

Housing Bias: New York Crackdown on Steering, Source of Income Discrimination; Best Practices

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In the wake of a 2019 *Newsday* investigation into alleged discriminatory housing practices of suspected racial steering, there has been a pronounced focus on ways to curb potentially discriminatory housing practices across New York.

Proposals include posting advertisements advising the public that landlords, real estate agents, or brokers are prohibited from engaging in certain activities, including:

- Refusing to accept vouchers or housing assistance;
- Directing minority potential homebuyers toward neighborhoods based on race;
- Requiring preapproved mortgage financing from certain groups, such as Black or Hispanic customers, but not requiring it from others, such as White prospective purchasers;
- Discussing housing values with certain buyers, but not others; and
- Disparately emphasizing the quality of the school district to buyers.

Racial steering and other forms of housing discrimination are sometimes less overt, more subtle, and can be difficult to regulate. To address this and based on recent publicity, attention, and enhanced enforcement efforts directed toward steering, source of income discrimination, and fair housing generally, it is very likely more housing discrimination cases soon will be brought against landlords, real estate management companies, and others.

An example of these efforts is New York Governor Andrew Cuomo announcing a state initiative to deploy undercover homebuyers to test the steering of buyers from certain neighborhoods. In conjunction with this, New York is dedicating \$250,000 and partnering with nonprofit housing agencies to dispatch fair housing testers. This testing will occur across Long Island, New York City, Westchester County, and upstate New York.

Source of income discrimination claims are also poised for a spike in enforcement. In 2020, the Human Resources Administration's (HRA) Fair Housing Litigation Unit handled 213 source of income complaints. In recent years, the New York City Commission on Human Rights (NYCCHR) has increased its efforts to combat source of income discrimination by investigating and prosecuting landlords. From 2018 to 2019, NYCCHR filed 176 cases of source of income discrimination against landlords, real estate management companies, and others across New York City. As with the *Newsday* investigation into steering, these initiatives frequently employ testers. These testing efforts have been revitalized with New York City hiring new staff to conduct more than 240 source of income discrimination tests in 2019 alone.

Typically, the HRA and NYCCHR tend to focus on rapid intervention; meaning, they alert the offending landlord of the illegal practice and instruct them to rent out the unit. In some cases, enforcement agencies have threatened to impose penalties for non-

compliance. To provide a stronger deterrent and enhanced enforcement, more frequent and larger fair housing lawsuits appear to be on the horizon. This type of litigation can be expected to continue for some time, and, along with it, potential money damages, attorneys' fees, civil fines, penalties, equitable and other forms of requested relief, as well as attendant unwanted attention and publicity. These lawsuits can be disruptive to business and expensive to defend with resources better deployed elsewhere within an organization (*e.g.*, on education, training, and other fair housing initiatives).

Best Practices

One best practice to assist with compliance and avoid costly issues would be to refer all potential buyers to the same publicly available resources concerning the local public school system, crime statistics, or other information that might inform a home purchase. This way, all buyers are provided the same types and sources of information that, in turn, could minimize potential steering and other fair housing violation claims.

Real estate management companies and others in the industry should also consider having their brokers, agents, and other personnel participate in housing discrimination and unconscious bias training. In fact, New York requires real estate appraisers, for example, to take training on fair housing and fair lending practices.

Another suggested practice is to provide potential buyers housing or rental availabilities from a wide variety of neighborhoods, unless access to a particular train station or other local amenity is designated by them. Likewise, the same kinds of information and buyer qualifications typically should be requested across the board (whether a mortgage pre-qualification letter or other required information) to ensure consistency and uniformity in requirements to show a property, submit an offer, or take the next step in the home buying process.

Please contact a Jackson Lewis attorney with questions about fair housing compliance, training, or other issues.

(Summer law clerk Nicholas Bonelli contributed significantly to this article.)

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