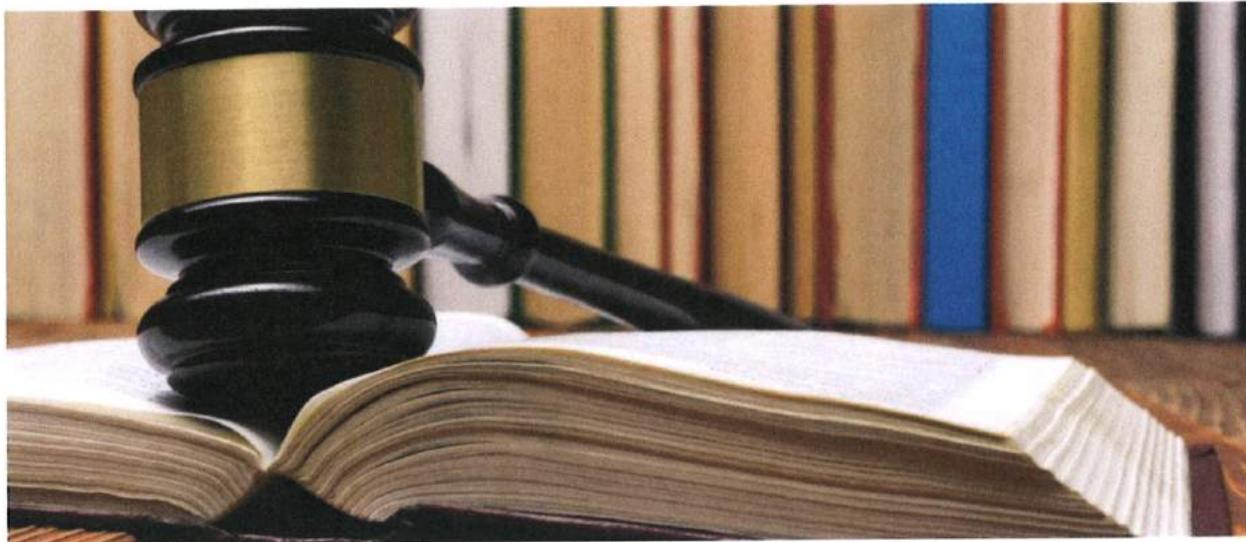


# Chapter **2**



## Fair Housing Acts, Ethics, Regulations, & Trust Funds

### Chapter 2 Goals:

- Understand federal and state fair housing laws and how they regulate the real estate market
- Know the responsibility of a broker and salesperson in a trust
- Know the various laws which deal with fair housing and how a real estate professional must adhere to these laws
- Recognize actions which may be deemed as sexual harassment of a client or fellow agent
- Understand what an agent inspection disclosure is

## Chapter 2: Fair Housing Acts, Ethics & Regulations

### Key Terms

Americans with Disabilities Act	Executive Order 11063	law
California fair housing laws	Fair Employment and Housing Act (FEHA)	public accommodation
Civil Rights Act of 1866	Fair Housing Amendments Act of 1988	readily achievable
Civil Rights Act of 1964	fair housing legislation	Realtor Code of Ethics
Civil Rights Act of 1968	familial status	Redlining
Enforcement Act of 1870	Fourteenth Amendment	Rumford Act
Equal Credit Opportunity Act	Holden Act	sexual harassment
Ethics		steering
		Unruh Civil Rights Act

### Chapter Overview

This chapter will help readers:

- Understand the difference between ethics and the law
- Understand federal and state fair housing laws and how they regulate the real estate market
- Know the various laws that deal with fair housing and how a real estate professional adheres to these laws

### Ethics

**Ethics** are the set of societal standards that guide individuals' behavior to do what is deemed to be "right". Ethics are at the root of both personal affairs and business dealings. They follow the principle of "do for others as you would do for yourself".

### **Ethics vs. The Law**

The **law** refers to the regulations and minimum standards of conduct that bind citizens into a society. Although ethics inform and help shape the law, the two are distinct.

The law upholds fairly rigid standards. An individual's failure to uphold those standards is punishable by fines, jail time, or both.

Conversely, an individual's violation of ethical standards may be morally reprehensible, but it is not necessarily illegal. Ethics fall into more of a grey area that

is often subject to interpretation. What is ethical is not necessarily the same in every situation as ethical standards can vary from one person to another.

## Ethics and Real Estate

Real estate is a business that is built on trust. Therefore, an agent must have strong ethical standards in order to build a successful career.

Agents have a great responsibility to the clients they serve. A real estate agent should always treat clients the way he or she wants to be treated. This means conducting business with honesty, professionalism, good faith, hard work, and most of all, results.

An agent may be able to *legally* engage in unethical behavior in order to get ahead or to make more money. However, self-serving behavior is detrimental to the work that an agent provides to his or her clients. Poor service subsequently affects an agent's reputation, ability to get referrals, and overall business. Particularly unethical behavior may result in a revocation of an agent's real estate license.

An agent's work defines who he or she is. An ethical agent should:

- *Provide quality work.* If an agent provides quality service, a satisfied client will refer that agent to other clients. Referrals are imperative to a real estate agent's business and more effective than any marketing or sales technique. If an agent works for his or her clients, those clients will subsequently work for him or her.
- *Cultivate relationships, not just transactions.* Real estate is a business of relationships. The higher the quality of an agent's relationships, the stronger an agent's network. The stronger an agent's network, the higher an agent's chances are for obtaining referrals and increasing his or her volume of transactions. Therefore, agents should measure success by the number of satisfied clients, not just the size of their commission checks.
- *Focus on long-term success, not short-term deals.* Because agents must make commissions in order to survive, it can be easy for them to get into the habit of thinking in terms of short-term deals. However, sloppily rushing to close a deal can result in long-term damage to an agent's reputation and his or her ability to obtain referrals.

## Sexual Harassment

**Sexual harassment** is the offensive, unwarranted sexual advance, action, or language that violates one or more parties. Such behavior is both illegal and unethical. It devalues and intimidates, and can create long-lasting damages for its victims.

Being charged with sexual harassment can cause significant personal and professional

damage for a real estate agent. Sexual harassment cases are also time-consuming and costly.

Agents should always remain professional. They should avoid situations that can be construed as sexual, such as hugging or kissing a client. They should also refrain from making suggestive, chauvinistic, or sexist jokes to another real estate professional, particularly those of the opposite sex.

An agent should never initiate or accept the sexual advances of others.

### **Realtor Code of Ethics**

In an effort to eliminate unethical practices that discredit the real estate profession and protect the interests of real estate clients, The National Association of Realtors developed a **Realtor Code of Ethics**. The Code requires agents to uphold a certain set of ethical standards in the service of his or her client.

# Code of Ethics and Standards of Practice

## of the NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2018

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE®S.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

### Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/00)

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whosoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. (Amended 1/07)

### Duties to Clients and Customers

#### Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. (Amended 1/01)

- **Standard of Practice 1-1**

REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. (Amended 1/93)

- **Standard of Practice 1-2**

The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'s firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®'s firm; "prospect" means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR®'s firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. (Adopted 1/95, Amended 1/07)

- **Standard of Practice 1-3**

REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

- **Standard of Practice 1-4**

REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®'s services. (Amended 1/93)

- **Standard of Practice 1-5**

REALTORS® may represent the seller/landlord and buyer/tenant in the



same transaction only after full disclosure to and with informed consent of both parties. *(Adopted 1/93)*

• **Standard of Practice 1-6**

REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. *(Adopted 1/93, Amended 1/95)*

• **Standard of Practice 1-7**

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. *(Amended 1/93)*

• **Standard of Practice 1-8**

REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. *(Adopted 1/93, Amended 1/99)*

• **Standard of Practice 1-9**

The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:

- 1) reveal confidential information of clients; or
- 2) use confidential information of clients to the disadvantage of clients; or
- 3) use confidential information of clients for the REALTOR®'s advantage or the advantage of third parties unless:
  - a) clients consent after full disclosure; or
  - b) REALTORS® are required by court order; or
  - c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
  - d) it is necessary to defend a REALTOR® or the REALTOR®'s employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics. *(Adopted 1/93, Amended 1/01)*

• **Standard of Practice 1-10**

REALTORS® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. *(Adopted 1/95, Amended 1/00)*

• **Standard of Practice 1-11**

REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. *(Adopted 1/95)*

• **Standard of Practice 1-12**

When entering into listing contracts, REALTORS® must advise sellers/landlords of:

- 1) the REALTOR®'s company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;

2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and

3) any potential for listing brokers to act as disclosed dual agents, e.g., buyer/tenant agents. *(Adopted 1/93, Renumbered 1/98, Amended 1/03)*

• **Standard of Practice 1-13**

When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:

- 1) the REALTOR®'s company policies regarding cooperation;
- 2) the amount of compensation to be paid by the client;
- 3) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
- 4) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g., listing broker, subagent, landlord's agent, etc.; and
- 5) the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. *(Adopted 1/93, Renumbered 1/98, Amended 1/06)*

• **Standard of Practice 1-14**

Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. *(Adopted 1/02)*

• **Standard of Practice 1-15**

REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, REALTORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. *(Adopted 1/03, Amended 1/09)*

• **Standard of Practice 1-16**

REALTORS® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller. *(Adopted 1/12)*

## Article 2

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. *(Amended 1/00)*

• **Standard of Practice 2-1**

REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. *(Amended 1/96)*

• **Standard of Practice 2-2**

*(Renumbered as Standard of Practice 1-12 1/98)*

• **Standard of Practice 2-3**

*(Renumbered as Standard of Practice 1-13 1/98)*

• **Standard of Practice 2-4**

REALTORS® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

• **Standard of Practice 2-5**

Factors defined as "non-material" by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not "pertinent" for purposes of Article 2. *(Adopted 1/93)*

### Article 3

REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

- **Standard of Practice 3-1**

REALTORS®, acting as exclusive agents or brokers of sellers/ landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. *(Amended 1/99)*

- **Standard of Practice 3-2**

Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. *(Amended 1/14)*

- **Standard of Practice 3-3**

Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. *(Adopted 1/94)*

- **Standard of Practice 3-4**

REALTORS®, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker's firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/ landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. *(Amended 1/02)*

- **Standard of Practice 3-5**

It is the obligation of subagents to promptly disclose all pertinent facts to the principal's agent prior to as well as after a purchase or lease agreement is executed. *(Amended 1/93)*

- **Standard of Practice 3-6**

REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. *(Adopted 5/86, Amended 1/04)*

- **Standard of Practice 3-7**

When seeking information from another REALTOR® concerning property under a management or listing agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their relationship with the client. *(Amended 1/11)*

- **Standard of Practice 3-8**

REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. *(Amended 11/87)*

- **Standard of Practice 3-9**

REALTORS® shall not provide access to listed property on terms

other than those established by the owner or the listing broker. *(Adopted 1/10)*

- **Standard of Practice 3-10**

The duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords. *(Adopted 1/11)*

### Article 4

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. *(Amended 1/00)*

- **Standard of Practice 4-1**

For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS® prior to the signing of any contract. *(Adopted 2/86)*

### Article 5

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

### Article 6

REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. *(Amended 1/99)*

- **Standard of Practice 6-1**

REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. *(Amended 5/88)*

### Article 7

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR®'s client or clients. *(Amended 1/93)*

### Article 8

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

### Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. *(Amended 1/04)*

## **Case Interpretations of Professional Standards Produced by the National Association of Realtors**

### **Case #1-1: Fidelity to Client**

(Originally Case #7-1. Revised May, 1988. Transferred to Article 1 November, 1994.)

Client A complained to a Board of REALTORS® that two of its members, REALTORS® B and his sales associate, REALTOR-ASSOCIATE® C, had failed to represent the client's interests faithfully by proposing to various prospective buyers that a price less than the listed price of a house be offered. His complaint specified that REALTOR® B, in consultation with him, had agreed that \$137,900 would be a fair price for the house, and it had been listed at that figure. The complaint also named three different prospective buyers who had told Client A that while looking at the property, REALTOR-ASSOCIATE® C, representing REALTOR® B, when asked the price had said, "It's listed at \$137,900, but I'm pretty sure that an offer of \$130,000 will be accepted."

REALTOR® B and REALTOR-ASSOCIATE® C were notified of the complaint and requested to be present at a hearing on the matter scheduled before a Hearing Panel of the Board's Professional Standards Committee.

During the hearing, REALTOR® B confirmed that he had agreed with Client A that \$137,900 was a fair price for the house, and that it was listed at that figure. He added that he had asked for a 90 day listing contract as some time might be required in securing the full market value. Client A had agreed to do this but had indicated that he was interested in selling within a month even if it meant making some concession on the price. The discussion concluded with an agreement on listing at \$137,900 and with REALTOR® B agreeing to make every effort to get that price for Client A.

REALTOR-ASSOCIATE® C said in the hearing that REALTOR® B had repeated these comments of Client A and he, REALTOR-ASSOCIATE® C, had interpreted them as meaning that an early offer of about 10 percent less than the listed price would be acceptable to the seller, Client A. Questioning by the Hearing Panel established that neither REALTOR® B nor REALTOR-ASSOCIATE® C had been authorized to quote a price other than \$137,900.

It was the Hearing Panel's conclusion that REALTOR® B was not in violation of Article 1 since he had no reason to know of REALTOR-ASSOCIATE® C's actions. The panel did find REALTOR-ASSOCIATE® C in violation of Article 1 for divulging his knowledge that the client was desirous of a rapid sale even if it meant accepting less than the asking price. The panel noted that such a disclosure was not in the client's best interest and should never be made without the client's knowledge and consent.

### **Case #1-2: Honest Treatment of All Parties**

(Originally Case #7-2. Revised May, 1988. Transferred to Article 1 November, 1994. Cross-reference Case #2-18.)

As the exclusive agent of Client A, REALTOR® B offered Client A's house for sale, advertising it as being located near a bus stop. Prospect C, who explained that his daily schedule made it necessary for him to have a house near the bus stop, was shown Client A's property, liked it, and made a deposit. Two days later, REALTOR® B read a notice that the bus line running near Client A's house was being discontinued. He informed Prospect C of this, and Prospect C responded that he was no longer interested in Client A's house since the availability of bus transportation was essential to him. REALTOR® B informed Client A and recommended that Prospect C's deposit be returned.

Client A reluctantly complied with REALTOR® B's recommendation, but then complained to the Board of REALTORS® that REALTOR® B had not faithfully protected and promoted his interests; that after Prospect C had expressed his willingness to buy, REALTOR® B should not have made a disclosure that killed the sale since the point actually was not of major importance. The new bus route, he showed, would put a stop within six blocks of the property.

In a hearing before a Hearing Panel of the Board's Professional Standards Committee, REALTOR® B explained that in advertising Client A's property, the fact that a bus stop was less than a block from the property had been prominently featured. He also made the point that Prospect C, in consulting with him, had emphasized that Prospect C's physical disability necessitated a home near a bus stop. Thus, in his judgment, the change in bus routing materially changed the characteristics of the property in the eyes of the prospective buyer, and he felt under his obligation to give honest treatment to all parties in the transaction, that he should inform Prospect C, and that in so doing he was not violating his obligation to his client.

The Hearing Panel concluded that REALTOR® B had not violated Article 1, but had acted properly under both the spirit and the letter of the Code of Ethics. The panel noted that the decision to refund Prospect C's deposit was made by the seller, Client A, even though the listing broker, REALTOR® B, had suggested that it was only fair due to the change in circumstances.

### **Case #1-3: Net Listing**

(Originally Case #7-3. Revised May, 1988. Transferred to Article 1 November, 1994.)

Client A called REALTOR® B to list a small commercial property, explaining that he wanted to net at least \$170,000 from its sale. He inquired about the brokerage commission and other selling costs. REALTOR® B's response was: "You have indicated that \$170,000 net to you from the sale will be satisfactory. Suppose we just leave it at that and take all of the selling costs from the proceeds of the sale above \$170,000." Client A agreed.

The property was sold to Buyer C for \$220,000. After settlement, in which it was apparent that \$50,000 would go to REALTOR® B as commission, Client A and Buyer C both complained to the Board of REALTORS® about REALTOR® B's conduct in the matter, and a hearing was scheduled before the Board's Professional Standards Committee.

REALTOR® B's defense was that he had performed the service that Client A engaged him for precisely in conformance with their agreement. Buyer C had considered the property a good buy at \$220,000 and was happy with the transaction until he learned the amount of the commission.

The Hearing Panel found REALTOR® B in violation of Article 1 of the Code. The panel concluded that REALTOR® B had departed completely from his obligation to render a professional service in fidelity to his client's interest; that he had, in fact, been a speculator in his client's property; and that he had not dealt honestly with either party to the transaction.

#### **Case #1-4: Fidelity to Client**

(Originally Case #7-5. Revised May, 1988. Transferred to Article 1 November, 1994. Cross-reference Case #4-5.)

Client A contacted REALTOR® B to list a vacant lot. Client A said he had heard that similar lots in the vicinity had sold for about \$50,000 and thought he should be able to get a similar price. REALTOR® B stressed some minor disadvantages in location and grade of the lot, and said that the market for vacant lots was sluggish. He suggested listing at a price of \$32,500 and the client agreed.

In two weeks, REALTOR® B came to Client A with an offer at the listed price of \$32,500. The client raised some questions about it, pointing out that the offer had come in just two weeks after the property had been placed on the market which could be an indication that the lot was worth closer to \$50,000 than \$32,500. REALTOR® B strongly urged him to accept the offer, stating that because of the sluggish market, another offer might not develop for months and that the offer in hand simply vindicated REALTOR® B's own judgment as to pricing the lot. Client A finally agreed and the sale was made to Buyer C.

Two months later, Client A discovered the lot was no longer owned by Buyer C, but had been purchased by Buyer D at \$55,000. He investigated and found that Buyer C was a brother-in-law of REALTOR® B, and that Buyer C had acted on behalf of REALTOR® B in buying the property for \$32,500.

Client A outlined the facts in a complaint to the Board of REALTORS®, charging REALTOR® B with collusion in betrayal of a client's confidence and interests, and with failing to disclose that he was buying the property on his own behalf.

At a hearing before a panel of the Board's Professional Standards Committee, REALTOR® B's defense was that in his observation of real estate transactions there can be two legitimate prices of property—the price that a seller is willing to take in order to liquidate his investment, and the price that a buyer is willing to pay to acquire a property in which he is particularly interested. His position was that he saw no harm in bringing about a transaction to his own advantage in which the seller received a price that he was willing to take and the buyer paid a price that he was willing to pay.

The Hearing Panel concluded that REALTOR® B had deceitfully used the guise of rendering professional service to a client in acting as a speculator; that he had been unfaithful to the most basic principles of agency and allegiance to his client's interest; and that he had violated Articles 1 and 4 of the Code of Ethics.

### **Case #1-5: Promotion of Client's Interests**

(Originally Case #7-6. Revised May, 1988. Transferred to Article 1 November, 1994.)

Client A gave an exclusive listing on a house to REALTOR® B, stating that he thought \$132,500 would be a fair price for the property. REALTOR® B agreed and the house was listed at that price in a 90-day listing contract. REALTOR® B advertised the house without response, showing it to a few prospective buyers who lost interest when they learned the price. In a sales meeting in his office, REALTOR® B discussed the property, advised his associates that it appeared to be overpriced, and that advertising and showing of the property had proved to be a waste of time and money.

After six weeks had gone by without a word from REALTOR® B, Client A called REALTOR® B's office without identifying himself, described the property, and asked if the firm was still offering it for sale. The response he received from one of REALTOR® B's nonmember associates was: "We still have the house listed, but there is little interest in it because, in our opinion, it is overpriced and not as attractive a value as other property we can show you."

Client A wrote to the Board of REALTOR® complaining of REALTOR® B's action, charging failure to promote and protect the client's interest by REALTOR® B's failure to advise the client of his judgment that the price agreed upon in the listing contract was excessive, and by REALTOR® B's failure to actively seek a buyer.

In a hearing on the complaint before a Hearing Panel of the Board's Professional Standards Committee, REALTOR® B's response was that Client A had emphatically insisted that he wanted \$132,500 for the property; that by advertising and showing the property he had made a diligent effort to attract a buyer at that price; that in receiving almost no response to this effort he was obliged to conclude that the house would not sell at the listed price; that in view of the client's attitude at the time of listing, he felt it would be useless to attempt to get Client A's agreement to lower the listed price; and that he had instructed his staff not to actively market the property at that price.

The Hearing Panel concluded that REALTOR® B was in violation of Article 1; that he had been unfaithful in his obligations in not advising his client of his conclusion that the property was overpriced, based on the response to his initial sales efforts; and in withholding his best efforts to bring about a sale of the property in the interests of his client.

### **Case #1-6: Fidelity to Client's Interests**

(Originally Case #7-7. Reaffirmed May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

REALTOR® A managed an apartment building owned by Client B. In his capacity as property manager, REALTOR® A received a written offer to purchase the building from Buyer C. REALTOR® A responded that the building was not for sale. A few days later Buyer C met Client B and told him that he thought he had made an attractive offer through his agent, and indicated that he would be interested in knowing what price would interest Client B. Client B answered that he had received no offer through REALTOR® A and asked for the details.

Client B then filed a complaint against REALTOR® A with the local Board of REALTOR® charging failure to represent and promote his interests. His complaint specified that while REALTOR® A had been engaged as a property manager, he had at no time told him not to submit any offers to buy, and that in the absence of any discussion whatever on this point, he felt that REALTOR® A should have recognized a professional obligation to acquaint him with Buyer C's offer which, he stated in the complaint, was definitely attractive to him.

REALTOR® A was notified of the complaint and directed to appear before a panel of the Board's Professional Standards Committee. In his defense,

REALTOR® A stated that his only relationship with Client B was a property manager under the terms of a management contract; that he had not been engaged as a broker; that at no time had the client ever indicated an interest in selling the building; that in advising Buyer C that the property was not on the market, he felt that he was protecting his client against an attempt to take his time in discussing a transaction which he felt sure would not interest him.

It was the conclusion of the Hearing Panel that REALTOR® A was in violation of Article 1; that in the absence of any instructions not to submit offers, he should have recognized that fidelity to his client's interest, as required under Article 1 of the Code of Ethics, obligated him to acquaint his client with a definite offer to buy the property; and that any real estate investor would obviously wish to know of such an offer.

### **Case #1-7: Obligation to Protect Client's Interests**

(Originally Case #7-8. Reaffirmed May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

Client A, an army officer, was transferred to a new duty station and listed his home for sale with REALTOR® B as the exclusive agent. He moved to his new station with the understanding that REALTOR® B, as the listing broker, would obtain a buyer as soon as possible. After six weeks, during which no word had come from REALTOR® B, the client made a weekend visit back to his former community to inspect his property. He learned that REALTOR® B had advertised the house: "Vacant—Owner transferred," and found an "open" sign on the house but no representative present. Upon inquiry, Client A found that REALTOR® B never had a representative at the property but continually kept an "open" sign in the yard. Client A discovered that the key was kept in a combination lockbox, and when REALTOR® B received calls from potential purchasers about the property, he simply gave callers the address, advised that the key was in the lockbox, gave them the combination, and told them to look through the

house by themselves and to call him back if they needed other information or wanted to make an offer.

Client A filed a complaint with the Board of REALTORS® detailing these facts, and charging REALTOR® B with failure to protect and promote a client's interests by leaving Client A's property open to vandalism, and by not making appropriate efforts to obtain a buyer.

REALTOR® B's defense during the hearing was that his advertising of the property was evidence of his effort to sell it. He stated, without being specific, that leaving keys to vacant listed property in lockboxes and advising callers to inspect property on their own was a "common local practice."

The Hearing Panel concluded that REALTOR® B was in violation of Article 1 of the Code of Ethics because he had failed to act in a professional manner consistent with his obligations to protect and promote the interests of his client.

#### **Case #1-8: Knowledge of Essential Facts**

(Originally Case #7-10. Reaffirmed May, 1988. Transferred to Article 1 November, 1994.)

Client A listed a small house with REALTOR® B who obtained an offer to buy it and a deposit in the form of a check for \$2,000. Client A agreed to accept the offer, then heard nothing from REALTOR® B, the listing broker, for three weeks. At that time REALTOR® B called him to say that the sale had fallen through and that the buyer's check had been returned by the bank marked "Not Sufficient Funds."

Client A complained to the local Board of REALTORS® against REALTOR® B charging him with dilatory and unprofessional conduct and apparent unfamiliarity with essential facts under laws governing procedures in real estate transactions.

At the hearing, it was established that two days after making the offer the buyer had refused to sign escrow instructions, and that REALTOR® B had not deposited the buyer's check until ten days after receiving it.

REALTOR® B's defense was that since the return of the check he had received numerous promises from the buyer that it would be made good, and that the buyer's reason for refusing to sign escrow instructions was to give the buyer's attorney time to read them. Questioning during the hearing established that the check had not been made good, the escrow instructions had not been signed, and that the delay had caused great inconvenience and possible loss to Client A.

The Hearing Panel concluded that REALTOR® B should have deposited the check immediately, in which event it would either have been accepted, or its NSF status could have been known and reported to the client at once; that REALTOR® B should have advised his client immediately of the buyer's refusal to sign escrow instructions; that in this negligence REALTOR® B reflected a lack of adequate knowledge of essential facts under laws governing

real estate transactions, and was in violation of Article 1 of the Code of Ethics, having failed to protect the client's interests.

### **Case #1-9: Exclusive Listing During Term of Open Listing**

(Originally Case #7-11. Revised May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

During a Board of REALTORS® luncheon, REALTOR® A described to those at the table an old house in a commercial area which was open listed with him and invited the others to cooperate with him in selling the property. REALTORS® X and Y said they also had the property open listed but had found very little interest in it. REALTOR® B made no comment, but feeling he could find a buyer for it, went to the owner and discussed the advantages of an exclusive listing. The owner was persuaded and signed an exclusive listing agreement with REALTOR® B, telling him at the time that he had listed the property on an "open" basis for 30 more days with REALTORS® A, X, and Y. REALTOR® B's comment was, "Just don't renew those open listings when they expire."

A few days later, REALTOR® A brought the owner a signed offer to purchase the property at the asking price. The owner told REALTOR® A that he now had the property exclusively listed with REALTOR® B, and asked him to submit the offer through REALTOR® B. Before REALTOR® A could contact REALTOR® B, REALTOR® B had taken another offer to purchase the property at the asking price to the owner. Confronted with two identical offers, the owner found both REALTOR® A and REALTOR® B expected full commissions for performance under their respective existing listing agreements. The owner filed an ethics complaint with the Board of REALTORS® alleging violations of Article 1 of the Code of Ethics because of the difficult position he had been placed in by REALTOR® A and REALTOR® B. The owner alleged neither of them had warned him that he might be liable for payment of more than one commission.

A hearing before a panel of the Board's Professional Standards Committee established the facts to be as outlined above. In reviewing the actions of REALTOR® A, the Hearing Panel found that he was not at fault; that he had performed as requested under his listing agreement. On the other hand, it was the conclusion of the Hearing Panel that REALTOR® B had violated Article 1 by failing to advise the owner of his potential commission obligation to the other listing brokers when the client told him other listing agreements were in force.

The Hearing Panel pointed out that because of REALTOR® B's omission his client, through no fault of his own, may have incurred legal liability to pay two commissions; that REALTOR® B should have advised the owner of his potential liability for multiple commissions; and that by not doing so REALTOR® B had failed to protect his client's interests as required by Article 1.

### **Case #1-10: Obligations Under Exclusive Listing**

(Originally Case #7-12. Reaffirmed May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

At the time Client A signed an exclusive listing agreement with REALTOR® B, they discussed market conditions and prevailing prices, and agreed on listing at \$156,900. After six weeks with no apparent interest in the house, Client A called REALTOR® B to learn why his property was receiving scant attention from prospective buyers. REALTOR® B said, "It's not hard to diagnose the trouble. Your property is overpriced. That was clear to me by the time we had it listed for ten days. In this market, it would take a really interested buyer to go as high as \$149,000 for it. That's why it hasn't been possible for us to push it." "When you reached that conclusion, why didn't you tell me?" asked Client A. "Because," said REALTOR® B, "it wouldn't have done any good. I know from experience that sellers can't be convinced that they are overpricing their property until they get tired of waiting for an offer that will never come. Now that the market has taught you something that you would not take as advice, let's reduce the price to \$148,900 and push it."

Client A complained about REALTOR® B to the Board of REALTORS®, detailing these circumstances, strongly insisting that REALTOR® B had fully agreed with him on the price at which the property was originally listed.

Client A reiterated this point strongly at the hearing of his complaint which was held before a Hearing Panel of the Board's Professional Standards Committee. REALTOR® B did not contest this, taking the position that at the time of the listing it was his judgment that a price of \$156,900 was fair and obtainable in the market. He stated that a strong immediate sales effort had convinced him that the listed price was excessive, and he defended his action of reducing his sales effort as he had done in his discussion with the client. He said that many years of experience as a broker had convinced him that once a seller decides on a definite price for his property, no argument or analysis will shake his insistence on getting that price; that only inaction in the market is convincing to the sellers.

The Hearing Panel concluded that REALTOR® B's conduct had violated Article 1 of the Code of Ethics, which requires REALTORS® to protect and promote their clients' interests. The panel also found that since REALTOR® B honestly felt the original listing price of \$156,900 was the fair market value at the time he listed it, REALTOR® B had not violated the Code of Ethics by suggesting that the price be lowered. However, since REALTOR® B later concluded the property was overpriced, he should have immediately notified Client A of his conclusion and not waited for Client A to call him six weeks later.

## **Federal Fair Housing Laws**

The federal government has passed extensive **fair housing legislation** in order to prevent discrimination in the real estate industry. These laws protect consumers of all backgrounds, races, religions, health status, sex, or sexual orientation.

The need for such laws stems from a dispute over the contents of the Declaration of Independence in the early part of the United States' history.

## History

Upon its independence from the British Empire, the United States adopted the Declaration of Independence as a guiding principle. The document stated:

*"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."*

This provision openly condemned an issue that divided the newly independent states: slavery. Some states, primarily in the North, opposed slavery on moral grounds. They cited the Declaration of Independence as an argument against it. Other states in the South renounced the document's "all men are created equal" provision and claimed that slavery was a state's decision.

Congress attempted to outlaw slavery in the Missouri Compromise of 1819. However, the Supreme Court subsequently ruled the Act to be unconstitutional in 1857. The "Dred Scott Decision" proclaimed that individual states had the power to make their own decision regarding slavery.

Because of this decision, it would become necessary to pass future state and federal antidiscrimination laws.

## Civil Rights Act of 1866

The **Civil Rights Act of 1866** was passed to establish equal protection for all American citizens. The Act established basic guidelines for how consumers could be treated in the marketplace.

In terms of real estate, it was the first federal housing law. It prevented property owners from discriminating on the basis of race in the selling, buying, leasing, renting, holding, conveying, or inheriting of land.

However, although progressive for its time, the Act did not include any federal enforcement provisions. It also did not protect against other forms of discrimination, such as disabilities or religion. Future housing laws would address these protections.

## Fourteenth Amendment

The government feared that a future Congress, Senate, or President might try to repeal the Civil Rights Act of 1866. To protect the Act's provisions, the government passed the **Fourteenth Amendment** in 1868. This made the equal protection of all American citizens part of the Constitution, ensuring that any future attempts at repeal would be more difficult.

## Enforcement Act of 1870

Supporters of the Civil Rights Act of 1866 also passed the **Enforcement Act of 1870**. It empowered the President to enforce the first section of the Fifteenth Amendment, which prohibited state and federal governments from denying a citizen the right to vote based on race.

Unfortunately, the Act's provisions would not be fully institutionalized until the passage of other civil rights acts 90 years later.

## Executive Order 11063

On November 21, 1962, President John F. Kennedy issued **Executive Order 11063**.

*"...the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin".*

In short, the Order prohibited discrimination in real estate situations where federal money was used. Although not overly specific, the Order changed the course of modern housing policies and helped set the course for real estate, financing, and credit-based transactions.

## Civil Rights Act of 1964

The **Civil Rights Act of 1964** was a landmark piece of legislation that outlawed discrimination on the basis of color, race, religion, sex or national origin. The Act sought to end the long era of racial segregation by granting equal protection in public institutions, workplaces, and the real estate marketplace.

## Civil Rights Act of 1968

The **Civil Rights Act of 1968** – also known as the Fair Housing Act – outlawed discrimination in the real estate market. An extension of the Civil Rights Act of 1964, it provided more specificity in regards to how the legislation would protect citizens.

The Act made it a federal crime for real estate professionals and consumers to “by force or by threat of force, injure, intimidate, or interfere with” the selling, buying, renting, or leasing of property to individuals on the basis of color, race, religion, sex or national origin.

It made the following actions illegal:

- Refusing to show, sell, or rent available property to certain individuals or groups
- Advertising only to a specific group of people, or intentionally indicating a preference for a specific group of people
- Preventing, or steering away certain individuals or groups from renting or buying in specific neighborhoods
- Redlining, or refusing to loan, to certain individuals or groups
- Trying to prevent or intimidate individuals who wish to report fair housing complaints

One practice outlawed by the Civil Rights Act of 1968 was blockbusting. **Blockbusting** occurs when an agent induces a property owner to sell his or her property for below market prices due to the changing racial makeup of the neighborhood. An agent scares a property owner into believing that the area’s changing demographics will negatively affect property values in the future.

## Fair Housing Amendments Act of 1988

The **Fair Housing Amendments Act of 1988** strengthened all previous fair housing legislation.

The Act outlawed discrimination on the basis of familial status. **Familial status** refers to the makeup of a family unit. The Act ruled that properties could no longer have a designated adult-only section. It did grant landlords the ability to establish a family section in their buildings, however.

The Act also outlawed discrimination on the basis of a disability. This includes both physical and mental disabilities. A landlord cannot refuse to rent to an individual with a guide dog or an emotional support animal, nor can he or she charge such an individual a higher rent or security deposit.

Disabled tenants also have the right to make necessary changes to their unit for the purpose of enjoyment or convenience. While the landlord cannot raise the tenant's rent because of these alterations, he or she can require the tenant to return the unit to its original condition upon the termination of the lease.

The Act also:

- Outlawed steering. **Steering** is the illegal practice of directing clients towards or away from a specific neighborhood on the basis of a race, religion, or ethnicity.
- Allowing The Department of Housing and Urban Development (HUD) to take an active role in enforcing the real estate market's rules and regulations. It gave them the power to both prevent and penalize housing discrimination.
- Requiring brokers to display an "Equal Housing Opportunity" sign at their place of business as a reminder that all real estate clients have an equal opportunity to apply for financing regardless of race, color, or religion.

U. S. Department of Housing and Urban Development



**We Do Business in Accordance With the Federal Fair Housing Law**

(The Fair Housing Amendments Act of 1988)

**It is illegal to Discriminate Against Any Person Because of Race, Color, Religion, Sex, Handicap, Familial Status, or National Origin**

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the provision of real estate brokerage services
- In the appraisal of housing
- Blockbusting is also illegal

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**Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination:**

1-800-669-9777 (Toll Free)  
1-800-927-9275 (TTY)

**U.S. Department of Housing and Urban Development  
Assistant Secretary for Fair Housing and Equal Opportunity  
Washington, D.C. 20410**

## Americans with Disabilities Act

The **Americans with Disabilities Act** was signed into law in 1990 by President George H. W. Bush. The Act prevents landlords, private companies, and public institutions from discriminating against disabled individuals by ensuring equal opportunity and access to goods, services, and use of facilities.



The Act makes it illegal for both public and private employers to discriminate against disabled individuals in hiring, firing, compensation, and the availability of employment opportunities.

The Act also requires private businesses that have more than 15 employees to make accommodations for current or future disabled employees. Such adjustments may include designating handicapped parking, creating wheelchair ramps, ramping curbs, or providing handicapped bathroom stalls.

Companies with fewer than 15 employees must provide accommodations if they are **readily achievable**, or easily accomplishable without much difficulty or expense. The government considers a business owner's property and business value relative to the cost of adjustments and whether the property is structurally capable of the desired changes. If proposed alterations are not readily achievable, a business owner does not need to make them.

First time violations to the Act can result in fines of up to \$50,000. This includes the cost of attorney, damages, court fees, and other associated costs.

Certain properties – including commercial and larger residential properties – may be required to have a place of public accommodation. **Public accommodation** refers to places or things that are required for specific groups of people, or the public in general. This includes restrooms, ramps, specific walkways, and elevators.

The Fair Employment and Housing Act requires new housing projects to be built in a manner that provides access to the property to the disabled.

## Public Facility Modifications for the Handicapped



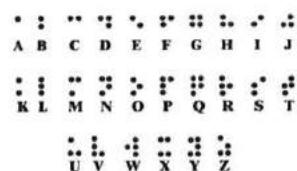
Increased Door Width



Access Ramp



Wheelchair Accessible



Brail



Guide Dog



Automatic Sliding Doors

## Equal Credit Opportunity Act

The **Equal Credit Opportunity Act** prohibits discrimination of credit applicants on the basis of race, religion, sex, marital status, or the fact that part or all of their income derives from public assistance.

The Act applies to every entity involved in extending credit, including banks, lenders, finance companies, credit card companies, and auto financiers.

Its provisions are regulated by the Federal Trade Commission.

## California Fair Housing Laws

Much like federal housing laws, **California fair housing laws** prohibit discrimination on the basis of race, religion, color, sex, or marital status in the sale, rent, lease, or transfer of property.

These state laws protect consumers if discrimination is found in the following situations:

- A property owner refuses to rent a unit or sell a home to certain individuals or groups
- A property owner gives different terms and conditions for the rental or purchase of a property to certain individuals or groups
- A financing company provides different rates and qualification standards to certain individuals or groups

## Unruh Civil Rights Act

The **Unruh Civil Rights Act** is a California law that prohibits businesses from discriminating against consumers who wish to use their products or services. The law applies to restaurants, hotels, retail stores, hospitals, office spaces, and housing.

Violations of the Unruh Act may result in a fine of up to \$4,000 and possible additional penalties.

## Rumford Act

The California Fair Housing Act of 1963 – more commonly known as the **Rumford Act** – was passed amidst the sweeping social and geographical changes of the post-World War II period. The Act was a significant equal protection housing law that protected African Americans and people of color against housing discrimination in

California. It addressed the shortcomings of previous housing laws, particularly regarding enforcement.

While both the Unruh Act and Rumford Act protect consumers, the Unruh Act covers general businesses and the Rumford Act deals specifically with real estate.

### **Holden Act**

Passed in 1977, the **Holden Act** prohibits financial institutions and creditors from discriminating against borrowers on the basis of race, religion, color, sex, or marital status. The Act promotes equal opportunity on the qualification of purchase, refinance, and construction loans.

The Act also banned the practice of redlining. **Redlining** refers to when a financial institution avoids lending money in specific neighborhoods or areas. The Act made it illegal for a lender to consider the location of a borrower as the primary component of qualification, rather than the borrower's actual qualifications.

### **California Fair Employment and Housing Act**

The **Fair Employment and Housing Act (FEHA)** was enacted in 1959 to prohibit discrimination in hiring and employment. The Act protects employees from unfair or retaliatory actions by employers, labor organizations, and employment agencies.

*"It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status"* (Government Code §§12920).

The Act also strengthened provisions against sexual harassment.

If the rights of a party have been violated, he or she must file a formal complaint with the Department of Fair Employment and Housing within one year of the violation. If a lawsuit ensues, the violating party will be required to pay the violated party's attorney fees and other related legal expenses.