

## AGREEMENT BETWEEN

THE NATIONAL ASSOCIATION OF REAL ESTATE LICENSE LAW OFFICIALS  
AND  
THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
TO  
PROMOTE FAIR HOUSING

In mutual recognition of the desirability of promoting equality of opportunity in housing through the regulatory functioning of real estate license law officials, the National Association of Real Estate License Law Officials (NARELLO) and the Department of Housing and Urban Development (HUD) have drafted an Affirmative Fair Housing Agreement, a copy of which is attached hereto. NARELLO and HUD believe that implementation of the Affirmative Fair Housing Agreement by individual members of NARELLO will have a salutary effect on the housing market in the members' respective jurisdictions. Accordingly, NARELLO and HUD pledge to strive to obtain execution of the Agreement by each member of NARELLO within the United States. NARELLO and HUD agree that, if the law or administrative practices in a member's jurisdiction would prevent full implementation of any provision of the Agreement, that provision may be modified by the member and HUD to the extent necessary to accomplish the purposes of the Agreement. NARELLO and HUD further pledge to render all possible assistance to the individual members in carrying out the Agreement's provisions.

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In witness whereof, the following signatures are affixed  
hereto.

THE NATIONAL ASSOCIATION OF  
REAL ESTATE LICENSE LAW OFFICIALS







set forth in order to promote uniform construction of various Agreement provisions, to safeguard against misconstruction and to aid in viewing the Agreement as an integrated whole. The Agreement provision to which each Comment applies is indicated parenthetically. The Comments were prepared jointly by Ross J. Lloyd, Office of Voluntary Compliance, U.S. Department of Housing and Urban Development, and John E. Hempel, Chairman, NARELLO Delegation to the Industry/NARELLO Liaison Committee of the National Association of Real Estate License Law Officials, October 1977.

Comment (I.B.):

HUD intends to execute a separate Agreement with each of the real estate licensing agencies of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico and the various territories and possessions.

Comment (II.):

The regulatory functions of real estate licensing agencies include three means of promoting fair housing. One, because they screen candidates for licensure, the agencies may ensure that all persons and organizations enjoy equal opportunity to engage in the practice of real estate without regard to minority status. Two, because they are frequently able to determine the nature of educational background required of candidates for licensure and the nature of continuing education for licensees, the agencies may ensure that real estate practitioners have a firm grasp of fair housing principles and practices. Three, because they are empowered to discipline licensees found to have engaged in prohibited conduct, the agencies often may enforce compliance with the fair housing laws.

The licensing agencies also occupy positions of great influence within the industry in matters not subject to direct regulation. For example, the agencies can and do lend their support to industry-group activities such as training seminars and proposals for legislation. Thus, the agencies are able to encourage industry activities which promote fair housing.

Comment (III.):

In essence, the Agreement's purpose is to provide a base for licensing agencies in the full exercise of those regulatory functions which promote fair housing. HUD's role under the Agreement is primarily supportive inasmuch as, with but one pertinent exception, HUD has no occasion for direct contact with a real estate practitioner. The exceptional instance arises when HUD processes a complaint of violation of Title VIII lodged against a practitioner. See the comment under subparagraph VI.A.3.

Comment (IV. C.):

At the federal level, fair housing law includes the Civil Rights Act of 1866, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 109 of the Housing and Community Development Act of 1974 and Executive Order 11063. A majority of the states have fair housing statutes, some of them stronger than federal law in terms of coverage and/or enforcement. Finally, numerous cities, towns and counties have fair housing ordinances.

Comment (V. A.1.):

The need for and value of education in fair housing principles and practices are evident both as a matter of promoting fair housing and of protecting real estate practitioners against unwitting violations of law. Many jurisdictions require that candidates for a license, particularly a broker's license, have completed a minimum number of hours of college-level education. The subject matter of the required education is frequently specified. Whether or not any education is required, candidates for a license typically receive some form of instruction designed to prepare them for the licensing examination.

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It should be noted that, in an educational course presented to candidates for a license, the natural emphasis is on passing the licensing examination. Therefore, the focus of the course is likely to be a narrow one, limited primarily to familiarization with the prohibitions of fair housing law. Continuing education should fill in the gaps in knowledge left by prelicensing education. The gaps will most probably consist of information regarding affirmative approaches to fair housing, e.g., information about HUD's Advertising Guidelines (37 F.R. 6700).

The National Center for Housing Management, under contract with HUD, has developed an educational program intended to provide training in fair housing principles and practices for persons in or aspiring to enter the real estate industry. The program is divided into five modules, or training sessions, covering various topics. The proposed time for presentation of the modules totals 3 1/2 hours. HUD will make the program available to any licensing agency or educational institution desiring to use it.

Comment (V. A.2.):

No one should be licensed to engage in the practice of real estate unless he or she has demonstrated a grasp of fair housing principles and practices. NARELLO has adopted a resolution recommending that a minimum of four percent of the questions asked on licensing examinations be on the subject of fair housing. A majority of the jurisdictions utilize an examination developed by either the Educational Testing Service or the California Department of Real Estate. Three percent of the questions included in the standardized examinations of both organizations are on the subject of fair housing. Because the standardized examinations are administered on a multi-state basis, the fair housing questions must relate to federal law. An additional fair housing question or questions may be added to the "local supplement" to the standardized examination in individual states. State fair housing law, if any, would be the logical subject of such additional questions.

Comment (V. A.3.):

Licensees should have available for easy reference all of the laws and rules to which they are subject in their professional activities including, obviously, fair housing law.

The Department of Justice has prepared for inclusion in the Florida Real Estate Commission handbook an abstract consisting of twelve paragraphs summarizing and explaining federal fair housing law. This abstract or an adaptation thereof can be used in any agency's licensing manual.

Comment (V. A.4.)

Public ignorance about fair housing exists in two forms. On the one hand, persons who are selling their homes or offering dwellings for rent may believe that it is still possible to discriminate against minorities, at least covertly if not openly. In the same category are persons who think that they can prevent a sale or rental in their neighborhood to a minority group member. On the other hand, many minority group members and women are either unaware that the traditional hindrances to their homeseeking efforts have been declared illegal or are understandably reluctant to believe that the hindrances have, in fact, been eliminated. Even when fully aware of their fair housing rights, these persons may be unfamiliar with procedures for vindicating those rights in the event they are denied.

Real estate practitioners should assume the initiative in providing necessary information and correcting misinformation about fair housing. The task will be greatly facilitated by the use of pamphlets, flyers and the like. HUD has prepared a variety of literature, including Spanish-language pamphlets, which explain federal fair housing law and which are available for distribution in quantity. State and local human rights agencies as well as private fair housing organizations also have available literature explaining applicable laws.

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Comment (V. A.5.)

Two benefits may be expected to accrue from implementation of this provision. First and obviously, equality of opportunity in employment will be promoted. In the real estate field, equal employment opportunity means that all persons, irrespective of their color, religion, national origin or sex, enjoy the same opportunities as have traditionally been enjoyed by non-minority males.

The second benefit is the easing of access to the housing market for those minority homeseekers who prefer to obtain the services of a real estate practitioner of the same minority group. Minority practitioners should be available to accommodate that preference, not because non-minority practitioners necessarily render unsatisfactory service to minority homeseekers, but simply to furnish an option which would tend to open the housing market.

The value of minority participation in the real estate industry must be viewed against the backdrop of the general industry employment situation. It is widely recognized that the industry as a whole is not in need of additional practitioners. Indeed, the reverse is generally the case; more men and women are entering the field than can be gainfully employed. In terms of aggregate dollars, there are simply not enough commissions to be earned to provide support for all of the practitioners in the industry. Of course, the shortfall in earnings is sustained primarily by inexperienced practitioners and those not well established. Consequently, numerous would-be practitioners are forced to leave the business almost as soon as they enter it. The cumulative effect of these individual misfortunes is a rapid turnover which has a harmful destabilizing effect upon the industry.

It is not to be inferred from the preceding paragraph that efforts on behalf of minority entrants into the field are unjustified. The discussion of overcrowding suggests only that assistance rendered to minorities should prepare them for the conditions they will face, specially in the initial stages of their careers. The National Center for housing Management, under contract with HUD, has prepared a Minority Pilot Placement Program designed to enhance employment opportunities in the real estate industry for minority group members. This program includes recruitment, training and placement components. The program could be implemented by any industry group but would be most effectively implemented as a joint endeavor of several such groups with licensing agency and HUD support. HUD will make the program available to interested parties.

Comment (V. A.6.):

The prerequisites for licensure must be fashioned so as to protect the public by screening out those unqualified to engage in the practice of real estate without placing minority group members at a relative disadvantage in attempting to satisfy the prerequisites. It is well established that minority group members, because of their cultural milieu, may have greater difficulty than non-minority group members in meeting certain standards and, particularly, in answering certain questions on standardized examinations. The standards may be imposed (or the questions designed) without any intent to discriminate, but they may, nonetheless, have the effect of discriminating against a minority group.

In the case of licensing examinations, questions which are susceptible to being misunderstood more so by minority than non-minority group members are discriminatory and are to be avoided to the extent possible, although it must be conceded that the necessity of using technical terminology creates a possibility of unavoidable cultural bias. The possibility that a question will be improperly discriminatory may be minimized by ensuring that the question is closely and objectively related to the skills required of a real estate practitioner. The Educational Testing Service and the California Department of Real Estate which, as indicated above, are developing standardized licensing examinations have acknowledged the bias

potential and are acting accordingly.

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Comment (V. A.7.):

The information and data of primary concern to anyone monitoring performance under the Agreement will be a numerical breakdown of license applicants, new licensees and total licensees by race, ethnic group and sex. These figures will not be readily available in most instances. Moreover, any attempt to collect racial or ethnic data will very probably face objections from both minorities and non-minorities. Minority group members may fear that being identified racially or ethnically, as for example, on an application to sit for a licensing-examination, may expose an individual so identified to discrimination. Non-minority group members may raise the specter of "quotas" or fear that an accurate enumeration of minority practitioners will form a statistical basis for charges of discrimination. Such objections must be met by showing a proper purpose for collecting racial and ethnic data. The proper and only purpose should be to determine whether the real estate profession is representative of the public it serves.

It is not the purpose of this Agreement to require that racial, ethnic and sex data be collected and reported. However, the value of doing so would, in most instances, greatly outweigh any expense or inconvenience resulting from the effort. Particularly where licensing operations are computerized, it would be a relatively simple matter to collect pertinent data on new license and license renewal applications and furnish tallies to appropriate parties. Therefore, in light of these facts and the additional fact that there is no other means of gauging the success of endeavors to improve minority representation in the industry, the collection and sharing of racial, ethnic and sex data is urged.

Comment (V. A.8.):

Real estate license law officials, as well as officials regulating other professions and occupations, have frequently been accused of representing the interests of an "in-group" and of shielding the industry against the incursions of "outsiders." In most cases the allegations are of dubious merit, but license law officials are, nonetheless, sensitive to such fault finding and properly so. The allegations have, after all, been upheld in court in a few instances.

To the extent that a licensing agency is all-white or all-male or fails in some other respect to be representative both of the industry it regulates and the public it protects, the agency is subject to criticism on grounds

of its exclusive image. Conversely, a licensing agency which includes among its officials and on its staff members of minority groups gains credibility in terms of representing all interests and, more to the point in the context of this Agreement, in terms of a commitment to fair housing.

Licensing agencies seldom have authority to fill official agency positions and, in many cases, do not control the hiring of staff personnel. Thus, an agency may be unable to determine directly its composition or that of its staff. The agency may, nevertheless, have a positive influence upon female and minority representation through appropriate recommendations made by the agency to appointing and/or hiring authorities.

Comment (V. A.9.):

HUD has developed similar Affirmative Marketing Agreements with each of the industry groups mentioned. The NAR Agreement is to be executed by local Boards of Realtors and by individual Realtors. The NAREB Agreement is to be executed by local associations and individual Realtists. The participants in each Agreement pledge to reach out to minority homeseekers, to shape their procedures so as to preclude steering and other discriminatory practices and to provide for training of sales personnel in affirmative marketing. The NAR Agreement provides for the invitation of minority brokers to join Realtor Boards and for the recruitment of minority employees and associates. The NAREB Agreement makes similar provision for non-minority participation.

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Since the Affirmative Marketing Agreements are voluntary, there is no guarantee that they will achieve wide acceptance. However, even if every NAR and NAREB member signed an Agreement, there would remain that very large group of unaffiliated licensees not party to any affirmative marketing program. Given these facts, it is not too much to state that affirmative marketing principles are not being promoted in that segment of the industry in which there is great, if not the greatest, need for their application. The licensing agencies may be able to play a role in filling this void, possibly through education or, in cases where a local affirmative marketing program exists, by encouraging licensees to participate in the program. An agency may find it advisable to take the lead in establishing a local program.

Comment (V. A.10):

Allegations of discriminatory housing practices engaged in by licensees will frequently be placed before organizations other than the responsible licensing agency and the agency will receive no formal notification of the

alleged discrimination. Such other organizations will ordinarily be glad to learn that the power of the licensing agency may be brought to bear in a discrimination case.

Comment (V. A.11.):

As originally enacted (beginning in 1919), the licensing laws were designed to eradicate the practices by which unscrupulous brokers and salespeople were defrauding the public and discrediting the real estate profession. This objective was accomplished through two basic provisions: (1) Possession of a license became a prerequisite to the practice of real estate, and (2) a licensing agency was empowered to suspend, revoke or refuse to renew the license of any practitioner who engaged in the fraudulent practices. Thus, a practitioner was subject to loss of the license for such acts as failing to place a client's funds in trust, purchasing listings and offering property without the owner's consent. Discriminatory housing practices were not included among the original grounds for suspension, revocation and non-renewal because the modern view of housing discrimination as a civil wrong and, in certain cases, a crime is a development which post-dates the enactment of the licensing laws.

Many jurisdictions have updated their licensing laws. That is to say, these jurisdictions have added fair housing law violations to the list of grounds upon which a license may be suspended, revoked or nonrenewed. They have done so expressly by amendment to their licensing laws or implicitly through a broadened interpretation of their laws.

The remaining jurisdictions have not updated their laws in this fashion. There can be little room for argument, however, against the proposition that violation of a fair housing law should constitute grounds for disciplinary action. Discriminatory housing practices may be injurious to their victims, as are other transgressions which a real estate practitioner might commit. Moreover, the public is no less in need of protection against housing discrimination than against many of the practices which the early licensing laws were intended to suppress.

Comment (V. B.):

Authority to undertake the agency actions provided for in this Agreement may be found in legislation or in agency regulations or both. The authority varied of course, from jurisdiction to jurisdiction. In some jurisdictions, full authority to undertake all of the agency actions presently exists and the agency need do nothing except exercise its authority to the maximum extent. In many jurisdictions, however, agency authority to undertake one or more of the actions is still lacking. In some instances, the agency, because of a broad delegation of power to it by the legislature, will be able to create the necessary authority simply by the adoption of appropriate additional regulations.

In jurisdictions in which the legislative delegation of power is narrower, the agency may be unable to provide for certain agency actions by regulation. In that event, only the legislature can create the needed authority. It may be possible, however, for the agency to propose legislation either on its own or through the executive

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department and the agency may find it appropriate to do so. The legislature could provide directly by statute that certain actions be taken or may enact enabling legislation investing the agency with power to adopt the necessary regulations.

Similarly, the manner and amount of funding of licensing agencies varies widely among jurisdictions. In the majority of jurisdictions, the activities on which an agency may spend money and the amounts which may be spent are subject to control from outside the agency - by the executive department, the legislature, or both. This Agreement is designed to be implemented within such constraints.

Comment (VI. A.1.):

The comment under sub-paragraph V. A.5. indicates one area, viz., minority recruitment, in which HUD can render technical advice and assistance. HUD is also prepared to share the expertise gained through its considerable experience in investigating fair housing law violations. HUD has learned that discriminatory housing practices may assume many subtle forms and that specialized investigative methods are needed to uncover the facts in many cases. These investigative methods have been the subject of training sessions conducted by various Regional Offices of HUD for personnel of state and local human rights agencies. Similar training could be presented to licensing agency investigators.

Comment (VI. A.2.):

HUD has, of course, worked closely with NARELLO in the development of this Agreement. The support of NAR and NAREB in its implementation would be invaluable, especially since both industry groups promote fair housing through their Affirmative Marketing Agreements with HUD.

Comment (VI. A.3.):

Frequently a complaint alleging that a real estate practitioner has violated a fair housing law will be filed both with HUD and the responsible licensing agency. The provision for HUD-agency cooperation in regard to a fair housing complaint is grounded upon the dual presumptions that the agency will desire (1) that unnecessary duplication of effort in the processing of the complaint be avoided and (2) that HUD achieve a successful resolution of the complaint through its conciliation proceedings. These presumptions will be examined separately.

Upon receipt of a fair housing complaint, HUD and the licensing agency each must determine whether there is reason to believe that a violation has, in fact, occurred. Separate investigations will typically be conducted with

the result that individuals may be subjected to essentially the same interrogation twice. This duplication of investigative effort is wasteful, bothersome to the interviewees and often unnecessary. It is logical to assume that a licensing agency would welcome any opportunity to avert the objectionable consequences of parallel investigations. Several forms of cooperation aimed at eliminating the duplication are possible. Not every form of cooperation will be suitable with all jurisdictions, but certain basic measures would seem universally appropriate. Clearly, HUD should notify the responsible licensing agency whenever a fair housing complaint involving a licensee is received. HUD and the agency could then decide upon a course of action with the objective of avoiding duplicative effort.

The second presumption - that a licensing agency will favor successful HUD conciliation of a fair housing complaint against a licensee - is founded upon the fundamental differences between conciliation and the disciplinary proceedings which the agency may initiate. Conciliation is an informal negotiating process which HUD undertakes whenever the facts obtained in an investigation of a fair housing complaint indicate that a respondent (the party against whom the complaint is lodged) has violated federal fair housing law. Conciliation is entirely voluntary on the respondent's part. The goal of conciliation is an agreement under which the complainant waives his/her right to sue the respondent in exchange for the commitment of the respondent to compensate the complainant and/or institute affirmative fair housing practices. The essential features of conciliation are positive relief for the complainant and the prevention of housing discrimination in the future.

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Neither of these benefits are ordinarily available through the disciplinary proceedings of licensing agencies, which are punitive in nature. Thus, even if a licensing agency has taken or will take disciplinary action against a licensee as a result of a fair housing law violation, the agency could be expected also to favor successful conciliation of the matter because of the special benefits conciliation yields.

The foregoing discussion of the desirability of combining conciliation and disciplinary action with respect to a single fair housing complaint ignores the question of the possibility of obtaining both remedies. In fact, there are practical difficulties which impair the chances for successful conciliation in a case in which disciplinary action is also in prospect. Assuming that conciliation is attempted first, the licensee-respondent will enter the conciliation proceedings without knowing whether or to what extent he/she will be disciplined by the licensing agency. This uncertainty regarding his/her license will, in all likelihood, have a negative effect on the licensee-respondent's willingness to conciliate.

The uncertainty concerning disciplinary actions which impedes conciliation might be reduced or eliminated through cooperation between HUD and the licensing agency. As with investigative cooperation, no specific cooperative measures can be proposed which would be fitting in all cases. However, two general practices to which licensing agencies frequently resort in the performance of their disciplinary functions may furnish a basis for cooperation. First, many licensing agencies will reduce the severity of their disciplinary sanctions in cases in which the offending licensee has voluntarily mitigated his wrongdoing by making redress to the complainant, although, of course, no agency can promise such clemency prior to a disciplinary hearing. Second, many licensing agencies will dispense with a disciplinary hearing and impose a disciplinary sanction by means of a consent order in cases in which the offending licensee will agree to the procedure and the sanction thereby imposed. HUD will arrange with each licensing agency for the particular form of cooperation which will be most suitable and of greatest value under local circumstances.

Comment (VI. B.1.):

The comment under sub-paragraph V. A.4. is applicable here.

Comment (VI. B.2.):

The comment under sub-paragraph V. A.1. is applicable here.

Comment (VI. B.3.):

The comment under sub-paragraph V. A.3. is applicable here.

Comment (VI. B.4.):

Because it is relatively new, fair housing law continues to evolve. The evolution is going on primarily in the courts, both federal and state, where new decisions are interpreting and giving shape to the law. The actions of HUD and other federal agencies are also significant in this regard. Likewise, state legislation, local ordinances, opinions of state attorneys general and the actions of human rights agencies are of interest.

Any or all of these developments may affect the regulatory functioning of a licensing agency. The practices of licensees may also be affected. The agency should have the opportunity to review such developments as they occur and advise its licensees through a newsletter or otherwise as to the impact of such developments.