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California Anti-Discrimination Housing Laws

Sacramento – April is National Fair Housing Month, which commemorates the passage of the Fair Housing Act in April 1968. As part of its commitment to the principles of fair housing, the Department of Real Estate wants to remind licensees about the important California laws intended to address housing discrimination.

Prohibitions on Housing Discrimination

Many California laws relate to prohibiting discriminatory housing practices, among them the three primary laws discussed below: 1) the Unruh Civil Rights Act; 2) the Fair Employment and Housing Act; and 3) the Holden Act. Additionally, portions of the Real Estate Law identify prohibited practices. Though not discussed in this advisory, federal anti-discrimination laws also prohibit discriminatory housing practices.

Generally, discrimination in housing is illegal if it is based on race, color, national origin, ancestry, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, military or veteran status, familial status (such as households with children under age 18), source of income, disability (mental and physical), medical condition, genetic information, age (with the exception of senior-only housing), citizenship, primary language, or immigration status.

Some of these protected characteristics are further defined by statute. For example, the definition of "sex" includes pregnancy, childbirth, or medical conditions related to either of these conditions. Additionally, definitions for some protected characteristics include the perception that the persons have one or more of these characteristics or that they are associated with a person who has or is perceived to have any of these characteristics.

Unruh Civil Rights Act

While the language of the Unruh Civil Rights Acts (beginning with section 51 of the Civil Code) specifically outlaws discrimination in housing and public accommodations (businesses) based on sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status, the California Supreme Court has held that protections under the Unruh Act are not necessarily restricted to these characteristics. The Unruh Act is meant to cover all arbitrary and intentional discrimination by a business establishment, including in housing and lending transactions, on the basis of personal characteristics.

California Fair Employment and Housing Act (FEHA)

The California Fair Employment and Housing Act (beginning with section 12900 of the Government Code) primarily applies to any owner of a housing accommodation, which includes a lessee, sublessee, assignee, managing agent, real estate broker or salesperson, or anyone with a legal or equitable right of ownership, or possession, or the right to rent or lease housing accommodations.

DRE licensees are included within the definition of "owner," which encompasses almost anyone who can affect the transfer of interest in real property that can be used for residential purposes. FEHA covers real estate-related transactions, including residential mortgage lending, residential

mortgage brokering, selling residential real property, and brokering residential real property. Additionally, FEHA imposes liability for practices that have discriminatory effects or impacts, even when those practices are not motivated by discriminatory intent.

Holden Act

The Holden Act prohibits discrimination related to housing financing (beginning with section 35800 of the Health and Safety Code). Within this Act are additional requirements that licensees who provide financing services post a fair lending notice within public view and also provide a copy of that notice to financing applicants.

California Real Estate Law

California Real Estate Law describes several prohibited practices (Commissioner's Regulation 2780). The following are some of the prohibited practices listed in the regulation:

- Refusing to negotiate the sale, rental, or financing of a property.
- Refusing to show, rent, sell, or finance a property, provide information about a property, or steering a person away from a property.
- Discriminating in soliciting or negotiating the sale or purchase of property, in loan servicing, or in soliciting or negotiating mortgage loans.
- Discriminating in the terms, conditions, or privileges of sale, rental, or financing the purchase of property.
- Representing to any person that property is not available for inspection, sale, or rental when such property is in fact available.
- Processing an application more slowly or otherwise acting to delay or avoid the sale, rental, or financing of the purchase of property.
- Refusing or failing to cooperate with or assist another real estate licensee in negotiating the sale, rental, or financing the purchase of property.
- Soliciting sales, rentals, or listings of real estate from any person, but not from another person within the same area because of differences in a protected characteristic.
- Providing information or advice to any person concerning the desirability of particular property or area that is different from information or advice given to any other person.
- Making or publishing any notice or advertisement concerning the sale, rental, or financing of the purchase of property that indicates any preference, limitation, or discrimination.
- Quoting or charging someone a price, rent, or cleaning or security deposit for a particular property that is different from the price, rent or security deposit quoted or charged to any other person because of a difference in a protected characteristic.
- Making any effort to instruct or encourage licensees to engage in any discriminatory act in violation of a federal or state fair housing law.

In addition, panic selling is specifically highlighted as a prohibited practice (Business and Professions Code section 10177(l) and Commissioner's Regulation 2781). Panic selling involves soliciting the sale or lease of a residential property because of the loss of value, increase in crime, or decline in the quality of schools due to the presence or prospective entry into the neighborhood of a person of a protected characteristic.

As a part of reasonable supervision requirements, brokers must familiarize employees, affiliated licensees, and staff with the requirements of federal and state laws related to prohibiting discrimination (Business and Professions Code section 10177(h) and Commissioner's Regulation 2725).

Department of Real Estate

DRE takes complaints about discrimination very seriously. We investigate complaints of discriminatory practices and will pursue disciplinary action against licenses, when appropriate. Additionally, the Department of Fair Employment and Housing enforces and prosecutes violations of FEHA and the Unruh Act. The U.S. Department of Housing and Urban Development

investigates complaints related to discrimination under the federal Fair Housing Act and other civil rights violations in housing and community development programs. All of these agencies refer complaints to one another to make certain that all appropriate actions are considered and pursued.

Licensees should become familiar with all aspects of the fair housing laws that prohibit discrimination in housing and are strongly encouraged to advise their clients about the requirements of these laws. Additionally, regardless of instructions or requests received from their clients, licensees may not engage in, participate in, or assist any person to engage or participate in a discriminatory housing practice. Good faith participation in advancing a client's demands that are discriminatory under FEHA is not a defense to civil or administrative liability or to a DRE license disciplinary proceeding.

DRE remains committed to educating licensees and the public about fair housing law requirements, enforcing violations when they occur, and working with licensees to reduce discrimination in housing.

The California Department of Real Estate (DRE) was established in 1917 to safeguard and promote the public interests in real estate matters through licensure, regulation, education and enforcement. Today, DRE licenses more than 441,000 salespersons, brokers and officers.

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