

A PUBLISHER'S GUIDE TO FAIR HOUSING ADVERTISING

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Fair Housing Laws

Federal¹, State², and Local³ fair housing law states that “It shall be unlawful...to make, print, or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the sale or rental of dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap (disability), familial status or national origin, or an intention to make any such preference, limitation or discrimination.”

As a publisher or advertiser you should be aware of three (3) important points:

- This provision imposes legal requirements on anyone that participants in any fashion in the “making, printing or publishing” of a real estate advertising. This includes newspapers, magazines, radio stations, television stations, cable television outlets, advertising agencies, Internet web sites, as well as the persons or companies conducting the underlying sale or rental transactions.
- This prohibition against discriminatory real estate advertising broadly applies to every form of advertising for residential real estate, including “any notice, statement, or advertisement.” This means that the law applies to classified advertisements, displays, inserts, or any other type of real estate advertising that a newspaper, magazine or any other media sources may publish.
- The law is also worded to prohibit advertising, which “indicates any preference, limitation, or discrimination” based on a protected class. This means that fair housing law prohibits not only real estate advertising that is explicitly discriminatory, i.e. “for whites only,” but also advertising which uses indirect means, such as words, cues, or photos to convey a discriminatory message (i.e. advertising which uses only white models).

Protected Classes

State and Federal laws specifies a number of protected classes which is covered. The laws prohibit discrimination based on race, color, religion, national origin, sex, disability and familial status (presence of children under 18 or a pregnant woman).

Lexington’s Local Ordinance 201-99 prohibits discrimination based on sexual orientation and gender identity.

Human Model Advertising

Frequently, real estate advertising will include photos or drawings depicting persons enjoying the amenities of the complex or neighborhood to make the housing seem appealing to potential

¹ See 42 U.S.C 3601 et al

² See KRS Chapter 344

³ See Local Ordinance 199-93 and 201-99

homeseekers. It is only common sense that a message may be sent by the race, sex, national origin, or family status of the persons in the advertisements.

Human models or drawings may not be used to indicate exclusiveness. A former United States Department of Housing and Urban Development regulation⁴ provides the following standard for human models in real estate advertisements:

If models are used in display advertising, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and when appropriate, families with children. Models, if used, should portray persons in equal social settings and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap (disability) familial status or national origin, and is not for the exclusive use of one such group.

By using the term “advertising campaigns” the regulations requires that publishers and advertisers be sensitive of the need to review real estate advertising over a period of time. For example, the repeated publication of advertisements for a particular development over a period of weeks or months, almost all of which use one or two white models and no models of any other race, may be found to be violation of the law. A newspaper or magazine that accepts and prints such advertising may also be held liable.

The term “metropolitan area” refers to the racial makeup of the community in which the advertisements are to be published. It may not be sufficient to publish advertising, which merely reflects the racial makeup of the particular neighborhood. Such advertising would merely reinforce patterns of residential segregation. However, this does not require that every advertising campaign depict every racial or ethnic group within the area.

Businesses involved in real estate advertising have an obligation to take steps to ensure that advertising that they publish does not convey a message of preference for or against any protected group, whether through words, pictures or other images.

Selective Placement of Advertising

Real estate advertisers should be aware of and not engage in selective advertising campaigns that use selective media catering to one racial or national origin segment of the population without complementary advertising directed at other groups. Similarly, you should use caution in using publications or media directed at one particular sex or persons without children.

Advertising Disability Access

While HUD regulations make clear that is unlawful to discriminate based on individual’s disability, the regulations are not intended to prohibit any real estate provider from including information which highlights the availability of accessible housing. It is entirely proper for a real estate provider to advertise that a dwelling is accessible to people with disabilities or it may describe other features that make it accessible without violating any legal prohibition.

⁴ See 24 CFR Part 109 and the appendix of this publication for a complete copy of this regulation

Affirmative Advertising (Marketing)

While fair housing laws make clear that it is unlawful to discriminate based on statutory protected classes, it is not intended to prohibit any real estate provider from including information which highlights the availability of housing to a protected group who would not ordinarily be expected to apply for the housing.

Advertising for Roommates

There is much confusion about what is or not proper language that can be used for advertisements in seeking roommates. Such advertisements may refer to the desired sex of the tenant, but only where the sharing of living areas is involved or where the advertisement is for a dormitory for an educational institution.

Such preference is not permissible where the advertisement merely involves the rental of separate units in a single or multi-family dwelling (i.e. a landlord who seeks to rent a basement apartment with no shared living quarters, could not advertise for a male tenant only).

The only exception regarding advertising for a roommate is with respect to the person's sex. In no case may a housing advertisement seek a roommate of a particular race, religion, or other protected class.

Use of Words, Phrases or Symbols

The law prohibits the use of words, phrases, and symbols to convey overt or subtle inferred discriminatory preferences or limitations. As a real estate advertiser it is important that one understand that the law prohibits not only advertisements that express a preference against certain homeseekers, i.e. blacks or children, but also those that express a preference for a particular type of person, i.e. "Jewish tenants sought" or "ideal for female tenant". Both types of advertisements may indicate a "preference, limitation or discrimination" based on a protected class and thus, violate the law⁵.

Equal Housing Opportunity Symbols

All advertising for the sale, rental, or financing of housing should contain an equal housing opportunity (EHO) logo, statement or slogan. This serves as a means to educate the homeseeking public that the property is available to all persons who economically qualify without regard to the homeseeker's protected class status. The EHO logo or statement should be used in advertisements of all types whether visual or auditory.

The EHO logo or statement should be a part of each advertisement and should be placed in visible location and comparable size of other symbols used in the advertisement in question. In using the EHO statement, the print should be in a type size comparable to other type used in the

⁵ See the appendix for list of words and phrases to avoid in real estate advertising.

advertisement. Note that the use of the EHO logo or statement extends not only to advertising for the sale or rental of housing, but also to advertising for the financing of housing as well⁶.

Fair Housing Over the Internet

Increasingly the Internet is the choice of media in searching for and securing housing, especially rental accommodations. In terms of coverage, the fair housing laws apply to online advertising just as other traditional advertising.

In September of 2006, HUD issued guidance to its housing investigators clarifying its position on this issue. This guidance very succinctly states that the prohibitions contained in the fair housing laws against discriminatory advertising applies to on-line advertising, as well as other advertising media.⁷

Publisher's Fair Housing Notice

All publishers should, at the beginning of their real estate advertising section, print a notice that they will not knowingly accept advertising that violates fair housing laws. This notice may also include statements regarding the coverage of any local or state fair housing law as well as the federal fair housing laws.

Conclusion

It is important that one inform its employees and clients that real estate advertising is covered by federal, state, and local fair housing laws and explain the basic provisions of those laws, describe the specific guidelines your company uses in abiding by those laws, and explain the consequences for non-compliance. As a publisher you should follow these basic obligations:

1. Screen your real estate advertising for discriminatory intent.
2. Develop and enforce non-discrimination policy in the area of real estate advertising.
3. Train and inform your employees and clients of said policy.

⁶ See the appendix for a guideline on the use of the fair housing logo or statement

⁷ See the attachment for copies of this guidance

Appendix I:

HUD Regulations

Part 109 – Fair Housing Advertising

PART 109 – FAIR HOUSING ADVERTISING

Sec.	
109.5	Policy.
109.10	Purpose.
109.15	Definitions.
109.16	Scope.
109.20	Use of words, phrases, symbols, and visual aids

APPENDIX I TO PART 109 – FAIR HOUSING ADVERTISING

AUTHORITY: Title V III, Civil Rights Act of 1968, 42 U.S.C. 3600-3620; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

SOURCE: 54 FR 3308, Jan. 23, 1989, unless otherwise noted.

§ 109.5 Policy.

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The provisions of the Fair Housing Act (42 U.S.C. 3600, *et seq.*) make it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage and appraisal services, because of race, color, religion, sex, handicap, familial status, or national origin. Section 804(c) of the Fair Housing Act, 42 U.S.C. 3604(c), as amended, makes it unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. However, the prohibitions of the act regarding familial status do not apply with respect to *housing for older persons*, as defined in section 807(b) of the act.

§ 109.10 Purpose.

The purpose of this part is to assist all advertising media, advertising agencies and all other persons who use advertising to make, print, or publish, or cause to be made, printed, or published, advertisements with respect to the sale, rental, or financing of dwellings which are in compliance with the requirements of the Fair Housing Act. These regulations also describe the matters this Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

§ 109.15 Definitions.

As used in this part:

(a) *Assistant Secretary* means the Assistant Secretary for Fair Housing and Equal Opportunity.

(b) *General Counsel* means the General Counsel of the Department of Housing and Urban Development.

(c) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(d) *Family* includes a single individual.

(e) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.

(f) *To rent* includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(g) *Discriminatory housing practice* means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

(h) *Handicap* means, with respect to a person –

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment.

This term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite.

(i) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with –

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

§ 109.16 Scope.

(a) *General.* This part describes the matters the Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising. Use of these criteria will be considered by the General Counsel in making determinations as to whether there is reasonable cause, and by the Assistant Secretary in making determinations that there is no reasonable cause, to believe that a discriminatory housing practice has occurred or is about to occur.

(1) *Advertising media.* This part provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of these criteria will be considered by the General Counsel in making determinations as to whether there is reasonable cause, and by the Assistant Secretary in making determinations that there is no reasonable cause, to believe that a discriminatory housing practice has occurred or is about to occur.

(2) *Persons placing advertisements.* A failure by persons placing advertisements to use the criteria contained in this part, when found in connection with the investigation of a complaint alleging the making or use of discriminatory advertisements, will be considered by the General Counsel in making a determination of reasonable cause, and by the Assistant Secretary in making determinations that there is no reasonable cause, to believe that a discriminatory housing practice has occurred or is about to occur.

(b) *Affirmative advertising efforts.* Nothing in this part shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

[54 FR 308, Jan 23, 2989, as amended at 55 FR 53294, Dec. 28, 1990.]

§ 109.20 Use of words, phrases, symbols, and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the Fair Housing Act, the Department will normally consider the use of these and comparable words, phrases, symbols, and forms to indicate a possible violation of the act and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the act is likely to result.

(a) *Words descriptive of dwelling, landlord, and tenants.* White private home, Colored home, Jewish home, Hispanic residence, adult building.

(b) *Words indicative of race, color, religion, sex, handicap, familial status, or national origin –*

(1) *Race* – Negro, Black, Caucasian, Oriental, American Indian.

(2) *Color* – White, Black, Colored

(3) *Religion* – Protestant, Christian, Catholic, Jew.

(4) *National origin* – Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

(5) *Sex* – the exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this part restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

(6) *Handicap* – crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. Nothing in this part restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

(7) *Familial status* – adults, children, singles, mature persons. Nothing in this part restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute housing for older persons as defined in Part 100 of this title.

(8) *Catch words* – Words and phrases used in a discriminatory context should be avoided, e.g., *restricted, exclusive, private, integrated, traditional, board approval or membership approval.*

(c) *Symbols or logotypes.* Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(d) *Colloquialisms.* Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(e) *Directions to real estate for sale or rent (use of maps or written instructions).* Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its exclusion of minorities (signal to whites). Specific directions which make reference to a racial or national origin significant area may indicate a preference. References to a synagogue, congregation or parish may also indicate a religious preference.

(f) *Area (location) description.* Names of facilities which cater to a particular racial, national origin or religious group, such as country club or private school designations, or names of facilities which are used exclusively by one sex may indicate a preference.

§ 109.25 Selective use of advertising media or content.

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of the Fair Housing Act. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisements which may be discriminatory:

(a) Selective geographic advertisements. Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.

(b) Selective use of equal opportunity slogan or logo. When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

(c) Selective use of human models when conducting an advertising campaign. Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex, or at persons without children. Such selective advertising may involve the use of human models of members of only one sex, or of adults only, in displays, photographs or drawings to indicate preferences for one sex or the other, or for adults to the exclusion of children.

§ 109.30 Fair housing policy and practices.

In the investigation of complaints, the Assistant Secretary will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the Fair Housing Act.

(a) *Use of Equal Housing Opportunity logotype, statement, or slogan.* All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Table I (see Appendix I) indicates suggested use of the logotype, statement, or slogan and size of logotype. Table II (see Appendix I) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

(b) *Use of human models.* Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex, handicap, familial status, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group.

(c) *Coverage of local laws.* Where the Equal Housing Opportunity statement is used, the advertisement may also include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

(1) *Employees.* All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental or financing of real estate should provide a printed copy of their nondiscrimination policy to each employee and officer.

(2) *Clients.* All publishers or advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and should have copies available for all firms and persons using their advertising services.

(3) *Publishers' notice.* All publishers should publish at the beginning of the real estate advertising section a notice such as that appearing in Table 111 (see Appendix I). The notice may include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

APPENDIX I TO PART 109 – FAIR HOUSING ADVERTISING

The following three tables may serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising:

A simple formula can guide the real estate advertiser in using the Equal Housing Opportunity logotype, statement, or slogan.

In all space advertising (advertising in regularly printed media such as newspapers or magazines) the following standards should be used:

Size of advertisement	<i>Size of logotype in inches</i>
½ page or larger	2x2
1/8 page up to ½ page	1x1
4 column inches to 1/8 page	½ x ½
Less than 4 column inches.....	(¹)

¹Do not use.

In any other advertisements, if other logotypes are used in the advertisement, then the Equal Housing Opportunity logo should be of a size at least equal to the largest of the other logotypes; if no other logotypes are used, then the type should be bold display face which is clearly visible. Alternatively, when no other logotypes are used, 3 to 5 percent of an advertisement may be devoted to a statement of the equal housing opportunity policy.

In space advertising which is less than 4 column inches (one column 4 inches long or two columns 2 inches long) of a page in size, the Equal Housing Opportunity slogan should be used. Such advertisements may be grouped with other advertisements under a caption which states that the housing is available to all without regard to race, color, religion, sex, handicap, familial status, or national origin.

Table II

Illustration of Logotype, Statement, and Slogan. Equal Housing Opportunity Logotype:



Equal Housing Opportunity Statement: We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.

Equal Housing Opportunity Slogan: "Equal Housing Opportunity."

Table III

Illustration of Media Notice – Publisher's notice: All real estate advertised herein is subject to the Federal Fair Housing Act, which makes it illegal to advertise "any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or intention to make any such preference, limitation, or discrimination."

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis.

Appendix II:

KAR 104

1:080 Guidelines on Fair Housing

104 KAR 1:080. Guidelines on fair housing.

RELATES TO: KRS 344.010, 344.360-344.385, 344.600-344.680

STATUTORY AUTHORITY: KRS 344.190(14), 24 C.F.R. 101.20, 101.25

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes standards and procedures for determining permissible conduct by persons engaged in real estate or real estate-related transactions.

Section 1. Definitions. (1) "Real estate operator" is defined in KRS 344.010(8), and includes, subject to KRS 344.362 and 344.365, any person engaging in housing practices or any real estate or real estate-related transaction and is not limited to those persons regularly engaging in real estate as a business.

(2) "Conduct" means in addition to practices prohibited by KRS 344.360 any action including statements, words, and utterances.

Section 2. Discriminatory conduct notice, statements and advertisements shall include:

(1) A written or oral notice or statement by a real estate operator; and

(2) Written notice or statement including an application, flyer, brochure, deed, sign, banner, poster, billboard, or a document used with respect to the sale or rental of housing accommodations; and

(3) Notices, statements and advertisements include the following:

(a) The use of words, phrases, photographs, illustrations, symbols or forms which convey that housing accommodations are available or not available to a particular group of persons because of race, color, religion, sex, disability, familial status, or national origin;

(b) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, disability, familial status, or national origin of such persons;

(c) Selecting media or locations for advertising the sale or rental of housing accommodations which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, disability, familial status, or national origin; and

(d) Refusing to publish advertising for the sale or rental of housing accommodations or requiring different charges or terms for such advertising because of race, color, religion, sex, disability, familial status, or national origin; and

(4) "Prohibited words, phrases, symbols and visual aids" shall include those specified in 24 CFR 109.20(a) to (f).

(5) Use of advertising media shall comply with the provisions of 24 CFR 109.25(a) to (c).

(6) Occupancy restrictions because of familial status.

(a) Real estate operators may enforce nondiscriminatory policies or standards involving reasonable occupancy restrictions on the basis of familial status.

(b) In reviewing occupancy restrictions, the Kentucky Commission on Human Rights shall consider the:

1. Size of bedrooms and unit;

2. Age of children;

3. Configuration of unit; and

4. Other special circumstances which may warrant occupancy restrictions.

Section 3. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Use of words, phrases, symbols, and visual aids, 24 CFR 109.20(a) to (f)", (54 Federal Register 3308, January 23, 1989, as amended at 55 FR 53294, December 28, 1990).

(b) "Selective Use of Advertising Media or Content, 24 CFR 109.25(a) to (c)", (54 Federal Register 3308, January 23, 1989, as amended at 55 FR 53294, December 28, 1990).

(2) This material may be inspected, copied, or obtained:

(a) At the offices of the Kentucky Commission on Human Rights, the Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

1. (502) 595-4024;

2. (800) 292-5566;

3. (502) 595-4084 (TDD), for the hearing impaired;

4. Kentucky Relay Service, (800) 648-6056 (TTD/TDD). (19 Ky.R. 2157; Am. 2396; eff. 5-10-93.)

Appendix III:
Fair Housing Advertising
Word and Phrase List

Fair Housing Advertising Word and Phrase List

This word and phrase list is intended as a guideline to assist in complying with state and federal fair housing laws. It is not intended as a complete list of every word or phrase that could violate any local, state or federal statutes.

This list is intended to educate and provide general guidance to you when creating real estate advertising. This list is not intended to provide legal advice. By its nature, a general list cannot cover particular persons' situations or questions. The list is intended to make you aware of and sensitive to the important legal obligations concerning discriminatory real estate advertising.

For additional information, contact Housing Opportunities Made Equal at (513) 721- 4663.

Not Acceptable

able-bodied
adult
adult building
adult community
adult living
adult park
adults only
African, no
agile
AIDS, no
alcoholics, no
American Indians
Appalachian, no
Asian
bachelor pad
blacks, no
blind, no
Catholic
Caucasian
Chicano
children, no
Chinese
Christian
church(es) near
Colored
Congregation
couple
couples only
crippled, no
deaf, no
disabled, no
drinker(s)
employed, must be

Use With Caution

active
bachelor
board approval required
Catholic
Christian
churches, near
curfew
domestic quarters
drinkers, no
exclusive
executive
family
female roommate **
female only **
55 and older community **
Gays, no
gender
Hindu
Ideal for (should not describe people)
Jewish
landlord (description of)
landmark reference
Lesbians, no
male roommate **
man (men) only **
mature
membership approval required
Mormon Temple
Muslim
must comply with park rules
nanny's room
near
neighborhood

Acceptable

assistance animals
assistance animals only
close to
college students, no
convalescent home
convenient to
credit check required
den
drinking, no
drug users, no
drugs, no
employed, must be
Equal Housing Opportunity
families welcome
family room
family, great for
fixer-upper
gated community
golf course, near
guest house
handicap accessible
kids welcome
membership available
mother in-law apartment
neighborhood name
nice
non-smokers
non-drinkers
number of bedrooms
number of sleeping areas
nursery
nursing home
pets limited to assistance animals

Not Acceptable

empty nesters
 English only
 ethnic references/landmarks
 families, no
 female
 gentleman('s)
 golden-agers only
 Grandma/Grandpa
 group home, no
 handicap limitations (not suitable for)
 handicap parking, no
 Handicapped, not for
 handyman
 healthy only
 Hispanic, no
 HIV, no
 holidays, religious
 housing for older persons/seniors*
 Hungarian, no
 impaired, no
 Indian, no
 individual
 in-law quarters
 integrated
 Irish, no
 Italian, no
 Jewish
 Latino, no
 males only**
 man
 marital status
 mature complex
 mature couple
 mature individuals
 mature persons
 membership approval
 mentally handicapped, no
 mentally ill, no
 mentally retarded
 Mexican, no
 Mexican-American, no
 migrant workers, no
 Mormon Temple
 Mosque
 name of school
 nationality
 Negro, no

Use With Caution

number of persons
 older persons*
 one person
 pets, no
 perfect for (should not describe people)
 prestigious
 private
 quality neighborhood
 quiet tenants
 restricted
 retirees
 retirement home
 safe neighborhood
 school name or school districts
 secluded
 section 8, no
 secure
 senior adult community *
 senior citizen *
 senior housing *
 Seniors *
 sex or gender **
 Single woman, man **
 sixty-two and older community *
 smoker, no
 snowbirds *
 sophisticated
 stable
 straight only
 students, no
 tenant (description of)
 traditional (settings)
 tranquil setting
 two people
 walking distance of, within
 winter/summer visitors *
 woman (women) only **

Acceptable

privacy
 private driveway
 private entrance
 private property
 private setting
 public transportation (near)
 quality construction
 quiet
 quiet neighborhood
 references required
 responsible
 se habla espanol
 seasonal rates
 seasonal workers, no
 section 8 accepted/welcome
 security provided
 single family home
 smokers, no
 smoking, no
 sober
 Spanish speaking
 square feet
 students
 townhouse
 traditional style
 unemployed, no
 verifiable income
 winter rental rates

Not Acceptable

newlyweds
number of children
older person
one child
one person
Oriental, no
parish
Philippine or Philipinos, no
physically fit
play area, no
preferred community
Puerto Rican, no
race
religious name
religious references/landmarks
restricted
retarded, no
retired/retirement/retiree
senior discount
senior citizen
Shrine
single person
singles only
Spanish speaking, no
supplemental security income (SSI), no
synagogue, near
temple, near
tenant (description of)
traditional neighborhood
unemployed, no
wheelchairs, no
White
White only

* Permitted to be used only when complex or development qualifies as housing for older persons

** Permitted to be used only when describing shared living areas or dwelling units used exclusively as dormitory facilities by educational institutions.

All cautionary words are unacceptable if utilized in a context that states an unlawful preference or limitation. Furthermore, all cautionary words are “red flags” to fair housing enforcement agencies. Use of these words will only serve to invite further investigation and/or testing.

This word and phrase list is intended as a guideline to assist in complying with the state and federal fair housing laws. It is not intended as a complete list of every word or phrase that could violate local, state, or federal statutes.

This list is intended to educate and provide general guidance to the many businesses that create and publish real estate advertising. This list is not intended to provide legal advice. If you are in need of legal advice, please see an attorney. By its nature, a general list cannot cover particular persons' situations or questions. The list is intended to make you aware of and sensitive to the important legal obligations concerning discriminatory real estate advertising.

Appendix IV:
HUD Guidance:
Internet Advertising



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000

September 20, 2006

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

MEMORANDUM FOR: FHEO REGIONAL DIRECTORS

FROM: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, ED

SUBJECT: Fair Housing Act Application to Internet Advertising

Section 804(c) of the Fair Housing Act makes it illegal "to make, print, or publish, or cause to be made, printed, or published, any notice or statement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, national origin, sex, disability, or familial status." This prohibition applies to all advertising media, including newspapers, magazines, television, radio, and the Internet. Just as the Department has found newspapers in violation of the Fair Housing Act for publishing discriminatory classifieds, the Department also has concluded that it is illegal for Web sites to publish discriminatory advertisements.

Some Web sites assert that they are exempt from liability under Section 804(c) of the Fair Housing Act because of a provision in the Communications Decency Act ("CDA"), 47 U.S.C. § 230, which limits the liability of interactive computer services for content originating with a third party user of the service. Although the CDA does not state an intent to limit liability under the Fair Housing Act or other civil rights statutes, some believe that Section 230 of the CDA gives Internet publishers immunity from lawsuits brought under federal and state civil rights statutes. However, HUD has concluded that the CDA does not make Web sites immune from liability under the Fair Housing Act or from liability under state and local laws that HUD has certified as substantially equivalent to the Fair Housing Act.

In order to ensure that Web sites do not provide an open market for unlawful discriminatory conduct, HUD will continue to investigate allegations that Web sites have published discriminatory advertisements on the Internet and, where there is cause to believe discrimination has occurred, will issue a Determination of Reasonable Cause. As required by the Fair Housing Act, HUD will attempt conciliation in each case. I recommend that proposed conciliation agreements include provisions designed to prevent discriminatory advertisements from being posted to the Web site; this may include the Web site agreeing to practices such as screening, filtering, pop-up warnings, or user self-certification.

This guidance does not change the established procedures for processing these cases. Regional Directors should continue to process these cases in accordance with current guidelines.

Appendix V:

HUD Guidance:

**Advertisements Under §804(c)
of the Fair Housing Act**



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000

January 9, 1995

OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

MEMORANDUM FOR: FHEO, Office Directors, Enforcement Directors, Staff, Office of Investigations, Field Assistant General Counsel

FROM: Roberta Achtenberg, Assistant Secretary for Fair Housing and Equal Opportunity, E

SUBJECT: Guidance Regarding Advertisements Under §804(c) of the Fair Housing Act

The purpose of this memorandum is to provide guidance on the procedures for the acceptance and investigation of allegations of discrimination under Section 804(c) of the Fair Housing Act (the Act) involving the publication of real estate advertisements.¹

Recently, the number of inquiries involving whether or not potential violations of the Act occur through use of certain words or phrases has increased, and these issues cannot, in some situations, be answered by referring to decided cases alone. In some circumstances, the Advertising Guidelines, published at 24 C.F.R. Part 109, have been interpreted (usually by persons outside of HUD) to extend the liability for advertisements to circumstances which are unreasonable.

This guidance is meant to advise you of the Department's position on several of these issues.

Previous guidance already requires that Intake staff review a potential complaint, gather preliminary information to ascertain whether the complaint states a claim under the Act, and consult with counsel on any legally questionable matters before the complaint is filed. Likewise, jurisdictional issues such as standing and timeliness should also be established prior to filing.

If the Advertising Guidelines, this memorandum, or a judicial decision clearly indicate that the language used in the advertisement is a potential violation of Section 804(c) and the criteria for establishing jurisdiction are met, the complaint should be filed and processed. Any complaint concerning an advertisement which requires an assessment of whether the usage of particular words or phrases in context is discriminatory, requires the approval of Headquarters FHEO before a complaint is filed. If the advertisement appears to be discriminatory, but the Advertising Guidelines, this memorandum, or a judicial decision do not explicitly address the language in question, supervisory staff must also obtain approval of Headquarters FHEO before the complaint is filed. Potential complaints regarding advertisements which do not meet the above descriptions should not be filed.

Where there is a question about whether a particular real estate advertising complaint should be

¹ This memorandum does not address fair housing issues associated with the publication of advertisements containing human models, and does not address 804(c) liability for making discriminatory statements.

filed, relevant information regarding the factual and/or legal issues involved in the complaint should be gathered, and counsel should be consulted prior to contacting the potential respondent publisher. The matter should then be referred to the Office of Investigations for review. Such referrals may take the form of a short memo, reciting the applicable advertisement language, and any factual or legal analysis which is appropriate.

Section 804(c) of the Act prohibits the making, printing and publishing of advertisements which state a preference, limitation or discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin. The prohibition applies to publishers, such as newspapers and directories, as well as to persons and entities who place real estate advertisements. It also applies to advertisements where the underlying property may be exempt from the provisions of the Act, but where the advertisement itself violates the Act. See 42 U.S.C. 3603(b).

Publishers and advertisers are responsible under the Act for making, printing, or publishing an advertisement that violates the Act on its face. Thus, they should not publish or cause to be published an advertisement that on its face expresses a preference, limitation or discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin. To the extent that either the Advertising Guidelines or the case law do not state that particular terms or phrases (or closely comparable terms) may violate the Act, a publisher is not liable under the Act for advertisements which, in the context of the usage in a particular advertisement, might indicate a preference, limitation or discrimination, but where such a preference is not readily apparent to an ordinary reader. Therefore, complaints will not be accepted against publishers concerning advertisements where the language might or might not be viewed as being used in a discriminatory context.

For example, Intake staff should not accept a complaint against a newspaper for running an advertisement which includes the phrase **female roommate wanted** because the advertisement does not indicate whether the requirements for the shared living exception have been met. Publishers can rely on the representations of the individual placing the ad that shared living arrangements apply to the property in question. Persons placing such advertisements, however, are responsible for satisfying the conditions for the exemption. Thus, an ad for a female roommate could result in liability for the person placing the ad if the housing being advertised is actually a separate dwelling unit without shared living spaces. See 24 CFR 109.20.

Similarly, Intake staff should not file a familial status complaint against a publisher of an advertisement if the advertisement indicates on its face that it is housing for older persons. While an owner-respondent may be held responsible for running an advertisement indicating an exclusion of families with children if his or her property does not meet the "housing for older persons" exemption, a publisher is entitled to rely on the owner's assurance that the property is exempt.

The following is policy guidance on certain advertising issues which have arisen recently. We are currently reviewing past guidance from this office and from the Office of General Counsel and will update our guidance as appropriate.

1. **Race, color, national origin.** Real estate advertisements should state no discriminatory preference or limitation on account of race, color, or national origin. Use of words describing the housing, the current or potential residents, or the neighbors or neighborhood in racial or ethnic terms (i.e., **white family home, no Irish**) will create liability under this section.

However, advertisements which are facially neutral will not create liability. Thus, complaints over use of phrases such as **master bedroom, rare find, or desirable neighborhood** should not be filed.

2. **Religion.** Advertisements should not contain an explicit preference, limitation or discrimination on account of religion (i.e., **no Jews, Christian home**). Advertisements which use the legal name of an entity which contains a religious reference (for example, **Roselawn Catholic Home**), or those which contain a religious symbol, (such as a **cross**), standing alone, may indicate a religious preference. However, if such an advertisement includes a disclaimer (such as the statement "This Home does not discriminate on the basis of race, color, religion, national origin, sex, handicap or familial status") it will not violate the Act. Advertisements containing descriptions of properties (**apartment complex with chapel**), or services (**kosher meals available**) do not on their face state a preference for persons likely to make use of those facilities, and are not violations of the Act.

The use of secularized terms or symbols relating to religious holidays such as **Santa Claus, Easter Bunny or St. Valentine's Day images**, or phrases such as "**Merry Christmas**", "**Happy Easter**", or the like does not constitute a violation of the Act.

3. **Sex.** Advertisements for single family dwellings or separate units in a multi-family dwelling should contain no explicit preference, limitation or discrimination based on sex. Use of the term **master bedroom** does not constitute a violation of either the sex discrimination provisions or the race discrimination provisions. Terms such as "**mother-in-law suite**" and "**bachelor apartment**" are commonly used as physical descriptions of housing units and do not violate the Act.

4. **Handicap.** Real estate advertisements should not contain explicit exclusions, limitations, or other indications of discrimination based on handicap (i.e., **no wheelchairs**). Advertisements containing descriptions of properties (**great view, fourth-floor walk-up, walk-in closets**), services or facilities (**jogging trails**), or neighborhoods (**walk to bus-stop**) do not violate the Act. Advertisements describing the conduct required of residents ("**non-smoking**", "**sober**") do not violate the Act. Advertisements containing descriptions of accessibility features are lawful (**wheelchair ramp**).

5. **Familial status.** Advertisements may not state an explicit preference, limitation or discrimination based on familial status. Advertisements may not contain limitations on the number or ages of children, or state a preference for adults, couples or singles. Advertisements describing the properties (**two bedroom, cozy, family room**), services and facilities (**no bicycles allowed**) or neighborhoods (**quiet streets**) are not facially discriminatory and do not violate the Act.

**LEXINGTON-FAYETTE URBAN COUNTY
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