



Fair Advertising Under The Fair Housing Act

by Janet Stearns

How often have you seen an advertisement for a new home showing the model residents—a husband and wife and two children (of course, one boy and one girl) all of whom are white? Since the Federal Fair Housing Amendments Act of 1988 put additional teeth into fair housing enforcement and administration, such advertisements may constitute violations of the Fair Housing Act. Violators may be subject to significant monetary penalties, as well as the attorney's fees of the opposing party.

All those who are involved in the sale, rental, or financing of dwellings should pay careful attention to the Fair Housing Act's mandates. (See also "New Handicapped Housing Rules," *JLC Legal Column*, 11/89). This article will focus on the Act's provisions regarding discriminatory advertising.

The newly adopted federal regulations state 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 which 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." Both written and oral communications are subject to this regulation. All those involved in the production of housing should carefully review all written advertising materials, as well as the practices of their salespeople, to assure compliance with the Act.

The regulations specify certain examples of discriminatory advertising:

- Using words, phrases, photographs, illustrations, symbols, or forms which convey that the dwellings are not available to, or are available only to, certain categories of per-

sons. For example, terms such as "Jewish home," "adult building," or "exclusively Hispanic" would be impermissible. Also, area descriptions or directions referencing facilities used only by persons of a certain sex or religion could be deemed discriminatory.

- Expressing to agents, brokers, employees, prospective sellers or renters any preference for, or discrimination against, any of the protected classes of persons. Express, as well as implied remarks, such as references to "those kinds of people" may lead to liability under the Federal Fair Housing Act.
- Selecting media or locations for advertising the sale or rental of dwellings which deny segments of the housing market information about housing opportunities. For example, advertising only in English in a multilingual community or placing billboards only in selective neighborhoods may be discriminatory.
- Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising. This requirement applies less to the developers and marketers of housing than to those in the advertising industry.

The use of human models in advertisements has come under particular scrutiny for the messages implied by the types of models selected. According to the federal regulations, if used, models should "reasonably represent [the] majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children." A number of court cases have recently charged discrimination on the basis of the exclusive or predominant use of white models. One questionable poster probably won't cause exposure under the Act, but a pattern of advertisements is

an invitation to a lawsuit.

Advertisers of residential housing also have an affirmative duty to display the Equal Housing Opportunity logo, statement, or slogan, depending on the medium of the advertisement. The statement is as follows:

"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."

The regulations describe the guidelines for the use of such affirmative language. The logo must also be displayed on posters in places of business where residences are sold and rented.

Aggressive enforcement of the new legislation requires vigilance on the part of all of those involved in the residential industry. You should also be aware of and conform to state and local antidiscrimination laws. For example, Connecticut requires the display of a poster informing potential victims of discrimination of prohibited activities and of a state office they can contact to report these activities.

The Federal Fair Housing Act is an effort to eliminate discrimination in housing and to encourage housing integration among all of society's constituent groups. Compliance with the Act will prevent lawsuits, as well as promote a more diverse and understanding society. ■

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