

Brokers Beware of the Danger of Buyers' Love Letters (March, 2018)

Real estate brokers and agents should beware that danger lurks in a seemingly innocent letter from the prospective buyer to a seller, professing the buyer's desire or even love for the seller's property, otherwise known as the Love Letter. First, real estate licensees should not suggest the use of Love Letters, and never help the buyer to compose or write such a letter. They subject the buyer, seller and the brokers to potential violations of the Fair Housing Laws of the Federal, State and local governments. Usually, Love Letters are an emotional plea, often directly or indirectly, maybe unwittingly, mentioning or distinguishing, classes of persons protected under the Fair Housing Laws of the Federal, State and local government, for example:

"I can see our family celebrating Christmas here;"

"My wife and I would love to raise our family in this house;"

"Our children's pictures will line the staircase and grace all the walls of the home;"

"Our daughter loves to swim;"

"Our son is the star of his basketball team;"

"We want to send our children to the parochial school and church in the neighborhood;"

"The house has a great dining room just right for our large Italian family dinners."

All of the above statements demonstrate characteristics of a potential buyer and how he or she views the property that is being marketed. They also demonstrate characteristics that distinguish a potential buyer from the universe of other buyers that may be potentially interested in the same property, but may not have children, do not practice the same religion or may have disabilities that prevent their children from athletic activities. If such a letter is a contributing factor to the seller's acceptance or denial of the purchase offer, it may be a Fair Housing Law violation.

The seller and the buyer's broker and/or agent need to be aware and raise Fair Housing concerns with the buyer. The buyer's broker and/or agent should not read or accept the Love Letter drafted by the buyer. Similarly, the listing broker and/or agent should discuss potential liability at the listing interview and not deliver any Love Letter to the seller. The listing broker and/or agent is cautioned not to accept such letters from buyers. The listing broker and/or agent and the buyer's broker and/or agent should not be involved in the delivery of Love Letters to the seller. The listing broker and/or agent and the buyer's broker and/or agent should not have any knowledge as to the contents of such letters. The listing broker and/or agent and the buyer's broker and/or agent should consider having the seller and buyer's attorney review the Love Letter and keep a record, showing good faith efforts to advise against this practice.

So why the fuss about such seemingly harmless letters? The Federal Fair Housing Act, otherwise known as Title VIII of the Civil Rights Act of 1968, as amended, established meaningful Federal enforcement mechanisms. It outlaws:

- 1) Refusal to sell or rent a dwelling to any person because of race, color, religion, sex, familial status, national origin or disability.
- 2) Discrimination based on race, color, religion, sex, familial status, national origin or disability in the terms, conditions or privileges of sale or rental of a dwelling.
- 3) Advertising the sale or rental of a dwelling indicating preference, limitation, or discrimination based on race, color, religion, sex, familial status, national origin or disability.

- 4) Coercing, threatening, intimidating or interfering with the person's enjoyment or exercise of housing rights based on discriminatory reasons or retaliating against the person or organization that aids or encourages the exercise or enjoyment of fair housing rights.

The New York State Human Rights Law at section 296 prohibits discrimination in the sale, rental, lease or otherwise deny or withhold a housing accommodation based on the same classes identified in the Federal Fair Housing Act, noted above, and expands the protected classes to include: race, color, creed, sex, familial status, national origin, age, sexual orientation, gender identity, military status, marital status, and disability. In all cases, discrimination means treating someone differently because of one of these protected classes.

The New York State Human Rights Law expressly prohibits real estate brokers, real estate salespersons or their employees or agents from refusing to sell, rent or lease any housing accommodation, land or commercial space to any person or group of persons or to refuse to negotiate for the sale, rental or lease of any housing accommodation, land or commercial space to any person or group of persons because of the above noted protected classes. New York law also prohibits real estate brokers, real estate salespersons or their employees or agents from printing or circulating or causing to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space, or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space which expresses, directly or indirectly any limitation, specification or discrimination as to any of the above protected classes. It is also an unlawful discriminatory practice for any person to aid, abet, compel, coerce or attempt to do any of the acts noted above prohibited by the New York Human Rights Law. In addition, many counties, cities and other local governments have established other protected classes, such as source of income or citizenship status of the prospective purchaser or tenant.

Also, the New York Real Property Law governs the conduct of real estate brokers and real estate salespersons and prohibits them from engaging in “untrustworthy or incompetent” behavior, which has been held to include discrimination against people within the above protected classes. The New York State Department of State has regulations that specify that discrimination is unlawful, and clarifies that a finding of discrimination by a court or agency against a real estate licensee will constitute evidence of untrustworthiness in any subsequent New York State Department of State disciplinary proceeding. In addition to any fines or penalties imposed by a court or governmental agency, the New York State Department of State has announced that it will seek to impose sanctions, including but not limited to, license revocation or suspension, fines and restitution against any licensee found to have engaged in discriminatory practices or conduct.

Based on the above hypothetical Love Letter, by way of example, and not as a limitation, a single non-Christian mother, with a disabled child, who otherwise has the financial ability to submit a competitive or better offer, may be aggrieved and entitled to a claim for discrimination under the Federal, State or local Fair Housing Laws, against the seller, the buyer and their real estate brokers/agents, if they participated in delivering or worse, prepared such a Love Letter. Real estate brokers and agents must be on guard not to promote or participate in Love Letters.