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The commercial classroom: Inadvertent discrimination

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This column is offered to help educate agents new to commercial and investment brokerage and serve as a review of basics for existing practitioners.

Discrimination is against the law and could also lead to a discrimination lawsuit against you and your broker. By definition discrimination is making a distinction in favor of or against, a person based on the group, class, or category to which that person belongs rather than on individual merit. There are seven federally protected classes: race, color, national origin, religion, sex, familial status and handicapped. NYS has four additional protected groups: age, sexual orientation, military status and marital status. And some cities have additional groups that you may not discriminate against.

In the industry we sometimes can get caught up with what I will call inadvertent discrimination. Since the tragedies of 9/11 and subsequent terrorist attacks throughout the world there has been an added sensitivity regarding discriminating against ones culture or religion. A culturally diverse customer (or any customer) may consider you discriminating (and possibly sue you) if you do not present to them all the listing you have that fit their requirement. "Why did you not let me bid on that building?" "Why didn't you show me that building, because I'm _____?" Don't make decisions for your clients. Let the customer decide.

Don't let the customer steer you in the wrong direction. "I only want to locate my business in _____ (that part of town);" perhaps a specific religious or cultural area. This could be construed as steering, the illegal funneling of real estate buyers to a particular area based on the desire to keep the makeup of that neighborhood the same or intentionally change it. Steering refers to the illegal practice of real estate agents only showing certain ethnic groups properties located in specific ethnic areas. An example would be showing an Asian businessperson store sites that are only located in Asian communities. Show the customer all properties available in your market area based on their size and budget requirements. Let the customer decide. Also remember customers do sometimes change or expand their criteria.

Occasionally, we find that our client is prejudice. "Don't bring any _____!" "I won't lease to _____!" The word prejudice refers to prejudgment: unreasonable feelings, opinions, or attitudes, especially of a hostile nature, regarding a racial, religious, or national group. You may have to walk away from this situation. Do not put your reputation and license in jeopardy.

Be aware of omission prejudice, "Your company represented the _____ building, why didn't you show it to me?" Agents sometimes make decisions for their customers, that property is no good for them, it's too big, too small, or too expensive, it's in the wrong area. Show the client everything available in your market area: I like to use the 10/20 rule in showing property. Search all properties that at 10% smaller to 20% larger than the target size. Let the customer decide.

You have a property that recently closed or is currently in contract with a sign on it. A new customer calls on the sign. You must disclose the facts, so you do not appear to be misleading with your

advertising. Remember if the property is in contract, unless the owner has directed you, in writing, to stop showing the property, you must show it until it closes. If the new customer decides to make an offer, you need to caution the owner to consult with their attorney because they are in contract, and accepting another offer could have legal consequences.

Communicate with your customers. A lack of communication, even if you have nothing that fits their criteria, may be misunderstood and taken that you are discriminating against them. Avoid even the appearance of impropriety.

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