

## **Guidance for Fair Housing Compliance during the COVID-19 Pandemic Connecticut REALTORS®<sup>1</sup>**

During the COVID-19 pandemic, REALTORS® continue to play an important role in assisting people to find homes.<sup>2</sup> To offer guidance on how we can discharge our role, consistent with fair housing principles and account for known public health concerns, we provide answers to six frequently asked questions.<sup>3</sup>

### **1. What anti-discrimination provisions apply to housing during the COVID-19 pandemic?**

Federal and state fair housing laws remain intact during the COVID-19 pandemic. Those laws make it unlawful for anyone to discriminate on several bases.<sup>4</sup>

### **2. Are individuals who have COVID-19 or may have COVID-19 covered under the national original protections of the Fair Housing Act?**

Yes. You may not discriminate against individuals during this time on the basis of their national origin, even if they are from other countries that have also been hit particularly hard by the COVID-19 pandemic.

### **3. Are individuals who have COVID-19 or may have COVID-19 covered under the disability protections of the Fair Housing Act?**

We advise you to treat individuals who have or may have COVID-19 as protected under federal disability protections, because COVID-19 can have severe symptoms for some people and may ultimately be interpreted as a disability for purposes of fair housing law.

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<sup>1</sup> This guidance was drafted on April 5, 2020 with the information available at that time. The situation is evolving quickly, and we may update our guidance accordingly.

<sup>2</sup> Conn. Dept. of Econ. & Community Development, *Business Exemptions for Coronavirus – Executive Order 7H* at paras. 7 & 10, available at <https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/Business-Exemptions-for-Coronavirus> (defining “essential business” to include “[s]ervices including ... real estate transactions and related services, including residential leasing and renting” and “[s]ervices necessary to maintain the safety, sanitation and essential operations of all residences and other buildings,” including “home-related services, including real estate transactions”).

<sup>3</sup> Connecticut REALTORS® consulted members of WilmerHale’s anti-discrimination practice for advice on ensuring compliance with fair housing while taking steps to protect health and safety during the COVID-19 pandemic.

<sup>4</sup> Federal statute prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners insurance companies whose discriminatory practices make housing unavailable to persons because of: race or color, religion, sex, national origin, familial status, or disability. The state statute, Connecticut’s Discriminatory Housing Practices Act prohibits discrimination in housing because of race or color, national origin, ancestry, creed (religion), sex, marital status, age (non-minors), familial status (families with children under the age of 18 living with parents or legal custodians and pregnant women), disability (physical, mental or learning), lawful source of income (income derived from social security, SSI, housing assistance such as Section 8, child support, alimony, public or general assistance), sexual orientation, status as a veteran, and gender identity or expression.

#### **4. Can I ask someone if they have been diagnosed with COVID-19 or if they have had known or potential exposures to the virus?**

Although anti-discrimination laws generally prohibit you from asking certain questions about a person's disability, given the circumstances of this pandemic, including the fact that COVID-19 is widespread and highly contagious, we recommend asking people verbally to self-disclose any symptoms or known or potential exposures to the virus in order to allow you to take the necessary safety precautions. According to medical experts, many individuals with COVID-19 are asymptomatic, and you should therefore take reasonable precautions, regardless of whether someone knows that they have the virus or is exhibiting symptoms. Although the current seriousness of the COVID-19 crisis provides greater flexibility under the anti-discrimination laws than is normally permitted, it is important to remember that this flexibility is limited to COVID-19 related conditions. It does not extend to non-COVID-19-related medical inquiries and decisions.

#### **5. Am I obligated to assist or show or provide housing to someone who has or may have COVID-19?**

Our goal is to facilitate real estate transactions while ensuring the health and safety of all individuals involved. If you are able to make reasonable accommodations to assist or provide housing to such people without posing a threat to the health and safety of others, you have an obligation to make such accommodations. When showing housing to such people would pose a direct threat to the health and safety of others and you are not able to make a reasonable accommodation to mitigate that threat, then you have no obligation to provide such assistance or housing—the federal fair housing law makes an exception to the general anti-discrimination obligations where providing assistance or housing to someone would pose a direct threat to the health and safety of others. Although there may be some reasonable adjustments to real estate licensee practices during the pandemic threat, it is important to make an individualized assessment about the risks posed by each individual and the extent to which a reasonable accommodation may be made for these individuals. For example, to the extent it is possible to provide housing to an individual who has or may have COVID-19 without threatening the health and safety of others, such measures should be undertaken.

#### **6. What constitutes a “reasonable accommodation”?**

Under the Fair Housing Act, we are required, to the extent possible, to assess whether a “reasonable accommodation” can be made to provide equal access to housing and services to individuals who have a disability. During the COVID-19 pandemic, as we face situations where homeowners may be quarantining in properties and clients, buyers, agents and other professionals may be seeking to enter properties, real estate licensees must consider whether they can make “reasonable accommodations” to provide housing or services to individuals who have or may have the COVID-19 virus, while also protecting the health of all parties to a transaction.

The options for doing so should take into account the fact that the virus is highly contagious and potentially very dangerous if contracted. The Centers for Disease Control have published safety guidance that includes recommendations to keep a distance from others and avoid close contact with people who may be sick. And, the state of Connecticut has taken various measures to protect against the spread of the virus, including a stay-at-home order and requiring all non-essential businesses to close. Such guidance and measures inform the “reasonableness” of potential accommodations.

Although each circumstance should be analyzed individually, during the COVID-19 pandemic reasonable accommodations for showing apartments or houses, for which sound public health rationales may be advanced, may include:

- declining to show occupied apartments and houses;
- asking individuals to view apartments and houses one at a time;
- asking individuals to maintain six feet from others and not to touch surfaces;
- ensuring that surfaces are cleaned often and thoroughly;
- using personal protective coverings;
- offering virtual showings of properties;
- providing addendum options such as a Sight Unseen Rider or a contingency that the contract is subject to a later in-person visit at a specified later date in time.

We encourage you to provide reasonable accommodations, like the examples above, to mitigate health risks while continuing to serve clients and ensuring compliance with all state and federal anti-discrimination laws. However, to the extent that accommodations for individuals who have or may have the COVID-19 virus impose undue financial and administrative burdens, you are not required to implement them.

In addition to making these reasonable accommodations for individuals who have or may have the COVID-19 virus, you may require all people involved in a transaction—whether or not they are sick—to wear face masks, or available cloth face coverings, given the Centers for Disease Control recommendation to that effect.

*This document is provided based on information known to us as of the date of drafting. It is subject to change at any time. Guidance is subject to change as situations evolve or as any government entity may otherwise dictate. CTR is not your corporate legal counsel. CTR is providing this guidance as our best effort to help you comply with the various guidance, laws and rules evolving in response to the COVID-19 crisis.*