
Welcome

Florida Realtors

2020 Mid-Winter Meetings

Legal Update



Fair Housing

Joel Maxson
Associate General Counsel

Recent Article

Newsday article “Long Island Divided” pub. 11/17/2019

- 3-year undercover investigation into real estate sales practices
- Teams of paired testers visited offices of real estate companies
- Paired testers were similar (finances, search area requested), except for their race or national origin
- Testers contacted 93 real estate agents from 12 companies
- Secretly recorded the interactions
- Differential treatment was documented and analyzed
 - Asian testers observed it 19% of the time
 - Hispanic testers observed it 39% of the time
 - African American testers observed it 49% of the time



Recent Article

Some ways in which paired testers were treated differently:

- Requiring mortgage preapproval for minority tester before showing property; not requiring preapproval for white tester
- Steering white and minority testers into different communities (article includes maps showing what properties were shown to different testers)
- Mentioning crime issues in a neighborhood (violence, drugs) to a white tester, but not the paired minority tester
- Providing more listings to the white tester



Florida Realtors

Florida Realtors has been, and will continue to be, an industry leader in fair housing and champion fair housing rights at all levels.

Multiple departments provide education and resources to enable compliance

- Legal
- Education
- Public Policy
- Communications
- Meetings



Florida Realtors

Legal Hotline

Takeaway from Florida Realtors Legal Hotline calls:

- You care about fair housing
- You understand the big picture
- You ask BEFORE taking any action you're not sure about
- You appreciate a safe, conservative approach
- You advocate for the rights granted in the Fair Housing Act and additional rules found in state law, local ordinances, and the code of ethics

Fair Housing Act: An Overview

- Civil Rights Act of 1968 prohibited discrimination concerning the sale, rental, and financing of housing based on:
 - Race
 - Color
 - Religion
 - National Origin
- 1974 Amendment Added:
 - Sex
- 1988 Amendment Added:
 - Handicap
 - Familial Status



Fair Housing Act: An Overview

Additional protected classes may exist outside of federal law in some jurisdictions, such as the following (not an exhaustive list):

- Sexual Orientation (included in NAR Code of Ethics)
- Gender Identity (included in NAR Code of Ethics)
- Source of Income
- Age
- Actual or perceived status as a victim of domestic violence, dating violence or stalking



Fair Housing Act: An Overview

Discrimination against a protected class can take many forms
it's not just a matter of avoiding certain words

- Denying or limiting services
- Setting different terms or conditions (requiring preapproval, identification)
- Advertising a preference, limitation, or discrimination (no children)
- Steering based on racial composition of a neighborhood
- Using coded language to do any of the above (schools, crime)



Fair Housing Act: An Overview

Discrimination against a protected class can take many forms (cont'd):

- Practices that have a disparate impact on a protected class (example: screening tenants based solely on a criminal conviction)
- Refusing to make reasonable accommodations for someone with a handicap (example: denying a service animal, not allowing modifications)
- **Be prepared to respond to people who ask inappropriate questions**



Fair Housing Act: Testers

Used by multiple organizations, including U.S. Department of Justice, local fair housing enforcement organizations, and others

Testers pose as clients or customers to test a licensee's compliance with the Fair Housing Act

Here are a few examples

- Paired testers different races or national origins with similar financial backgrounds and service requests
- A person with a criminal conviction asks whether automatically disqualified
- Person with a handicap requests an accommodation



Fair Housing: NAR's Commitment

Recent NAR Fair Housing Action Plan ACT (Accountability, Culture change and Training) is a commitment to:

- Design and promote minimum, core fair-housing training requirements for all states
- Develop and promote a model state licensing law that ensures real estate agents who violate fair housing laws are held accountable
- Launch a public-service announcement campaign that reaffirms NAR's commitment to fair housing and tells consumers how to report problems
- Integrate fair housing into all Realtor conferences and engagements
- Explore the creation of a voluntary self-testing program in partnership with a fair housing organization that brokers and others can use as a resource. It would include confidential reports on agent practices so problems can be addressed



Fair Housing: NAR's Commitment

NAR's Fair Housing Action Plan ACT (continued)

- Create robust fair housing education that includes unconscious-bias training and education on how the Realtors' actions shape communities
- Conduct a national study to determine what factors motivate discrimination in sales markets
- Profile leaders who exemplify fair housing practices and workplace diversity
- Develop materials that helps Realtors provide information on schools in a way that avoids fair housing pitfalls



National Association of Realtors Case Interpretations Update

Meredith Caruso
Associate General Counsel

NAR Case Interpretations

- Case # 3-13 – Timing of Commissions and Negotiations
- FACTS:
 - REALTOR® A had a listing with Seller, which was priced at \$1.0M and placed it into the MLS, offering a certain percentage of cooperative compensation.
 - REALTOR® C sees the listing, believes it to be perfect for her buyers, but unfortunately it is out of their price range. Still, REALTOR® C discusses it with her buyers and they ask her to submit an offer of \$900,000. Buyers love the home and want REALTOR® C to submit the offer even after the risks of submitting an offer so far below asking price have been explained to them.
 - After the offer has been submitted, REALTOR® A presents the offer to Seller, who is concerned about accepting an offer so far below the asking price.
 - As a result, REALTOR® A agrees to reduce her commission by 1% if Seller wants to accept the \$900,000 offer and get a quick sale.

Case #3-13: Timing of Commission Negotiations Continued...

- Seller agrees to accept the lower offer and reduce the commission paid to REALTOR® A by 1%.
- REALTOR® A informs REALTOR® C that buyers' offer was accepted, but that now REALTOR® A's commission has been reduced by 1%.
- REALTOR® A says, "Listen, it seems like both of our clients are happy with the price if it means the sale moves quickly. Would you be willing to split the difference on my reduced commission and I pay you 0.5% less in cooperative compensation than I offered in the MLS?"
- REALTOR® C agrees to the 0.5% reduction.
- After the closing takes place, REALTOR® C files an ethics complaint against REALTOR® A, alleging a violation of Article 3, as illustrated by Standard of Practice 3-2.



Article 3, SOP 3-2

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.

STANDARD OF PRACTICE 3-2

Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction.



Case #3-13: Timing of Commission Negotiations Outcome

- REALTOR® C argued that in REALTOR® A asking her to accept 0.5% less after the offer was submitted, REALTOR® A unilaterally modified the compensation with regard to that transaction.
- The Hearing Panel disagreed, however, and found no violation of Article 3. Specifically, they noted that SOP 3-3 specifically allows for listing and cooperating brokers to agree to change compensation at any time.
- The Panel additionally noted that REALTOR® C could have said no to the reduced commission and then REALTOR® A would have been obligation to pay the commission originally offered in the MLS.

NAR Case Interpretations Cont...

- Case #16-22: Ascertaining Whether a Consumer is Subject to an Exclusive Representation Agreement
- FACTS:
 - REALTOR® A was holding an open house for Seller's home, which had been on the market for several months. After two hours with no visitors, REALTOR® A was thrilled when Buyer came to the house.
 - Buyer indicated that she was really looking for more of a fixer upper as she had done some extensive renovations on previous homes and wanted another project.
 - REALTOR® A had another listing she knew was perfect for Buyer, it just wasn't on the MLS yet as that client had just signed their listing agreement that morning.



Case #16-22 Ascertaining Exclusive Representation Continued....

- REALTOR® A described the home to Buyer and offered to show it to Buyer.
- Buyer replied, “Oh, thank you, I am actually working with someone. I should probably ask them about it.”
- REALTOR® A said, “That is fine, but to be honest, I’m not sure if your agent will even get a chance to see it. At the price at which is listed, I’m confident it will sell before I can even get it in the MLS.”
- Reluctantly, Buyer agreed to see the property with REALTOR® A. This resulted in REALTOR® A drafting up an offer, which was accepted, and the parties closed quickly.
- Subsequently, REALTOR® A was shocked when she received notice of an ethics complaint against her, filed by REALTOR® B, alleging a violation of Article 16, for violating his exclusive relationship with Buyer.



Article 16, SOP 16-9

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.

STANDARD OF PRACTICE 16-9

REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service.



Case #16-22 Ascertaining Exclusive Representation Outcome

At the hearing, REALTOR® A defended her actions, stating, “Listen, if I had known that Buyer had an exclusive agreement with someone, I would have backed off. But Buyer never said that she was working with someone *exclusively*; just that she was working with someone. It’s not my responsibility to fill in the gaps on what she told me or hammer her with questions and drive away a potential buyer just to determine what sort of relationship she has. That doesn’t serve my client well.”

The Hearing Panel decided REALTOR® A had violated Article 16, based on OP 16-9. Specifically, the Panel found that as REALTOR® A had made no affirmative effort to ascertain whether Buyer’s relationship with another agent was exclusive or not, no reasonable efforts were made by REALTOR® to determine the nature of the relationship as required by Article 16, OP 16-9.



TAKEAWAYS?

There is a difference between ASKING another REALTOR® to AGREE to change compensation offered in the MLS and changing it UNILATERALLY after an offer has been submitted.

REALTORS® must make sure they are making “reasonable efforts” to determine the nature of a relationship a consumer may have with another REALTOR® before entering into a representation agreement with that consumer.



REMINDERS!!!

They're baaaack! WHAT?

LAWSUITS!

What are the most recent ones about?

- ADA Compliant websites – get free audits done, make concerted effort to be in compliance
- Copyright – make sure you are either using your own or have written permission from the owner to use the photo
- TRACED Act – robocalling fines went up – see recent article for more details and information: <https://www.floridarealtors.org/news-media/news-articles/2020/01/you-could-be-sending-illegal-robocalls-and-not-know-it>



Property Assessed Clean Energy (PACE)

Marcia Tabak

Deputy General Counsel

Each state must pass statute- (section 163.08

Fla. Stat. passed 2010) +

Each municipality or county that wants PACE
must pass enabling resolution or ordinance

One Florida PACE administrator states they
operate in 26 counties and 150 municipalities

PACE is assessment financing. (Not note and mortgage, subject to foreclosure)

Special assessment - placed on property; collected as non- ad valorem tax, tax sale is means of enforcement of non-payment this assessment

PACE original mission- green upgrades

Many Eligible Residential Improvements including:
solar panel installation, solar pool heaters, low-flow plumbing, hurricane-impact windows, roof replacements and HVAC system updates

Attraction: no down payment, fixed interest rates, term 20 - 30 years, can't exceed 20% of just valuation of property appraiser

Criteria: Owner's equity and ability to repay, including and valorem and mortgage payment history, but not credit score of borrower



PACE Funding

Owner enters into a financing agreement with the assessing authority for eligible improvements.

Agreement or memo of agreement states max amount of financing recorded in public records within 5 days of execution. An amendment should be recorded if amount borrowed differs from max.

Agreement will be revealed by title search = title defect.

PACE liens have super-priority, so are superior to purchase money mortgages and other security interests.

Generally must be paid off if buyer obtaining conventional financing.

As property changes hands, new owner becomes obligated for the assessments, if not paid off and financing agreement terminated.



Paying off PACE can be tricky: tied to tax bill

May be hard to find amount of new PACE lien
assessment

May be hard to obtain accurate payoff; as hard to verify
assessment for current year was paid

If you must wait until year after closing to verify payoff
hard to obtain release of financing agreement

Buyer may have to escrow for PACE financing for a year
or more after close, although PACE was paid in full



Why tricky?

May be hard to find amount of new PACE lien assessment

- PACE assessment shows up on tax bill once the assessment amount is relayed to the assessor by the plan administrator.
- Assessments for projects funded on or after July 1 will typically not appear on the tax bill until the following year.
- PACE non ad valorem assessment do not always appear on Trim notice, because not subject to appeal.
- Buyer may be notified that their lender may escrow for PACE financing for a year or more after close even though financing was paid in full



Why tricky?

May be difficult to obtain accurate payoff and release of financing agreement

- PACE lien payoff statements issued by PACE administrator may not include the assessment for the current tax year even if the tax bill has already been issued
- May not determine if assessment for current year was paid, until April, so final release of lien (satisfaction of the PACE Agreement) will not be recorded until the property tax payment window closes in March and taxes are confirmed as paid.
- Payoff amount may not include the assessments portion being collected with the first installment under a financing agreement,
- In addition to the payoff received by the closing agent, the closing agent may require an escrow equal to 150% of assessment amount on the prior year's tax bill to be held at seller's expense until payoff is confirmed.



Section 163.08(14) Florida Statutes

Seller shall give a disclosure to Buyer at or before executing contract, if a non-ad valorem assessment, under this section has been levied and has an unpaid balance due on property being purchased

- QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.—The property being purchased is located within the jurisdiction of a local government that has placed an assessment on the property pursuant to s. [163.08](#), Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law. (contract or separate writing)



Florida Realtor forms:

- PACE Addendum to Contract- generic form for use with sales contracts
- Florida Realtors/Florida Bar – PACE Disclosure

Encountering PACE

BUYING Side

Has property been subject of PACE financing and when?

What improvements were made?

Was value of improvements considered in list price, assuming seller will be paying off special assessment ?

Was value of improvements excluded if buyer will be assuming the special assessment (but only if a cash transaction or seller financing)?

Has this information about the improvements and existence of PACE financing been included in seller disclosure?

Can seller finance the transaction?

Is seller current on PACE special assessment payments? When did seller make last payment of special assessment?

Does seller escrow with current lender for PACE assessments?

Did lender transmit payment to tax collector in the current year?

Can seller obtain a payoff amount?

Will there be a prepayment penalty?

Has PACE financing been paid off?

Has termination/release of any memorandum of the financing agreement been recorded in the public records?

Will seller enter into escrow agreement at Closing?

How much will seller escrow?

SELLING Side

- **Does PACE lien exist? Ask if there is one, look at tax bill and review title search**

- **If yes, determine what improvements were made?**

- **Does recorded agreement, memo of agreement or amendment reflect amount financed, annual assessment and term?**

- **Advise buyer to seek advice of attorney**

- **Should amount be assumed (but not if value of improvement already included in purchase price), if not financing the property?**

- **Is escrow agreement adequate, if payoff is not possible ?(possibly 150% percent of last assessment , if appeared on previous tax bill seller's escrow stays in place until next tax bill to ensure payment in full or receipt of Termination of Agreement, or if not on bill possibly 150 % of amount on memorandum of financing, or amendment)**

- **If there is an escrow agreement, will buyer's lender allow, and will buyer too have to escrow for this assessment, including for first year of ownership**

- **Know tax bill won't reflect assessment if work completed after July 1 will not appear on tax bill until November following year**

- **Remind buyers to double check the next year's tax bill to confirm removal of the assessment.**

NAR Policy Changes

Juana Watkins

Vice President of Law and Policy & General Counsel

Policy Statement 8.0 Clear Cooperation

Section 1.01 – Clear Cooperation

Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public listing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. (Adopted 11/19)



Do All REALTOR® Association MLSs have to Adopt
Clear Cooperation?

YES.

By establishing a national policy, it is mandatory that all REALTOR® Association MLSs adopt the policy and have the same consistent standard.



Can a seller direct the REALTOR® to opt out of the policy?

No.

The new policy does not include an “opt out.” Any listing that is “publicly marketed” must be filed with the service and provided to other MLS Participants for cooperation within one (1) business day.



Florida REALTOR

How does the new deadline correspond to existing local MLS deadlines?

The local MLS's filing deadline, typically found in Section 1 of the MLS rules, is ***the amount of time*** that a broker has to file the listing with the service ***after receiving all of the appropriate signatures on the listing contract.***

Once a broker begins to ***publicly market the property***, they have one (1) business day to file the property with the service. Specific questions about filing deadlines can be directed to your local MLS.



Florida Real Estate

MLSs establish a “coming soon” status or other pre-marketing statuses that share listing data with all MLS participants or subscribers, does this comply with the new policy?

Yes.

No other explanation!!!

Does the policy prohibit office exclusives?

No.

“Office exclusive” listings are an important option for sellers concerned about privacy and wide exposure of their property being for sale. In an office exclusive listing, direct promotion of the listing between the **brokers and licensees affiliated with the listing brokerage**, and **one-to-one promotion between these licensees and their clients**, is **not considered public advertising**.



oes Policy Statement 8.0 require submission to the
MLS of properties only shared with select groups of
limited access groups outside the listing brokerage

Yes.

“Private listing networks” that include more brokers or
licensees than those affiliated with the listing brokerage
constitute public advertising and display pursuant to Policy
Statement 8.0. Listings shared in multi-brokerage networks by
participants must be submitted to the MLS for cooperation.



STAY TUNED!

1/1/2020

Policy Effective

5/1/2020

Implementation Date

“It Depends”

Details determined by locals

Misc. concerns

Exclusive Right of Sale Listing Agreement changes

Code of Ethics Training Changes



What's New??

New Timeframe – 3 years vs. 2 years

Cycle 6 deadline is extended from Dec. 31, 2020, to Dec. 31, 2021

Cycle 7 will begin Jan. 1, 2022, and end Dec. 31, 2024

Learning objectives revised to include content on professional conduct, courtesies, business etiquette, and real-life scenarios

What else is new?

NAR establish training equivalency options such as the Commitment to Excellence (C2EX) endorsement

Only courses and equivalencies provide by a REALTOR® association, OR ITS PARTNER, can satisfy the training requirement

A microsite will be created that compiles all available options for fulfilling the training requirement.



FREC UPDATE

Education rules only right now!

Licensing Count

	July	Aug	Sept	Oct	Nov	Dec
RE	411,295	414,589	416,672	412,180	414,699	416,710
Sales Assoc						
Current	198,375	200,225	201,403	199,181	200,632	201,287
Current, Inactive	79,379	80,688	81,735	78,042	79,269	80,660
Probation	20	24	21	30	24	21
Suspend	116	126	136	114	116	121
Invol Inactive	21,132	20,772	20,296	22,632	22,109	21,776
Military	220	221	221	221	221	221
Broker/Sales Assoc						
Current	21,248	21,366	21,436	21,365	21,502	21,582
Current, Inactive	5,469	5,491	5,549	5,337	5,407	5,478
Probation	5	4	4	4	4	3
Suspend	1	2	3	3	4	6
Invol Inactive	1,688	1,666	1,640	1,712	1,687	1,664
Military	6	6	5	5	6	6
Brokers						
Current	41,159	41,331	41,460	40,973	41,143	41,254
Current, Inactive	3,188	3,213	3,259	3,163	3,174	3,182
Probation	13	11	8	10	11	10
Suspend	19	19	21	21	18	18
Invol Inactive	2,486	2,440	2,382	2,572	2,495	2,465
Military	2	2	2	2	2	2
RE Corporation						
Current	27,514	27,712	27,828	27,701	27,833	27,946
Probation	0	1	1	1	1	1
Suspend	1	1	1	1	1	1
Invol Inactive	1,372	1,306	1,260	1,349	1,265	1,202



Application Trends

Application Counts for DRE

	November 2019	December 2019	December 2018	
Request BK Exam (Upgrade SL to BL)	221	269	269	
Request BK Exam (out-State Applicant)	52	69	60	
Request BK Law Exam Mutual Recognition	30	33	29	
Request SL Exam	3,125	2,532	2,867	
Request SL Law Exam Mutual Recognition	54	54	38	
Total for Month	3,482	2,957	3,263	



Exam Performance

Exam Performance Summary

FLDBPR Real Estate

January 1, 2019 – December 31, 2019

Total Appointments	85,272
Total No Shows	9,815
Total Canceled	2,179
Total Graded Exams	73,231
Total Scheduled	0

Client Name: FL DBPR Real Estate and Appraisers

Exam Series Code	Exam Title	First Time Takers					Repeaters					Total				
		Total Graded	Total Passed	Pass Rate	Total Failed	Fail Rate	Total Graded	Total Passed	Pass Rate	Total Failed	Fail Rate	Total Graded	Total Passed	Pass Rate	Total Failed	Fail Rate
-FL-A	FL Sales Associate	32,377	16,000	49%	16,377	51%	34,158	10,580	31%	23,578	69%	66,535	26,580	40%	39,955	60%
-FL-C	FL Real Estate Broker	2,838	1,693	60%	1,145	40%	2,383	843	35%	1,540	65%	5,221	2,536	49%	2,685	51%
-FL-E	FL Real Estate Laws & Rules	606	388	64%	218	36%	328	192	59%	136	41%	934	580	62%	354	38%
-FL-G	FL Real Estate Instructor	122	45	37%	77	63%	107	46	43%	61	57%	229	91	40%	138	60%



Audits and Inspections

AUDITS/INSPECTION 2019

	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTAL
INSPECTIONS	107	93	94	106	94	46	98	110	80	102	82		1000
AUDITS	24	18	23	17	18	8	21	11	51	11	12		215

AUDITS/INSPECTION 2018

	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTAL
INSPECTIONS	16	43	13	8	15	7	14	20	35	39	43	62	310
AUDITS	4	5	5	3	6	2	7	11	4	12	5	14	78



More questions? Call us at (407) 438-1400

Joel Maxson – Ext. 2433

Marcia Tabak – Ext. 2422

Meredith Caruso – Ext. 2434

Juana Watkins – Ext. 2311