

SUMMARY OF IMPORTANT FAIR HOUSING LAWS

EXCERPTED FROM PUBLICATIONS OF THE NATIONAL ASSOCIATION OF REALTORS AND FROM A WESTCHESTER REALTOR'S GUIDE TO FAIR HOUSING AND EQUAL OPPORTUNITY REAL ESTATE PRACTICE.

The 1866 CIVIL RIGHTS ACT provided that:

*All citizens of the United States shall have the same rights, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

On June 17, 1968, in the case of JONES v. MAYER, the United States Supreme Court held that the 1866 law prohibits "all racial discrimination, private as well as public, in the sale or rental of property."

Thus, any individual, who feels he or she has been discriminated against, can immediately file a suit in Federal Court. The court can stop the sale of a house, or rental of an apartment, to someone else or award damages and court costs.

The 1968 Supreme Court decision further held that the 1866 Act protects all individuals against the following:

1. Denial that housing is available for inspection, sale, or rent when it really is available.
2. Discrimination in the terms or conditions of sale or rental lease.

1968 FAIR HOUSING LAW

Title VIII of the Civil Rights Act of 1968 (the Federal Fair Housing Law), declared it a national policy to provide fair housing throughout the United States. This law and subsequent amendment makes discrimination based on race, color, religion, sex, or national origin illegal in connection with the sale or rental of most housing and any vacant land offered for residential construction or use.

The Fair Housing Law provides protection against the following acts, if they are based on race, color, religion, sex or national origin:

1. Refusal to sell or rent, to deal or negotiate with any person.
2. Denial of a loan or creation of different terms or conditions for home loans by commercial lenders, such as banks, savings and loan associations or insurance companies.
3. Discrimination, by advertising that housing is available only to persons of a certain race, color, religion, sex, or national origin.
4. "Blockbusting" for profit i.e. persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood.
5. Denial to anyone of the use of, or participation in, any real estate services such as broker's organizations, multiple listing services, or other facilities to the selling or renting of housing.

NEW YORK STATE LAW

New York law prohibits discrimination in the sale, rental or lease of housing accommodations on the bases of race, creed, color, national origin, sex, disability or marital status by the owner, lessee, sublessee, or managing agent of housing accommodations or by real estate brokers and salespersons.

The law also prohibits discrimination in:

1. The terms, conditions or privileges of the sale, rental or lease or in the furnishing of facilities or services in connection with any housing accommodation;
2. The printing or circulating of any statement or publication or the use of any form of application or publication for the purchase, rental or lease of a housing accommodation.

The provisions of this paragraph shall not apply: (1) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or member of his family restriction of the rental of all rooms in a housing accommodation to individuals of the same sex or (2) to the rental of a room or rooms in a housing accommodation, if such a rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and he or a member of his family resides in such housing accommodation.

FAIR HOUSING AMENDMENTS ACT OF 1988

This Act strengthened the enforcement of the 1968 Fair Housing Law. It also provided substantial additional protection for handicapped persons seeking housing, and limited restrictions on purchasers or renters on account of age or familial status. Sellers or landlords who would decline to sell or rent to persons on account of handicap or familial status are advised to consult an attorney beforehand.

Discriminatory Advertising

In addition to discriminatory housing practices such as refusing to sell or rent a dwelling, falsely denying the availability of a dwelling, and refusing to make a reasonable accommodation for a disabled person, state and federal housing discrimination laws prohibit advertising about the sale or rental of a dwelling in a manner that indicates a discriminatory preference.

Under North Dakota Century Code section 14-02.5-03, it is unlawful to make, print, or publish or effect the making, printing, or publishing of a notice, statement, or advertisement that is about the sale or rental of a dwelling and that indicates any preference, limitation, or discrimination or the intention to make a preference, limitation, or discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.

Consistent with the Federal Fair Housing Act, advertisement under this section refers not only to published ads in newspapers but also to any other statements that are written, verbal, or non verbal. Discriminatory advertisements include but are not limited to applications, brochures, signs, banners, photographs, symbols, human models, and spoken words and phrases which convey that dwellings are available or are not available to a particular group of persons because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.

Those potentially liable for discriminatory advertising include 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 a dwelling.

In determining whether advertising constitutes a discriminatory housing practice, courts have generally applied a “reasonable person” standard. This means that liability is incurred by a person or entity if they make an advertisement that indicates a preference and that preference is readily apparent to an ordinary reader.

The North Dakota Department of Labor is committed to educating the public about housing discrimination laws and to functioning as a neutral third-party in objectively and efficiently resolving housing discrimination complaints.

HUD Guidance

The Department of Housing and Urban Development’s (HUD) Fair Housing and Equal Opportunity office has issued the following guidance to its field staff with regard to determining what does and does not constitute unlawful discrimination under the Federal Fair Housing Act:

Race, Color, National Origin

Real estate advertisements should not state 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 such as “white family home” or “no Irish” will create liability under the law.

Religion

Real estate advertisements should not contain explicit preference, limitation, or discrimination on account of religion. Advertisements that state preferences such as “no Jews” or “Christian home” will create liability under the law. Ads using the legal name of an entity that contains a religious reference or a religious symbol (such as a cross), standing alone, may indicate a religious preference. However, if a disclaimer is included in the ad that the entity does not discriminate based on a person’s status in a protected category then the ad would not violate the law. Advertisements containing descriptions of properties such as “apartment complex with chapel” or services such as “kosher meals available” do not on their face state a preference and are not violations of the law. The use of secularized terms or symbols relating to religious holidays such as “Santa Claus,” “Easter Bunny,” or “St. Valentine’s Day,” or phrases such as “Merry Christmas” or “Happy Easter” do not constitute a violation of the law.

Sex

Advertisements for single family dwellings or separate units in a multi-family dwelling should contain no explicit preference or limitation based on sex. Terms such as “master bedroom,” “mother-in-law suite,” and “bachelor apartment” are commonly used as physical descriptions of housing units and do not violate the law.

Disability

Real estate advertisements should not contain explicit exclusions or limitations for persons with disabilities. An advertisement would be unlawful, for example, if it indicated “no wheelchairs.” Advertisements containing descriptions of properties such as “great view,” “fourth floor walk-up,” “walk-in closets,” or descriptions of services or facilities such as “jogging trails” do not violate the law. Ads describing conduct of individuals such as “non-smoking” or “sober” do not violate the law. Advertisements that describe accessibility features such as “wheelchair ramp” are lawful.

Familial Status

Advertisements may not contain limits on the number or ages of children or state a preference for adults, couples, or singles. Advertisements describing properties (“two bedroom” or “family room”), services or facilities (“no bikes allowed”), or neighborhoods (“quiet streets”) are not on their face discriminatory and do not violate the law.

State-Only Protected Categories

In addition to the protected categories covered in the HUD guidelines, it is unlawful under state law for advertisements to express any preference or limitation because of age (over 40), marital status, or status with regard to public assistance.

FAIR HOUSING ADVERTISING WORD AND PHRASE LIST

Revised 05/15/06

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 the many businesses in the Miami Valley that create and publish 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 the Miami Valley Fair Housing Center at (937) 223-6035.

BOLD — not acceptable

ITALIC — caution

STANDARD — acceptable

able-bodied

Active

adult community

adult living

adult park

adults only

African, no

Agile

AIDS, no

Alcoholics, no

Appalachian, no

American Indians, no

Asian

Assistance animal(s)

Assistance animal(s) only

Bachelor

Bachelor pad

Blacks, no

blind, no

board approval required

Catholic

Caucasian

Chicano, no

children, no

Chinese

Christian

Churches, near

college students, no

Colored

Congregation

Convalescent home

Convenient to

Couple

couples only

Credit check required

crippled, no

Curfew

Deaf, no

Den

disabled, no

domestics, quarters

Drug users, no

Drugs, no

employed, must be

empty nesters

English only

Equal Housing Opportunity

ethnic references

Exclusive

Executive

BOLD — not acceptable

ITALIC — caution

STANDARD — acceptable

families, no
families welcome
family room
family, great for
*female roommate***
*female(s) only***
*55 and older community**
fixer-upper
gated community
Gays, no
Gender
golden-agers only
golf course, near
group home(s) no
guest house
handicap accessible
handicap parking, no
Handicapped, not for
healthy only
Hindu
Hispanic, no
HIV, no
*housing for older persons/seniors**
Hungarian, no
Ideal for . . . (should not describe people)
impaired, no
Indian, no
Integrated
Irish, no
Italian, no
Jewish
kids welcome
Landmark reference
Latino, no
Lesbians, no
*male roommate***
males(s) only**
*man (men) only***
Mature
mature complex
mature couple
mature individuals
mature person(s)
membership available
Membership approval required
Mentally handicapped, no
Mentally ill, no
Mexican, no

Mexican-American, no
Migrant workers, no
Mormon Temple
Mosque
Mother in law apartment
Muslim
Nanny's room
Nationality
Near
Negro, no
Neighborhood name
Newlyweds
Nice
non- smokers
of bedrooms
of children
of persons
of sleeping areas
Nursery
nursing home
Older person(s)
one child
one person
Oriental, no
Parish
perfect for . . . (should not describe people)
pets limited to assistance animals
pets, no
Philippine or Philipinos, no
physically fit
play area, no
preferred community
Prestigious
Privacy
Private
Private driveway
Private entrance
Private property
Private setting
Public transportation(near)
Puerto Rican, no
Quality construction
quality neighborhood
Quiet
Quiet neighborhood
references required
religious references
Responsible

BOLD — not acceptable

ITALIC — caution

STANDARD — acceptable

Restricted
retarded, no
Retirees
Retirement home
safe neighborhood
school name or school district
se habla espanol
seasonal rates
seasonal worker(s), no
Secluded
section 8 accepted/ welcome
section 8, no
Secure
security provided
*senior adult community**
*senior citizen(s)**
senior discount
*senior housing**
*senior(s)**
*sex or gender***
Shrine
single family home
single person
*single woman, man***
singles only
*sixty-two and older community**
Smoker(s), no
Smoking, no

*Snowbirds**
sober
Sophisticated
Spanish speaking
Spanish speaking, no
Square feet
Straight only
student(s)
Students, no
Supplemental Security Income (SSI), no
Synagogue, near
temple, near
tenant (description of)
Townhouse
traditional neighborhood
traditional style
tranquil setting
two people
Unemployed, no
Verifiable Income
walking distance of , within
Wheelchairs, no
White
White(s) only
winter rental rates
*winter/summer visitors**
*woman (women) 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.

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