



DEAR  
SELLER

---

My husband and I would love to raise our family here.” “I would love for my children to attend the local school here.” “I can see my children enjoying the pool in the backyard.” “I love that the location has a strong community of people of my faith here.”

**LEGAL LINES** | Personal letters from prospective buyers carry with them potential fair housing implications.

THE LEGALITY OF PERSONAL LETTERS FROM BUYERS being included with purchase offers has been generating many questions on the NYSAR Legal Hotline. This situation may also occur with a rental transaction, but less frequently. Both listing agents and buyer agents should exercise caution in scenarios in which their clients wish to deliver or receive such letters, as potential fair housing issues may arise.

Liability under federal fair housing law occurs when a seller or landlord refuses to sell or rent after the making of a bona fide offer, or refuses to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status or national

origin, and/or to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status or national origin. Such liability may also occur because of state human rights law, which is strikingly similar to its federal counterpart. Regardless of whether there is a federal or state violation, licensees should follow certain best practices to avoid any type of claim related to personal letters.



**By S. Anthony Gatto, Esq.**  
NYSAR GENERAL COUNSEL



**By Liz Celeone, Esq.**  
NYSAR ASSOCIATE COUNSEL

NYSAR's Legal Hotline is a question-and-answer service for REALTOR® members only. Call (518) 43-NYSAR or (518) 436-9727 from 9 a.m. to 4 p.m. Monday through Friday with your questions. You will need to provide your member number, which can be found on the mailing label of this magazine. The hotline does not provide a client-lawyer relationship. For confidential legal advice, consult a competent attorney.

## POTENTIAL FAIR HOUSING VIOLATIONS

The scenario is as follows: A listing agent receives a purchase or lease offer containing a personal letter from a potential purchaser/tenant. This letter will normally include some personal background information of the person or people who wish to purchase or rent the home, along with why they wish to reside in the specific property being offered for sale or lease. What happens more often than not is that such a letter will include and make a specific reference to one or more protected classes covered under the federal Fair Housing Act or the New York State Human Rights Law.

Examples of the statements often included in these letters are:

- "My wife and I would love to raise our family here."
- "I would love for my children to attend the local school here."
- "I can see my children enjoying the pool in the backyard."
- "I love that the location has a strong [insert religion, ethnicity, age group, etc.] community here."

These are just some examples of potentially problematic language that directly or indirectly references one or more protected classes. These examples include references to marital status, familial status, religion, ethnicity, creed, national origin and age.

If this type of letter referring to a protected class is used with or without the assistance of the licensee — and is (or could be argued to be) a contributing factor in the seller's acceptance or denial of the offer — it is a fair housing violation against the seller and potentially the listing agent if they were involved.

An example of this would be if the seller rejected a purchase offer from a potential buyer who had no children, and the buyer later found out that the seller had accepted the offer of a family with four young children, who had expressed in a personal letter to the seller that they wished for their children to grow up in the subject home. This would assist the would-be buyer in establishing a case that they were discriminated against because of their familial status. The non-prevailing purchaser in this case would be the aggrieved party in a fair housing complaint or civil lawsuit.

The nightmare scenario would be the seller after the closing discussing the fact that they sold the house to a "nice couple with children because the house always had children in it." Such an utterance by the seller, if heard by or conveyed to the aggrieved

party, would be justification for the filing of a lawsuit alleging violations of fair housing laws.

In this situation, both the listing agent and the seller could potentially be liable for the fair housing violation, and the real estate licensee would likely be named as a party in the action against the seller. The listing agent could potentially be found to have assisted their seller in making a discriminatory

**During the initial interview, the listing agent should strongly advise their clients against accepting such letters from buyers.**

**64%**  
**OF REALTORS®**  
**DISCUSS FAIR**  
**HOUSING WITH**  
**BUYERS AND**  
**SELLERS.**

Source: REALTOR® magazine survey of 2,300 NAR members

decision based upon the protected classes directly or indirectly mentioned in the letter. In order to prevail against a fair housing complaint, licensees would have to prove that they either had no knowledge of the contents of the letter, or that they made a good faith effort to keep their seller client from reading the letter and had no knowledge if the seller's decision was based upon the content of the letter.

## HOW TO MANAGE YOUR RISK

Legal Hotline questions often include how listing or buyers' agents should proceed if presented with one of these letters, in order to properly manage their risk. Neither the listing nor the buyer's agent should ever suggest the use of these letters to their clients (with the exception of those letters that do not directly or indirectly refer to a protected class). Buyers' agents should not suggest that their clients write letters to sellers, and listing agents should not suggest that their clients read them in order to assist their decision-making process. Licensees should also explain to their clients the potential for a fair housing violation.

If the buyer still insists upon writing such a letter to the seller, and the seller is agreeable to reading it, neither the listing agent nor the buyer's agent should be involved in the delivery of the letter to the seller, nor should either agent read it. Licensees should require that the buyer deliver the letter directly to the seller without any licensee involvement. Listing agents should also advise their sellers to have their attorneys review such letters before reading them.

It is also advisable that listing brokers discuss the potential liability that these letters carry with them during their initial listing interview with the seller. During the initial interview, the listing agent should strongly advise their clients against accepting such letters from the buyers, and should not be involved if clients still choose to read them. Listing agents, as well as buyers' agents, should keep a paper trail of their good faith efforts to advise their clients against such practices.

It should be noted that letters addressing the property itself that do not directly or indirectly identify one or more protected classes are permitted. For example, a letter complimenting the seller on their meticulous upkeep of a property is permitted as would be the buyer expressing their desire to live in a specific type of home (Tudor, colonial, high rise, etc.)

In a scenario where the buyer's agent finds out the buyer delivered a letter to the seller containing a reference to a protected class (even after the licensee has made a good faith effort to discourage their client from delivering or accepting such letter, and hasn't read or delivered such letter), the buyer's agent should make sure that their file reflects that they discouraged the buyer from delivering the letter. The same applies to a situation where the seller's agent finds out that the seller made their determination as a result of such a letter. A listing agent that continues to represent their client in this situation would be at risk of prosecution.

### ADDITIONAL RESOURCES


A recent article in *The Wall Street Journal* ("The Strangely Effective [and Easy] Way to Win a Bidding War," Jan. 18, 2018) referenced personal letters to sellers. This article stated that personal letters to sellers can give buyers a significant advantage in a competitive housing market. The article cited several situations where the buyers won their dream home by writing a letter to the seller describing their search for a home, and why this particular house was the one they wanted. In one scenario described, the offer containing a personal letter was chosen over a similarly priced, all-cash offer.

The article also referenced a survey that contained data from purchase offers made in 2016 and 2017 that were written by agents at Redfin, "a Seattle-based real-estate brokerage." According to results of this survey, writing a personal letter to the seller increased the buyer's odds of a successful offer by 52.2 percent. For a luxury home, this increased to 75.7 percent.

This article strongly encouraged potential buyers to increase their chances of winning their dream home in a bidding war by submitting a personal letter to the seller along with the offer. One thing the article did not address were the fair housing concerns discussed here. However, it did not advocate for the inclusion of a protected class in the letter, but instead used examples such as the buyer referencing wanting to maintain the house as opposed to tearing it down and being fond of the architecture.

This, however, does not change NYSAR's position that licensees should generally advise their clients against using these letters unless there is no mention, directly or indirectly, of a protected class. For guidance on what is acceptable, personal letters should not contain any of the words or phrases deemed to be impermissible for the purposes of advertising under the Fair Housing Act.

For general information on fair housing and protected classes, see the following documents available at NYSAR.com: "Fair Housing in Rentals" ([bit.ly/fairhousingrentals](http://bit.ly/fairhousingrentals)) and "The Federal Fair Housing Act: A guide for real estate licensees" ([bit.ly/NYSR0216](http://bit.ly/NYSR0216)). 🌱




## CONTROL YOUR DESTINY


With Pearl Insurance and the New York State Association of REALTORS®, you don't need to know the future to protect it.

**Our errors and omissions insurance includes coverage for:**

- The cost of defending a disciplinary complaint
- Claims stemming from unknown preexisting or new environmental hazards, including pollutants, asbestos, lead, and radon
- Coverage for agent-owned property transactions
- And more

Get a complimentary quote today.


**PEARL INSURANCE**



182125 PI EO-MAG-PAD-NY

[pearlinsurance.com/newyork](http://pearlinsurance.com/newyork)