

Buyer Unfair Practice Letters

The Washington legislature is currently considering legislation that would prohibit real estate brokers from presenting a seller of residential real estate with a “buyer unfair practice letter.” A buyer unfair practice letter is a written communication from a buyer reasonably read to be intended to persuade a seller to sell to a buyer because of a status protected from discrimination by the WA Law Against Discrimination (WALAD) or related laws (presumably including the federal Fair Housing Act). The Fair Housing Act makes it unlawful to refuse to engage in or negotiate a real estate transaction with a person because of race, color, religion, national origin, sex, children, or disability, and the WALAD prohibits housing discrimination based on creed, sexual orientation, veteran / military status, marital status, and immigration / refugee status.

Buyer love letters, as they are often called, are written by buyers to sellers, especially in competitive real estate markets, to try to woo sellers to accept the buyer’s offer over other offers, such as those with higher down payments or all-cash. The letters may share information about the buyer’s household composition, appreciation for the property, and intentions for upkeep. While such letters may appeal to a seller’s emotional sense of well-being about finding a buyer who is a “right fit” for the property and neighborhood, injecting such letters into the decision-making process puts the seller and broker at risk for committing unlawful housing discrimination, and buyers at risk of experiencing it.

When considering buyer unfair practice letters, sellers and brokers can intentionally or inadvertently, through unconscious bias, make decisions that violate fair housing laws. Sellers may feel more affinity with buyers who look like them and have similar family compositions, sexual orientations, national origins, and religious backgrounds. By bringing subjective variables into the decision-making process, however, discrimination, or the perception of it, may result, leading to fair housing complaints and lawsuits. Other buyers who are in different protected classes than those discussed in a successful buyer’s letter may be discriminated against, or believe they were discriminated against. Conversely, a buyer who submits a letter that discusses their protected classes can still be rejected, which may be because of protected class, or lead to suspicions of discrimination, especially if the accepted offer has less favorable terms than the rejected buyer’s. The likelihood of discrimination increases when buyers include photos and images with their letters, revealing race, children, same sex partners, people with visible disabilities, or furnishings or attire associated with religion or national origin.

Recognizing the fair housing concerns raised by buyer love letters, the National Association of Realtors on October 3, 2020 issued guidance to its members of the risks of buyer love letters¹, the real estate brokerage firm Redfin stopped tracking the effectiveness of buyer letters², and in June 2021, Oregon lawmakers passed House Bill 2550 which directs sellers’ agents to reject love letters from buyers.³ The Oregon law,

¹ [Love Letters or Liability Letters? \(nar.realtor\)](#)

² [With house supply low, the opportunity for discrimination is high - Vox](#)

³ [Oregon lawmakers pass bill banning 'love letters' during home sales | KATU](#)

like the Washington bill, is narrowly tailored so as to still allow free speech. The content prohibited from conveyance to sellers is that which violates fair laws, namely communications intended to persuade sellers to make decisions based on protected classes. Buyers may still communicate information to sellers that does not include protected class details, such as telling the seller how the house and landscaping will be cared for, expressing appreciation and admiration for the beauty of the home, amenities, view, paint, or décor; and, details about the offer's business terms, such as, able to close quickly, pre-approval documents, escalation clauses, non-refundable deposit, or pre-underwriting to remove a financing contingency.

The low real estate stock and rising housing prices across Washington creates an environment where many people are struggling to find a home to purchase and may resort to self-promotion strategies they hope will give them an edge. But solutions to our housing crisis should not include encouraging buyers and requiring brokers to promote protected classes to sellers, which positions sellers to discriminate and buyers to be discriminated against.⁴

Information provided by Northwest Fair Housing Alliance (NWFHA) is not intended as a substitute for legal advice. For more information about NWFHA visit our website at www.nwfairhouse.org.

The work that provided the basis of this article was supported by funding under a grant with the U.S. Department of Housing and Urban Development. Northwest Fair Housing Alliance is solely responsible for the accuracy of the statements and interpretations provided and such interpretations do not necessarily reflect the views of the Federal Government.

⁴ See also, [Buyer "Love Letters" and Fair Housing - St. Louis REALTORS® \(stlrealtors.com\)](#).