

A Reprint from *Tierra Grande*, the Real Estate Center Journal

You Can't Say That

Advertising Taboo List

By Judon Fambrough

Language is serious business in real estate. A federal mandate prohibits language that may suggest discrimination or prejudice in real estate advertising.

The Fair Housing Act prohibits discrimination in the sale or rental of housing based on a person's race, color, religion, sex, handicap, familial status or national origin. It is a violation to make, print or publish or cause to be made, printed or published any notice, statement or advertisement regarding the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on the seven categories.

This point was emphasized recently when an Oregon Multiple Listing Service (MLS) included in the "remarks section" of its publication that property was for "adults only, over 40." The statement reiterated the condominium's bylaws. The MLS considered the language proper because the act applies to advertising only. As the MLS found out, the act applies to any "notice, statement or advertisement."

The U.S. Department of Housing and Urban Development (HUD) publishes a list of words,

phrases and symbols it says conveys, either overtly or tacitly, discriminatory preferences or limitations. Their use may violate the act.

Words indicating a possible preference or limitation based on race, color or national origin include: *white private home*, *Jewish home*, *Hispanic residence*, *Negro*, *black*, *white*, *Caucasian*, *Oriental*, *American Indian*, *Mexican*, *American*, *Puerto*

HUD publishes a list of words, phrases and symbols it says conveys discriminatory preferences or limitations.

Rican, *Philipino*, *Polish*, *Hungarian*, *Irish*, *Italian*, *Chicano*, *Hispanic*, *Chinese*, *Indian* or *Latino*. However, phrases such as *master bedroom*, *rare find* or *desirable neighborhood* are acceptable.

The words *woman*, *man*, *single* or *multifamily dwelling* suggest a possible preference or limitation based on sex. However, restrictive advertisements based on sex are

permissible for dormitory facilities at educational institutions. Also, the terms *mother-in-law suite* and *bachelor apartment* are permitted because they refer to physical descriptions.

Protestant, *Christian*, *Catholic* or *Jew* imply a possible preference or limitation based on religion. The legal name of an entity that contains a religious reference (Roselawn Catholic Home) or a religious symbol such as a cross may be a violation unless a disclaimer is added such as, "This home does not discriminate on the basis of race, color, religion, national origin, sex, handicap or familial status." The terms *apartment complex with chapel* or *kosher meals available* do not in themselves violate the act.

Crippled, *blind*, *deaf*, *mentally ill*, *retarded*, *impaired*, *handicapped* or *physically fit* are words that may evoke a possible preference or limitation based on handicap. While information about physical access to housing (wheelchair ramp) is lawful, phrases such as "no wheelchairs" are not.

Advertisements describing the property (great view, fourth floor walk-up, walk-in closets), services or facilities (jogging trails) or neighborhoods (walk to bus stop) do not violate the act. Neither do advertisements describing the conduct required of residents (nonsmokers, sober).

Advertising that denotes familial status may not discriminate against families that include one or more children younger than 18 years old. Protection extends to pregnant women also.

Words HUD says may indicate a preference or limitation based on familial status include: *adults*, *children*, *singles*, *mature persons* or *adult building*. Advertisements

for occupancy by older persons within HUD guidelines are proper. Also, the terms *two bedroom*, *cozy*, *family room* or *quiet streets* are permissible because they describe the property.

The federal guidelines go beyond the use of specific words or phrases. Other words and phrases are prohibited if used in a discriminatory context, such as *restricted*, *exclusive*, *integrated*, *traditional*, *board approved* or *membership approval*. Also prohibited are symbols, logotypes or colloquial terms that imply or suggest preferences or limitations.

Directions to the property may imply a discriminatory preference or limitation. For example, using landmarks with racial or national-origin significance may be a violation (two blocks from the Booker T. Washington School). References to existing black or white development may imply discrimination. References to a synagogue, congregation or parish may indicate a religious preference.

Names of facilities that cater to a particular racial, national origin or religious group, such as a country club or private school designation, or names of facilities used exclusively by one sex may indicate a preference.

Discrimination may be implied based on the chosen media. For example, the use of media catering to the majority population in an area may discriminate against the minority population. Even the use of English or Spanish in an advertisement may suggest discrimination in certain bilingual areas.

Finally, pictures and human models used in an advertisement may be viewed as discriminatory. For example, the exclusive use of young, old, white, black, athletic (nonhandicapped), single, Catholic or Jewish persons may violate the law.

The legal penalty for a violation is harsh. An aggrieved person has two years to begin a lawsuit. The potential recovery includes actual

and punitive damages plus reasonable attorneys' fees and costs.

The aggrieved party may seek an administrative hearing in which HUD attorneys represent the claimant. An administrative law judge may order the violator to:

- compensate the plaintiff for actual damages, including humiliation, pain and suffering;
- provide the plaintiff housing (an injunction);
- pay civil fines ranging from \$10,000 to \$50,000 based on the number of violations and
- pay reasonable attorneys' fees and costs.

A copy of the HUD memorandum outlining rules for advertising under the Fair Housing Act is available. It is on the Internet at <http://www.fairhousing.com/hudguid2.htm>. ☐

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Tierra Grande (ISSN 1070-0234), formerly *Real Estate Center Journal*, is published quarterly by the Real Estate Center at Texas A&M University, College Station, Texas 77843-2115.

Subscriptions are free to Texas real estate licensees who provide their name, address, telephone and license numbers to Department JS at the address given. Other Texas subscribers, \$20 per year. Out-of-state subscribers, \$25 per year.

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