

EVERYONE NEEDS TO PLAY BY THE RULES

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In the game of buying and selling residential real estate, there are buyers, sellers and real estate agents. The basic rules of the game are pretty simple – buyers buy, sellers sell, and real estate agents try to make all of that happen. Sounds simple, doesn't it? Well, it is, except there are more rules and, to make the game fair, everyone should know and play by the rules. These other rules are the fair housing laws and they apply to all of the players in the game.

Briefly, the Connecticut Fair Housing Act disallows discrimination in housing by race, creed, color, national origin, ancestry, sex, marital status, age, sexual orientation, lawful source of income, familial status, learning disability, mental retardation, mental disability or physical disability. So, how does anyone in this game of real estate actually and factually know if discrimination has taken place? Just as in sports where there are referees and umpires who watch for and call the fouls, so it is in real estate, except that the role of referees and umpires is carried out by representatives of fair housing law enforcement agency representatives called "testers". These fair housing testers look and act like everyday, run-of-the-mill buyers. Testers walk into an agency, go through the qualifying process and look at houses just like any other buyer, and by doing so, quietly, unobtrusively and purposefully, put the fair housing laws and the practices of real estate agents to the test.

Testing is subtle and virtually undetectable. Here is how it works. There are two "buyers/tenants" (could be two individuals or two couples) that are basically identical with respect to financial capabilities and housing needs. One tester/couple is usually a member of a protected class (a minority race or ethnic group) and the other is a member of a majority class. Each tester/couple inquires about an agency's listing for sale or for rent within a short period of time – usually within the same week or during consecutive weeks. The test is to determine whether either tester/couple received different treatment. It is important to note that while a real estate agent may ask every prospective buyer or tenant the same, routine, non-discriminatory financial questions and the same, routine, non-discriminatory housing needs and wants questions, a prospective buyer's or tenant's life experiences may cause him or her to view the process and the questions differently – perhaps even as an attempt to avoid doing business with him or her.

People have the right to decide where they will live. It is the agent's responsibility to show all properties available within a buyer's/tenant's price range and criteria. It is not an agent's job to presume that a prospective buyer or tenant would not want to live in a particular area, house or apartment. For example, if a couple with four children walks into a real estate agency and asks to see a newly advertised two bedroom listing, the agent should show it to them, even though the agent believes that such a house will not meet their needs. If an agent tries to dissuade them from seeing the property they are interested in, the couple may feel that the agent is discriminating against them by steering them away from what they wanted to see. To avoid this situation, the agent should show them the property they want to see and, if it is unacceptable to them, proceed to other listings. This course of action fulfills the obligation to the seller to expose the property while, at the same time, allows the couple to come to the same conclusion about their needs as the agent had without them feeling they were being discriminated against or being steered away from the property they wanted to see.

The law is meant to be neutral with respect to questions of race, creed, color, national origin, ancestry, sex, marital status, age, sexual orientation, lawful source of income, familial status, learning disability, mental retardation, mental disability of physical disability. So, for example, when an Asian buyer asks to see homes only in an area that is mostly Asian because he wants his children to grow up in a community that shares his customs and culture, should an agent recommend such a neighborhood? Yes, you say? Well, what if a white buyer were to request the same thing? Oh. As you can see, the problem with questions regarding racial composition is that an agent cannot know the motivation of the person asking the question. The buyer's motivation may be pure, but, if an agent answers the question regarding racial makeup of a neighborhood and the buyer then replies, "do not show me any houses in that neighborhood", has the agent now inadvertently helped to steer that buyer away from that neighborhood based on its racial makeup?

The lessons here, then, are clear and basic. First, buyers should not ask racial composition or status-based questions about communities and neighborhoods and agents should not answer them. Secondly, agents should focus on the *property*, not on the potential buyer or the tenant. In other words, agents should focus on what is for sale, not to whom. As an example, "starter home" typically describes a home that would attract young buyers, but it could also fit the needs of any small family, an empty nester or a senior citizen. By using the term "starter home", the property itself, not the neighborhood or the buyer, has been described. No foul on that.

In the realm of residential real estate sales, discriminatory housing practices are illegal. Everyone who takes part in the game of real estate, whether it be to rent or to own, should play by the rules of fair play. Sellers need to be aware of the fair housing laws so that they will understand that they cannot demand an agent show their property to and present offers from only a specified kind of buyer. Buyers need to be aware of the fair housing laws so that they will understand that they cannot demand that their agent show them homes in only those neighborhoods consisting of residents of only a specified color, national origin, or religion. Real estate agents need to understand and constantly be aware of the fair housing laws so that they do not use discriminatory practices in listing real estate on behalf of sellers or in helping a buyer find a new home.

Here's the deal – we all want to be treated equally and fairly, whether we're buying food, souvenirs or real estate. Buyers and sellers should be heartened and reassured that testers are out there in the marketplace checking for equality and fairness in housing practices, keeping the game fair and calling "foul play" when necessary. Real estate agents are required to know the law regarding the listing, advertising and showing of property, negotiating offers and generally serving the needs of buyers and sellers without discrimination. As we are all players in the same game, we need to continually strive towards equal treatment for all in housing and, perhaps, putting the testers out of a job. That's fair play.