

Fair Housing Information Guide



Berkshire County Board of REALTORS®, Inc. (413) 442-8049
Housing & Urban Development - Advertising Information drafted by
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What Everyone Should Know About Equal Opportunity In Housing

When a person purchases or sells a home it is not just the most significant event of their lifetime. It is also the hopes, dreams and aspirations of those involved. To protect against discriminating practices during this process, the Civil Rights Act of 1866 was enacted to prohibit all racial discrimination in the sale or rental of property. The United States Congress determined that all citizens should have the same rights as white citizens to sell, rent, hold, or convey any type of property. The Civil Rights Act of 1866 was held to apply to all property, public and private, by the United States Supreme Court in Jones vs. Mayer, decided in 1968.

During this same year, Congress also adopted Title VIII of the Civil Rights Act of 1968, now known as the Fair Housing Act. The Fair Housing Act, which was amended in 1974, 1988 and 1995, prohibits discrimination based on race, color, religion, sex, handicap, familial status, or national origin.

The home Seller, the home Buyer or prospective tenant, and the Real Estate Professionals all have rights and responsibilities under the law. One of the first places you will run into language with regard to Fair Housing and Equal Opportunity is in the "Exclusive Right to Sell Contract", which is the document you use to take a listing. On paragraph 15 of the contract the language reads as follows:

Non-Discrimination:

Broker is authorized and instructed to market real property without respect to any person's race, sex, age, marital status, religious creed, color, national origin, physical or mental handicap, and without respect to whether a person intends to occupy the Property with one or more minor children or is the recipient of public assistance. Owner authorizes and directs Buyer and any sub-agent to market the Property in compliance with all laws and regulations relating to non-discrimination in the sale of real estate.

As agents in a real estate transaction, licensed brokers or salespersons are prohibited by law from discriminating on the basis of race, color, religion, sex, handicap, familial status, or national origin. A request from the home seller or landlord to act in a discriminatory manner in the sale, lease or rental of a property cannot legally be fulfilled by the real estate professional. You will in your careers run into a homeowner or landlord who may direct you to act in a discriminatory fashion. If you would like to continue to practice as a REALTOR®, you better learn very early on **NOT TO EVER PARTICIPATE IN ANY NON-DISCRIMINATORY ACTION**. You may even have to walk away from a listing at some point if the homeowner or landlord engages in conversation with you that is heading toward directions to discriminate. It is definitely in your best interest to stay clear of this kind of business practice.

When you are working with Buyers or prospective Tenants, you need to know they have the right to expect that housing will be available to them without discrimination or other limitations based on race, color, religion, sex, handicap, familial status or national origin. This includes the right to expect:

- Housing in their price range made available to them without discrimination.
- Equal professional service.
- The opportunity to consider a broad range of housing choices.
- No discriminatory limitations on communities or locations of housing.
- No discrimination in the financing, appraising or insuring of housing.
- Reasonable accommodations in rules, practice and procedure for persons with disabilities.
- Non-discriminatory terms and conditions for the sale, rental, financing or insuring of a dwelling.
- To be free from harassment or intimidation for exercising their fair housing rights.

HUD Guidance On Section 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 The following is policy guidance on certain advertising issues which have arisen recently.

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 (*ie.*, **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* of 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 multifamily 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 walkup, 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 ("**nonsmoking,**" "**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.

Please contact Sara K. Pratt, Director, Office of Investigations or Susan Forward, Deputy Assistant Secretary for Enforcement and Investigations, for further information.

This guidance was issued in 1995, but is the most current HUD advice on advertising and fair housing. (January 9, 1995)

Article 10 of the Code of Ethics

DUTIES TO THE PUBLIC reads: Realtors® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, or national origin. Realtors® shall not be parties to any plan or agreement or discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, or national origin (amended 1/90).