

**Connecticut Real Estate
Agency Law Review
and Fair Housing**
Part Two

**Mandatory Continuing
Education Course
2018-2020 CE Cycle**

This course was developed by the **UConn Center for Real Estate**
at the request of the **Connecticut Real Estate Commission**

We thank the following individuals for their contributions to this course:

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- Ben Castonguay; Chair, Connecticut Real Estate Commission
 - Lana Ogrodnik; Connecticut Real Estate Commission
 - Amy Bergquist; Connecticut Real Estate Commission
 - Kelly Harvey; Examiner, CT Department of Consumer Protection
 - Kristen Haseney, Esq.; Associate Counsel, Connecticut REALTORS®
 - Terry Hastings; Andover Real Estate Institute
 - Rhonda Ivey-Lentini; Dynamic Directions, Inc.
 - Erin Kemple; Executive Director, Connecticut Fair Housing Center
 - Lucy Michaud, Esq.; Asst. Ext. Professor, UCONN Center for Real Estate
 - Valerie Votto, Esq.; Valerie Ann Votto, LLC

We also want to thank the National Association of Realtors for granting permission to use the NAR Principles in this course.

Overview of this 3-Hour Mandatory Continuing Education Course for all Connecticut Real Estate Licensees

- Security Deposits
- Licensee Mistakes
- Fair Housing Laws
- NAR Principles



This course meets the minimum requirements as set forth by the Connecticut Department of Consumer Protection and Connecticut Real Estate Commission.

Connecticut Real Estate 3-Hour Agency Law Review and Fair Housing (Part Two)

	<u>Slide #</u>	<u>Minutes</u>
1. Security Deposits.....	5	15
2. Real Estate Licensee Mistakes.....	9	30
3. Fair Housing Laws.....	17	120
4. NAR Principles.....	63	<u>15</u>
	Total = 3 Hours	



SECURITY

DEPOSITS

Security Deposits

- Landlords may require tenants to pay a security deposit in advance not to exceed more than two months rent.
- Any payments made in advance that exceed the first month's rent are considered to be security deposits.
- Landlords must pay interest on tenants' funds being held as security deposits in accordance with the annual rate of interest as determined by the CT Banking Commissioner.

Security Deposits from Tenants

- Landlords may only accept a security deposit up to a maximum of **one** month's rent from tenants age 62 or over.
- Tenants who turn 62 during their tenancy may request a refund of any security deposits in excess of one month's rent being held by the landlord.

Return of Security Deposits

- Landlord must return the security deposit, plus statutory interest, within 30 days after the tenant vacates the apartment.
- Landlord may retain a portion of the security deposit to make necessary repairs, and must provide an itemized list of the repairs and the costs to the tenant.
- Necessary repairs are defined as damage that exceeds ordinary wear and tear.
- If landlord does not return the security deposit within 30 days, tenant may receive double the amount of the security deposit.

Rental Security Deposit Interest Rates are in Notes section.



REAL ESTATE
LICENSEE

MISTAKES

Real Estate Licensee Mistakes

- Improper and Illegal Advertising
- “Coming Soon” – Licensees are not showing and advertising the house in accordance with the listing agreement.
- Failing to include all required information in online advertising
- Accepting unethical or illegal referral fees
- Not abiding by Fair Housing laws

Improper and Illegal Advertising

- It is improper to post properties without the affiliated broker's written permission.
- It is illegal to use photos without obtaining permission from the owner of the photograph.

“Coming Soon”

If a property is “Coming Soon,”

- there is a **valid listing contract** between the seller and the listing broker; and
- the listing is **not available to show** because the seller instructs the broker that the listed property is not ready for market.

Online Advertising

All online advertising must include the following information on the broker's home page:

- licensee's name and office address
- name of affiliated broker
- all states where licensee is licensed
- last date when property information was updated

Online information must be updated at least once every 72 hours.

Referral Fees

- Brokers and salespersons are prohibited from receiving compensation for referring clients to a bank or attorney.
- Referral fees are prohibited when any portion of a real estate commission is paid to someone engaging in the real estate business without a license.

RESPA / Referral Fees

- RESPA law prohibits real estate agents from receiving anything of value from real estate settlement service providers for referring business to them.
- Licensees are prohibited from giving anything of value to a settlement service provider for the referral of closing business.

Now, for the TEST...



QUESTION:

A real estate attorney and a broker have offices next door to each other. The attorney pays \$100 for every new client referred from the broker. Is this okay?

ANSWER:

NO! It is against the law for attorneys to pay referral fees to brokers. RESPA prohibits real estate agents from receiving a “thing of value” for referring business to a real estate settlement service provider.



FAIR HOUSING

LAWS

FAIR HOUSING LAW

- It is illegal for a licensee acting in the real estate business to discriminate against any person in a protected category (class).
- Violations may result in additional mandatory continuing education, monetary penalties, license suspension, or agents **losing their real estate license.**

CT Fair Housing Law

An agent refusing to represent, sell, or lease based on the fact of a person's protected category would be discrimination.

CT Discriminatory Housing Practices Act:

Conn. Gen. Stat. § 46a-64c provides individuals with disabilities, and those who assist individuals with disabilities, protections against discrimination in the sale or rental of housing units.

FAIR HOUSING

Federal and State Protected Classes

Federal Protected Classes:

- Race
- Color
- National Origin
- Sex
- Religion
- Familial Status
- Disability

Additional CT Protected Classes:

- **Ancestry**
- **Marital Status**
- **Sexual Orientation**
- **Age (except minors)**
- **Lawful Source of Income**
- **Gender Identity or Expression**
- **Status as a Veteran**

Fair Housing Laws

- Civil Rights Act of 1866 (42 USC §1983)
- Federal Fair Housing Act and Amendments of 1988 (42 USC §3604ff)
- Connecticut Fair Housing Act (Conn. Gen. Stat. 46a-64c)
- Rehabilitation Act of 1973 (29 U.S. Code §701)

Begin by Asking Three Questions:

- Is the person covered?
- Is the property covered?
- Is the behavior covered?

If the answer to all three questions is Yes, then the Fair Housing laws apply.

Civil Rights Act of 1866

- All persons born in the United States are citizens, “without regard to any previous condition of slavery or involuntary servitude.”
- Citizens have the same rights, to make and enforce contracts, to purchase and sell real and personal property.
- Citizens have “full and equal benefit of all laws ... for the security of person and property.”

Federal Fair Housing Act

(Title VIII of the Civil Rights Act of 1968)

- Passed in 1968 (amended in 1974)
- Prohibits discrimination in the sale, rental, and financing of housing based on race, color, national origin, religion, sex, familial status, and disability.

Connecticut Fair Housing Law

Protected classes:

- race, creed, color, national origin, ancestry, sex, gender identity or expression, marital status, age, lawful source of income, familial status
- veteran status, learning disability, physical or mental disability

Familial Status

Familial Status Households include:

- a parent or guardian and children under 18, or someone standing in the place of a parent or guardian
- a pregnant woman
- families in the process of obtaining custody of a child under the age of 18

Disability Definition

- Physical or mental “impairment”
 - a condition or disease that affects the mind or the body
- that “substantially” limits
 - for a long period of time or to a great degree
- one or more “major life functions”
 - walking, talking, breathing, seeing, hearing, self-care, paying bills, etc.

Disability, cont'd

Definition

- record of having a substantial impairment
 - Receipt of SSI, SSDI, history of treatment or hospitalization
- considered by others to be disabled
 - Person in recovery from drug or alcohol abuse is considered disabled

Is the Person Covered?—Disability

- A person who is a threat to the health or safety of others is not protected.
 - Do not have to rent or sell to a person who is a threat to the health of safety of others.
 - Must have evidence that this person is a threat to the health of safety of others.

Is the Person Covered? Connecticut Fair Housing Act

- Marital Status
 - Does not protect an unmarried, unrelated man and woman
- Sexual Orientation
 - Having a preference for heterosexuality, homosexuality, or bisexuality
- Age (except minors)

Is the Person Covered?

Connecticut Fair Housing Act

- Lawful Source of Income
 - Includes housing vouchers, security deposit guarantee program, SSI, Social Security Disability, trust funds, disability pension, etc.
- Gender identity or expression
 - A person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth

Is the Person Covered? Connecticut Fair Housing Act

- Status as a Veteran
 - Went into effect on October 1, 2017
 - Veteran is any person honorably discharged from, or released under honorable conditions from active service in, the armed forces

State and Federal Fair Housing Laws Prohibit

- Differential treatment by brokers of people in any of the protected classes
- Denying any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings

State and Federal Fair Housing Laws Prohibit

Discriminating against someone in a protected class by:

- Refusing to rent or sell
- Refusing to negotiate for the rental or sale of a dwelling
- Misrepresenting the availability of a dwelling

State and Federal Fair Housing Laws Prohibit

- Having different terms and conditions for people in the protected classes
- Steering
- Discriminatory statements
- Discriminatory advertising

Is the Behavior Covered?

Differential Treatment

- Blockbusting—for profit, to induce or attempt to induce someone to sell or rent a dwelling by representations regarding the entry into the neighborhood of people of a different race, color, religion, sex, disability, familial status, or national origin are moving in

Is the Behavior Covered?

Disparate Impact

- Neutral rule that has a disparate impact (greater effect) on members of a protected class
- Occupancy standards
 - Example—two people per bedroom has a disparate impact on families with children

Is the Behavior Covered?

Familial Status

- Occupancy standards—better to use square footage of the unit
 - For example, State Building Code Occupancy Standards
 - 150 square feet for one person
 - 100 square feet for each additional person
 - Rooms used for sleeping purposes—70 square feet for one person; 50 square feet if more than one person
 - Measure habitable space

Is the Behavior Covered? Disability

- Cannot refuse to rent or sell to a person because she is disabled or because a member of her household is disabled
- Cannot have different rules for people who are disabled than for everyone else
- Cannot steer people who are disabled

Differential Treatment

- Differential treatment is a failure to make a reasonable accommodation.
- Reasonable accommodation is a change in a rule, policy, or practice.
- An unreasonable accommodation would cause an undue financial or administrative burden.

Is the Behavior Covered?

Reasonable Accommodations

- How to request Reasonable Accommodations (RA):
 - If the disability is obvious and the need for the change in the rule, policy or practice is obvious, the RA request does not have to be in writing.
 - The RA request does not have to be on a form prescribed by a housing provider.
 - Cannot require a person requesting a RA to allow access to his or her medical records.

Is the Behavior Covered?

Reasonable Accommodations, cont'd

- If in writing, can get a description of the limitation (e.g. cannot walk more than 75 feet) and a description of the change in rule, policy or practice (e.g. assign a parking place within 75 feet of front door).
- Change must be necessary for the person to live in the housing unit.
- The treating medical professional and the patient decide what is necessary, not the housing provider.

Reasonable Accommodations

Kinds of Animals

- Two kinds of animals involved in reasonable accommodations
 - Service animal—performs a service for the person who is disabled, e.g. seeing eye dog, seizure alert animal
 - Emotional support animal—companion animal that provides a benefit for a person with a disability
- Do not have to be licensed, trained or certified as service animals or emotional support animals

Reasonable Accommodations Cannot Deny Service Animals

- Cannot deny a service animal or emotional support animal due to:
 - Building, condo association, coop or homeowner association has a “no pet” policy
 - Size of the animal
 - Breed of the animal
 - “Everyone will want one”
 - Insurance company won’t provide insurance for that animal breed/size

Reasonable Accommodations

Service or Companion Animals

If the disability is:

- obvious and the need for the companion or service animal is obvious, person does not have to request the accommodation in writing
- not obvious or the need for the service animal or companion animal is not obvious, then occupant should get a statement from a treating medical provider that explains the limitation (person has an anxiety that makes it difficult for her to be home alone) and the change in the rule, policy or practice (let her have an emotional support animal)

Is the Behavior Covered?

Reasonable Modifications

- For purposes of the fair housing laws, differential treatment is failing to make a reasonable modification.
- Reasonable modifications may cost money, such as:
 - building a ramp
 - widening a doorway

Is the Behavior Covered?

Who has to make modifications?

- Owners of housing with federal operating subsidies must make modifications.
- Federal operating subsidies include for example, in-place Section 8 units, Section 236 housing, Section 221 housing, NOT Low-Income Housing Tax Credit housing.

Is the Behavior Covered?

Who pays for reasonable modifications?

- Owners who do not have federal operating subsidies must permit occupants to make modifications at their own expense.
- Some towns have low-interest loans for people who need to make modifications.
- VA has money for modifications sometimes.

Is the Behavior Covered?

Maintaining Modification

- Owner must maintain the modification if he/she would maintain that portion of the property anyway
- Landlord/condominium association must maintain a ramp if the landlord/condominium association maintains the sidewalk and steps to the front door.

Is the Behavior Covered?

Disability Modifications

- If a tenant moves out, the tenant must restore inside of the unit.
- If modifications are made to outside of the unit, modification can stay.
- If modifications made to inside of a unit are owned by occupant, owner can decide whether to restore inside of unit.

Disparate Treatment—Disability

- Failure to construct covered multi-family housing built for first occupancy after March of 1991 in accordance with the accessibility requirements of the fair housing laws shall be considered discrimination.

Real Estate Brokers

- Create and enforce a non-discrimination policy
- See Article 10 of National Association of Realtors Code of Ethics
- Review compliance with the fair housing laws as part of annual review or supervision of employees
- Review and evaluate the location of homes shown and sold to determine if steering is going on

Real Estate Brokerage Policy

- Put any rules in writing and have available for clients, e.g. must be prequalified for a mortgage before you can look at houses, or client must choose homes to look at, not the real estate agent.
- Make sure all agents follow rules with all clients.
- Define service area so that it does NOT exclude certain neighborhoods.

Real Estate Brokers and Salespersons

Office Policy Manual

- Any client-focused rules should include a statement that the agent and agency makes reasonable accommodations for a client's disability.
- Include information in the office policy manual about how to request a reasonable accommodation.

Real Estate Brokers and Salespersons

Qualification Standards for Rentals

- Review owner's qualification standards to determine if any violate the fair housing laws.
- Do not agree to represent owner who insists on illegal qualification standards.
- Ask that all qualification standards be in writing and available to give to applicants.

Real Estate Brokers and Salespersons

Qualified Applicants for Rentals

- Ask owners to define how they will decide among equally qualified applicants, e.g. first to see the unit, first to put down a security deposit, etc.
- Be sure that any qualification standards include a statement on reasonable accommodations and how to request a reasonable accommodation.
- Discuss with the owner who will decide when a reasonable accommodation is requested.

Fair Housing and Criminal Records

HUD issued a memorandum on April 4, 2016 evaluating whether:

- the criminal history policy has a discriminatory effect;
- the policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest; and
- there is a less discriminatory alternative.

Case example #1

- Tenant has multiple sclerosis and has difficulty going up and down stairs. He requested a transfer to a first floor unit as an accommodation to his disability. He was offered a first floor unit in a different building and turned it down. The housing provider refused to keep him at the top of the transfer waiting list saying he lost his chance for a reasonable accommodation by turning down the unit that was offered him.
- In this case, the housing provider violated the law. The tenant should not have been removed from the top of the transfer waiting list for turning down a unit. He is entitled to stay at the top of the list as a reasonable accommodation to his disability.

Case example #2

- An African-American family is moving to Connecticut from out of state. They contacted a real estate agent saying that they were interested in buying a 3-bedroom home near New Haven with an attached garage. They have been preapproved for a \$450,000 mortgage. The agent shows them homes in New Haven and North Haven. All of the homes were listed at or below \$350,000.
- In this case, the family may be the victims of steering. New Haven and North Haven have large African-American populations while many of the other municipalities have large White populations. This couple could afford to live in many different municipalities near New Haven not just the areas with large African-American populations that also have lower prices.

Case example #3

- A couple owns a one-bedroom condominium. After they had a baby they received notice from the management company that the condominium association has a two-person per bedroom rule. Since the couple now has three people in a one-bedroom, they must move or face a \$500 per month fine.
- The condominium's two-person per bedroom rule most likely has a disparate impact on families with children since families with children are most likely to have more than two people living in a household. The best practice would be to use the square footage requirements outlined in the course.

Case example #4

- A real estate agent made an appointment with a new client who was looking for a rental unit in Fairfield County. When the man arrived for his appointment, he was accompanied by a pit bull that weighed about 50 lbs. He explained that he has a seizure disorder and that the dog alerts him if he is about to have a seizure.
- The real estate agent worked with the man to determine what type of apartment he wanted and how much he could afford. At the end of the interview, the agent stated that although the man's right to have a dog was protected by the fair housing laws, she thought he would have an easier time finding a place to live if he got rid of the dog.

Case example #4 (continued)

- The man brought a discrimination complaint against the real estate agent. At the fact finding conference at the CHRO, the agent brought in affidavits from 50 landlords, condo association managers, and management companies saying that they would look less favorably on an applicant with a dog or pit bull than an applicant with no animal.
- In this case, the real estate agent likely would be held liable for housing discrimination. She certainly discouraged him in looking for housing and in asserting his fair housing rights. The fact that others involved in real estate also discriminated would not result in a finding in her favor.

NAR PRINCIPLES

Data Privacy and Security

REALTORS® recognize that as data collection continues to become a valuable asset for building relationships with their clients, so does their responsibility to be trusted custodians of that data. Consumers are demanding increased transparency and control of how their data is used. While each state has its own definition of “Personally Identifiable Information,” for purposes of these principles “personal information” will be interpreted broadly to mean any information that can be used to uniquely identify, contact, or locate a single person or can be used with other sources to uniquely identify a single individual.

For this reason, REALTORS® endorse the following Data Privacy and Security principles:

Collection of Personal Information Should be Transparent

REALTORS® should recognize and respect the privacy expectations of their clients. They are encouraged to develop and implement privacy and data security policies and to communicate those policies clearly to their clients.

Use, Collection and Retention of Personal Information

REALTORS® should collect and use information about individuals only where the REALTOR® reasonably believes it would be useful (and allowed by law) to administering their business and to provide products, services and other opportunities to consumers. REALTORS® should maintain appropriate policies for the reasonable retention and proper destruction of collected personal information.

Data Security

REALTORS® should maintain reasonable security standards and procedures regarding access to client information.

Disclosure of Personal Information to Third Parties

REALTORS® should not reveal personal information to unaffiliated third parties unless 1) the information is provided to help complete a consumer initiated transaction 2) the consumer requests it; 3) the disclosure is required by/or allowed by law (i.e. investigation of fraudulent activity); or 4) the consumer has been informed about the possibility of such disclosure through a prior communication and is given the opportunity to decline (i.e. opt-out.)

Maintaining Consumer Privacy in Business Relationships with Third Parties

If a REALTOR® provides personal information to a third party on behalf of a consumer, the third party should adhere to privacy principles similar to the REALTOR® that provides for keeping such information secure.

Single Federal Standard

NAR supports a single federal standard for data privacy and security laws in order to streamline and minimize the compliance burden.

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UConn

SCHOOL OF BUSINESS

REAL ESTATE CENTER

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