



Love Letters

Q: The real estate market in my area continues to improve and multiple offer situations are common now. As a listing agent, I have received “love letters” written by buyers to the sellers, to influence the sellers to accept that offer rather than another offer. I don’t really feel comfortable with these letters and am concerned that they may present Fair Housing issues. Can you please provide some guidance?

A: Although buyer “Love Letters” are not new, they are becoming more common, particularly, as you noted, in a hot market or a seller’s market. Buyers who want to make their offer stand out from others may want to write a personal letter to the sellers, explaining why they love the house or the neighborhood, or how perfect this home is for them. Some buyers even include photos with their Love Letters. Remarks made in these letters may include:

- I grew up in the neighborhood and went to St. James. We would love to send our kids to St. James!
- We love the large dining room—it will be perfect for our family’s Christmas celebration.
- The house is so close to the Swim Club that the kids can walk to swim meets!
- Our kids will love the big backyard!

These comments may appear innocuous, however, each of them demonstrates an effort to stand out from other buyers who may not have children, attend parochial school, celebrate Christmas, or be able to walk to and participate in athletic activities. Whether intentional or unintentional, each of these comments makes distinctions based upon classes of persons protected under Federal, State and local Fair Housing laws. If the seller’s decision to accept an offer is based on information contained in the buyer’s Love Letter pertaining to race, religion, familial status or any other protected class, it could constitute a violation of the Fair Housing laws.

Title VIII of the Civil Rights Act of 1968 (also known as the “Fair Housing Act”), as amended, prohibits the following:

1. Refusing to sell or lease a dwelling to a person because of race, color, religion, national origin, sex, familial status or disability.
2. Discriminating because of race, color, religion, national origin, sex, familial status or disability with respect to the terms, conditions or privileges of sale or lease of a dwelling.
3. Advertising the sale or lease of a dwelling indicating a preference, limitation, or discrimination because of race, color, religion, national origin, sex, familial status or disability.
4. Coercing, threatening, intimidating, or interfering with a person’s enjoyment or exercise of housing rights based on discriminatory reasons or retaliating against a person or organization that aids or encourages the exercise or enjoyment of fair housing rights.

The State of Maryland, in furtherance of its policy to provide for fair housing throughout the State, has expanded its protected classes to include: race, color, religion, sex, familial status, national origin, marital status, sexual orientation, gender identity, or disability. Md. Code Ann., State Gov’t § 20-702 (West). Maryland law also prohibits the conduct set forth above. In all cases, treating someone differently based on one of the protected classes constitutes discrimination. In the hypothetical referenced above, if the Love Letter is a factor in the seller’s decision to accept the offer from the Christian family with able-bodied kids, a single, non-Christian parent who celebrates Diwali, whose child has a disability may be an aggrieved party within the meaning of the Fair Housing laws.

Q: Does this affect the agents and brokers involved in the transaction?

A: Absolutely! You should speak with your office manager or broker to determine your broker's policy with respect to Love Letters. In our opinion, the best practice would be to discourage buyers from writing and submitting a Love Letter with an offer, due to the potential risks of violating Fair Housing laws. The buyer's agent should *never* write a Love Letter for a buyer.

Remember that the Maryland Code of Ethics provides:

The licensee, acting as agent, may not discriminate in the sale, rental, leasing, trading, or transferring of property to any person or group of persons in violation of State Government Article, § 20-402, Annotated Code of Maryland. Md. Code Regs. 09.11.02.01.

Q: How should Listing Agents handle Love Letters?

A: The listing agent should address Love Letters and potential Fair Housing issues with the seller to make sure that the seller understands that the decision to accept one offer rather than another offer must be based on sound business or financial reasons and cannot be based upon the seller's preference to sell to a family, for example. In our opinion, the listing agent shouldn't encourage or solicit buyers to submit Love Letters, but should make the seller aware of the Fair Housing laws and should document that he or she has done so.

Q: How should Buyers Agents handle Love Letters?

A: The best practice would be for the buyers' agent to make the buyers aware of the Fair Housing laws and to document that you did so. The buyers need to understand that the focus of the letter should be on the property, rather than the person. The buyers' letter should be limited to features of the home ("we love the tiles on the backsplash and the floor coverings in the basement"), rather than discussing the buyers' marital status, religion or status as a member of any other protected class.

If the letter goes beyond a discussion of the home's features and the seller accepts that offer based upon impermissible criteria (race, color, religion, sex, familial status, national origin, marital status, sexual orientation, gender identity, or disability), it may be deemed to violate the Fair Housing laws. If, despite your best efforts, your buyer client insists on writing a Love Letter, you should speak with your office manager or broker to determine what your broker's policy is with respect to Love Letters.

Q: What if buyers want to include a photograph of themselves and their lovely family?

A: The best practice, regardless of whether you're representing the buyer or the seller, is to make your client aware of the Fair Housing laws, document that you did so, and to discourage the use of photographs in this context, as it is a risky practice. The photo will show a heterosexual couple, a same sex couple, an African-American male, an Asian female, a man wearing a yarmulke, a child in a wheelchair and so on, all of which present features of being in a protected class and none of which are relevant to a seller determining which offer to accept. If your client insists on submitting a photo with their offer, you should speak with your office manager or broker to determine the broker's policy on this issue.

Bottom Line

We are aware that there are many articles explaining why your buyer should prepare and submit a letter; how to draft a letter; and why such letters are effective. Some articles suggest that the buyers submit a photo to make their offer "stand out." We are also aware that sellers often *do* make their decisions because they want to sell to a family, or to someone from their congregation or similar factors. The best practice is to avoid Love Letters and accompanying photographs whenever possible. The seller should be focused on the financial aspects of the transaction, not the characteristics of a potential buyer. Brokers, if you do not yet have a policy for how your agents should address this issue with their buyer and seller clients, it is our strong suggestion that you consult with your attorney to update your Policy and Procedure Manual to address this timely topic. 