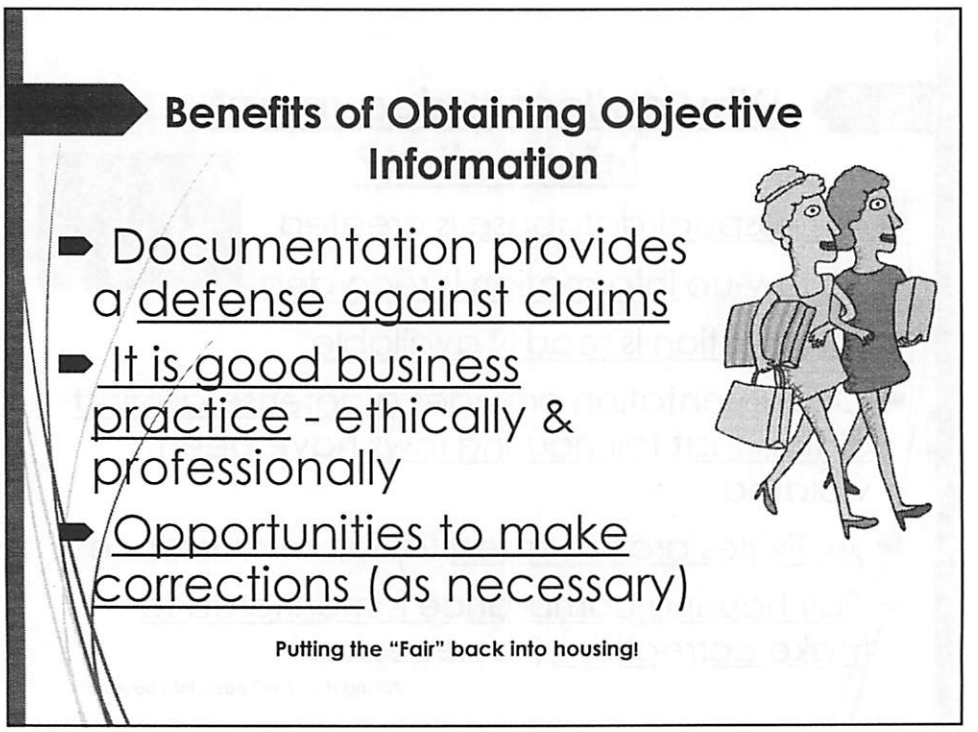

## Slide 74

**R1** Robert, 3/29/2021

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## Benefits of Obtaining Objective Information

- It makes a sales associate a problem solver
- It saves a sales associate time
- Activities are recorded for reference
- Information is readily available

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## *Selecting Homes to View*

- Select homes that are at both the upper and lower ends of the homebuyer's price range
- Take the homebuyer's wants and needs into careful account
- Develop a list of properties available in the areas requested.

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# Putting the "Fair" back into housing!

## Selecting Homes to View


- Allow the homebuyer to determine the properties to be viewed
- Consider homes that meet the homebuyer's needs, in all areas, when a specific area has not been requested.

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## It's not a choice!

## It's the Law!

**Thank You for your attention & time Toady!**