

## Advertising Guidelines

**There has been much confusion in the past few years regarding what is legal and what is illegal to use in real estate advertising. There have also been many arguments about who can be held responsible for illegal advertising and whether or not the advertising constitutes first amendment protections or not. The following information should be helpful in sorting out these issues.**

Firstly, both the publisher and the advertiser can be held liable for discriminatory housing advertising. Discriminatory housing advertising is not protected under the first amendment of the constitution for freedom of speech, because housing advertising is considered commercial speech and therefore not covered. If the publisher of a newspaper accepts an advertisement from a housing provider that states “no children,” both the newspaper and the housing provider can be held liable. However, it is not the publishers responsibility to make sure the housing provider’s statements are accurate for advertising not discriminatory on its face. For example, if the owner of an apartment complex wants to advertise the complex as “housing for older persons,” the publisher cannot be held liable if the complex is found not to be a qualified senior facility, but the owner of the complex can be held liable for the discriminatory advertising.

Secondly, what does constitute discriminatory advertising? Housing advertisements should state no discriminatory preference or limitation on account of any of the protected classes. Let’s start with 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 for discriminatory advertising. However, advertisements which are facially neutral will not create liability. For example, the use of phrases such as master bedroom, rare find, or desirable neighborhood are not considered discriminatory.

Advertisements should contain no 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 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 be considered discriminatory advertising. 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 considered discriminatory. The use of secularized terms or symbols relating to religious holidays such as Santa Claus, the Easter Bunny, or St.Valentine’s Day, or phrases such as Merry Christmas, Happy Easter or the like are not considered discriminatory advertising.

Advertisements for single family dwellings or separate units in a multi-family dwellings should contain no explicit preference, limitation or discrimination based on gender. Use of the term master bedroom does not constitute a violation of either the gender 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 are not considered discriminatory advertising.

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 the property (great view, fourth-floor walk-up, walk-in closets), services or facilities (jogging trails), or neighborhoods (walk to bus-stop) are not considered discriminatory advertising. Advertisements describing the conduct required of residents (“non-smoking,” “sober”) are not considered discriminatory advertising. Advertisements containing descriptions of accessible features are lawful (wheelchair ramp).

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 property (two bedroom, cozy, and family room), services and facilities (no bicycles allowed) or neighborhoods (quiet streets) are not facially discriminatory and are not considered discriminatory advertising.

Hopefully the above information will help guide you through the mire of confusing information available from various sources today regarding real estate advertising. The information in this article was taken directly from the HUD guidance memo on advertising and is standard practice on how to deal with advertising issues.