

*Original Paper*

# Is The Use of “Love Letters” a Form of Housing Discrimination?

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## **Abstract**

*An unprecedented demand for houses due to the COVID pandemic has spurred competition among prospective home buyers who often resort to writing “so called” love letters to sellers to increase their chances of purchasing a house over competitors. This article examines the potential discriminatory impact of this device.*

## **Keywords**

*love letters, discrimination, Fair Housing Laws, redlining, restrictive covenants*

## **1. Introduction**

The Covid pandemic has spurred the use of “love letters” written by prospective home buyers which persuade a seller of a house to look more favorably upon their bid as opposed to those of other possible purchasers. But are these letters legal? Do they run afoul to fair housing laws at the state and federal levels? The article examines the use of this device and how these missives might be written to avoid claims of discrimination.

One of the byproducts of the COVID crisis is that Americans have been reassessing their housing choices. Some workers who have the ability to work remotely no longer have to worry about a lengthy commute so they are relocating from cities to more distant suburbs. This desire to move has spurred bidding wars for a paucity of available houses, some of which have drawn twenty, thirty or fifty bids well in excess of the asking price. This heated competition has led some desperate buyers to some write so-called “love letters” to persuade a seller to accept their bid based on factors other than money.

These letters can be quite personal. Some play on the sympathy of a seller by writing that the party is a first time buyer with young children who want a home. Other buyers do research on the sellers’ background citing such commonalities as schools attended or shared interests to woo the seller into accepting their offer perhaps in lieu of higher bids. Some of these enterprising buyers will send pictures

or videos featuring children or family pets. The hope is that providing this personal information will elicit a sympathetic and favorable response from the seller.

Buyers are seeking a “competitive edge” and indeed one study shows that a personal letter can make the prospective buyers offer 52 percent more likely to be accepted by the seller (Note 1).

The problem is that these communications may wittingly or unwittingly promote discrimination in violation of the federal Fair Housing Act. This law forbids sellers from selecting one buyer over another from a protected class. Among the law’s provisions are prohibitions against discrimination based on race, color, religion, national origin, sex, familial status and disability (Note 2). Some states have laws which protect even more groups from housing discrimination like sexual orientation, gender identity or source of income.

A personal love letter to the seller may reveal the race, religion or nationality of the prospective buyers and a seller may make a decision about which buyer to choose based on this information.

Housing discrimination based on race has been a problem for decades as realtors steered African-Americans to certain neighborhoods and banks made it more difficult for Blacks to obtain mortgages than their white counterparts. Whites have a home ownership rate of nearly 75 percent while only 48 percent of Hispanics and 45 percent of Blacks own their homes. Real estate agents often have been complicit in the use of discriminatory tactics (Note 3).

In recent years there has been a heightened concern over housing discrimination. In 2021, the Biden administration’s Department of Housing and Urban Development has pushed fair housing to the forefront of its agenda. The real estate community has undergone a similar reappraisal. In October 2020, the National Association of Realtors and some state associations have recommended that real estate agents should decline to convey these love letters from buyers to sellers (Note 4).

Could the existence of these letters lead to a lawsuit? While possible, it would be difficult to prove that a homeowner made the decision to sell the property based on the contents of the letter because the communication would be between the buyer and the seller. How would the party whose bid was not accepted have access to its contents? Suspicions might be aroused if the winning offer was far lower than the one accepted but that information is publicly available only after the sale is consummated. It could be argued that the selling price was lowered once the buyers undertook an inspection of the house which revealed flaws that needed to be remedied forcing the owner to lower the selling price.

Nevertheless, some states are considering legislation to ban the use of “love letters”. In June 2021, Oregon passed such a law which forbids real estate agents from passing letters and photographs prepared by buyers on to sellers. The law states:

In order to help a seller avoid selecting a buyer based on the buyers’ race, color, religion, sex, sexual orientation, national origin, marital status or familial status as prohibited by the Fair Housing Act, a seller’s agent shall reject any communication other than customary documents in a real estate transaction, including photographs provided

by a buyer (Note 5).

It is likely that other states will follow Oregon's lead (Note 6). However the passage of such laws are not without controversy. Some argue that these restrictions impinge on free speech. The Oregon bill's sponsor, himself a real estate agent stated, that "the buyer can still write the letter, but the seller's agent is no longer required to pass that information along." (Note 7)

Can these letters ever be considered non-discriminatory? Some real estate agents believe that if the contents of the letter do not reveal personal information but focus instead on "first-time buyer" who could be of any race, religion or nationality or a discussion of the qualities of the property that attracted the buyer, the letters could pass muster. But real estate agents would have to read the letters to determine their contents.

In the absence of legislation in other states, the National Association of Realtors has issued guidelines for real estate agents to follow in recognition of the problems inherent in passing on personal information about the buyer to the seller. The NAR recommends that agencies educate clients about the problems with love letters and urges that realtors notify buyers they will neither draft nor pass along such communications to the seller.

Realtors representing the seller should inform the latter that the decision to accept an offer should be based on a legitimate objective criteria. Realtors should not read any love letter written or received by the seller or buyer.

Finally, the agent representing the seller should document information about the offers received and get a written statement about the seller's reasons for accepting one offer in preference to others (Note 8). The latter is especially important in situations where there are multiple offers and the seller accepts the bid that is lower than the others. As is the case in any business, realtors must be wary of incurring liability by running afoul of fair housing laws.

## **2. Conclusion**

It is no secret that for many years members of minority groups were victims of discrimination in housing. A variety of tactics were used to keep minorities out of certain neighborhoods including redlining which means denying a creditworthy individual a loan for a house located in a certain neighborhood even though the applicant qualified for the mortgage. Steering is a method used by agents to influence a potential buyer to choose a neighborhood or community based on race or ethnicity. Before they were outlawed in 1948 by the United States Supreme Court. Restrictive covenants in deeds were another device used to prevent minorities from purchasing a house in some areas.

The use of a "love letter" can create a more subtle form of discrimination. When a prospective buyer can write a letter that discusses how the family celebrates the holidays, or encloses photographs or videos of who will be living in the house and discloses other personal information, that communication can subconsciously if not consciously influence a seller's decision to accept that offer over other higher bids. The Sellers may be influenced by buyers whose background and values align with their own.

The decision to sell property should be a business determination based on objective criteria not prejudice and be congruent with the provisions of state and federal fair housing laws.

### Notes

Note 1. Nicole Friedman, “House ‘Love Letters’ Spur Bias Worry”, Wall St. J. Sept 13, 2021 A3.

Note 2. Fair Housing Act 42 U.S.C. 3601. (et seq).

Note 3. Megan Kimble and Dan Solomon, “Writing ‘Love Letters’ Can Give Home Buyers an Edge— And Open the Door to Discrimination, Texas Observer Aug 31, 2021. <https://www.texasobserver.org>

Note 4. Ibid.

Note 5. WB 2550. Oregon’s law becomes effective on January 1, 2022.

Note 6. Jeffrey M. Schlosberg and John A. Snyder “Oregon Bans Home Buyers Love Letters to Sellers,” The National Law Review, Aug 26, 2021.

Note 7. Brenna Kelly (KPTV) “One More Step Before Controversial Oregon Bill Becomes Law, Banning ‘Love Letters’ During Home Sales. Posted June 15, 2021. <https://www.kptv.com/news>

Note 8. “Oregon Bans Buyer Love Letters,” Realtor Magazine, July 9, 2021. <https://magazine.realtor.2021/07/>