

A Real Estate Industry Interpretation of Title VIII  
(Open Housing Provisions) of the Federal Civil Rights Bill

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The Federal Civil Rights Bill was signed into law on April 11, 1968. The Law goes into effect in stages. Immediately covered are FHA and VA financed multi-family projects and new homes. Beginning January 1, 1969 multi-family housing and new construction conventionally financed are covered (exempted are single-family, owner occupied homes and structures having accommodations for not more than four families where the owner occupies one of the units). After December 31, 1969, i.e., beginning January 1, 1970, the Law applies to the sale or rental of single-family homes unless the house is sold or rented without the services of a real estate broker or of a person engaged in the business of selling or renting of dwellings, and also without public advertisement in violation of the provision in the Bill on discriminatory advertisement.

The following questions and answers were prepared by the Realtors Washington Committee of the National Association of Real Estate Boards (4/18/68) and represents an interpretation of the Law from NAREB's point of view. Their presentation follows:

Some questions (and their answers) suggested\* by a reading  
of Title VIII of Public Law No. 90-284, relating to forced housing

A. SCOPE OF THE ACT

1. Q. This is 1969 and I, a real estate broker, have a listing of a home for sale. A non-white purchaser expresses an interest in purchasing the home and I present the purchaser to the owner who refuses to sign a sales contract. The purchaser files a complaint against me. What is my defense?

A. You have not violated the law. Neither has the seller. His home is exempt from the operation of the law during 1969. Beginning January 1, 1970, his home would still be exempt, except that he cannot engage a broker after that date if he wants to preserve freedom of contract for himself.

2. Q. Suppose the above facts are present but the date is after January 1, 1970. Have I violated the law?

A. No, you have not violated the law because you have not discriminated. The seller could be accused of discriminating on the grounds of race, color, religion, or national origin while at the same time using the services of a broker.

\*The answers are based on the application of ordinary meaning to the language of the statute. Because of the unusual legislative procedure followed by the Congress in developing and enacting Title VIII little reliance can be placed on legislative history. Ultimately, the many ambiguities in the Act will have to be resolved by the courts. (over)

3. Q. It is October 1968 and a home owner, whose home is security for a mortgage insured by the Federal Housing Administration, executes a listing contract with me. Is his home covered by the new federal open occupancy law?

A. No. Any "single-family house sold or rented by an owner" is exempt from the provisions of the law. This exemption is without qualification except that after January 1, 1970 he may not engage a real estate broker or advertise indicating any preference based on race, etc., if he chooses to discriminate. The fact that purchaser is assuming an existing FHA-insured or VA-guaranteed mortgage, or is financing the purchase price with a new one, does not place the transaction in any different category than conventionally financed home. All are exempt.

4. Q. A home owner desires to sell his home and wants to preserve his right of freedom of contract. He posts a sign saying "For Sale by owner - Broker inquiries invited." I have a prospect but before disclosing him I ask the seller to execute a listing contract to assure me of a commission should the sale go through with my purchaser. Have I violated the law if the listing contract and sales contract are executed?

A. No. The home owner and his home are exempt up to the moment he executes a listing contract with you, the broker. After he executes such a contract with you it is unlawful for him to discriminate on the grounds of race, color, religion, or national origin. Since there has been no discrimination after execution of the listing contract neither you nor the owner has violated the law. The fact that he may have discriminated prior to his engaging you as a broker is immaterial.

5. Q. Suppose a home owner decides to sell his own home because he wishes to reserve the right to reject a purchaser on the grounds of race, color, religion, or national origin. He is unsuccessful in selling his home, so he subsequently decides to list his home with a broker on a non-discriminatory basis. May he do so?

A. Yes. The exemption applies only "if such house is sold or rented without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker..." Once the seller engages the services of a broker, he may not reject a purchaser on the grounds of race, color, religion, or national origin.

6. Q. A home owner wants to rent his home for several months. He decides to exercise his exemption and subsequently rents his home to a co-religionist. He then contacts me, a real estate manager, to manage the property and collect the rent. If such a contract is executed, has either the home owner or I violated the law?

A. Neither. The home owner has not rented his home with the assistance of a broker or manager. The management contract was executed after the owner obtained a tenant without the assistance of a broker.

7. Q. A client owns a duplex and occupies one of the units. He engages me, a real estate broker, to sell the other unit to a person of a specific religion or race. I accept the listing contract. Have I or the client violated the law if the unit is sold on a freedom of choice basis?

A. No. The law specifically exempts units in dwellings containing quarters to be occupied by no more than four families living independently of each other if owner actually occupies one of such living quarters as his residence. This provision (Sec. 803 (b) (2) is not affected by the limitation that the unit, to be exempt, must be sold without the use of a broker.

8. Q. A home owner decides to take advantage of his exemption and engages an attorney to sell his home. Is this permitted by law?

A. Yes, but if the attorney has engaged in the sale of two or more homes during the preceding 12 months as an agent, he is considered a person "in the business of selling or renting dwellings" and comes under the same prohibition applicable to real estate brokers.

9. Q. A home owner approaches a real estate broker, and advises that he wants to sell his home only to a co-religionist and requests the broker to refer suitable prospects to him. There is no listing contract. Subsequently, the home is sold to a prospect furnished by the broker. Has the owner violated the law?

A. The federal law provides that after December 31, 1969, a single-family home is exempted from the law only "if such house is sold.... without the use in any manner of the...facilities....of any real estate broker." If the owner has not rejected a prospect on the grounds of race, color, religion, or national origin prior to selling the home to a purchaser furnished by the broker, there has clearly been no violation of the law because the owner has not exercised this exemption. If the seller has exercised his exemption and refused to sell or negotiate with another purchaser, after contacting the broker, there is a likelihood that he has violated the law because he has discriminated and he has sold the home through the use of a real estate broker.

#### B. EFFECT ON BOARDS OF REALTORS AND MULTIPLE LISTING SYSTEMS

1. Q. A Board of Realtors consistently pursues a policy of denying membership to any person of the Negro race. What remedies are available to a licensed real estate broker who is a Negro and desires to join the Board?

A. He has three remedies. He may file a complaint with the Secretary of HUD who may attempt to resolve the complaint through "conciliation and persuasion". In so proceeding, the Secretary has the power of subpoena and may conduct such investigation as he deems desirable. The complainant, if he feels that such procedure may not be fruitful, may file suit in a Federal district court and request an injunction or restraining order against officials of the Board who are denying him membership. He may also complain to the United States Attorney who may initiate an action on behalf of the Attorney General because the practice of the Board may constitute a "pattern or practice of resistance" which "raises an issue of general public importance."

(over)

2. Q. A Board's multiple listing system does not have any non-white participants. Does the law require the membership be made open to non-white brokers regardless of their qualifications.

A. No. The law permits a multiple listing system to impose any requirements it desires for membership. However, such requirements must be applied equally to all brokers, white or non-white. In other words, rejection must not be based on race, color, religion or national origin. Thus a requirement that all applicants for membership in MLS be members of the Board of Realtors is not affected by the law.

3. Q. Does the above mean that the Board of Realtors must be open to all non-white brokers regardless of their qualifications?

A. No. the Board of Realtors may apply any reasonable standards for membership. However, the standards must be applied equally to all applicants, and there must not be any different standards applied to applicants because of race, color, religion, or national origin.

4. Q. The new Federal law was signed on April 11, 1968, How does this affect the several hundred listings on file on that date in a board's multiple listing system?

A. It will have no effect. Until December 31, 1969, an owner may accept or reject any would-be purchaser. However, after that date any listing in an MLS is covered by the Act. If the seller, after that date, rejects a purchaser on the grounds of race, color, religion or national origin, he - the owner - is liable under the federal law. Of course, this assumes that there is no state or local fair housing law in existence covering owners and brokers.

#### C. ENFORCEMENT OF THE LAW, REMEDIES AVAILABLE, AND THE BURDEN OF PROOF

1. Q. Suppose a home owner, who has engaged a broker, executes a contract for the sale of his home to a purchaser. After settlement, a complaint is filed against the owner alleging discrimination based on race, color, religion or national origin. Would the sale be affected by the complaint?

A. No, not if the purchaser was without actual notice of the existence of the filing of a complaint or civil action under the new law. However, while the sale and transfer of title is not affected, the complainant could still file a civil action against the owner and request damages for any violation of the law.

2. Q. A would-be purchaser files a complaint against the seller; who has the burden of proving that the rejection was based on race, color, religion, etc?

A. The purchaser. The law specifically requires that he have the burden of proof in complaints filed with the Secretary of Housing and Urban Development. The Federal Rules of Civil Procedure require that he have the burden of proof should he file suit in Federal court against the seller.

3. Q. A civil rights group in the community has decided to "test" the compliance of an apartment owner with provisions of the federal law. A Negro couple applies for a unit and the owner refuses to show them any vacant unit. A complaint is filed and evidence is submitted that the couple owned a home and were not planning to rent the apartment unit - they were "testing" the practice of the owner. Has the owner violated the law?

A. No. The law provides that the offer to rent must be "bona fide" The legislative history behind the insertion of this phrase in the law on the Senate floor makes it clear and unmistakable that "testing" does not give rise to a valid complaint.

#### D. EFFECT OF STATE AND LOCAL LAWS

1. Q. My state has a fair housing law which is applicable to owners and brokers. Must a complainant proceed first under the state law before proceedings may be initiated under the new federal law?

A. Yes, in all probability, if a complaint is first filed with the Secretary of HUD, the Secretary may take no action on the complaint if the appropriate state official has, within 30 days of being advised of the complaint, initiated proceedings under state law. In addition, if the would-be purchaser has first filed a complaint with the Secretary, any judicial remedies available under state or local law must be exhausted before any action may be brought in a United States District Court.

2. Q. But suppose the complainant does not file a complaint with the Secretary of HUD but instead proceeds immediately in a Federal Court. If substantially equivalent relief is available to him under state law, would his suit be entertained?

A. Perhaps. But the Federal Court has discretion (which very likely would be exercise) to continue - that is, delay indefinitely - proceedings under the Federal law if the local or state agency assumes jurisdiction over the complaint.

#### E. BROKER AND SALESMAN CONDUCT

1. Q. A would-be purchaser enters a real estate brokerage office and informs the salesman on duty or the broker that he wants to purchase a home, that he has no definite home in mind but would like to peruse all the listings which the broker has on file. The broker advises that his listings are not available for inspection but that if the purchaser has a particular house in mind, and the broker has such a listing, he would be pleased to arrange a time for inspection of the house. The purchaser leaves and subsequently files a complaint alleging that the broker has discriminated and violated the Federal law. Would such circumstances give rise to a valid cause of action the broker?

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A. No, in all probability. But the salesman must treat all would-be customers the same. That is, if it is the custom of the office not to permit any persons to come in off the street and peruse listings which are on file, it would not constitute a violation of the Act to deny this privilege to Negro purchasers. However, if it could be shown that the office customarily did permit white prospects to look at the listings file, then it would not be permissible to deny Negroes the same opportunity.

2. Q. Suppose a would-be Negro purchaser enters a brokerage office and states that he is interested in purchasing a home in the neighborhood of \$20,000 in a particular section of the community. It is not the practice of the office to allow prospects to see listing files but in fact the salesman involved is well aware that the office has several listings that meet the prospect's general requirements. Nevertheless he informs the prospect that the office has no listings in that category. Has the salesman violated the Act?

A. Section 804 defines the conduct or practice which is deemed unlawful. All refer to conduct with respect to "a dwelling" and this must assume a dwelling of certain identity. The law does not give any person the right to purchase or right to inspect dwellings whose identity is vague and uncertain. The essence of the offense is the discriminatory refusal to sell a dwelling which the purchaser wants to buy.

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FOOTNOTE

Baltimore Neighborhoods, Inc., of course, hopes that the real estate industry will take a positive attitude towards the Federal Housing Law and will seek to help in its enforcement rather than trying to escape its implications even if this could be done legally. John I. Hasselblad, a nationally prominent realtor has spoken on this subject in relation to the Colorado housing law: "We could drag our feet! We could fight a rear-guard action. We could create more problems than they could think of in trying to enforce this law!....(or).....we could obey the law in spirit as well as in letter, knowing that as realtors we have a civic as well as an ethical obligation to uphold. Somehow we began to sense that we could be a very important factor in the solution of housing and human relations." Hasselblad goes on to state that after two years experience with the law the realtors found that the industry was not hurt by the law and that there was widespread public acceptance of it.