

## Section III – Fair Housing Status

This section provides an overview of the institutional structure of the housing industry with regard to fair housing practices. In addition, this section discusses the fair housing services available to residents, as well as the nature and extent of fair housing complaints received by the fair housing provider. Typically, fair housing services encompass the investigation and resolution of housing discrimination complaints, discrimination auditing/testing, and education and outreach, including the dissemination of fair housing information. Tenant/landlord counseling services are usually offered by fair housing service providers but are not considered fair housing services.

### **Fair Housing Practices in the Homeownership Market**

On December 5, 1996, HUD and the National Association of Realtors (NAR) entered into a Fair Housing Partnership. Article VII of the HUD/NAR Fair Housing Partnership Resolution provides that HUD and NAR develop a Model of Affirmative Fair Housing Marketing Plan for use by members of the NAR to satisfy HUD's Affirmative Fair Housing Marketing regulations. Even so, there is still room for discrimination in the housing market.

### **The Homeownership Process**

One of the main challenges in owning a home versus renting a home is the process. Buying a house takes considerably more time and effort than finding a home to rent. The major legal and financial implications surrounding the process also intimidate potential buyers. Typically, people are overwhelmed by the unique terminology, number of steps required, and financial considerations involved. The process is costly and fair housing issues may surface at any time during this process.

### **Advertising**

The first thing a potential buyer is likely to do when they consider buying a home is search advertisements either in magazines, newspapers, or the Internet to get a feel for what the market offers. Language in advertising has recently become an issue within the realm of real estate. Advertisements cannot include discriminatory references such as the use of words describing current or potential residents or the neighbors or the neighborhood in racial or ethnic terms. Some commonly used statements that are discriminatory include:

- Adults preferred
- Perfect for empty nesters
- Conveniently located by a Catholic church
- Ideal for married couples without kids

Even the use of models in ads has been questioned, based on the idea that it appears to appeal to a certain race. Additionally, selecting media or locations for advertising that deny information on listings to certain segments of the housing market may also be considered discriminatory. Even if an agent does not intend to discriminate in an ad, it would still be considered a violation to suggest to a reader whether or not a protected class is preferred. In cities such as Salisbury,

where the majority of residents belong to a specific racial or ethnic group, the homeownership process offers opportunities for fair housing violations due to the natural tendency to advertise in a specific language. While the advertisements may not violate fair housing laws, these advertisements may limit opportunities for other racial/ethnic groups to find housing. Although the homeownership process is outside the jurisdiction of the City, recent litigation has set precedence for violations in advertisements that hold publishers, newspapers, Multiple Listing Services, real estate agents, and brokers accountable for discriminatory ads. As a reminder to choose words carefully, the Multiple Listing Service now prompts a fair housing message when a new listing is being added. Recent litigation has also set precedence for violations in advertisements that hold publishers, newspapers, Multiple Listing Services, real estate agents, and brokers accountable for discriminatory ads.

### Lending

Initially, buyers must find a lender that will qualify them for a loan. This part of the process entails an application, credit check, and an analysis of ability to repay, amount eligible for, choosing the type and terms of the loan, etc. Applicants are requested to provide a lot of sensitive information including their gender, ethnicity, income level, age, and familial status. Most of this information is used for reporting purposes required of lenders by the Community Reinvestment Act (CRA) and the Home Mortgage Disclosure Act (HMDA); however it does not guarantee that individual loan officers or underwriters will not misuse the information.

A report on mortgage lending discrimination by the Urban Land Institute<sup>1</sup> illustrates four basic stages in which discrimination can occur:

1. Advertising and outreach
2. Pre-application inquiries
3. Loan approval/denial and terms/conditions
4. Loan administration

A number of different individuals take part in the various stages of this process and any of them may potentially discriminate. Further areas of potential discrimination include: differences in the level of encouragement, financial assistance, types of loans recommended, amount of down payment required, and level of customer service provided.

### Real Estate Agents

Finding a realtor is normally the next step, which can be done by looking in newspapers, searching the Internet, and primarily through referrals. The agent will find the home that fits a buyer's needs, desires, and budget based on the amount they are qualified for by the lending institution. Realtors may act as agents of discrimination by unintentionally or even intentionally

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<sup>1</sup> The Urban Land Institute, Mortgage Lending Discrimination: A Review of Existing Evidence. June 1999. Turner, Margery Austin and Skidmore, Felicity, Editors.

steering potential buyers to or from a particular neighborhood. Salisbury has a racially diverse population; however, a real estate agent may assume that some buyers may not be interested in living in certain portions of the City based on the existing demographic makeup of the neighborhood.

Agents may also discriminate by who they agree to represent, who they turn away, and the comments they make about their clients. However, the North Carolina Association of Realtors (NCAR) has included language on many of their forms disclosing fair housing laws to those involved. Many Realtor Associations also host fair housing trainings and seminars to educate their members on the provisions and liabilities of fair housing laws. The Equal Opportunity Housing Symbol is also located on all forms as a reminder.

#### Appraisals

Banks order appraisal reports to determine whether or not a property is worth the amount of the loan they will be giving. Generally speaking, appraisals are based on the comparable sales of properties surrounding the neighborhood of the property being appraised. Other factors are taken into consideration, such as the age of the structure, any improvements made, location, etc. Some neighborhoods with higher concentrations of minorities may appraise lower than like properties in neighborhoods with lower concentrations. Unfortunately, this practice is geared toward a neighborhood and not an applicant, and therefore is not a direct violation of fair housing law that can easily be addressed. One effect of this practice, however, is that it tends to keep property values lower in a given neighborhood, thereby restricting the amount of equity and capital available to those residents. Individual appraisers are the ones making the decisions on the amounts; thus, there is room for flexibility in the numbers. As each appraiser is individually licensed, similar to real estate agents, they risk losing their license for unfair practices.

#### Sellers

A seller may not want to sell his/her house to certain purchasers based on classification biases protected by fair housing laws, or they may want to accept offers only from a preferred group. Often, sellers are home when agents show the properties to potential buyers, and they may develop certain biases based upon this contact. Sellers must sign the Residential Listing Agreement and Seller's Advisory forms, which disclose that a seller understands fair housing laws and practices of nondiscrimination. Yet enforcement is difficult because a seller may have multiple offers and choose one based on a bias.

#### Covenants, Conditions, and Restrictions

Covenants, Conditions, and Restrictions (CC&Rs) are restrictive covenants that involve voluntary agreements that run with the land with which they are associated. CC&Rs to be in writing, because they involve real property and must also be recorded in the County where the property is located in order to bind future owners. Owners of parcels may agree amongst themselves as to the restrictions on use, but in order to be enforceable, restrictions must be reasonable. In the past, CC&Rs were used to exclude certain groups such as minorities from equal access to housing in a community.

### Insurance

Insurance agents are provided with underwriting guidelines for the companies they work for to determine whether or not a company will sell insurance to a particular applicant. Currently, underwriting guidelines are not public information; however, consumers have begun to seek access to these underwriting guidelines in order to learn if certain companies have discriminatory policies. Some states are being more responsive than others to this demand and have recently begun to require that companies file their underwriting guidelines with the state department of insurance, which would then make the information public. Texas is one state that has mandated this reporting, and its office has made some significant findings regarding discriminatory insurance underwriting guidelines. Many insurance companies have applied strict guidelines, such as not insuring older homes, that disproportionately affect lower income and minority families that can only afford to buy in older neighborhoods.

### Credit and FICO Scores

Credit history is one of the most important factors in obtaining a home purchase loan. Credit scores determine loan approval, interest rates associated with the loan, as well as the type of loan an applicant will be given. Applicants with high credit scores are generally given conventional loans, while those with lower and moderate range scores often utilize government-backed loans or subprime loans. Applicants with lower scores also receive higher interest rates on the loans as a result of being perceived as a higher risk to the lender, and may even be required to pay points depending on the type of lending institution used.

Fair Isaac and Company (FICO), which is the company used by the Experian (formerly TRW) credit bureau to calculate credit scores, has set the standard for the scoring of credit history. Trans-Union and Equifax are two other credit bureaus that also provide credit scores, though they are typically used to a lesser degree. In short, points are awarded or deducted based on certain items such as how long one has had credit cards, whether one makes payments on time, if credit balances are near maximum, etc. Typically, the scores range from the 300s to around 850, with higher scores demonstrating lower risk. Lower credit scores require a more thorough review than higher scores and mortgage lenders will often not even consider a score below 600.

FICO scores became more heavily relied upon by lenders when studies conducted showed that borrowers with scores above 680 almost always make payments on time, while borrowers with scores below 600 seemed fairly certain to develop problems. Credit scores also made it easier to develop computer programs (electronic underwriting) that can make a “yes” decision for loans that should obviously be approved. Some of the factors that affect a FICO score are:

- Delinquencies
- New accounts (opened within the last 12 months)
- Length of credit history (a longer history of established credit is better than a short history)
- Balances on revolving credit accounts
- Public records, such as tax liens, judgments, or bankruptcies
- Credit card balances
- Number of inquiries
- Number and types of revolving accounts

### National Association of Realtors

The National Association of Realtors (NAR) has developed a Fair Housing Program to provide resources and guidance to realtors in ensuring equal professional services for all people. The term Realtor identifies a licensed professional in real estate who is a member of the NAR; however, not all licensed real estate brokers and salespersons are members of the NAR.

### Code of Ethics

Article 10 of the NAR Code of Ethics provides that “Realtors shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. Realtors shall not be a party to any plan or agreement to discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin.”

A realtor pledges to conduct business in keeping with the spirit and letter of the Code of Ethics. Article 10 imposes obligations upon realtors and is also a firm statement of support for equal opportunity in housing. A realtor who suspects discrimination is instructed to call the local Board of Realtors. Local Boards of Realtors will accept complaints alleging violations of the Code of Ethics filed by a home seeker who alleges discriminatory treatment in the availability, purchase, or rental of housing. Local Boards of Realtors have a responsibility to enforce the Code of Ethics through professional standards, procedures, and corrective action in cases where a violation of the Code of Ethics is proven to have occurred.

Additionally, Standard of Practice Article 10-1 states that “REALTORS® shall not volunteer information regarding the racial, religious, or ethnic composition of any neighborhood and shall not engage in any activity which may result in panic selling. REALTORS® shall not print, display, or circulate any statement or advertisement with respect to the selling or renting of a property that indicates any preference, limitations, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.”

### Realtor Fair Housing Declaration

In accordance with the Code of Ethics, each realtor signs the following pledge, developed in 1996 as a result of the HUD-NAR agreement.

I agree to:

1. Provide equal professional service without regard to race, color, religion, sex, handicap, familial status, or national origin of any prospective client, customer, or of the residents of any community.
2. Keep informed about fair housing law and practices, improving my clients’ and customers’ opportunities and my business.
3. Develop advertising that indicates that everyone is welcome and no one is excluded, expanding my client’s and customer’s opportunities to see, buy, or lease property.

4. Inform my clients and customers about their rights and responsibilities under the Fair Housing Laws by providing brochures and other information.
5. Document my efforts to provide professional service, which will assist me in becoming a more responsive and successful Realtor.
6. Refuse to tolerate non-compliance.
7. Learn about those who are different from me, and celebrate those differences.
8. Take a positive approach to fair housing practices and aspire to follow the spirit as well as the letter of the law.
9. Develop and implement fair housing practices for my firm to carry out the spirit of this declaration.

To continue the efforts to ensure equal and professional services, NAR now requires mandatory Code of Ethics instruction for all realtor members based on the following schedule:

- Continuing members must have completed the instruction within the time frame of January 1, 2001 to December 31, 2004, and every 4 years thereafter.
- New members must complete the instruction within 90 days after submitting the application for membership to NAR.

### **North Carolina and Fair Housing Regulations**

According to federal and state law, it is illegal for anyone selling or renting property to discriminate on the basis of: race or color, national origin, religion, sex, handicap and family status (including children under the age of 18 living with parents or legal custodians, pregnant women and people securing custody of children under 18). The North Carolina State Fair Housing Act, covers the sale and rental of mobile homes, houses, apartments and vacant lots intended for homesites and applies to sellers, renters, Realtors/real estate agents, banks and lenders, builders, rental managers, property owners, builders, landlords and developers.

The law states that a home seller cannot discriminate either directly or indirectly. The person offering the property for sale or rent cannot ask the real estate agent to place limitations on the home based on the above criteria, nor could the seller/landlord establish discriminatory terms or conditions. A seller or landlord cannot restrict advertising in a way which offers the property to only a select audience in regards to the above criteria, and they cannot deny that the property is available. Nor can covenants and restrictions be placed or enforced on properties that limit the kind of buyer who can purchase/rent the property with the exception of housing specifically for the elderly.

Sellers and real estate agents cannot tell potential buyers that the demographic status (in relation to the above criteria) of a neighborhood has or will change or allude to any negative outcomes, such as a decrease in property values or increase in crime or quality of schools, due to any such change. There are also detailed specifics in the law regarding willingness to make reasonable modification to properties needed to accommodate a person with disabilities. Multifamily

dwellings, such as apartment complexes, which were first occupied after March of 1991 are also required to have accessible public areas and routes, doors wide enough to accommodate a wheelchair, maneuverable kitchens and bathrooms and accessible switches, outlets and controls.

Realtors are bound by a national Code of Ethics which specifically forbids them from accepting a request from a seller or landlord that would require that the realtor act in a discriminatory manner. Realtors also abide by a Fair Housing Declaration which sets out very specific commitments to equitable treatment. Not all licensed real estate agents are realtors, and therefore not all agents have placed themselves under the Code of Ethics or the Fair Housing Declaration. The Code of Ethics, in particular, is enforced at the local and state level by the realtor associations, which have authority to impose strict penalties for non-compliance or violations and provide mediation services.

A potential homebuyer has a legal right to expect to see housing choices without discrimination or limitation based on race, color, religion, sex, handicap, familial status or national origin. This means that the real estate professional is required to offer each client equal professional service and to provide housing choices within the price range without limitation to certain neighborhoods, areas or subdivisions/complexes. Each client is also entitled to equal access without discrimination when it comes to financing, home insurance and home appraisals. The terms and conditions offered to an individual must be the same as those offered to all and there must be no intimidation or harassment to discourage anyone from making a free choice in where to live.

Homebuyers enjoy strong legal backing for fair housing, dating back to the Civil Rights Act of 1866. Other laws, which protect homebuyers' rights, include the national Fair Housing Act, Title VIII of the Civil Rights Act of 1968, the Americans with Disabilities Act, the Equal Credit Opportunity Act, and the North Carolina State Fair Housing Act.

### **Fair Housing Law Enforcement**

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 commission also enforces the North Carolina State Fair Housing Act and is fully substantially equivalent with the Division of Fair Housing within the U.S. Department of Housing and Urban Development. The commission participated in writing and implementing the Fair Housing goals for the Comprehensive Housing Affordability Strategy (CHAS) and the Consolidated Housing Plan required by the federal government. Further, the commission also serves as a resource to Community Development Block Grant recipients in helping them develop adequate Fair Housing plans. The commission supports and works with 57 local autonomous commissions throughout the state of North Carolina. In addition, the commission also serves as a clearinghouse to disseminate information concerning North Carolina's employment law to citizens.

### **Salisbury's Fair Housing Complaint History**

According to the Fair Housing Community Relations Unit of the N.C. Human Relations Commission, there have been only 4 complaints filed in Salisbury between 2000 and 2010. The most recent case was filed in October 2007 under handicap discrimination and was closed on February 2008 with a Conciliation Agreement after a partial cause finding. A case was filed in December 2009 under race and sex discrimination and remains open. However, this Respondent is not located in Salisbury but in another state. Only the Complainant lives in Salisbury and she was trying to get financing from an out-of-state financing company. A case was filed in September 2000 under the basis of sex and familial status and was closed in December 2000 with a conciliation agreement. The earliest case was filed in June 2000 under the basis of handicap and familial status and it was closed in December 2000 with a withdrawal with settlement. In this case the Respondent was in Salisbury but not the Complainant.

### **State of North Carolina Landlord/Tenant Laws**

North Carolina has created and implemented laws governing the relationship between the landlord and the tenant. The state of North Carolina requires both the landlord and the tenant to fulfill certain responsibilities and refrain from restricted acts.

#### **Landlord Responsibilities**

There are several responsibilities and laws the landlord must abide by in the state of North Carolina. First, the landlord must obey the housing code, which informs the landlord of what utilities must be provided and how the premises must be cleaned and maintained. Second, the landlord must make necessary repairs to ensure the habitability of the unit rented. Third, the landlord must ensure the utilities such as gas, water, heating and electrical are working properly. Fourth, the landlord is responsible for fixing any provided appliances such as a stove or refrigerator. Fifth, the landlord is to keep all the public hallways, stairwells and other areas available to the renters clean and safe. Finally, the landlord will provide and install smoke detectors in each unit and common area.

#### **Tenant Responsibilities**

North Carolina landlord and tenant law lists the obligations and responsibilities of tenants when renting a residential unit such as the following: keeping the leased unit safe and sanitary to the best of the tenant's ability; giving the landlord reasonable notice of any needed repairs; and refraining from damaging the leased property.

#### **Evictions**

The landlord may have the right to evict a tenant but there are certain methods North Carolina law prohibits the landlord from using, such as changing the locks of the leased unit, turning off any type of utility like water or electric, or disconnecting a heating unit.

### **NIMBYism**

Many people agree that a variety of housing should be available for people with special needs, such as homeless shelters, affordable housing, and group homes for people with disabilities. However, whether or not these types of housing should be located within their own community is another matter.

The Not-in-My-Back-Yard sentiment (NIMBYism) can serve as the most significant constraint to the development of affordable or even market-rate multi-family housing. NIMBYism describes opposition by residents and public officials alike to additional or different kinds of housing units in their neighborhoods and communities. The NIMBY syndrome often is widespread, deeply ingrained, easily translatable into political actions, and intentionally exclusionary and growth inhibiting. NIMBY sentiment can reflect concerns about property values, service levels, community ambience, the environment, or public health and safety. It can also reflect racial or ethnic prejudice masquerading under the guise of a legitimate concern. NIMBYism can manifest itself as opposition to specific types of housing, as general opposition to changes in the community, or as opposition to any and all development.

Community opposition to high-density housing, affordable housing, and housing for persons with special needs (disabilities and homeless) is directly linked to the lack of such housing options for residents in need. In particular, community opposition is typically strongest against high-density affordable housing and group homes for persons with mental disabilities.

Community residents who are especially concerned about the influx of members of racial and ethnic minority groups sometimes justify their objections on the basis of supposedly objective impacts like lowered property values and increased service costs. Racial and ethnic prejudice often is one root of NIMBYism, although NIMBY concerns still exist where racial or ethnic differences are not involved.