



# Implicit Bias

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## Introduction to Implicit Bias — Probing Below the Surface

### A California for all

As the bellwether state of the United States, California draws its strength from a **diversity of people** and **ideas**. Its characters are as colorful as its historic Painted Ladies, resilient as its ancient sequoias, and optimistic as its sunny climate.

The California Dream sells itself — and *real estate professionals* sell the home.

But what happens when this signature strength is hobbled? California's legislature has long neglected housing health, especially in terms of discrimination in real estate. The result is one of the nation's lowest homeownership rates and steepest income disparities.

Worse, disparities frequently track neatly along racial lines. As part of 2008's *Great Recession*, Latinx households were disproportionately targeted for subprime mortgages. During the COVID-19 pandemic, de facto housing segregation left Black residents more vulnerable to contracting the virus.

These snapshots are a far cry from the "A California for all" Governor Gavin Newsom outlined in his 2019 inaugural address. As the fifth-largest economy in the world, California has the resources to ensure a decent standard of living for all its people. So how is it that California's racial minorities and other vulnerable groups come to bear the brunt of the state's housing crises? And what is the real estate

professional's responsibility in this issue?

## Breaking the cycle

The answer lies in acknowledging our own biases – both implicit and explicit.

The term **implicit bias** refers to discriminatory thoughts or attitudes of which a person is not *fully aware*. These thought patterns are subtle, subliminal, and below the level of direct consciousness. Think of the portion of an iceberg that rests beneath the surface of frigid water.

Alternatively, **explicit bias** describes the same type of discriminatory thoughts

### **implicit bias**

Actions which are not openly discriminatory but yield discriminatory results.

or attitudes, but paired with an *awareness* of their existence and influence on behavior. Explicit bias is the craggy piece of the iceberg which juts out above the surface of the water, fully visible to all. For example, a real estate agent or landlord who consciously and deliberately refuses to show homes to or accept applications from members of a protected group is guilty of *explicit discrimination*.

This marks the difference between being aware of a stereotype and allowing it to

### **explicit bias**

Blatant discrimination which causes real estate licensees to unlawfully refuse to show properties or take applications from members of a protected class.

color behavior, versus letting it motivate unconsciously — *implicitly*.

*Implicit bias* training is now taking place across industries — in healthcare, policing, and now real estate, thanks to California **Senate Bill 263**.

This training prepares California real estate professionals to *identify and counteract* elements of systemic racism, conscious and unconscious, in real estate transactions.

More critically, this training is pragmatic in nature and designed to inform behavior. After completing this training, students will be able to:

- take steps to avoid unconscious implicit bias in sales, leasing and lending activities;
- implement fair hiring practices;

- properly report discriminatory practices observed in the industry;
- adhere to advertising guidelines in order to avoid discrimination in marketing; and
- standardize tenant screening practices and the handling of applications.

The point of this training is not to shame any specific group. Even when licensees don't consciously embrace racist stereotypes, those stereotypes may still subtly influence their behavior outside of their direct awareness. Understanding this

## The Implicit Association Test (IAT) – Check your perceptions

Methods are available to check your own innate level of implicit bias. In 1998, three scientists launched Project Implicit to educate the national public about bias and disparities. To this end, the **Implicit Association Test (IAT)** was created to measure subconscious attitudes and beliefs held by individuals.

### **Implicit Association Test (IAT)**

A publically available online test designed to measure subconscious attitudes and beliefs held by individuals.

The IAT is a publically available test that is taken online. Primarily, the IAT measures associations between concepts and the strength of those associations.

The IAT tasks individuals with quickly categorizing two selected concepts with an attribute (for example, “Black”/“Caucasian” and “Good”/“Bad”). Later in the test, individuals are then to deliberately invert their responses. The length of time it takes the individual to make each association is measured.

Associations that are made more quickly indicate a more deeply held underlying belief, whereas associations made more slowly (such as associating “Black” with “Good”) may signal a subconscious attitude – implicit bias.

However, the IAT is not without its detractors and remains controversial in the scientific community. While it may reveal some degree of implicit bias, it may also simply reflect an individual's familiarity or may result

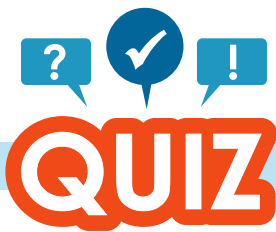
from mental conditioning – telling the brain and fingers to do the opposite of what was done just moments earlier.

The IAT may be taken here:

[implicit.harvard.edu/implicit/takeatest.html](http://implicit.harvard.edu/implicit/takeatest.html)

subtlety – the ice beneath the surface – is the crux of any effective implicit bias training.

To err is human, but to counter those mistakes with compassion is uniquely Californian.



1. Actions which are not openly discriminatory but yield discriminatory results refers to:
  - a. explicit bias.
  - b. direct bias.
  - c. implicit bias.
2. The \_\_\_\_\_ is a publically available test designed to measure subconscious attitudes and beliefs held by individuals.
  - a. Implicit Aptitude Exam (IAE)
  - b. Explicit Association Metric (EAM)
  - c. Implicit Association Test (IAT)

## State and Federal Fair Housing Laws: Identifying the Explicit and the Implicit, Pt I

### Systemic racism can exist in real estate too

Although not unheard of, real estate professionals rarely practice overt discrimination. **Overt discrimination** occurs when, based on race or other protected classification, real estate professionals refuse to:

- show properties;
- provide property information;
- give consultations; or
- accept rental/purchase applications.

Alternatively, **implicit discrimination** occurs when a real estate professional performs actions that are not openly discriminatory but produce discriminatory results. For example, an agent may show minority buyers fewer listings than non-minority buyers.

*Implicit discrimination* also happens when agents steer minority buyers to neighborhoods consisting of the same protected class. Implicit discrimination may be unconscious, but it is still unlawful.

Even though it's not always detectable, explicit and implicit discrimination keep protected classes out of their desired homes.

## General protection under the federal Civil Rights Act

Regardless of race, all citizens of the United States have the right to purchase or rent real estate under the federal **Civil Rights Act**. [42 United States Code §1982]

### **Civil Rights Act**

A federal law which provides broad protections to numerous classes of individuals in the United States against discriminatory activity.

Further, all individuals within the United States are given the same rights to make and enforce contracts, sue, be sued, enjoy the full benefits of the law and be subject to the same punishments, penalties, taxes and licenses, regardless of race or legal status. [42 USC §1981]

The federal Civil Rights Act applies to race discrimination on the sale or rental of all types of real estate, both residential and commercial. Racially motivated activities in any real estate sales or leasing transaction are prohibited.

Federal protection against racial discrimination given under the Civil Rights Act is the broadest of protections which apply to types of discrimination prohibited in all activities between individuals present in the country.

## Greater protection under the Federal Fair Housing Act (FFHA)

While the federal Civil Rights Act provides general protection against all prohibited discriminatory activity, the **Federal Fair Housing Act (FFHA)** protections are specifically limited to dwellings, including rental housing. [42 USC §§3601 et seq.]

### **Federal Fair Housing Act (FFHA)**

A collection of policies designed to prevent discrimination in the access to housing based on an occupant's inclusion in a protected class.

A **dwelling** includes any building or structure that is occupied, or designed to be occupied, as a residence by one or more families. A *dwelling* also includes vacant land offered for lease for residential dwelling purposes, such as a lot or space made available to hold a mobilehome unit. [42 USC §3602(b)]

The FFHA prohibits discrimination in the following situations:

- the sale, rental or advertisement of a residence;
- offering and performing broker services;
- making loans to buy, build, repair or improve a residence;

- the purchase of real estate loans; or
- appraising real estate. [42 USC §3602]

The FFHA bars the use of any discriminatory actions a seller, landlord or property manager might take against a prospective buyer or tenant based on an individual's:

- race or color;
- national origin;
- religion;
- sex;
- familial status; or
- handicap. [42 USC §3602]

**Familial status** refers to whether a household includes individuals under the age of 18 in the legal custody of a parent or legally designated guardian. [42 USC §3602(k)]

**familial status**

A status which indicates a household includes individuals under the age of 18.

**Handicapped persons** are individuals who have:

- a physical or mental impairment which substantially limits the individual's life activities; or
- a record of, or are regarded as having, a physical or mental impairment. [42 USC §3602(h)]

Any individual who claims they have been injured by a prohibited discriminatory housing practice under the FFHA or believes they will be injured by such a practice is considered an **aggrieved individual**. [42 USC §3602(i)]

An *aggrieved individual* may file a complaint with the Secretary of Housing and Urban Development (HUD), within one year of the alleged discriminatory housing practice. HUD then attempts to resolve the dispute by having the parties enter into informal negotiations, called **mediation**. [42 USC §3610(a)]

When a real estate broker subjected to a judicial action is found guilty of discriminatory housing practices, HUD is to notify the California Department of Real Estate (DRE) and recommend disciplinary action. [42 USC §3612(g)(5)]

When a court determines discriminatory housing practices have taken place, actual and punitive amounts of money awards may be granted. Also, an order



may be issued preventing the landlord or broker from engaging in any future discriminatory housing practice. [42 USC §3613(c)(1)]

## Federal fair lending laws

In the context of lending and mortgage practices, the federal **Equal Credit Opportunity Act** prohibits discrimination in lending based on race, color, religion, national origin, sex, marital status or age (provided an individual is of legal age).

### **Equal Credit Opportunity Act**

A 1974 federal enactment prohibiting lenders from discriminating against borrowers from a protected class.

The anti-discrimination rules apply to institutional lenders, mortgage brokers, and others *who make or arrange mortgages*. [15 United States Code §1691a(e)]

Discriminatory practices take many forms, including:

- treating minority mortgage applicants less favorably than non-minority applicants;
- placing additional burdens on minority applicants;
- requiring a spouse's signature on a mortgage application when an applicant qualifies for a mortgage individually; [Anderson v. United Finance Company (1982) 666 F2d 1274]
- discouraging mortgage applicants based on their race, color, sex, etc.; [12

### **Exemptions from FFHA discrimination prohibitions**

There are exemptions to the FFHA prohibitions. A landlord who rents out a single family residence is exempt from FFHA discrimination prohibitions if they:

- own three or fewer single family residences (SFRs);
- do not use a real estate licensee to negotiate or handle the tenancy; and
- do not use a publication, posting or mailing for any discriminatory advertisement. [42 USC §3603(b)(1)]

Thus, the FFHA prohibitions apply to all notices, statements and

advertisements promoting rentals by anyone in the *business of renting dwellings*. [42 USC §3603]

A person is in the business of renting (or selling) dwellings if the person:

- has participated within the past 12 months as a *principal* in three or more transactions involving the sale or rental of any dwelling or interest in a dwelling;
- has participated within the past 12 months as an *agent*, negotiating two or more transactions involving the sale or rental of any dwelling or interest in a dwelling, excluding the agent's personal residence; or
- is the *owner* of a dwelling structure intended to be occupied by five or more families. [42 USC §3603(c)]

If a broker is the agent for any of the participants in a sale or rental transaction, the FFHA anti-discrimination rules apply.

However, attorneys, escrow agents, title companies and professionals other than brokers who are employed by a landlord to complete a transaction do not bring the transaction under the FFHA, unless they participate in negotiations with the buyer or tenant. [42 USC §3603(b)(1)(B)]

Also exempt from FFHA discrimination rules is the sale or rental of a residence in a one-to-four unit residential rental property which is occupied in part by the owner. [42 USC §3603(b)(2)]

**Religious organizations** who limit the sale, rental or occupancy of dwellings to individuals of the same religion are also exempt, provided the dwelling is owned for noncommercial reasons. No religious exemption exists if the religion is restricted to individuals of a particular race, color or national origin. [42 USC §3607(a)]

**Private clubs** which provide their members with residential dwelling space for noncommercial purposes may limit rental or occupancy of the dwellings to members.

Further, housing qualified for older citizens which excludes children is not considered prohibited discrimination against buyers or tenants with children based on familial status. However, for housing to exclude children it needs to first qualify as housing for the elderly. [42 USC §3607(b)]

Code of Federal Regulations §1002.5(b)] and

- making inquiries into the marital status of mortgage applicants. [12 CFR §1002.5(d)]

The lender may not make any inquiries into whether an applicant's income is derived from *alimony or child support*. The lender may not inquire whether the applicant intends to bear children. [12 CFR §1002.5(d)]

Further, to deny a mortgage based on an applicant's receipt of income from a public assistance program, such as *welfare or social security*, is unlawful discrimination. [15 USC §1691(a)(2)]

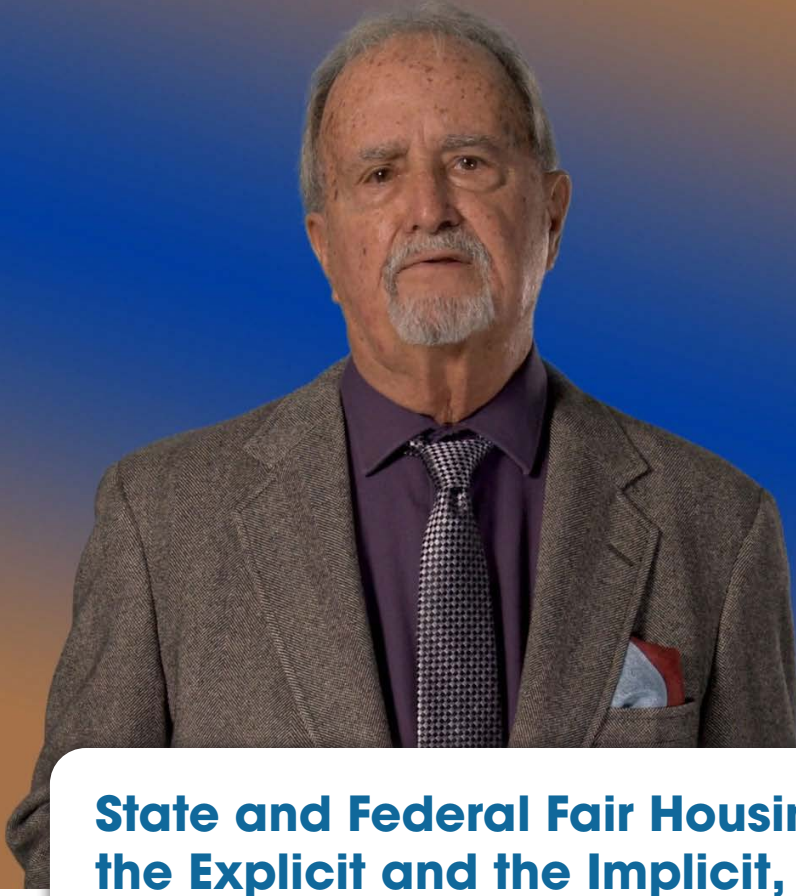
However, discrimination is rarely practiced overtly – it is practiced **implicitly**. Most lenders are not transparent enough for the consumer to see the discrimination. Most often, discrimination takes the form of a lender denying a mortgage to a minority borrower without a valid reason, or applying different standards to minority and non-minority borrowers.

Lenders need to be careful not to provide more assistance to non-minority borrowers than to minority borrowers when preparing applications and working out problems which arise.

The **different treatment** of minority and non-minority applicants is a form of unlawful *implicit discrimination*.



1. While the federal Civil Rights Act provides general protection against all prohibited discriminatory activity, the \_\_\_\_\_ protections are specifically limited to dwellings, including rental housing.
  - a. Federal Fair Housing Act (FFHA)
  - b. Equal Credit Opportunity Act
  - c. Unruh Civil Rights Act



## State and Federal Fair Housing Laws: Identifying the Explicit and the Implicit, Pt II

### California prohibitions against discrimination

California prohibits discrimination in the sale or rental of housing accommodations based on an individual's race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income, veteran or military status, ancestry, citizenship, primary language, or immigration status. [CC §§51 et. seq.; Calif. Government Code §12955; DRE Reg. §2780 and §2781]

This list of protected individuals under state law is more extensive than all others.

Discriminatory activities and conduct include:

- making a written or oral inquiry into the race, sex, disability, etc. of any individual seeking to rent housing;
- ads or notices for rental of housing which state or infer preferences or limitations based on any of the prohibited discrimination factors;
- a broker refusing to represent an individual in a real estate transaction based on any prohibited factor; and
- any other practice that denies housing to a member of a protected class. [Gov C §12955]

The denial of housing based on the landlord or broker's perception that a prospective buyer or tenant has any of the protected characteristics is absolutely prohibited, whether it was done *explicitly* or *implicitly*. An individual who has been the victim of discriminatory housing practices may recover their money losses. [Gov C §12955(m)]

## Fair Employment and Housing Act (FEHA)

The **Civil Rights of Department** is the California government agency which enforces anti-discrimination law. [Gov C §§12901, 12903, 12930, 12935]

### Civil Rights Department

A state agency designated with protecting Californians from housing, employment, and public accommodation discrimination.

Any individual who feels they have been discriminated against may file a complaint with the *Department*. The Department investigates the complaint to determine any wrongful conduct. If grounds exist, the Department then seeks to resolve the situation through discussions with the individual against whom the complaint is made. [Gov C §12980]

## California's Unruh Civil Rights Act

California's **Unruh Civil Rights Act**, another anti-discrimination law, prohibits discrimination by a **business establishment** based on numerous status classifications, including: an individual's sex, race, color, religion, ancestry, national origin, disability or medical condition. [Calif. Civil Code §§51; 51.2; 51.3]

### Unruh Civil Rights Act

A California law which prohibits discrimination by a business establishment based on sex, race, color, religion, ancestry, national origin, disability or medical condition. A real estate practice is a business establishment.

However, age restriction is a legitimate discrimination as long as the restriction is in a project that qualifies as a senior citizen housing development.

The *Unruh Civil Rights Act* applies to anyone in the *business of providing housing*. Brokers, developers, apartment owners, condominium owners and single family residential owners renting or selling are considered to be in the business of providing housing.

As business establishments, landlords may not boycott, blacklist, refuse to lease or rent because of the race, creed, religion, color, national origin, sex, disability or medical condition of an individual's, or that individual's business partners, members, stockholders, directors, officers, managers, agents, employees, business associates or customers. [CC §51.5]

## DRE regulation of discrimination

The DRE also enforces numerous regulations prohibiting discriminatory practices by real estate brokers and agents. A broker or agent found guilty of engaging in **discriminatory business practices** may be disciplined by the DRE. [California Department of Real Estate Regulation §2780]

DRE prohibited *discriminatory practices* include situations in which a broker or agent discriminates against anyone based on race, color, sex, religion, ancestry, disability, marital status or national origin.

Prohibited practices include any situation in which a broker, while acting as an agent, discriminates against anyone based on race, color, sex, religion, ancestry, disability, marital status or national origin. Examples of discriminatory practices include:

- refusing to negotiate for the sale or rental of real estate;
- refusing to show property or provide information, or steering clients away from specific properties;
- refusing to accept a listing;
- publishing or distributing advertisements that indicate a discriminatory preference;
- any discrimination in the course of providing property management services;
- agreeing with a client to discriminate when selling or leasing the client's property, such as agreeing not to show the property to members of particular minority groups;
- attempting to discourage the sale or rental of real estate based on representations of the race, sex, disability, etc. of other inhabitants in an area; and
- encouraging or permitting employees to engage in discriminatory practices.

A broker has a duty to advise their agents and employees of all anti-discrimination rules, including DRE regulations, the Unruh Civil Rights Act, the California Fair Employment and Housing Act, and the FFHA. [DRE Reg. §2725(f)]

The broker, in addition to being responsible for their own conduct, owes the public a duty to ensure their employees follow anti-discrimination regulations when acting as agents on the broker's behalf.



1. A broker owes the public a duty to ensure:
  - a. their own compliance with anti-discrimination law.
  - b. their employees' compliance with anti-discrimination law.
  - c. Both a. and b.



## White households



## Latinx households



## Black households

### Access to Homeownership and the Wealth Gap

#### A source of wealth

**Homeownership** is the main source of wealth for American families. To increase household wealth, the U.S. government subsidizes and encourages homeownership through various tax incentives and mortgage programs, like:

- the mortgage interest deduction (MID);
- Federal Housing Administration (FHA)-insured, low down payment mortgages;
- low ceilings on capital gains tax; and
- Proposition 13 (Prop 13) in California.

Yet despite these incentives, some groups have greater difficulty becoming homeowners than others, which leads to an enormous wealth disparity between racial and ethnic groups.

The median household wealth as of 2019 is:

- \$184,000 for white households;
- \$38,000 for Latinx/Hispanic households; and
- \$23,000 for Black households. [Kent, Ana Hernández & Ricketts, Lowell. (2021) *Wealth Gaps between White, Black and Hispanic Families in 2019*]

Put another way, for every dollar held by white households, Black households hold



only 12 cents, and Latinx households hold only 21 cents.

While all types of asset ownership are greater for white households, the majority of this **racial wealth gap** can be explained by lower **homeownership rates** among Black and other minority households.

#### **racial wealth gap**

The disparity of wealth held amongst different racial and ethnic groups.

## **Why minority households steer clear of homeownership**

If homeownership is the key to wealth, why don't more minority households buy homes?

If past experience has taught minority communities anything, it's that for Black and Latinx households, homeownership is not the "safe investment" many vociferously proclaim it to be.

The **National Bureau of Economic Research (NBER)** published a study on the impact of the 2008 Millennium Boom and subsequent Great Recession on the homeownership rates of Black and Latinx households compared to white households (Asian households were excluded from the study). [Bayer, Patrick; Ferreira, Fernando & Ross, Stephen L. (2013) *The Vulnerability of Minority Homeowners in the Housing Boom and Bust*]

It found the 2009 **foreclosure crisis** had a greater effect on Black and Latinx homebuyer communities compared to white communities. The share of homeowners who lost their homes to foreclosure during this time was:

- over 1-in-10 Black and Latinx households; and
- just 1-in-25 white households.

Why were Black and Latinx homeowners more than twice as likely than White homeowners to lose their homes? Three factors converged to increase the likelihood of foreclosure:

- **aggressive subprime** or **predatory lending**;

#### **predatory lending**

The practice of targeting individuals unprepared or underqualified for homeownership with relaxed mortgage standards, luring borrowers into taking out a mortgage with higher fees and subprime terms.

- high **debt-to-income ratios (DTIs)** allowed by lenders; and
- high cases of **employment instability**.

## Millennium Boom: the perfect storm for minority homebuyers

The most dangerous factor that increases the likelihood of foreclosure for Black and Latinx homebuyers is **predatory lending**.

The largest recognized case of predatory lending was settled by **Bank of America (BofA)** in 2012 for their subsidiary company, Countrywide's, discriminatory lending practices. BofA paid \$335 million to roughly 200,000 victims of Countrywide's actions.

Countrywide discriminated against minority homebuyers in two ways, by:

- charging **higher fees** to minorities than white homebuyers with equivalent qualifications; and
- **steering** minority homebuyers into subprime mortgage products, even though the targeted homebuyers had equal or better credit histories than other white homebuyers who were not shown bad mortgages.

### Steering

An unlawful housing practice that includes words or actions by a real estate sales licensee intended to influence the choice of a prospective buyer or tenant. A violation of federal fair housing provision that seek to eliminate discrimination in the sale or rental of housing.

Higher upfront fees and **subprime mortgages** induced the minorities targeted by Countrywide to ultimately pay much more than similarly qualified white homebuyers. Therefore, when the housing market and the economy went bust following the Millennium Boom, it was more difficult for minority homebuyers to make mortgage payments than the white homeowners who took our mortgages with Countrywide — the mortgages themselves were already less favorable and posed more risk.

### subprime mortgage

A mortgage made to a borrower based on loose underwriting standards and resulting in a high risk of default.

Lenders also deliberately encouraged minority homebuyers to take on more debt than they would reasonably be able to carry — in effect, *steering* them to a mortgage product with a higher DTI that would provide the greatest benefit to the lender. The higher a homebuyer's DTI, the greater the risk and the less likely

the buyer will be able to make future mortgage payments.

Lenders of the **Millennium Boom** era did not seem to care about this axiom, and knowingly pushed minority homebuyers into mortgages they were unable to pay. This resulted in higher immediate fees for lenders, who jettisoned the risk to other investors by selling the bad mortgages on the secondary mortgage market — out of sight, out of mind.

Lastly, homeowners were more likely to lose their home following the Great Recession due to the statistical fact that the heads of Black and Latinx households are more likely to be employed in professions more susceptible to economic downturns, like manufacturing and other hourly jobs. In other words, the heads of these households are more likely to lose their jobs than their white counterparts.

**Job loss** and the inability to pay are the biggest reasons homeowners default on their mortgages. Other **financial shocks** also contribute to the decision to strategically default, which is typically a struggling household's last resort. [Gerardi, Kristopher; Herkenhoff, Kyle F.; Ohanian, Lee E. & Willen, Paul. (2015) *Can't Pay or Won't Pay? Unemployment, Negative Equity, and Strategic Default*]

## The problem for California real estate

California is a large, diverse state. Nearly 40% of the population identifies as Latinx (Hispanic or Latino/Latina), according to the U.S. Census. Roughly 16% identify as Asian and 7% identify as Black or African American. Therefore, discrimination in the mortgage and housing markets has a far-reaching influence on our state.

Another issue for minority homebuyers, not mentioned in the NBER report, is the discriminatory behavior practiced by *some real estate agents*.

Compared to similarly qualified white clients, the U.S. Department of Housing and Urban Development (HUD) finds real estate agents show fewer rental and for-sale listings to Black, Asian and Latinx clients. [Aranda, Claudia L.; Levy, Diane K; Pitingolo, Rob; Santos, Rob; Turner, Margery Austin; Wissoker, Doug; The Urban Institute. (2013) *Housing Discrimination Against Racial and Ethnic Minorities 2012*]

Why do some real estate agents tend to show minority homebuyers fewer listings than their white counterparts?

It's usually *implicit bias* on behalf of the real estate agent. For instance, some real estate agents may think they're doing their Black clients a favor by only showing them homes in neighborhoods predominately full of other Black residents (an unlawful practice). Or agents may not realize they're slower to respond to requests by minority homebuyers, exercising a lesser degree of urgency than they would normally provide.

This perpetuates neighborhood **segregation**, which limits minority household access to higher quality jobs, better schools and other resources that disproportionately benefit white households.

**segregation**

The systemic act of separating households by race, which, in real estate, limits minority household access to higher quality jobs, better schools and other resources that disproportionately benefit white households.

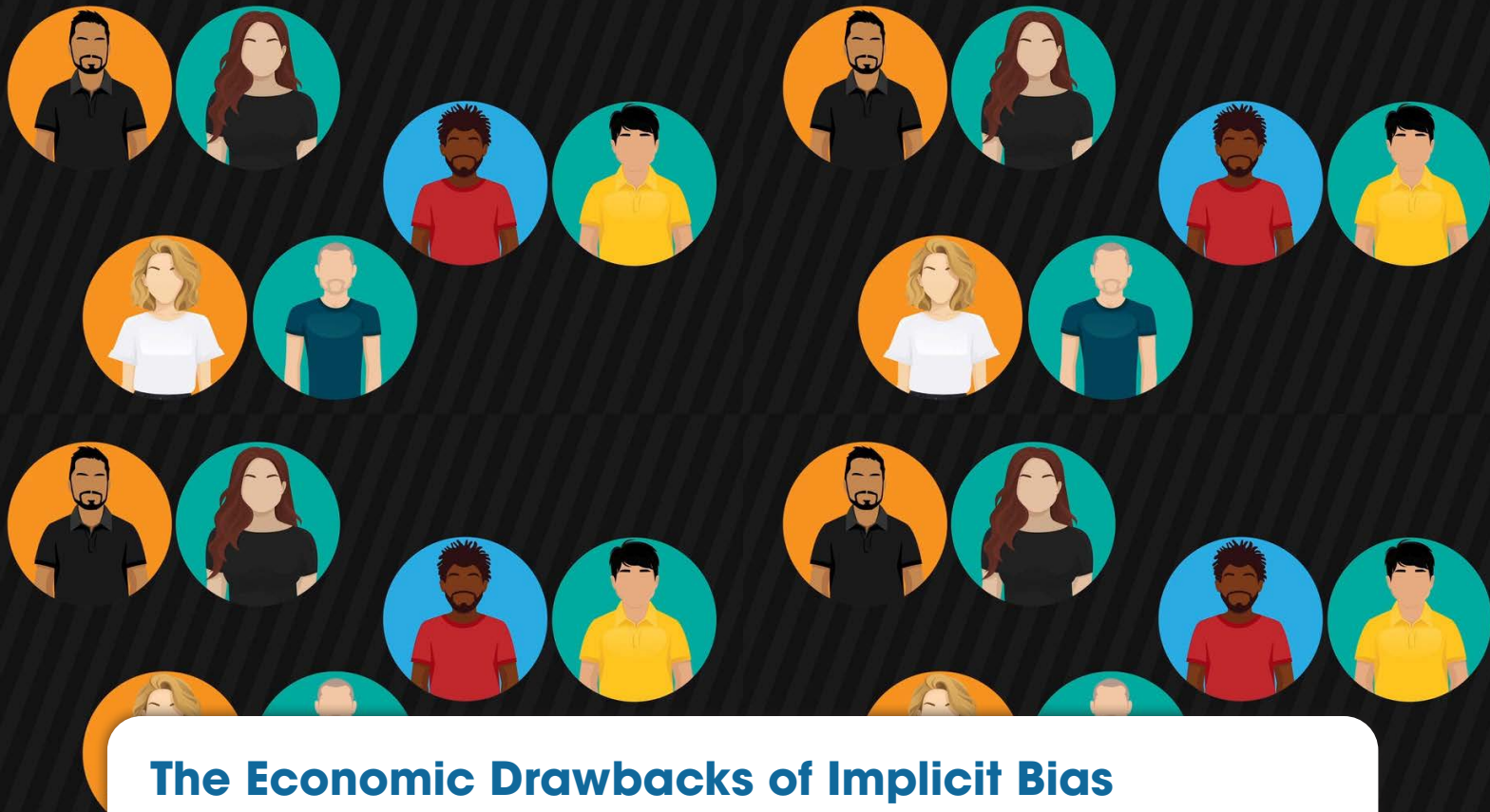
The only way to stop a California real estate agent from discriminating against minority clients?

The **California Department of Real Estate (DRE)** may enforce anti-discrimination laws. However, the DRE will only pursue an agent for ethics violations after first receiving a *formal complaint*.

In cases of discrimination, most homebuyers, sellers and renters do not know how to take appropriate action by contacting the DRE. Therefore, it is up to fellow agents and brokers to report discriminatory practices to the DRE. Aggrieved individuals may report complaints on the DRE's website using their online complaint form.



1. The racial wealth gap refers to:
  - a. the allocation of resources in a manner which favors individuals in a protected class.
  - b. the use of debt financing to acquire property to maximize the return on cash invested.
  - c. the disparity of wealth held amongst different racial and ethnic groups.
2. The most dangerous factor that increases the likelihood of foreclosure for Black and Latinx homebuyers is:
  - a. climate change.
  - b. predatory lending.
  - c. financial literacy.



## The Economic Drawbacks of Implicit Bias

### Implicit bias from real estate licensees

On top of the economic reasons mentioned above, minority households face **discrimination** in the form of:

- intentional **mortgage discrimination**;
- implicit (and sometimes explicit) discrimination from real estate professionals; and
- a higher likelihood of **default** and **foreclosure**.

*Implicit discrimination* ensures minority homebuyers and renters are:

- shown fewer properties; and
- given less information by real estate agents. [Aranda, Claudia L.; Levy, Diane K; Pitingolo, Rob; Santos, Rob; Turner, Margery Austin; Wissoker, Doug; The Urban Institute. (2013) *Housing Discrimination Against Racial and Ethnic Minorities 2012*]

A landmark study conducted by the Department of Housing and Urban Development (HUD) measured implicit racial discrimination by comparing the experiences of white testers against testers who were Black, Asian or Latinx, each with identical socioeconomic profiles.

Testers were instructed to contact housing providers and/or real estate licensees about recently advertised rental or sales listings. For consistency, two testers

contacted the same provider about the same listing. Testers had the same gender, age, family composition and financial characteristics, with their race the only contrasting factor.

This test was repeated 8,000 times across 28 major U.S. metros, including five metros in California.

Testers obtained listing information and scheduled viewings in equal measure, demonstrating that blatant racial discrimination has fallen significantly. But this was not true for the quieter, but equally harmful, implicit bias.

Compared to white buyers and renters responding to the same listings:

- Asian clients were shown 19% fewer for-sale and 7% fewer rental listings;
- Black clients were shown 18% fewer for-sale listings and 4% fewer rental listings; and
- Latinx clients were shown 7% fewer rental listings and roughly the same number of for-sale listings.

While blatant refusal to show properties to Black, Asian or Latinx clients was not an issue identified in the study, licensees exposed all non-white participants to fewer available units than their white counterparts. This subtle form of discrimination still has the adverse effect of providing Black, Asian and Latinx households with fewer options, limiting not just housing choices, but educational and economic access.

### Redlining: A history — and an ongoing problem

One of the most insidious forms of discriminatory lending in California's history is **redlining**. *Redlining* is the practice of denying mortgages and under-appraising properties in minority communities based on demographics. The **Housing Financial Discrimination Act of 1977** outlawed the practice in California.

#### **redlining**

The practice of denying mortgages and under-appraising properties in minority communities based on demographics, outlawed in California by Housing Financial Discrimination Act of 1977.

Redlining emerged as a practice after the **Great Depression** when the federal government sought to limit foreclosures and stabilize the housing market by classifying communities on a scale from low risk to

high risk for mortgage lenders.

The **Home Owners Loan Corporation (HOLC)** drew maps for over 200 cities nationwide between 1935 and 1940. The purpose of these maps was to color-code and document the **creditworthiness** of neighborhoods. The racial composition of neighborhoods was factored into the grades received, and often proved pivotal in assigning a certain grade.

The HOLC maps grouped neighborhoods into four classifications:

- Grade A: “Best” (colored green), described as the most stable, homogenous and in demand during good times or bad;
- Grade B: “Still desirable” (colored blue), described as somewhat stable and “still good,” posing an acceptable risk of default for mortgage lenders;
- Grade C: “Declining” (colored yellow), posing a high risk of default for lenders and described as becoming obsolete with expiring restrictions or a lack of them and “infiltration of a lower grade population”; and
- Grade D: “Hazardous” (colored red), posing the greatest risk of default for lenders and the least stable of all the categories.

Redlining has historically led to a decline in the quality and quantity of housing in communities that were deemed risky. Even though California outlawed the practice in 1977, the effects of the HOLC maps introduced in the 1930s persist today.

The HOLC maps which contributed to redlining practices had measurable effects in subsequent decades. This includes reducing **homeownership rates, home values** and **rents** among neighborhoods with lower HOLC map grades like C and D, while also increasing **racial segregation**. [Aaronson, Daniel; Hartley, Daniel Aaron; Mazumder, Bhashkar. (2017) *The Effects of the 1930s HOLC “Redlining” Maps*. Accessed March 2022. <https://ideas.repec.org/p/fip/fedhwp/wp-2017-12.html>]

Over the 20th century, redlined areas — neighborhoods receiving D grades — became more Black than their bordering C-grade neighborhoods. The gap between D and C boundaries grew steadily from 1930 until the 1970s, before shrinking thereafter.

A similar pattern emerges in C neighborhoods bordering B

neighborhoods. In fact, the effects on housing were more significant and longer lasting along the C-B boundaries than the D-C boundaries.

For example, the gap between C and B home values as of 2010 was 7.5 percentage points. The gap between D and C home values as of 2010 was 2 percentage points.

## Economic mobility hampered

Racial housing discrimination is not just morally and ethically reprehensible. It's also bad business. Implicit racial discrimination hinders sales volume in the real estate market, and also ties up rental activity.

Importantly, it was real estate agents, not owners, who engaged in the implicit discriminatory practices found by the HUD investigation.

The study showed that implicit racial discrimination impacts minority renters and buyers by:

- limiting their access to available housing;
- making the housing search longer, costlier and more difficult;
- hampering **economic mobility** by limiting a minority buyer's housing choices in areas with access to better employment and quality schools; and
- reinforcing the de facto racial segregation (redlining) that has gripped many U.S. cities in the years since outright segregation was outlawed.

### **economic mobility**

The ability of an individual, household or family to improve their financial status over the course of years or generations.

Further, **explicit bias** still exists in the real estate profession, though less so today. In these rarer and more overt cases, real estate agents refuse outright to show properties or take applications from members of protected classes.

But the harm of racial, ethnic, and economic segregation reaches far beyond just those who are isolated from the market by these practices. It drags down the larger economy of an entire region – and with it, real estate sales volume – according to research published in the *Journal of Urban Studies*.

Metropolitan areas with high levels of racial and job skill segregation suffered



reduced rates of short- and long-term economic growth between 1980 and 2005, the Urban study found. The future of any community is no less endangered by segregation.

Worse, poverty is very costly to a local economy. Housing discrimination and racial segregation only exacerbate those costs, cutting into the incomes of all people with local vested interests.

California's homeownership rate is low for all ethnicities, typically averaging roughly ten percentage points below the U.S. homeownership rate.

The number one enemy for real estate professionals is a low homeownership rate. With fewer homebuyers and sellers, real estate agents, brokers and mortgage loan originators (MLOs) — along with all the other professionals involved, like appraisers, escrow agents and title insurance officers — have fewer closings, fewer fees and lower incomes.

## Doing your part

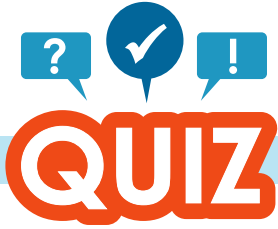
How can you get involved and help more Latinx, Black and Asian households break the cycle of implicit bias and achieve homeownership?

Real estate agents need to be vigilant for signs of predatory lending. Agents can make sure all clients are fully aware of the details of the mortgage they are agreeing to pay back. The **Consumer Financial Protection Bureau's (CFPB's)** mortgage shopping tools are a safe place to direct homebuyers for homebuying and mortgage guidance.

Real estate professionals also need to maintain high anti-discrimination standards by following the laws set out in **California's Unruh Civil Rights Act**.

To ensure brokers, agents, MLOs and landlords don't violate anti-discrimination law — even unintentionally — professionals need to:

- ask the same questions of all applicants;
- keep records of client interactions; and
- when in doubt, contact a local fair housing expert for advice — find a list of experts at HUD's website.



1. The ability of an individual, household or family to improve their financial status over the course of years or generations is referred to as:
  - a. assimilation.
  - b. financial literacy.
  - c. economic mobility.



## Avoid the Risk of Discrimination in Advertising

### Implicit signaling

In advertising, a company needs to target audiences effectively and directly. For example, goods marketed toward women are stereotypically packaged in pastels, identifying them as engineered for a feminine audience before you can even say “For Her.”

While that might pass muster in retail, applying such a strategy in real estate may amount to **implicit discrimination** or worse – **explicit discrimination**.

For an example of implicit discrimination in advertising, consider an agent who directs Black homebuyers only to neighborhoods with a large Black population. While they may believe they are acting in their client’s best interest by guiding them to a community with a similar population, the impact is discriminatory and this activity is unlawful.

Of course, some neighborhoods are not a good fit for every homebuyer. But when selling and renting properties, it is risky to limit your marketing blitz to a single group — even if that group is protected under fair housing laws.

Relatedly, if you are going to use models or stock photography in any of your marketing materials, be mindful to use images of *all types* of people. Do not single out one group in particular, even if the group you choose to single out is a protected group. By relying on just one type of person in your marketing, whether premised on race, gender or other protected class, you are implicitly signaling the

property is not a good fit for others who are not in this group.

## Federal protections under the Federal Fair Housing Act (FFHA)

The printing or publishing of an advertisement for the sale or rental of residential property that indicates a wrongful discriminatory preference is a violation of the Federal Fair Housing Act (FFHA). [42 United States Code §3604(c)]

A property sold or leased for residential occupancy is referred to as a dwelling. The discriminatory preference rule applies to all brokers, developers and landlords in the business of selling or renting a dwelling. [42 USC §3603, 3604]

Real estate advertising guidelines are issued by the Department of Housing and Urban Development (HUD). The guidelines are the criteria by which HUD determines whether a broker has practiced or will practice wrongful discriminatory preferences in their advertising and availability of real estate services.

HUD guidelines also help the broker, developer, and landlord avoid signaling preferences or limitations for any group of persons when marketing real estate for sale or rent.

## Wrongful discriminatory preferences in advertising

The **selective use** of words, phrases, symbols, visual aids and media in the advertising of real estate may indicate a wrongful discriminatory preference held by the advertiser. When published, the preference can lead to a claim of discriminatory housing practices by a member of the protected class.

Words in a broker's real estate advertisement that indicate a particular race, color, sex, sexual orientation, handicap, familial status or national origin are considered *violations* of the FFHA.

To best protect themselves, a broker – as **gatekeeper** to real estate – refuses to use phrases indicating a wrongful preference, *even if requested* by a seller or landlord.

Preferences are often voiced in prejudicial colloquialisms and words such as restricted, exclusive, private, integrated or membership approval.

## Beyond just words

Words are not the only way to discriminate. Selectively using **symbols, images, human models, visuals** and other forms of media indicate preference too.

## Housing for senior citizens

Indicating a preference by age is an exclusion from unlawful age discrimination when marketing qualified 55-or-over residences or communities. **Senior housing** is exempt from this particular anti-discrimination advertising rule.

### **senior housing**

Housing intended for persons 55 or 62 years of age and older.

A senior citizen housing project is housing:

- intended for and solely occupied by persons 62 years of age or older; or
- intended and operated for occupancy by persons of 55 years of age or older. [Calif. Civil Code §51.3(b)(1); 42 United States Code §3607(b)]

Landlords and owners of qualified **retirement communities** or senior citizen apartment complexes can exclude children to meet the needs of older persons.

To qualify as senior citizen housing, the development or renovation project must have at least 35 dwelling units and obtain a public report issued by the DRE. [CC §51.3(b)(4)]

Examples of symbols and other visual aids used in advertising include:

- sexuality pride flags;
- religious images such as a cross or Star of David;
- gender symbols;
- handicapped signs; and
- flags representing nationalities.

As previously discussed, aiming an advertisement at a particular class may lead people outside the group to believe they are not welcome in the area. Also, it may make the seller and their agent look like they *only* want to do business with a few select groups, which is never the desired intent in good brokerage practice.

The phrases above directly **target** protected classes, so it is best to leave them

out of your practice – period. This includes listings and marketing materials, as well as applications and deeds. While some may not sound aggressively prejudiced, even the seemingly harmless phrase “spacious master bedroom” is to be avoided due to the historical underpinning of the expression.

Regardless of what the advertiser meant, these problematic phrases can alienate clients and welcome a discrimination lawsuit.



1. When using models or stock photography in any of your marketing materials, be mindful to use images of:
  - a. only the type of people you wish to target.
  - b. all types of people.
  - c. computer-generated people only.
2. A senior citizen housing project is housing:
  - a. intended for and solely occupied by persons 62 years of age or older.
  - b. intended and operated for occupancy by persons of 55 years of age or older.
  - c. Either a. or b.

# “What country were you born in?”



## Avoid the Risk of Discrimination in Rental Practices

### Discrimination in leasing

A good rule of thumb is to simply not ask a potential or current tenant questions regarding their **protected status**.

For example, since landlords may not discriminate based on a tenant's national origin, landlords may not ask prospective tenants what country they were born in as this can never be a factor in deciding the terms, conditions or privileges for their rental of a dwelling.

To avoid discrimination, landlords need to ask all potential tenants the same **standard questions** to ensure equal treatment. Landlords also ought to limit inquiries to matters that are directly applicable to the potential renters' tenancy or the maintenance of the rental property.

For example, landlords may ask:

- about the presence of pets;
- how many tenants will occupy the property;
- how many parking spaces will be required;
- whether their present landlord will provide a favorable reference;
- whether any of the tenants smoke; and

- whether any of the tenants intend to use a waterbed in the premises.

This allows landlords to screen tenants effectively and limits vulnerability to a lawsuit from a potential tenant who believes they were treated unfairly. For example, a landlord may not ask questions about the tenant's:

- marital status;
- religious practices;
- intention to have children;
- national origin;
- disability status; or
- any other protected status.

Some common fair housing violations include:

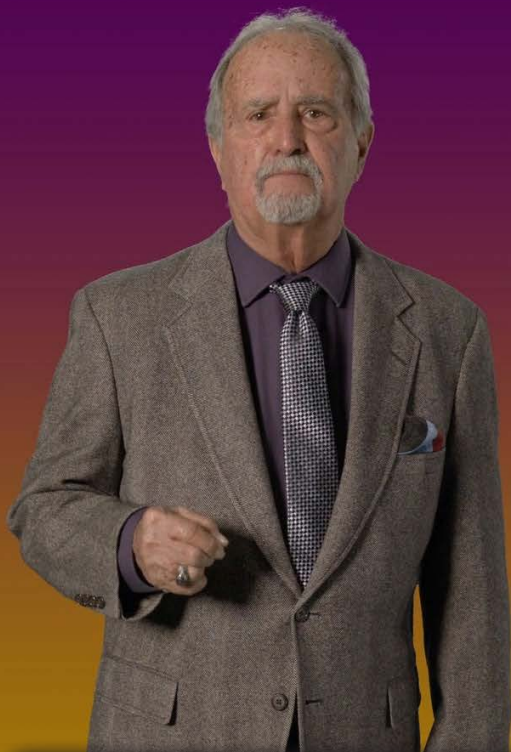
- refusing to rent, lease or sell housing due to illegal discrimination;
- sexual harassment, particularly demanding sexual favors in return for housing;
- creating documents, such as **covenants, conditions and restrictions (CC&Rs) that discriminate against a protected group**;
- denying a home loan or insurance for discriminatory reasons; and
- failing to reasonably accommodate a disability.

When a landlord is on shaky ground with fair housing laws, it is best to err on the side of caution. The penalties for violating these laws are serious and can include awarding money to the aggrieved individuals involved and paying attorney fees.



1. To avoid discrimination, landlords need to ask all potential tenants:
  - a. whether they are a member of a protected class.
  - b. the same standard questions to ensure equal treatment.
  - c. Both a. and b.





transaction agent



## Helping Clients Gain Mortgage Approval

### Mortgage lending and the homeownership gap

Bias in mortgage lending is well-documented historically. Though concrete administrative steps have been taken to address it to create a more equitable mortgage market, it still continues in some form today. While the net effect of bias in the mortgage industry and all its manifestations proves difficult to quantify, the fundamental result has been lower homeownership rates and less household wealth for Black and Latinx households.

Here in **California**, the share of mortgage applicants denied a mortgage are:

- 16% of American Indian mortgage applicants;
- 15% of Black applicants;
- 13% of Latinx applicants;
- 13% of Pacific Islander applicants;
- 10% of white applicants; and
- 10% of Asian applicants, according to the 2020 Home Mortgage Disclosure Act (HMDA).

While the disparity in mortgage denial is clear, it of course is not entirely due to discrimination. The high mortgage denial rates for non-white and non-Asian households can be traced to many observable factors, including:

- down payment size;

- credit history;
- debt-to-income (DTI) ratios; and
- job security.

For example, the average Black mortgage applicant listed a 3.5% down payment, well below the 8.9% down payment from applicants averaged across all races.

While direct discrimination by mortgage lenders is not responsible for low down payment amounts, **systemic bias** against minority homebuyers is the underlying cause of this disparity. Thinking back, **redlining** and its ongoing impacts have reduced wealth in Black and Latinx communities, holding back generational wealth and reducing access to benefits like **down payment gifts** and inheritance.

#### **down payment gift**

A gift of down payment funds frequently from a family member that is not to be repaid.

In fact, parental transfers of wealth like down payment gifts account for 30% of the Black-white **homeownership gap**, as found in a study by the Consumer Financial Protection Bureau (CFPB). In the U.S., young white households are *twice as likely* to be homeowners as are young Black households.

The result: the homeownership rate amongst Black households in the U.S. is just 52%, while the homeownership rate for white households is 72%.

## **Assisting clients gain mortgage approval**

Real estate brokers and agents are well positioned to open the doors of homeownership for all groups of people, including those who have historically been left out of homeownership. Often times, a *proactive approach* is needed.

First-time homebuyers may be unsure about the mortgage application and pre-approval process, more so if they are the first in their family to purchase housing. Here, brokers and agents need step up their role as a **transaction agent**, helping their buyer through every component of the process.

These transactional duties include:

- helping the buyer locate the most advantageous mortgage terms available in the market;
- oversight of the mortgage application submission process; and
- policing the lender's mortgage packaging process and funding conditions.

Collectively, these activities ensure all documents needed to comply with the

lender's requests and closing instructions are in order. If not, funding cannot take place and closing the sales escrow is jeopardized.

Further, having a couple trustworthy and helpful lenders on hand is crucial. Brokers may suggest these proven lenders to homebuyers to receive a pre-approval letter, which is typically necessary for submitting a successful offer. Homebuyers ought to apply with at least three mortgage lenders so they can choose the best terms.

*Editor's note — Keep in mind that an agent receiving payment for referring a client to a mortgage lender is considered a **kickback**, which is unlawful under the Real Estate Settlement Procedures Act (RESPA). 12 United States Code §2607(d)*

#### **kickback**

A fee improperly paid to a transaction agent who renders no service beyond the act of referring when the transaction agent is already providing another service in the transaction for a fee.

Any first-time homebuyer will be assisted by knowing what documents they will need to have available. Further, even after they receive approval, there are several "next steps" that need to be taken once their offer is accepted. Brokers can move the process along by keeping in contact with both the client and their chosen lender.

## **Getting an approval – next time**

What happens when a potential client wants to buy, but is unable qualify?

Rather than giving up and simply moving on to the next client, it's important for brokers and agents to take the extra step to help them qualify *next time*.

For example, brokers can inform unsuccessful mortgage applicants about special **mortgage programs** designed for first-time homebuyers. Some of these programs allow more leeway in qualifying.

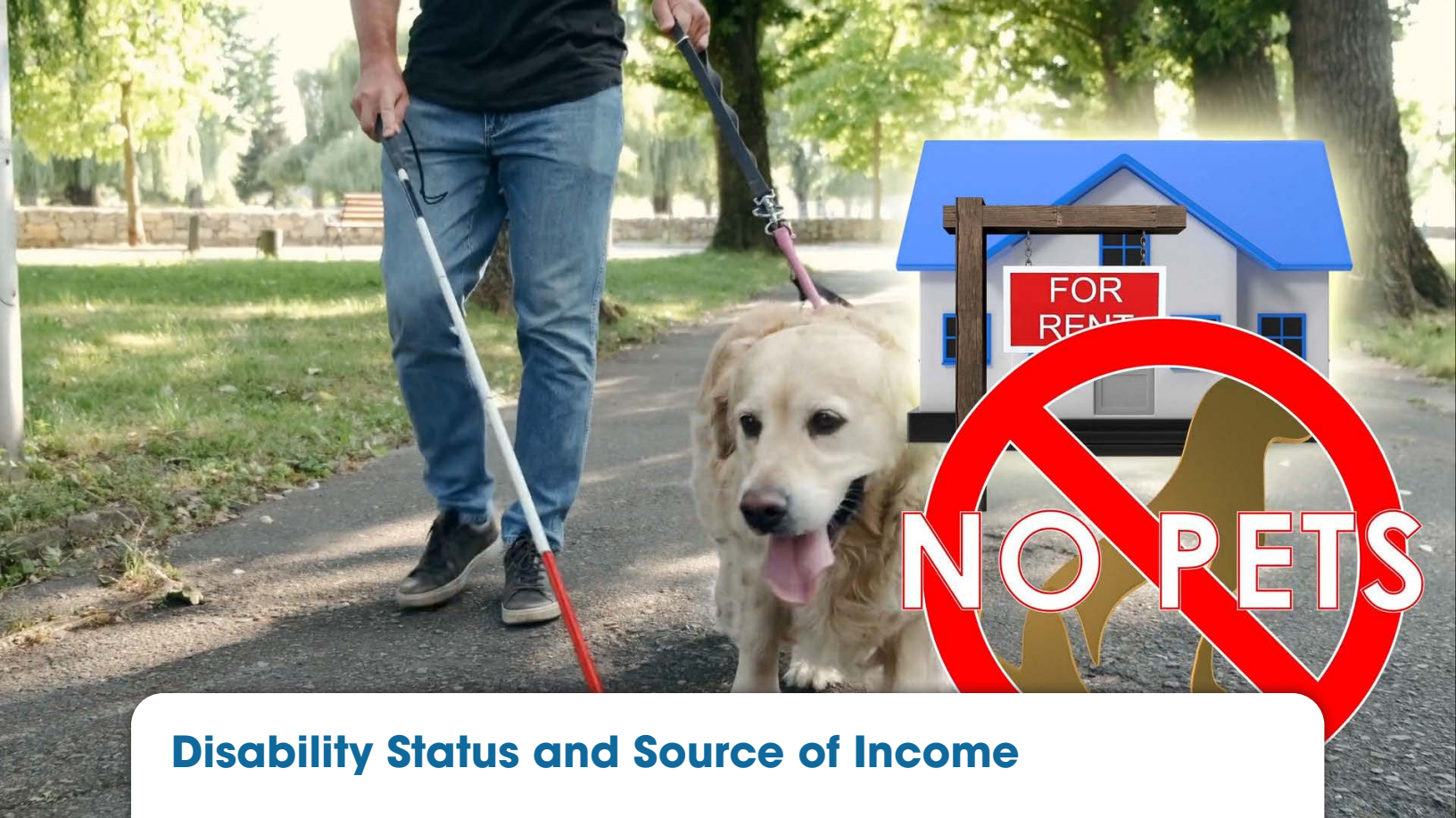
The number one reason for receiving a mortgage denial is a too-high DTI ratio. A homebuyer's DTI is measured by comparing all of their monthly debt obligations (e.g., auto loan payments, student debt, credit card payments, etc.) with their monthly income. In most underwriting circumstances, a lender will not allow a homebuyer's total debt — including a mortgage payment — to exceed 43% of their monthly income.

In many cases, the client will be able to gain mortgage approval after taking a few steps to **pare down debt**. Without being pushy, brokers may continue to

check in every month or so to see where they are in the process. Clients may be discouraged or embarrassed about being denied a mortgage, but it's the broker's job to keep them motivated and on the path to homeownership — not just in “special cases,” but for *all clients*.



1. The transactional duties of a transaction agent include helping the buyer locate the most advantageous mortgage terms available in the market and:
  - a. oversight of the mortgage application submission process.
  - b. policing the lender's mortgage packaging process and funding conditions.
  - c. Both a. and b.



## Disability Status and Source of Income

### Avoiding the top fair housing complaints

As gatekeepers to homeownership, real estate brokers and agents are in a prime position to help close the homeownership gap and ensure quality rental housing for historically marginalized groups.

One of the biggest errors when trying to even the playing field for all groups is to claim to be blind to all differences (e.g. “color blindness”). A more effective approach recognizes and honors the differences in others, creating **empathy**. With greater understanding, individuals may become aware of their own biases, discard stereotypes and embrace the unique backgrounds and experiences of each individual.

#### **empathy**

The ability to understand and be sensitive to the feelings of others.

The highest number of fair housing complaints received each year in California — by far — are in regard to **disability status**. [Department of Fair Employment and Housing (DFEH). (2022) 2020 Annual Report.]

California law defines **disability** as a mental or physical impairment, disorder or condition that limits a major life activity, such as working, physical and social

activities. This includes medical diagnoses like HIV/AIDs and cancer. [Calif. Government Code §12926.1(c)]

#### **disability**

A mental or physical impairment, disorder or condition that limits a major life activity.

For example, consider a disabled rental applicant who requires the use of a service dog — but the rental unit they are applying for does not allow pets. Even though the no-pet rule applies to all tenants and is not on its face discriminatory, the landlord *may not* refuse to rent a unit to a tenant on the basis that they are disabled and use a:

- **guide dog**, a seeing-eye dog trained by a licensed individual to aid a blind person;
- **signal dog**, trained to alert a deaf or hearing-impaired person to intruders or sounds; or
- **service dog**, trained to aid a physically disabled person with protection work, pulling a wheelchair or fetching dropped items. [Calif. Civil Code 54.1(b)(6)]

#### **Pet addendum**

Landlords may, as a matter of general policy, refuse to accept any prospective tenant who wants to occupy a unit with their pet, unless the tenant is disabled and uses a specially trained dog on the premises. [Calif. Civil Code §54.1(b)(5)]

When a landlord allows pets, they will often:

- impose restrictions on the type or size of the pet; and
- require the landlord's written consent to keep the pet on the premises. [See **RPI** Form 551 §6.9 and Form 550 §6.9]

The landlord and tenant may sign and attach a pet addendum that states:

- the type of pet and its name;
- the **security deposit** to be charged for the pet (but limited as part of the maximum security deposit allowed); and
- the tenant's agreement to hold the landlord harmless for any damage caused by the pet. [See **RPI** Form 563]

A landlord who allows pets may not:

- favor declawed or devocalized animals in any advertisement;
- refuse to rent or negotiate for rent to a tenant because their pet has not been declawed or devocalized; or
- require tenants' pets to be declawed or devocalized as a condition of renting the property. [CC §1942.7]

Further, landlords may not charge additional rent or security deposit to tenants with authorized service, guide or signal dogs. [CC §54.2(a)]

### Equal opportunity denied

A landlord who refuses to make reasonable accommodations to afford a person with disabilities an **equal opportunity** to use and enjoy their housing — such as through denying them housing due to their use of a service dog — is guilty of practicing **unlawful discrimination**. When the Civil Rights Department (CRD) investigates and finds the landlord practiced unlawful discrimination, the CRD may require the landlord to:

- provide housing that was previously denied;
- pay monetary compensation for any losses or even emotional distress;
- undergo mandatory one-time or regular training to prevent future discriminatory acts;
- pay fees, penalties, fines; and
- undergo monitoring to avoid future discrimination. [Civil Rights Department (CRD). (2020) [Disability Discrimination Fact Sheet](#).]

Another discriminatory activity for which the CRD receives a high number of complaints is discrimination based on **source of income**.

#### **source of income**

Lawful, verifiable income paid directly to a tenant, their representative or landlord on behalf of a tenant. This includes public assistance and housing subsidies, such as Section 8 housing vouchers.

### section 8 housing

A government housing program for low-income households which provides qualifying tenants with rent subsidies and minimum habitability standards.

As of 2020, government housing vouchers — such as **Section 8 vouchers** — are considered a tenant's source of income in California, and thus are a protected status. In other words, California landlords may not choose to deny housing to a tenant based on their use of housing vouchers. Further, due to the tenant's source of income, the landlords may not:

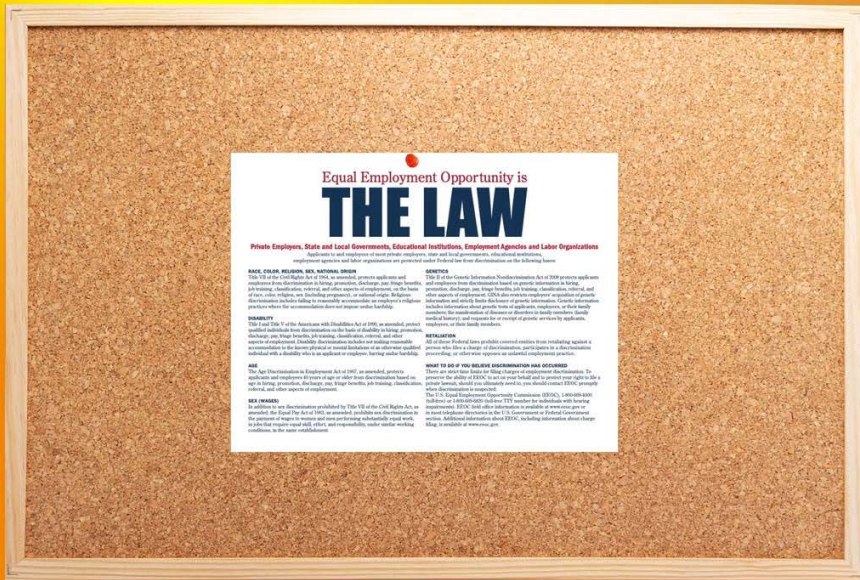
- advertise a preference or limitation for certain sources of income;
- refuse an application;
- charge a higher deposit or rent;
- treat the tenant differently in any way;
- refuse to renew the lease;
- terminate the tenancy;
- lie about the availability of a unit;
- require additional conditions or rules on the tenancy; or
- restrict the tenant's access to property facilities or services. [Gov C §12927]

Tenants or applicants who believe they have been discriminated against may **file a complaint** with the CRD. The CRD will investigate and attempt to resolve the complaint. However, when the complaint cannot be resolved, the CRD may file a lawsuit against the landlord to seek monetary relief.



1. The highest number of fair housing complaints received each year in California are in regard to:
  - a. disability status.
  - b. race.
  - c. gender identity.





## The Inclusive Brokerage

### Combat implicit bias before it occurs

To make a living in real estate, it's always best to appeal the widest audience – cast a wide net. This means real estate marketing needs to speak to everyone. Seeking to appeal to only a certain type of demographic, even with the best of intentions, will leave out opportunities to work with everyone else.

Worse, a **real estate advertisement** that indicates a bias against or preference for particular race, color, sex, sexual orientation, handicap, familial status or national origin is considered a violation of the Federal Fair Housing Act (FFHA). Even when a real estate professional doesn't mean to discriminate, problematic wording, phrases or images can alienate clients. Not only is this simply bad for business, it may also welcome a discrimination lawsuit.

The best way to avoid discriminatory advertisements is to take an *active approach* to being inclusive.

For example, advertisements that use single-gender pronouns (he or she) unnecessarily exclude half of all readers from a broker's potential client base and tend to incite protests. For more **inclusive advertising**, brokers do not need to clutter ads with multiple gender pronouns and titles — or clarify their intention to address all genders. Rather, speaking in the second person (you) or using the third person (they) covers all bases.

Simplicity is the best approach. Always avoid salutations that isolate a specific

gender, such as “sir” or “madam,” and instead opt for generic terms like “homeowner.” Alternatively, drop titles altogether.

To be inclusive, it’s also helpful to create advertising and other transaction-related content in **multiple languages**.

Over one-in-four California residents were born in another country. For perspective, the national average for **foreign-born residents** is just one-in-eight. Three-quarters of this population is documented or U.S. citizens. Half of California’s migrant population is from Latin America and 39% are from Asia. [Public Policy Institute of California. [Immigrants in California](#). (2019)]

With such a diverse population, creating content in languages that are most common in each particular community is reasonable and good practice. Not just one or the other – both.

## Hire and work with a diverse workforce

When seeking to serve a diverse community of clients and combat implicit bias before it occurs, the best thing a broker can do is hire and work with a diverse community of agents and other professionals.

For example, when advertising for an available position, employers proactively include an **Equal Opportunity Employment (EOE) statement**. The EOE statement is a recognition that bias often happens during the employment process, but the employer’s EOE is a step toward countering that bias by promoting a diverse applicant pool.

The EOE statement includes the employer’s commitment to hiring a diverse and inclusive workforce. For example: *XYZ Brokerage is an equal opportunity employer. We do not discriminate on the basis of race, color, religion, sex, gender identity, sexual orientation, pregnancy, national origin, age, disability or genetic information.*

No longer than a brief paragraph, EOE statements make it clear that the employer wishes to employ a workforce representative of the full range of society. The broker may wish to elaborate to show their earnest wish to employ a diverse workforce, outlining their willingness to provide reasonable accommodations, or even highlighting who they are as a company culture. For example: *XYZ Brokerage seeks qualified applicants from all backgrounds and we encourage diverse applicants to apply, including women, people of color, people with disabilities, LGBTQ people and veterans.*

Other steps a broker may take to ensure equity in their hiring and employment practices include:

- basing **agent-broker fee-splits** on identifiable factors, such as transaction volume or years of experience, upholding the *equal pay for equal work standard*;
- responding promptly and thoroughly to any complaints of discrimination from agents or clients; and
- making **reasonable accommodations** in the workplace to ensure protected groups are not excluded from employment, such as allowing time off for religious holidays and making adjustments for employees with disabilities.

Further, employers with 15 or more employees need to post the *EEO is Law* poster, which summarizes EEO law and directs employees how to make a formal complaint, in a conspicuous location in the office. [42 United States Code §2000e-10 (a); [U.S. Equal Employment Opportunity Commission](#).]

Employers with fewer than 15 employees are *not* required to display the *EEO is Law* poster, but all employers are required to follow the **equal pay for equal work** standard. [29 Code of Federal Regulations §1620 et seq.]

The **gender pay gap**, which sees women systemically earn less money doing the same job as men, is mainly a product of implicit bias on behalf of employers. This also may exist in the context of salary-based office staff who perform administrative work within a real estate brokerage office. This disparity is implicit as employing brokers don't generally *intend* to pay female office staff less than a male equivalent doing a similar job, but their hidden expectations, assumptions and attitudes may cause women to receive less pay than men.

#### **gender pay gap**

The systemic difference in pay between male and female employees.

Women employed as full-time real estate brokers or sales agents earn on average 70 cents on the dollar compared to men in the same full-time employment, at the national level. On average, that's a difference of:

- \$415 a week; or
- \$21,580 a year. [Bureau of Labor Statistics. (2021) [Highlights of Women's Earnings in 2020](#).]

Beyond hiring a diverse workforce and seeking out a diverse group of professionals to work with, ensuring equal pay and equal access to employment are crucial to rooting out systemic implicit bias.



1. Over \_\_\_\_\_ California residents were born in another country.
  - a. one-in-two
  - b. one-in-four
  - c. one-in-six



# lack of financial literacy

## The Importance of Financial Literacy

### Educate your buyers

Households from all walks of life ought to have an equal chance at homeownership.

However, the greatest obstacle many individuals face is a lack of *financial acumen*, which is usually built over years of exposure to different financial strategies and products.

California is one of just five states in the nation with no **financial literacy** education requirements for K-12 public schools. Further, only 20% of teachers feel confident enough to teach on the subject, according to the Council of Economic Education. [Council for Economic Education. Survey of the States – 2022.]

#### **financial literacy**

The ability to understand and apply personal financial skills, including budgeting, saving for retirement, investing and qualifying to borrow money.

Without basic financial literacy required in school, there is a lot of catching up to do for clients seeking to become homeowners — especially when these clients have no family history of homeownership, as is significantly more likely for minority homebuyers. Financial literacy teaches homebuyers how to elevate and maintain their credit scores, pay off debts and save — all crucial to qualifying for a mortgage.

Brokers who encourage their first-time homebuyer clients to ask questions will improve understanding and homeownership outcomes, while narrowing the financial literacy gap. Each time the agent or broker speaks with these clients, they ought to end each conversation with “and do you have any questions for me?”

Chances are, they will have many.

Likewise, brokers need to encourage all clients to ask questions of their *lender*. As the biggest financial investment of their lives, taking out a mortgage ought to leave the homebuyer with zero uncertainty.

While first-time homebuyers may naturally ask their broker plenty of questions, there are also numerous things they may not have the peripheral vision or experience to do know they need to ask about. That's where the broker's initiative and intuition comes in.

## Additional costs of ownership

A first-time homebuyer client likely knows about how much cash on hand they need for a **down payment**. But some additional costs the broker may need to prepare first-time homebuyers for are:

- **mortgage insurance**;
- **closing costs**;
- the **supplemental tax bill** the homeowner will receive shortly after closing;
- any **initial repairs** needed to make the home livable; and
- the true costs of maintenance and upkeep. [See **RPI Form 306**]

Other aspects of the transaction the first-time homebuyer may be unaware of include:

- the **time it takes to close** — having never experienced a closing before, they won't realize that it typically takes 30-45 days from their offer being accepted to closing;
- the **home inspection** — the buyer needs to make their offer contingent on a satisfactory home inspection, even if the contingency makes their offer less attractive to the seller;
- choosing **homeowners' insurance** — required by the lender, the homebuyer needs to know they have options when choosing a homeowners' insurance provider and that the costs can vary based on coverage and the provider; and

- the **tax deductions** available to homeowners, including mortgage interest deductions (MIDs) and deductions on property taxes and bonded assessments.

Being upfront with first-time homebuyer clients about these additional costs and transaction steps will avoid any confusion or surprise on their part.

This additional communication also improves homeownership outcomes, and of course, shrinks the **homeownership gap**.



1. \_\_\_\_\_ literacy teaches homebuyers how to elevate and maintain their credit scores, pay off debts and save — all crucial to qualifying for a mortgage.
  - a. Linguistic
  - b. Financial
  - c. Cross-cultural
2. Aspects of the transaction the first-time homebuyer may be unaware of include the time it takes to close, the tax deductions available to homeowners and:
  - a. the home inspection process.
  - b. choosing homeowners' insurance.
  - c. Both a. and b.

# Implicit Bias: Glossary

## C

**Civil Rights Act** ..... 6  
A federal law which provides broad protections to numerous classes of individuals in the United States against discriminatory activity

**Civil Rights Department** ..... 12  
A state agency designated with protecting Californians from housing, employment, and public accommodation discrimination.

## D

**disability** ..... 37  
A mental or physical impairment, disorder or condition that limits a major life activity.

**down payment gift** ..... 33  
A gift of down payment funds frequently from a family member that is not to be repaid.

## E

**economic mobility** ..... 23  
The ability of an individual, household or family to improve their financial status over the course of years or generations.

**empathy** ..... 36  
The ability to understand and be sensitive to the feelings of others.

**Equal Credit Opportunity Act** ..... 8  
A 1974 federal enactment prohibiting lenders from discriminating against borrowers from a protected class.



**explicit bias** ..... 2

Blatant discrimination which causes real estate licensees to unlawfully refuse to show properties or take applications from members of a protected class

**F**

**familial status** ..... 7

A status which indicates a household includes individuals under the age of 18

**Federal Fair Housing Act (FFHA)** ..... 6

A collection of policies designed to prevent discrimination in the access to housing based on an occupant's inclusion in a protected class.

**financial literacy**..... 44

The ability to understand and apply personal financial skills, including budgeting, saving for retirement, investing and qualifying to borrow money.

**G**

**gender pay gap** ..... 42

The systemic difference in pay between male and female employees.

**I**

**Implicit Association Test (IAT)** ..... 3

A publically available online test designed to measure subconscious attitudes and beliefs held by individuals.

**implicit bias** ..... 2

Actions which are not openly discriminatory but yield discriminatory results.

**K****kickback** ..... 34

A fee improperly paid to a transaction agent who renders no service beyond the act of referring when the transaction agent is already providing another service in the transaction for a fee.

**P****predatory lending** ..... 16

The practice of targeting individuals unprepared or underqualified for homeownership with relaxed mortgage standards, luring borrowers into taking out a mortgage with higher fees and subprime terms.

**R****racial wealth gap** ..... 16

The disparity of wealth held amongst different racial and ethnic groups.

**redlining** ..... 21

The practice of denying mortgages and under-appraising properties in minority communities based on demographics, outlawed in California by Housing Financial Discrimination Act of 1977.

**S****section 8 housing** ..... 39

A government housing program for low-income households which provides qualifying tenants with rent subsidies and minimum habitability standards.

**segregation..... 19**

The systemic act of separating households by race, which, in real estate, limits minority household access to higher quality jobs, better schools and other resources that disproportionately benefit white households.

**senior housing..... 28**

Housing intended for persons 55 or 62 years of age and older.

**source of income..... 38**

Lawful, verifiable income paid directly to a tenant, their representative or landlord on behalf of a tenant. This includes public assistance and housing subsidies, such as Section 8 housing vouchers.

**steering..... 17**

An unlawful housing practice that includes words or actions by a real estate sales licensee intended to influence the choice of a prospective buyer or tenant. A violation of federal fair housing provision that seek to eliminate discrimination in the sale or rental of housing.

**subprime mortgage..... 17**

A mortgage made to a borrower based on loose underwriting standards and resulting in a high risk of default.

**U**

**Unruh Civil Rights Act..... 12**

A California law which prohibits discrimination by a business establishment based on sex, race, color, religion, ancestry, national origin, disability or medical condition. A real estate practice is a business establishment.

# Implicit Bias: Quiz Answer Key

Introduction to Implicit Bias — Probing Below the Surface		
Q1	C	Pg 2
Q2	C	Pg 3
State and Federal Fair Housing Laws, Pt I		
Q1	A	Pg 6
State and Federal Fair Housing Laws, Pt II		
Q1	C	Pg 16
Access to Homeownership and the Wealth Gap		
Q1	C	Pg 19
Q2	C	Pg 19
The Economic Drawbacks of Implicit Bias		
Q1	C	Pg 27
Avoid the Risk of Discrimination in Advertising		
Q1	B	Pg 29
Q2	C	Pg 31

Avoid the Risk of Discrimination in Rental Practices		
Q1	B	Pg 34
Helping Clients Gain Mortgage Approval		
Q1	C	Pg 39
Disability Status and Source of Income		
Q1	A	Pg 42
The Inclusive Brokerage		
Q1	B	Pg 47
The Importance of Financial Literacy		
Q1	B	Pg 51
Q2	C	Pg 53