

2021-2022 General Update Course

Section Two

Racial Equity



1. Define disparate impact. _____
2. What is the Housing Choice Voucher Program?

3. Sara is an affiliated broker with 123 Realty. She is working with two buyer-clients. Sara provides Casey, a Caucasian buyer-client, with information about school performance in the Greenleaf neighborhood and advises her to purchase a property in that area. Casey also asks about the Brownstone community, and Sara advises against purchasing there due to underperforming schools and a declining neighborhood. When Samuel, a Hispanic buyer-client, asks about the Brownstone and Greenleaf neighborhoods, Sara tells him she thinks Brownstone would be perfect for his family but that Greenleaf would not.

Could Sara be in violation of state and/or federal fair housing laws?

LEARNING OBJECTIVES

By the end of this section, you should be able to:

- identify the Commission rule that was created to include racial equity language;
- define disparate impact and implicit bias; and
- describe the Housing Choice Voucher Program.

TERMINOLOGY

- **Disparate impact:** occurs when a doctrine, policy or practice that seems neutral on its face, disproportionately harms people of a certain protected class as identified in the Fair Housing Act.
- **Implicit Bias:** A bias or prejudice that is present but not consciously held or recognized.
- **Racial Equity:** There are various definitions of racial equity. Here are some of those definitions:
 - *Aspen Institute* defines racial equity as a society in which people are no more or less likely to experience society’s benefits or burdens because of the color of their skin. [Read more here.](#)
 - The *Center for Assessment and Policy Development* defines racial equity as the condition that would be achieved if one’s racial identity no longer predicted, in a statistical sense, how one fares. [Read more here.](#)
 - The City of Durham defines racial equity as the condition when racial identity cannot be used to predict individual or group outcomes (e.g. wealth, income, employment, criminal justice, housing, health care, education) and outcomes for all groups are improved. [Read more here.](#)
 - According to [Merriam-Webster](#), equity is a freedom from bias or favoritism.

Fair Housing Act: A group of laws that forbid discrimination in housing based on race, color, national origin, religion, sex, familial status, and disability. There is a federal Fair Housing Act and a North Carolina (“State”) Fair Housing Act.

The NCREC’s Commitment to Racial Equity

In July of 2020, the Commission published the following statement on the website:

The North Carolina Real Estate Commission members and its staff are deeply saddened by the senseless death of George Floyd, and far too many people of color. We grieve with our fellow Americans and with people across the world over the senseless losses. These deaths, and the resulting protests, have affected all of us in some way and have shown the importance of compassionate and open discussion about issues of racial inequities.

Those involved in real estate brokerage are a diverse community. The Commission is committed to the principles of excellence, fairness, and respect for all people. It is our goal to ensure that brokerage activities are

conducted in fairness to all, ensure equal housing opportunities, and to end discrimination in the sale or rental of all real estate. Everyone should feel safe in their communities and should feel and be free from discrimination.

We stand with those who seek equal justice for all and will do our part to encourage and support our community in making necessary changes to make sure racism and disregard for the dignity of people of color become a part of our history and not our present. We vow to listen, learn, and work with others to promote equality, inclusion, and acceptance.

The Commission is committed to examining its rules to ensure that they address discriminatory conduct and to being a leader in moving the industry forward. Please help us better understand the experiences you have faced as a real estate broker or consumer around racism or other discrimination in your real estate transactions by contacting us and/or filing a complaint. We cannot stress enough the importance of providing us with this information.

NOTE: The Commission revised its Racial Equity statement in May of 2021. The revised statement is referenced at the beginning of this student manual and includes a review of some of the actions the Commission has taken to carry out the goals of its statement.

Suggest a Rule Change/File a Complaint

The Commission is committed to ensuring that brokers are not engaging in discriminatory conduct while practicing brokerage. If a broker and/or consumer wants to suggest a rule change or has experienced racism and/or discrimination in connection with their brokerage activities, the Commission encourages them to click on the link: “Suggest a Rule Change/File a Complaint.”

Brokers and/or consumers who click on the link to Suggest a Rule Change are directed to a web form on which they are prompted to enter their name, phone number, and email address, and then to type their message to the Commission.

Brokers and/or consumers who click on the link to File a Complaint are directed to the Commission’s Complaint Form, on which they are prompted to enter their name, the name of the broker and/or firm they are complaining about, the date that the event occurred, and a description of the event/situation.

According to Rule 58A .0601, any individual may file a complaint against a broker at any time. A complaint shall:

1. be in writing;
2. identify the respondent broker or firm; and
3. apprise the Commission of the facts which form the basis of the complaint.

Once a complaint is received, the Commission will investigate the complaint if on its face it provides sufficient information and allegations of a violation. For a full explanation of the complaint process, refer to the 2019-2020 *Law and Rules* section of the Update Course materials.

Requests for rule changes and complaints about brokers are initially handled by the Commission's regulatory staff. The ultimate decision to adopt or change a rule, or to discipline a broker for a violation, rests with the Commission members as a body.

RULE CHANGES

In keeping with the *Commitment to Racial Equity*, the Commission analyzed its rules in 2020 "to ensure that they address discriminatory conduct."

At that time, two key existing rules addressed discriminatory practice: 58A .1601 and 58A .0104.

- Rule 58A .1601, Fair Housing, provides:

Conduct by a broker which violates the provisions of the State Fair Housing Act constitutes improper conduct in violation of G.S. 93A-6(a)(10).

Basically, if a broker violates the State Fair Housing Act, the broker is also in violation of Commission rules and can, in turn, be disciplined by the Commission.

- Rule 58A .0104, Agency Agreements and Disclosures, dictates, in relevant part:

(b) Every listing agreement, written buyer agency agreement, or other written agreement for brokerage services in a real estate transaction shall contain the following provision: "The broker shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap, or familial status of any party or prospective party." The provision shall be set forth in a clear and conspicuous manner that shall distinguish it from other provisions of this

agreement. For the purposes of this Rule, the term, “familial status” shall be defined as it is in G.S. 41A-3(1b).

In other words, this rule requires language to be inserted in every agency agreement. It becomes a contractual provision in every agency agreement between a broker and a buyer or seller.

New Rule: Rule 58A .0120 - Prohibited Acts

After reviewing existing rules, the Commission decided to add another rule to expand the focus on equity. Rule 58A .0120 was adopted on July 1, 2021, and is reprinted at the end of this section.

NOTE: Subsections (a)-(c) of this new rule are unrelated to racial equity and are discussed in the Law and Rules Update section.

Subsection (d) dictates:

A broker shall not conduct brokerage activities or otherwise promote their status as a real estate broker in any manner that discriminates on the basis of race, color, religion, national origin, sex, familial status, or disability.

The rule is intentionally broad, so that it may be applied to any of the duties or conduct of a broker. Under the rule, a broker may not use a person’s race, color, religion, national origin, sex, familial status, or disability to determine the type of representation, fees, and/or services the broker will provide.

Let’s consider a few examples of how subsection (d) of Rule 58A .0120 interacts with and expands expectations in other rules.

Agency Agreements and Disclosure

As mentioned earlier, Rule 58A .0104(b) requires the inclusion of a specific anti-discriminatory statement in brokers’ agency agreements.

Although Rule 58A .0104 does not directly prohibit discriminatory conduct by a broker, Rule 58A .0120 does.

Consequently, a broker may not use race, color, religion, national origin, sex, familial status, or disability to determine the type of representation to provide clients or how to interact with consumers. A broker who does so is in violation of the new Rule.



John, a buyer agent with ABC Realty, represented Tom with the purchase of his first home. Tom was pleased with John's representation so he referred his co-worker, Hong, to John. John met with Hong to review the WWREA disclosure and agency agreements. During the exclusive buyer agency agreement explanation, John informed Hong that he must pay a retainer fee for his representation. Hong asked Tom if he had to pay a retainer fee; Tom told Hong that he did not. Once Hong received this information he asked John why he had to pay the retainer. John indicated that it was in the discretion of the broker and /or firm to charge a retainer fee to clients. Hong was confused as to why he had to pay a retainer fee and Tom did not. Could John be in violation of Commission Rule 58A .0104 &/or 58A. 0120?

Why or why not? _____

Advertising

Brokers must ensure their advertisements are not discriminatory or prejudicial to members of a protected class, in order to be in compliance with State and Federal Fair Housing laws. For example, advertisements should be inclusive and representative of all individuals, including people of all racial or ethnic backgrounds, persons with disabilities, and families with children.

Brokers who advertise using discriminatory language and/or images may violate fair housing laws, and, in turn, Commission Rule 58A .1601. As noted previously, Commission Rule 58A .1601 makes a violation of the State Fair Housing law also a violation of Commission rules.

Now, in addition, they may be in violation of Rule 58A .0120.

Brokers should be aware that the making, printing or publishing of any notice, statement, or advertisement that indicates any preference, limitation, or discrimination towards a member of a protected class is prohibited. HUD has provided guidance on advertising in the document, "*Part-109-Fair Housing Advertising*" to help individuals ensure that when they make, publish, or print advertisements, they are doing so in compliance with the Fair Housing Act. The Commission encourages brokers to use *Part 109-Fair Housing Advertising* as an educational resource to assist them with developing discriminatory-free advertisements.

The document can be accessed by clicking [here](#).



1. Marcus, an African-American man, meets with Saul, a broker, to discuss purchasing a house. Marcus tells Saul he wants to purchase a house in Green Creek. Saul asks Marcus, “Will you be comfortable there?” Marcus says, “Yes.” Saul tells Marcus he wants to show him a listing in a neighborhood that has more people like him. Saul takes Marcus to view the property and Marcus notices that many of the residents are African-American.

Has Saul violated Commission Rule 58A .1601? _____

2. Amina is Muslim and wears a hijab. As she is driving, she notices a new apartment complex with a sign that says, “Immediate occupancy available for 1, 2, and 3-bedroom apartments.” Amina calls the broker listed on the sign and asks if there are available units. The broker states, “Yes, we have several.” Amina makes an appointment for later in the afternoon to view an apartment. While at her appointment, she notices Tom, a broker, seems reluctant to answer her questions. At one point he asks her if she was born in the United States. Amina indicates that she is not a U.S. citizen but she does have a “green card” and is a permanent resident. She also informs Tom that she works full-time at the local university. Shortly thereafter, Tom tells her there are no available units. Amina asks to be placed on a waiting list, and Tom replies that they do not have a waiting list.

Has Tom violated Commission Rule 58A .1601? _____

3. Jason, a broker, has drafted the following advertisement for a property that he just listed:

Spectacular three bedroom, 2½ bath cottage in downtown Wake Forest. This cottage is perfect for a single man or woman due to its proximity to local shops and restaurants. The cottage is also two blocks away from Strawberry Baptist Church. This cottage is perfect.

If Jason publishes this advertisement, could he be in violation of Commission rules? Explain your answer.

IMPLICIT BIAS: WHAT IS IT?

According to the [Merriam-Webster Dictionary](#), implicit bias is defined as, “a bias or prejudice that is present but not consciously held or recognized.” An individual may have a bias if they have a preference or apprehension toward a person or specific group of people. Research conducted by the [Perception Institute](#) in Washington, D.C. indicates that our thoughts and feelings are implicit if we are unaware of them or mistaken about their nature.

What is the Cause of Implicit Bias?

Implicit bias is our unconscious attitude and/or stereotyping belief about another or others with respect to race, ethnicity, nationality, gender, and other distinctions. Implicit bias is a part of being human. Everyone possesses bias, even individuals with heightened commitments to being impartial.

Implicit bias is derived from cultural interactions, historical interpretations, and our own personal experiences. It begins as early as childhood. An individual’s environment, such as how they were raised, the neighborhood they grew up in, the school system and/or college they attended, and their personal relationships, may create biases.

For instance, were you raised in an environment that educated you on the importance of following rules? If so, do you gravitate more toward individuals who follow the rules? How might this environment affect your attitudes about work? Questions like those are meant to provoke your thoughts regarding how you were raised and the beliefs and/or attitudes that you may have regarding certain individuals.

Let’s analyze an example of how a broker’s implicit bias could cause her to violate the Fair Housing Act.

Example:

Alicia, a Caucasian woman, grew up in a Caucasian neighborhood. During her teenage years, an African-American family purchased a house in the neighborhood. Alicia’s Caucasian parents and neighbors were unhappy because they were convinced that the African-American family would bring down their property values, and several of those families moved away immediately.

Now Alicia is a broker for Loft Homes, a new home development. Loft Homes has an open house and is offering incentives to prospective buyers. During the open house, Alicia tells visitors how great the community is and she executes a sales contract for one of her listed homes with a Caucasian couple. She does not ask the buyers to furnish a preapproval letter.

Later that day, an African-American couple attends the open house. They inform Alicia that they are interested in purchasing in the community. Alicia is less enthusiastic about the neighborhood with this couple. She tells them they must furnish a preapproval letter before she can show any properties or explain the current incentive package.

Do you think Alicia's implicit bias may have caused her to treat the African-American couple differently? _____

Are Alicia's actions in violation of Commission rules? Why or why not?

Implicit Bias: Why does it Matter to Real Estate Brokers?

All individuals possess implicit biases which shape their perception of people. It is important for brokers to consciously recognize how their perceptions may influence their brokerage related activities.

What if a client tells you they want to live in a *nice* neighborhood and/or a neighborhood with a *good* school district? How would you respond? If your response to the client uses race and/or religion as predictors to determine which neighborhood is *nice* and/or has a *good* school district, you may be unconsciously steering the client to a specific neighborhood.

A broker may be unconsciously participating in steering because the broker is choosing the location *they* think is best for the client.

According to the *North Carolina Real Estate Manual*, racial steering is defined as:

...a practice by real estate brokers... to preserve and encourage patterns of racial segregation by steering members of racial and ethnic groups to buildings occupied by their own racial or ethnic group and away from neighborhoods inhabited by others.

Steering members of a protected class towards or away from particular neighborhoods is prohibited under the Fair Housing Acts. Brokers can refrain from participating in steering by using objective criteria such as purchase price and property features when providing listings to clients.

How Can I Reduce Implicit Bias As A Broker?

Reducing implicit bias requires conscious awareness of its existence and implementing strategies to control it.

The following strategies may assist a broker in reducing implicit bias and treating clients/consumers fairly.

- Pursue education on the history of racial bias in housing and the challenges people of color have endured such as blockbusting, redlining, steering, and inequitable lending practices.
- Be knowledgeable about fair housing laws.
- Participate in educational programs and/or training opportunities that focus on racial bias, diversity, and equality.
- Adopt policies and procedures that include racial equity.

A broker has a responsibility to provide brokerage and real estate related services to all individuals equally. Remember, implicit bias can adversely affect a broker's business and could possibly cause the broker to participate in activities and/or behaviors that violate fair housing laws.

Implicit Bias: The National Association of REALTORS® Perspective

Fair housing, equality, and inclusion are among the National Association of REALTORS® (hereafter known as “NAR®”) most cherished values according to the former NAR® President, Vince Malta. Brokers who are members of NAR® must follow a strict code of ethics that explicitly prohibits discrimination on the basis of race, gender, national origin, or sexual identity.

NAR® states that it is committed to implementing policies that address racial injustice and build communities where people of every color feel safe to pursue their own American Dream. In furtherance of this commitment, NAR® created a Fair Housing Action Plan in January of 2020. The plan was created to ensure that brokers are continuously protecting the housing rights of individuals in America. Additionally, it provides REALTORS® resources and the ability to participate in educational opportunities including one they call the “*Fairhaven Simulation*” to help their members identify and control implicit bias. NAR® also amended its *Code of Ethics* to make it a violation to use harassing or hate speech toward any protected class.

NAR® has also created a challenge entitled, *Stand Up for Racial Equity*. This challenge helps REALTORS® to become more knowledgeable about preexisting bias in an effort to strengthen their commitment to fair housing.

Want to Test Yourself for Implicit Bias?

To evaluate your implicit biases and their impacts on your attitudes and behaviors, consider taking an “Implicit Association Test.” Where to find a test? Just Google it!

Housing Choice Voucher Program

The United States Housing Act of 1937 (hereafter known as “USHA”), was the country’s first major piece of legislation related to public housing. It was a part of President Roosevelt’s New Deal legislation and was passed with the intent to increase economic stability in America. Under USHA, state and local public housing agencies were created with the goal of remedying:

- unsafe conditions, and
- an acute shortage of decent and safe dwellings for low-income families.

USHA was amended in 1974 by the Housing and Community Development Act. This act authorized Housing and Urban Development (hereafter known as “HUD”) to enter into payment contracts for housing to assist eligible families. This authorization created the Housing Choice Voucher program (hereafter known as “HCV”). This program is also known as *Section 8* housing.

HCV is the federal government’s largest housing subsidy program serving low-income households. Currently, over five million people or 2.2 million low-income households use the HCV program. This program is funded by HUD and implemented by over 2100 state and local public housing agencies (“hereafter known as “PHA”) that receive federal funds to administer rental subsidies to low-income families so they can afford housing that is:

- decent,
- safe, and
- sanitary.

Low income families apply for vouchers at their local PHA. The PHA evaluates the families’ income and other eligibility requirements. If income and eligibility requirements are met, the PHA issues the family a voucher or puts them on a waiting list. A family with a voucher pays generally no more than 30% of its income for rent, with the PHA paying the remainder to the landlord with HUD funds.

Is Participation in the Housing Choice Voucher Program Mandatory?

No. Landlords who participate in the HCV program do so voluntarily. A landlord who wants to become a HCV provider must be approved by their local PHA.

HUD has published the document, *Interested in Becoming a Housing Choice Voucher (HCV) Landlord and Housing Choice Voucher Program Guidebook*, to assist landlords with obtaining approval for the program. The steps are as follows:

1. Contact your local PHA to receive information about the local process for approval and posting housing vacancies.

2. Select a tenant based on your rental criteria and complete the voucher holder's *Request for Tenancy Approval* form.
3. Ensure the dwelling meets the following thirteen (13) housing quality standards at the beginning of occupancy and throughout the tenancy:
 - a. sanitary facilities
The unit must have facilities that are in proper operating condition, adequate for personal cleanliness, and disposal of waste.
 - b. food preparation and refuse disposal
The unit must have suitable space and equipment to store, prepare, and serve food in a sanitary manner.
 - c. space and security
The unit must provide adequate space and security for the family and include a living room, kitchen, and a bathroom.
 - d. thermal environment
The dwelling unit must be able to provide a thermal environment that is healthy for the human body. There must be a safe system for heating the dwelling unit, such as electric baseboard, radiator, or forced air systems.
 - e. illumination and electricity
The unit must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Occupants must also have sufficient electrical sources so they can use essential electrical appliances.
 - f. structure and materials
The dwelling unit must be structurally sound and not present any threat to the health and safety of the occupants and must protect the occupants from the environment.
 - g. interior air quality
The dwelling unit must be free of air pollutant levels that threaten the occupants' health.
 - h. water supply
The water supply must be free of contamination.
 - i. lead-based paint
The dwelling unit must be free of deteriorated paint.
 - j. access
The use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

- k. site and neighborhood
The site and neighborhood must be reasonably free from disturbing noises and reverberations or other dangers to the health, safety, and general welfare of the occupants.
 - l. sanitary conditions
The dwelling unit and its equipment must be in sanitary condition that is free of vermin and rodent infestation.
 - m. smoke detectors
On each level of the dwelling unit including the basement, there must be at least one battery-operated or hard-wired smoke detector in proper operating condition.
4. Sign the lease and housing assistance payment contract and start receiving monthly housing assistance payments from your local PHA and the remainder of the rent payment from the tenant.

HUD's Pilot Study of Landlord Acceptance of Housing Choice Vouchers

HUD's Office of Policy Development and Research sponsored a study in September 2018 entitled, "*A Pilot Study of Landlord Acceptance of Housing Choice Vouchers.*" The study determined whether or not landlords treated people who received vouchers differently in the following jurisdictions:

- Fort Worth, Texas,
- Los Angeles, California,
- Newark, New Jersey,
- Philadelphia, Pennsylvania, and
- Washington, DC.

The goals of the study were to:

1. identify testing methods for measuring differential treatment of renters who use vouchers authorized under the United State Housing Act of 1937,
2. identify the types and patterns of rental housing discrimination against voucher holders, and
3. measure the prevalence and extent of voucher-related discrimination against racial and ethnic minorities and differences between low-and high-poverty neighborhoods.

The voucher acceptance test showed evidence that landlords were more likely to deny voucher holders in low-poverty areas compared with high-poverty areas.

Data also revealed that voucher holders who were attempting to choose an area with high-quality schools and transportation faced even more rejection and they were charged higher rates and fees than non-voucher holders.

The study concluded that landlords play a critical role in narrowing or widening the choices available to voucher holders in their search for safe, affordable quality housing.

DISPARATE IMPACT

Under the Fair Housing Act (hereafter known as “FHA”), disparate impact occurs when:

- a doctrine, policy, or practice
- that is neutral on its face
- disproportionately harms people of a protected class.

FHA prohibits discriminatory acts and policies that may seem neutral on their face but have the effect of limiting housing opportunities based on race, color, national origin, religion, sex, familial status, or disability.

Brokers should avoid policies that have a disparate impact on protected classes and create barriers to providing equitable housing. It may be helpful to keep in mind that although a majority of individuals insist they do not possess the intent to discriminate, disparate impact may still occur unintentionally as a result of implicit biases or stereotypes. Although the underlying conduct is unintentional, it may still result in a Fair Housing violation.

Source of Income Discrimination

Source of income discrimination is defined as the practice of refusing to rent to a housing applicant because of that person’s lawful form of income according to the American Bar Association. Source of income is not a protected class under the Fair Housing Act.

However, landlords who analyze the **source** of prospective tenants’ income and then use the information to deny housing may be disparately impacting people of a protected class, specifically minorities. Disparate impact is prohibited under the Fair Housing Act. Housing providers who analyze the source of prospective tenants’ income as a reason to deny housing are at risk of violating the Fair Housing Act.

North Carolina and Source of Income Discrimination

At this time, North Carolina has not enacted legislation that provides protections against source of income discrimination to recipients of housing vouchers. However, one locality, the City of Durham, has instituted a program entitled “***Unlocking Doors Initiative***” to make the housing choice voucher program more attractive to landlords and property managers.

This initiative is a collaboration between the City of Durham, the Durham Housing Authority, landlords, and several nonprofit agencies. The program provides risk

mitigation for landlords who accept qualifying residents who later incur damages to their properties. If the landlord suffers damages, they can make a claim for reimbursement for all or a portion of the damages from the program.

Although North Carolina does not prohibit source of income discrimination, municipalities are beginning to adopt resolutions and/or conduct research to prohibit this type of discrimination in housing. Brokers should be aware of these preliminary conversations and/or policy changes. Here are two examples:

City of Raleigh

The City of Raleigh adopted *Resolution 236* on March 16, 2021. The resolution requires recipients who receive financial assistance from the City of Raleigh, when developing affordable housing, to consider all lawful sources of income. Recipients must include federal housing vouchers when they are determining the eligibility of an individual to participate in the program. If you would like more information regarding *Resolution 236*, you can access it [here](#).

City of Charlotte

The City of Charlotte created a Source of Income Ad Hoc Advisory Committee in April of 2021. The committee is charged with developing recommendations, program enhancements, and process improvements that will increase the acceptance of all forms of rental subsidies including the HCV program. The goal of the committee's work is to increase safe and affordable housing opportunities for low-to-moderate income households.

The first Ad Hoc Committee meeting was held on May 20, 2021. During this meeting the committee established ground rules and created action items. The committee is expected to meet monthly and share its final report with City Council by December 2021. You can access additional information [here](#).

Housing Choice Voucher Tenant Statistics

As of July 1, 2019, the United States Census Bureau indicated the population in NC was 10,488,084. Approximately 62.6% of the population identified as Caucasian, 22.2% identified as African-American, and 9.8% identified as Hispanic and/or Latino. In other words, 6,565,540 residents were Caucasian, 2,328,354 were African-American, and 1,027,832 were Hispanic and/or Latino.

The [Center on Budget and Policy Priorities](#), in Washington, D.C., released a **Federal Rental Assistance Fact Sheet** in December of 2019. This fact sheet indicated that 263,000 people in NC participated in the housing choice voucher program.

Statistical data reflects that African-Americans do not make up a large percentage of the population in NC; however, they do make up a large percentage of the recipients

for the housing choice voucher program. According to HUD's Resident Characteristic Report, approximately 72% of HCV recipient households in NC identify as African-American (44,352), 3% as Hispanic (1,848), and 26% as Caucasian (16,016).

The United States Census Bureau indicated that 9.4 percent (985,879) of the population in NC suffers from a disability. According to the *Center on Budget and Policy Priorities*, 20% (53,900) of the recipients of the HCV program who use rental assistance have a disability.

These statistics indicate that recipients of housing vouchers are more likely to consist of households with people of color and households in which at least one person is disabled. Based upon these statistics, when a landlord refuses to accept HCVs, disabled individuals, Hispanics, and African-American people are disproportionately affected and this poses a significant challenge to ensuring everyone has access to affordable housing.

If you would like more information about HUD's Low Income Housing Tenant Characteristics, click [here](#).

What Can I Do As A Broker?

Brokers can provide information about the HCV program to housing providers to help educate them on the myths versus the realities of accepting housing voucher tenants.

To this end, HUD has created a *Housing Choice Voucher (HCV) Myth-Busting and Benefits Fact Sheet*, to help eliminate some of the inaccurate information about housing voucher tenants.

MYTH	FACT
Landlords can't charge HCV participants the same rent as their non-HCV tenants.	Landlords can charge the full rent no matter who the tenant is. The housing authority must determine that the proposed rent is reasonable and is not higher than units in that area with similar amenities.
HCV voucher tenants are problem tenants.	HCV tenants are typically long-term tenants, living in a unit for 7-8 years on average. There are no documented statistics showing that HCV participants are any more likely to damage units or not pay rent than are non-HCV tenants. Landlords use their own screening criteria and should screen HCV tenants as they would screen any other tenant to avoid problem tenants.
It is impossible to evict a HCV tenant when they violate the lease.	HCV tenants are bound by the terms of their rental agreements and are subject to eviction as is any non-HCV tenant.
If you accept one HCV program tenant, then all of your units must be rented to HCV program tenants.	Renting unit(s) to HCV tenants does not in itself further obligate you to rent to other HCV tenants. For each vacancy, you should follow your established policies for screening prospective tenants.

The ***Housing Choice Voucher (HCV) Myth-Busting and Benefits Fact*** Sheet is one of many resources offered by HUD to assist housing providers with evaluating the benefits of the HCV program.

If you would like more access to educational resources about the HCV program, you can access it [here](#).

NOTE: If a broker represents a client who violates the Fair Housing Act, the broker may be in violation of N.C. Gen. Stat §93A-6(a)(10) and (15) and Commission rule 58A. 1601. If a client will not relent and continues to engage in fair housing violations, the broker should terminate the agency agreement immediately in writing and explain the reasons for the termination.

Additional Examples of Disparate Impact

The following cases were filed in court by fair housing organizations and the Department of Justice. They were later discussed in literature prepared by the [National Fair Housing Alliance](#), a non-profit organization located in Washington, D.C. These cases highlight policies that had the intent of being neutral but actually disproportionately affected people with disabilities, families with children, and individuals of a specific race and/or national origin.

People with Disabilities

Sally Wiesman was a woman from Fitchburg, Massachusetts, living in a housing authority apartment. She suffered from multiple sclerosis, major depression, and a panic disorder—all of which substantially limited her ability to sleep, work, and carry on other important daily activities. Ms. Wiesman’s condition worsened after her downstairs neighbor initiated and repeated confrontational behavior towards her. Ms. Wiesman asked to be transferred to a different apartment to help with her condition. The housing authority denied her request, citing a policy that only allowed tenants with mobility impairments to transfer apartments.



Did the housing authority implement a policy that disproportionately affected individuals with disabilities?

Answer: Yes. The housing authority developed a policy that allowed tenants with mobility impairments to transfer dwellings. However, when drafting this policy, the housing authority did not consider individuals with other types of disabilities. This oversight in the creation of the policy disproportionately impacted persons with a disability that was non-mobility related.

Therefore, the Department of Justice filed a complaint on Ms. Wiesman’s behalf in 2009 and obtained a consent decree. The Court enjoined the housing authority from:

- discriminating on the basis of a disability as prohibited by FHA, 42 U.S.C. §§ 3601-3619;

- discriminating in the rental of, or otherwise making unavailable or denying a dwelling to any renter on the basis of disability, in violation of 42 U.S.C. § 3604(f)(1);
- discriminating against any person in terms, conditions, or privileges of the rental of a dwelling, or in a provision of services or facilities in connection with the rental of such dwelling on the basis of disability, in violation of 42 U.S.C. § 3604(f)(2); and
- refusing to make a reasonable accommodation in rules, policies, practices or services when such accommodations may be necessary to afford a resident with a disability an equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604 (f)(3).

Further, the housing authority had to revise its transfer policy so people with non-mobility related disabilities were not disparately impacted. *United States of America v. Fitchburg Housing Authority, et al.*

Families with Children

Drita and Florim Gashi lived in a one-bedroom condo they owned in Stamford, CT. After they had their first child, they got a notice from the condo association informing them that they were in violation of a two-person per bedroom occupancy limit. They could either pay a \$500 monthly fine to stay, or vacate their home. Not being able to afford the additional fee, the Gashi's had to sell their condo at a loss.



How did the condominium association violate the Fair Housing Act?

Answer: The condominium association violated the Fair Housing Act by developing an occupancy policy that only permitted two individuals per bedroom which disparately impacted families with children.

The Connecticut Fair Housing Center filed a fair housing complaint on behalf of the Gashi's. In June 2011, a District Court granted the Gashi's motion for summary judgement noting that the condo association could not provide a legitimate rationale for the creation of the policy. The association dropped its restrictive occupancy standards which opened 150 units of housing to families with children. *Gashi, et al. v. Grubb & Ellis, et al.*

Race and National Origin

From 2004 to 2008, Countrywide Financial Corporation had a business practice that allowed its loan officers and brokers discretion in varying a borrower's interest rate and other fees after the price was set based on objective credit-related factors. This practice resulted in more than 200,000 African-American and Hispanic borrowers paying more for loans.



Did the policy created by Countrywide disparately impact people of color?

Answer: Yes. Countrywide Financial Corporation provided its loan officers and/or mortgage brokers discretion in varying the interest rates. As a result of this practice, thousands of borrowers who were people of color were steered to higher-cost subprime loans as compared to similarly qualified white borrowers who got prime loans.

In December 2011, the Department of Justice reached a \$335 million settlement with Countrywide and they were required to revise their discretionary policies. *United States of America v. Countrywide Financial Corporation*.

Newsday Investigation: Long Island, New York

The *FHA* requires brokers to engage in brokerage practices that allow equal access to housing for all individuals. Newsday conducted a three year investigation to measure how often, if at all, real estate brokers provided unequal brokerage services to Caucasian and minority house hunters. The investigation consisted of:

- 25 individuals hired as paired testers;
- 93 real estate agents;
- 86 matched tests;
- 240 hours of recorded meetings; and
- 5,763 houses analyzed by testers posing as prospective house hunters.

Newsday hired paired testers for the investigation. Paired testing is regularly endorsed by federal and state courts as a practicable method for detecting housing discrimination.

Paired testing consists of using two testers of the same gender and age bracket - but of different races and/or ethnicities - to test whether discrimination exists. These paired testers are given matching profiles based upon their:

- family status,
- education level,
- type of job,

- level of income, and
- credit score.

After individuals are matched in a pair, the testers separately inform the real estate broker that they are searching for houses with identical qualities, prices, and locations.

The evidence collected from April of 2016 to August 2017, indicated that 19% of Asians, 39% of Hispanics, and 49% of African-Americans were treated differently during this investigation: 34 of the 86 matched tests showed evidence suggesting fair housing violations by steering and the denial of equal service.

Moreover, African-American testers were directed toward different, more integrated neighborhoods than their Caucasian counterparts, were given fewer listings, and their financial ability to purchase a property was scrutinized more heavily. The conditions imposed on the minority buyers (e.g., preapproval, prequalification, and identification requirements) were harsher compared to those imposed on the Caucasian buyers. Thus, minority buyers appeared to be disparately impacted as a result.

The investigation conducted by Newsday yielded data indicating that some of the brokers affiliated with Long Island’s dominant residential brokerage firms contributed to racial segregation in housing.

If you would like more information regarding the investigation conducted by Newsday, you can access it [here](#).

Additional Resources

The Commission has published on its website a resource entitled, “*Fair Housing*”. This information can be found under *Resources* and accessed [here](#).

Brokers should familiarize themselves with the fair housing resources on the Commission’s website and reference them while providing brokerage services. Let’s review each of these resources.

State Fair Housing Resources

- Questions and Answers on: Fair Housing
This publication by the Commission is available in a PDF or brochure format. The purpose of this resource is to inform brokers/consumers about the fair housing laws and how they are applied primarily in North Carolina.

- **North Carolina Human Relations Commission: Housing Discrimination**
The North Carolina Human Relations Commission provides services and programs aimed at improving relationships among all citizens of the state, while seeking to ensure equal opportunities in the areas of employment, housing, public accommodations, recreation, education, justice and governmental services. The North Carolina Human Relations Commission also enforces the North Carolina State Fair Housing Act.
- **Filing a Housing Discrimination Complaint in North Carolina**
If an individual believes they have experienced discrimination in housing, they may file a complaint. If the residential real estate is located in North Carolina, the Housing Discrimination Section of the Civil Rights Division will investigate to determine whether unlawful discrimination has occurred.
- **North Carolina Department of Justice**
The North Carolina Department of Justice works to prevent crime and support law enforcement, to safeguard consumers, and to defend the State, its people, and their constitutional rights. Consumers can file a complaint with the North Carolina Department of Justice if they have been treated unfairly while receiving service(s), and/or have been a victim of fraud.
- **North Carolina Fair Housing Act**
The State Fair Housing Act makes it illegal to discriminate in housing in North Carolina because of race, color, religion, sex, national origin, physical or mental handicaps, or family status.

Federal Fair Housing Resources

- **United States Department of Justice Civil Rights Division**
The Civil Rights Division enforces federal laws that protect an individual from discrimination based on race, color, national origin, disability status, sex, religion, familial status, or loss of other constitutional rights.
- **United States Department of Housing and Urban Development (HUD)**
The Department of Housing and Urban Development is the federal agency responsible for national policy and programs that address America's housing needs, improve and develop the Nation's communities, and enforce fair housing laws.

- **Federal Fair Housing Act**
The Fair Housing Act protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing related activities. It prohibits this discrimination because of race, color, national origin, religion, sex, familial status, and/or disability.
- **Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation**
This Executive Order directs all federal agencies that enforce federal laws prohibiting sex discrimination to also prohibit discrimination based on *sexual orientation* and *gender identity* in areas including but not limited to employment, housing, healthcare, education, and credit.

Other Fair Housing Resources

- Implicit Bias Training (NAR)

NOTE: If you are a REALTOR®, you may have access to additional resources from NAR®.

ANSWERS TO DISCUSSION QUESTIONS

For Discussion on page 39

1. Define disparate impact.

Answer: Disparate impact occurs when a doctrine, policy or practice that seems neutral on its face, disproportionately harms people of a certain protected class as identified in the Fair Housing Act.

2. What is the Housing Choice Voucher Program?

Answer: According to HUD, the housing choice voucher program is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market.

3. Sara is an affiliated broker with 123 Realty. She is working with two buyer-clients. Sara provides Casey, a Caucasian buyer-client, with information about school performance in the Greenleaf neighborhood and advises her to purchase a property in that area. Casey also asks about the Brownstone community, and Sara advises against purchasing there due to underperforming schools and a declining neighborhood. When Samuel, a Hispanic buyer-client, asks about the Brownstone and Greenleaf neighborhoods, Sara tells him she thinks Brownstone would be perfect for his family; however, Greenleaf would not be a good fit. Samuel asks Sara to still provide listings for the Greenleaf area. Sara refuses his request.

Is Sara in violation of state and/or federal fair housing laws?

Answer: Sara's conduct may be a violation of state and/or federal fair housing laws if she steered her buyer-clients to specific communities based upon their race if everything else about the client is the same like income, education, family size, etc. If Sara is found to be in violation of state and/or federal fair housing laws, she may also be in violation of Commission Rule 58A .1601. However, if Sara is providing the client information solely based on their budget and/or preferences, she may not be engaging in steering. There may be several reasons as to why a broker may provide specific listings to a client; however, the broker must ensure they are not making the choice for the client. The information the broker provides should be based on the client's needs/wants.

For Discussion on page 44

John, a buyer agent with ABC Realty, represented Tom with the purchase of his first home. Tom was pleased with John's representation so he referred his co-worker, Hong, to John. John met with Hong to review the WWREA disclosure and agency agreements. During the exclusive buyer agency agreement explanation, John informed Hong that he must pay a retainer fee for his representation. Hong asked Tom if he had to pay a retainer fee; Tom told Hong that he did not. Once Hong received this information he asked John why he had to pay the retainer. John indicated that it was in the discretion of the broker and /or firm to charge a retainer fee to clients. Hong was confused as to why he had to pay a retainer fee and Tom did not.

Could John be in violation of Commission Rule 58A .0104 and/or 58A .0120? Why or why not?

Answer: Possibly.

First, note that the discussion question did not identify the race, color or other protected classes for Tom, John, or Hong. No assumptions should be made based simply upon the names or roles of the people involved.

As to Rule 58A .0104, if John did not include "The broker shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap, or familial status of any party or perspective party..." in his written buyer agency agreement, then John has violated Rule 58A .0104.

As to Rule 58A .0120, if John charged Hong a retainer fee based on his race, or if he waived his usual retainer fee for Tom because of his race, then John likely violated Commission Rule 58A .0120. If John wants to charge a retainer fee, he should charge it to all clients or have a set list of objective criteria having nothing to do with any protected class on which he bases that decision.

For Discussion on page 45

1. Marcus, an African-American man, meets with Saul, a broker, to discuss purchasing a house. Marcus tells Saul he wants to purchase a house in Green Creek. Saul asks Marcus, "Will you be comfortable there?" Marcus says, "Yes." Saul tells Marcus he wants to show him a listing in a neighborhood that has more people like him. Saul takes Marcus to view the property and Marcus notices that many of the residents are African-American.

Has Saul violated Commission Rule 58A .1601?

Answer: Saul may have violated state and federal fair housing laws, and thereby, Commission Rule 58A .1601, by steering Marcus to a particular neighborhood. Of course, Saul may show houses in multiple neighborhoods, but his choices must not be influenced by the makeup of the neighborhood or his clients' race, color, or other protected class.

2. Amina is Muslim and wears a hijab. As she is driving, she notices a new apartment complex with a sign that says, "Immediate occupancy available for 1, 2, and 3-bedroom apartments." Amina calls the broker listed on the sign and asks if there are available units. The broker states, "Yes, we have several." Amina makes an appointment for later in the afternoon to view an apartment. While at her appointment, she notices Tom, a broker, seems reluctant to answer her questions. At one point he asks her if she was born in the United States. Amina indicates that she is not a U.S. citizen but she does have a "green card" and is a permanent resident. She also informs Tom that she works full-time at the local university. Shortly thereafter, Tom tells her there are no available units. Amina asks to be placed on a waiting list, and Tom replies that they do not have a waiting list.

Has Tom violated Commission Rule 58A .1601?

Answer: Tom may have violated state and federal fair housing laws, and thereby, and Commission Rule 58A .1601, for refusing to rent to Amina based upon her religion.

3. Jason, a broker, has drafted the following advertisement for a property that he just listed:

Spectacular three bedroom, 2½ bath cottage in downtown Wake Forest. This cottage is perfect for a single man or woman due to its proximity to local shops and restaurants. The cottage is also two blocks away from Stewberry Baptist Church. This cottage is perfect.

If Jason publishes this advertisement could he be in violation of Commission rules? Explain your answer.

Answer: If Jason is found in violation of federal and/or state fair housing laws, he may be in violation of Rule 58A. 1601. Jason is using unacceptable words under the Fair Housing Act such as, "single", and "Baptist" to describe the cottage. His advertisement expresses a discriminatory preference against families with children, in favor of a particular religion, and possibly based upon race. Part 109-Fair Housing Advertising, published by HUD, provides examples of unacceptable words that should not be used in advertisements.

Example on page 46

Alicia, a Caucasian woman, grew up in a Caucasian neighborhood. During her teenage years, an African-American family purchased a house in the neighborhood. Alicia's Caucasian parents and neighbors were unhappy because they were convinced that the African-American family would bring down their property values, and several of those families moved away immediately.

Now Alicia is a broker for Loft Homes, a new home development. Loft Homes has an open house and is offering incentives to prospective buyers. During the open house, Alicia tells visitors how great the community is and she executes a sales contract for one of her listed homes with a Caucasian couple. She does not ask the buyers to furnish a preapproval letter.

Later that day, an African-American couple attends the open house. They inform Alicia that they are interested in purchasing in the community. Alicia is less enthusiastic about the neighborhood with this couple. She tells them they must furnish a preapproval letter before she can show any properties or explain the current incentive package.

Do you think Alicia's implicit bias may have caused her to treat the African-American couple differently?

Answer: Yes, it is possible. Alicia's upbringing could have made her think that the African-American couple purchasing in the community might decrease the property value of the houses.

Are Alicia's actions in violation of Commission rules?

Answer: Yes, Alicia's actions likely violate state and federal fair housing laws. If so, her actions violate Commission Rule 58A .1601.

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