

Legal Affairs 2000 Advertising Guide

2000 FAIR HOUSING ADVERTISING QUESTION AND ANSWER GUIDE

Question: Several salespersons in our real estate firm provide property management for a number of our clients. They occasionally place rental advertisements for these properties. Is my real estate firm responsible for screening their rental ads?

Answer: Yes. The broker is responsible for the acts of its salespersons and must provide supervision with respect to all written advertisements.

Question: Do you mean that the principal broker of a real estate office must be the person responsible for screening all advertisements for violations of fair housing advertisements?

Answer: Ultimately the broker is responsible, but the broker will often delegate this responsibility to others. This responsibility may fall to an office manager or other person in charge of placing or monitoring advertising. Support staff may be trained to spot questionable terms and phrases, which can then be referred to a broker or manager. Many offices have a designated fair housing officer.

Question: Are publications like the shopping news or a newspaper responsible for screening their advertisements for compliance with the fair housing laws?

Answer: Yes. The Fair Housing Act of 1968 provides in Section 3604(c) 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 a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination."

This provision applies to anyone that participates in any way in the making, printing or publishing of housing advertisements. This includes newspapers, magazines, advertising agencies, real estate brokers and other professionals, property management companies and all of their clients.

Indiana law, I.C. 22-9.5-5-2, provides similar language: "A person may not 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 based on race, color, religion, sex, disability, familial status, or national origin, or an intention to make such a preference, limitation, or discrimination."

Question: What if I didn't intend to discriminate is it really discrimination?

Answer: Yes, intent is not a required element of a fair housing violation. Violations are judged by whether an advertisement would suggest to an ordinary reader that a protected class is preferred or disfavored.

Question: When is it appropriate to advertise a limit on the number of occupants?

Answer: The federal Fair Housing Act permits local and state governments and the federal government to establish "reasonable" occupancy standards for housing units. The issue this raises is whether or not an occupancy standard, for example, a certain minimum square footage per person or per bedroom, or maximum persons per bedroom, creates the potential for discrimination against large families, thus violating the familial status provision of the Fair Housing Act.

HUD's guidance in March 1991, issued by General Counsel Frank Keating, was recently adopted as a HUD guidance on occupancy standards. HUD has stated that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. A copy of the HUD Occupancy Standards is available on IAR's CommandFax as Document #133 and at www.indianarealtors.com.

Question: Is it discrimination to market to a particular audience?

Answer: Possibly, 24 CFR 100.75(c)(3) provides that discriminatory notices or statements include "Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin."

Liability may be found if selective media or locations are used, regardless of intent. HUD regulations warn against using media or publications that cater exclusively to one particular racial, ethnic, religious or other protected group. Instead, a variety of media should be used which reach diverse groups in the community. HUD regulations are not intended to deter advertising in publications with specialized audiences. However, selective advertising must be used as part of an overall marketing strategy that places advertising in a variety of locations and media that attempt to reach all groups in the community.

Question: What if my seller wants me to use a marketing strategy that is designed to target a certain group of buyers?

Answer: The fact that a seller has requested that the advertisement for a

property appear to target a certain buyer would not change the liability exposure of the real estate broker/agent placing the advertising. Also, the seller may be liable for violating the fair housing laws. The broker/agent should explain to the seller that selective advertising may be used only if other advertising in other media is also employed as well.

Question: What about Internet advertising?

Answer: Any fair housing violation resulting from published advertising in the Internet carries the same liability as advertising published in printed materials. In recent years, some MLSs have been sued because their participants included illegal remarks such as "great for empty nesters" or "no children" in their Internet listings.

Question: Under the 1995 HUD guidelines, what is acceptable advertising?

Answer: Although there were at one time many groups who developed lists of "forbidden words" and words to avoid in advertisements for housing, current HUD standards take a more practical approach. Under the current standards, one looks at the entire ad and the context in which words are used instead of making decisions based solely on the presence or absence of particular words.

Race, color and national origin: Real estate advertisements may not state a discriminatory preference or limitation on account of race, color or national origin. However, it is not unlawful to use phrases such as "*master bedroom*," "*rare find*" or "*desirable neighborhood*" which are deemed to be "neutral" on their face with respect to race, color or national origin.

Religion: Advertisements that contain an explicit preference, limitations, or discrimination on account of religion are prohibited (i.e., no Jews, Christian home). If an advertisement uses the legal name of an entity that contains a religious reference (i.e., Roselawn Catholic Home) or a religious symbol (such as a cross), then a religious preference could be implied. If the advertisement contains an appropriate disclaimer against such preference or limitation, it will not be held in violation of the federal fair housing law. Advertisements describing the property (apartment complex with chapel), or services (kosher meals available) that do not state a preference for the persons to make use of those facilities are not violations.

Use of secularized terms (Merry Christmas or Happy Easter) or symbols (Santa Clause or Easter Bunny) relating to certain religious holidays do not constitute a violation of the law.

Sex: It is unlawful to advertise for single family dwellings or separate units in

multifamily dwellings in a manner which explicitly indicates preference, limitations or discrimination on the basis of sex. It is permissible to use the terms "master bedroom," "mother -in-law suite" and "bachelor apartment," which are commonly used as physical descriptions of housing units.

Handicap: Real estate advertisements may not contain exclusions, limitations, or other indications of discrimination based on handicap. It is lawful to describe the property (*great view, fourth-floor walk-up, walk-in closets*), the services or facilities (*jogging trails*) or the proximity of the neighborhood (*walk to the bus stop*) to other locations. It is also permitted to describe the conduct required of residents (*nonsmoking, sober*). Advertisements may contain descriptions of accessibility features, such as a wheelchair ramp.

Familial Status: Advertisers may not discriminate on the basis of familial status. Descriptions of the property (*two bedrooms, cozy, family room*), services and facilities (*no bicycles allowed*) or neighborhoods (*quiet streets*) are not discriminatory on their face and therefore do not violate the law.