

## **RE111C21:**

### **Diversity, equity and inclusion – why it matters to RE commercial practitioners**

Objective: Educate commercial brokerage on the importance of understanding civil rights issues, and understanding the importance of diversity and equity and inclusion.

1. Understanding of commercial real estate
  - a. Includes the sale/ management of apartment buildings
  - b. Anything outside 1-4 family transactions?
2. Civil Rights Laws and Commercial RE
  - a. Civil Rights of 1866 – discrimination on the bases of race in sale and rental in all real estate is illegal, no exception
  - b. Civil Rights Act of 1968, commonly referred to as the Federal Fair Housing Laws
    - i. Apply to any real estate activities involving sale and rental of residential units (management of apartment buildings for example)
    - ii. Establishes a list of protected classes and of prohibited activities (detailed later)
    - iii. Disparate impact discussion
  - c. MA Civil Rights Laws - MGL 151B
    - i. Addresses Employment and real estate, both commercial and residential
    - ii. Considered substantially equivalent to Federal Laws
    - iii. Massachusetts is a pioneer in anti-discrimination laws. These laws apply to commercial as well as residential.
      1. Mid 1940's: Massachusetts established a commission to enforce laws prohibiting discrimination.
      2. In 1950 Commission's name changed to the Massachusetts Commission Against Discrimination (MCAD), and its jurisdiction and power enforcement were widely expanded.
    - iv. Establishes a list of protected classes and of prohibited activities (detailed later)
  - d. American with Disability Act (ADA) - 1990
    - i. Objective is to provide reasonable access/ accommodation for handicap/ disability
    - ii. Examples:
      1. Access to public buildings such as medical buildings, office space and retail properties.
      2. Reserved parking
  - e. Possible professional organization code of ethics. Examples:
    - i. SIOR – Code of Ethical Principles and Standards of Professional Practice of the SIOR/ Principle 7 – Do not discriminate
    - ii. IREM - IREM Code of Professional Ethics, Article 11 Equal Opportunity

### 3. Enforcement discussion

#### a. Process

- i. HUD (Housing & Urban Development) is the federal agency responsible for enforcing the Federal Civil Rights Laws
- ii. Massachusetts Commission Against Discrimination (MCAD) is the state agency whose mission is to enforce:
  1. Primary civil rights regarding discrimination M.G.L. c. 151B
  2. Public accommodations civil rights M.G.L. c. 272, §§92A, 98, 98A
  3. Sexual harassment M.G.L. c. 151B, § 3A
  4. Maternity leave M.G.L. c. 149, § 105D
  5. Civil rights and education M.G.L. c. 151C
  6. Lead paint M.G.L. c. 111, § 199A ; think of old mill buildings that are renovated into multi-family or offices/lab space
- iii. Any person filing a complaint with MCAD for an alleged violation of Massachusetts anti-discriminatory laws must do so within:
  1. 300 days after the alleged employee related act of discrimination,
  2. 12 months after the alleged housing related act of discrimination

#### b. Testing

- i. Using testers is legal to prove discrimination: in the case of Havens Realty Corp. v. Coleman, 455 U.S. 363, 373 (1982), the United States Supreme Court ruled testers are legal. Commercial brokerage offices are subject to testers.
- ii. Testers do not identify their role, and are not required to accurately represent themselves -
- iii. Testers entitled to damages for humiliation, mental anguish, and emotional distress.
- iv. Testers lack of intent is NOT a defense.

#### c. Penalties

- i. civil penalties, damages (actual and/or punitive), and injunctive relief
- ii. Civil penalties amounts, in addition to any other sanction, not to exceed:
  1. \$10,000 for a first offense;
  2. \$25,000 for the second offense within a 5-year period;
  3. \$50,000 for the third offense within a 7-year period.
- iii. MCAD and Real Estate License Law: MCAD conviction of unlawful discriminatory practice is a violation of the real estate license law. The Board of Registration of Real Estate Brokers & Salespersons will:
  1. suspend the commercial real estate licensee for a minimum period of 60 days.
  2. if second violation within two years then automatic minimum 90-day

4. Protected classes and prohibited activities
  - a. Poster reminder
  - b. Prohibited practices
    - i. Blockbusting
    - ii. Redlining
    - iii. Steering
    - iv. Differential treatment. Examples:
      1. Terms of lease/ security deposit amount based on economics/ risks, but not on people profile/ rental assistance
      2. Requirements to proceed with offering services
    - v. Advertising (Spann v Colonial Village)
  - c. Protected classes
    - i. Review and compare the lists of protected classes from the federal law and MGL 151B
  - d. Review of most common issues
    - i. Gathering info from the consumer:
      1. not relative to any protected class,
      2. Basic required info to proceed (ID, financial)
      3. Objective needs and wants
    - ii. Differential treatment on offering real estate services
      1. Financial qualification from some but not all
      2. Providing information to some but not others (crime, school for example)
      3. Different lease terms
    - iii. Source of income is a protected class
      1. Residential property: illegal to refuse/treat differently someone using a rental assistance voucher
      2. An arbitrary credit score requirement is discriminatory
    - iv. Children (Example: HUD v. Property Management of Andover)
    - v. Handicap/ disability and requirement of reasonable accommodation
      1. Service animals (ADA), assistance animal (MGL 151B)
      2. Accommodation through interactive process (MA AG settlement, Peabody Properties Management Company and deaf tenants, Shapiro v Cadman Towers)
      3. Drive by inspection re ADA requirements

5. Best practices
  - a. Non discrimination office policy, including
    - i. sexual harassment policy
    - ii. Non retaliation, coercion, intimidation with any person exercising their rights
  - b. Set business processes to ensure equal treatment, such as:
    - i. Responding to inquiries
    - ii. Showing properties
    - iii. Selection criteria
    - iv. Negotiation elements

Related courses:

- RE21RC01 - ADA
- RE19RC20: Fair Housing
- RE111RC20: Protecting the Protected Classes