

FAIR HOUSING ADVERTISING MANUAL

HOUSING DISCRIMINATION IS AGAINST THE LAW!

ARE YOUR ADS DISCRIMINATORY

The Fair Housing Amendments Act of 1988 and Title VII of the Civil Rights Act together make up the Fair Housing Act. The law provides protection against discrimination based on race, color, national origin, religion, sex, familial status, and handicap.

Section 804 of the federal fair housing law states it is against the law to "... make, print, publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or any intention to make any such preference limitation or discrimination."

In addition to the above disclaimer, all advertising for housing, including lending, should contain the Equal Housing Opportunity slogan or logo according to HUD regulations. The federal regulations suggest that logo size be based on the ad size. At all times it must be clear and legible and at least equal in size to other logos appearing in the ad (For example: 1/8 page up to 1/2 page ads should contain a 1" by 1" logo).

Offensive phrases include the following and should not be used: "Exclusive, restricted, private, no children, singles preferred, male or female only, catholic church nearby, perfect for physically fit, Hispanic area, prefer bright, healthy person, for active or mature adults."

Acceptable phrases include: "Quiet residential area, parks nearby, gated, houses of worship nearby."

The use of human models in real estate related ads is regulated by HUD and "models should be clearly definable as representing majority and minority groups..." If models are used in photographs, drawings or other graphic techniques, they should "indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin and is not for the exclusive use of one such group."

WHAT IS CONSIDERED ADVERTISING?

Advertising includes flyers, brochures, billboards, mailings, radio, and TV ads, newspapers and magazine ads, signs, business cards, and statements (i.e. word of mouth).

INFORMATION FOR PUBLISHERS

Potential Liability Under the Act

While it is not the place of this handbook to explain in detail the enforcement provisions of the Fair Housing Act, you should be aware of the potential liability which may be imposed on those who engage in discriminatory real estate advertising. Private parties who are aggrieved by discriminatory advertising may file suit in federal court or may file an administrative complaint with HUD.

Lawsuits to challenge discriminatory advertising may be brought both by fair housing organizations and by readers of discriminatory advertising who are deterred in their housing search or suffer emotional injury. In such a suit, if a court finds that a discriminatory practice has occurred or is about occur, it may award the plaintiff compensatory damages, punitive damages, a declaratory judgment, and/or appropriate equitable relief.

Compensatory damages may include not only out-of-pocket expenses, but damages to the mission of an organization and damages for a reader's emotional suffering. Equitable relief may include an injunction preventing a newspaper, magazine, or advertiser from publishing future discriminatory ads, or placing specific conditions on advertising.

It is important for publishers and advertisers to understand that the financial liability for violating the Fair Housing Act may be very to significant. As described in detail below, jury cases involving discriminatory real estate ads in the Washington, D.C.-Baltimore, Maryland area have resulted in jury awards of \$850,000 and \$2 million. In addition, a successful plaintiff in a discriminatory advertising suit is generally entitled to have the court order the defendant to pay the plaintiff's attorneys' fees, which

can be significant. Where the defendant has acted in reckless disregard of the plaintiff's civil rights, punitive damage awards are also available under federal law.

In addition to private party suits, the United States Government has the authority to file suit where it finds a "pattern or practice" of discriminatory real estate advertising or when the case raises an issue of "general public importance." A "pattern or practice" is shown where the discriminatory conduct is not an isolated or accidental departure from otherwise nondiscriminatory practices.

In a case brought by the United States, the court may award injunctive relief against the person responsible for violating the Act, other relief the court considers appropriate, including monetary damages, and a civil penalty against the advertiser or publisher in the amount of \$50,000 for the first violation and \$100,000 for any subsequent violation.

THE HUD REGULATIONS

Since 1972, HUD has had in place Fair Housing Advertising regulations. 24 C.F.R. Part 109. One specific purpose of these HUD regulations is to assist all advertising media, advertising agencies, and other persons who use real estate advertising to comply with the Fair Housing Act. In 1989, HUD issued general regulations interpreting the Fair Housing Act which contain further discussion of the Act's advertising provisions.

Learn The HUD Regulations. It is very important for publishers to be familiar with the provisions of the HUD regulations. The courts frequently look to the HUD regulations for guidance in interpreting the Fair Housing Act, and will defer to HUD's interpretation of that statute.

Human Model Advertising. One topic covered by the HUD regulations which has been the subject of extensive litigation is the use of human models in real estate advertising. Frequently, display advertising will include photos or drawings. Often, such ads will depict persons enjoying the amenities of the complex or the neighborhood to make the housing seem appealing to potential homeseekers. It is only common sense that a message may be sent by the race, sex, age, or family status of the persons in the advertisements.

With respect to such advertising, the HUD regulations describe the meaning of the Fair Housing Act's prohibition against advertising that "indicates any preference" based on a protected class.

The HUD regulations state expressly that human models in photos or drawings "may not be used to indicate exclusiveness." They go on to provide the following standard for human model ads:

If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group.

In essence, this standard requires that the human models depicted in advertising campaigns be generally reflective of the make-up of the metropolitan area in which the ads are published.

The regulation has several implications. *First*, by referring to advertising "campaigns," the regulation requires that publishers and advertisers be sensitive to the need to review real estate advertising over a period of time. At times, an ad for a complex may include so many people in the picture that it is apparent from a single viewing that the ad sends a message that only whites live or are welcome at the complex advertised (or only blacks, or only adults, to cite other examples). Other ads, however, must at times be viewed in the context of an entire "campaign." For example, the repeated publication of ads for a particular development over a period of weeks or months, almost all of which use one or two white models and no models of any other race, may be found to be in violation of the law.

A newspaper or magazine that accepts and prints such advertising may be held liable. Liability may also fall on the advertising agency, the real estate developer, the sales firm, and any other parties involved in developing or placing the advertising at issue. This can occur even if each individual ad in a series contains only one or two white models.

Second, the term "campaign" also makes clear that the publisher and advertiser should review advertising on a development-by-development basis. The general practice in the real estate advertising industry is to develop advertising "campaigns" for each complex to be promoted. Each of these "campaigns" must be appropriately inclusive. For example, an advertiser may not be in compliance with the law if it published virtually all-white advertising for a development in Cuyahoga Falls, which is predominately

white, and published integrated advertising for a development in Akron, a city with a substantial black population. To avoid liability, publishers and advertisers must be alert to and refuse to participate in publishing any advertising campaign which may be discriminatory.

Third, you should also keep in mind that the regulations refer to the “metropolitan area” in which the advertising is published. In using this term, the HUD regulations emphasize that the relevant community to look to in establishing human model standards is the racial make-up of the greater metropolitan area in which ads are published. It is not sufficient to publish advertising which merely reflects the racial make-up of particular neighborhoods. For example, if a development is located in a predominately white suburb, advertising for that development may not therefore show only white models. Such advertising would merely reinforce patterns of residential segregation, and is contrary to the purpose of the Fair Housing Act.

By the same token, the racial composition of advertising should not be tied to the income group of the potential buyers for the housing (e.g., luxury housing may not be targeted to a predominately white audience), or to the particular racial make-up of the publication’s audience (e.g., advertisers may not use models predominately of the race of the publication’s readers, whether white or black). Again, the relevant standard to follow is the racial make-up of the metropolitan area as a whole.

This reflects the national policy, set forth in the Fair Housing Act, to encourage housing integration and to outlaw all forms of housing discrimination. While it is common for advertisers of consumer products to target particular racial groups in their advertising, publishers and advertisers must keep in mind that the same type of advertising may be illegal when housing is at issue.

The HUD regulations do not require that every advertising campaign which you design or publish must depict each racial or minority group in the area, as well as both sexes, families, and a person with a disability. It does mean that businesses involved in real estate advertising have an obligation to take steps to ensure that the advertising they publish, as read by an ordinary reader, does not convey a message of preference for or against any protected group, whether through pictures or words. The best way to do this is to ensure that your advertising depicts persons from diverse groups, including different races, national origins, ages, types of families, and genders.

The Publisher’s Fair Housing Notice. The HUD regulations contain a special provision applicable to publishers. They provide that all publishers should publish at the beginning of their real estate advertising section a notice including language to the following effect:

All real estate advertised herein is subject to the Federal Fair Housing Act, which makes it illegal to advertise “any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or intention to make any such preference, limitation or discrimination.”

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis.

The notice may also include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental, or financing of dwellings.

Some publishers, as a public service, have also included in their publisher’s notice telephone numbers for local fair housing organizations or agencies which homeseekers may call for information if they feel that they have been the victim of housing discrimination. The authors of this handbook encourage publishers to include such information in the text of their fair housing notice. The suggested text for a publisher’s notice for an area newspaper or magazine is provided in Part C.

Selective Placement of Advertising. Advertisers should be aware that the HUD regulations warn against selective advertising campaigns, such as a campaign that primarily uses media catering to one racial or national origin segment of the population without complementary advertising directed at other groups. They warn, similarly, against advertising campaigns which use publications or media directed at one sex, or at persons without children. In an area where non-English publications are available, the HUD regulations note that use of English language media alone could have a discriminatory impact.

The HUD regulations also caution against the strategic placement of advertising materials in only certain geographic areas. Examples would include such practices as the selective display of billboards, or the selective distribution of brochures by mail or by hand, to certain neighborhoods predominately inhabited by a particular race or ethnic group. Other selective advertising strategies disapproved by HUD include the selective use of HUD logos only in advertising for certain properties, and the selective use of mixed-race human models only for particular developments and not others.

This means, *first*, that under the HUD regulations, advertisers should be sure to use a variety of media outlets which reach diverse groups in the community. Advertisers should not use only or predominately media targeted at particular protected groups. For example, an advertising strategy which used only publications geared to a black audience (or, to cite an alternative example, only publications directed to women) could be found to be in violation of the fair housing laws. Where non-English publications are available, advertisers would be well-advised to use those media outlets, as part of an overall advertising program, to reach out to parts

of the population which they would not otherwise attract.

Second, advertisers should be careful to look to their overall advertising strategy to make sure that it is not selectively targeted in *any* manner to particular racial, ethnic, or other protected groups. This includes review not only of print advertising but also of direct mail, signs and billboards, promotional materials and events, and each other element of the advertising strategy.

If your advertising program may appear to target neighborhoods or audiences predominantly made up of one racial or ethnic group (for example, a campaign using direct mail targeted to neighborhoods which are predominantly white and geographic newspaper editions circulated in white suburbs), it is important to include complementary advertising efforts designed to reach other groups in order to avoid legal liability.

The HUD regulations are not intended to deter advertisers from using publications with specialized audiences, or to otherwise reaching out to protected groups in their advertising. To the contrary, such efforts can be an important source in bringing in homeseekers who might not otherwise apply to particular complexes or neighborhoods. The HUD regulations simply make clear that any selective advertising must be used as part of an overall, inclusive advertising strategy which places advertising in a variety of locations and media which seek to reach all groups in the community.

Affirmative Marketing Efforts. The HUD regulations recognize that there may be some instances in which, contrary to the general rule, advertising which is geared to particular races or groups is permissible. In particular, housing advertising which is part of an affirmative effort to reach out to and include protected classes may be permissible.

In its regulations, HUD makes clear that its regulations are not intended to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, if such efforts are part of an affirmative marketing program or are undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings. Affirmative advertising programs, designed to attract minority groups in order to help integrate neighborhoods, have also been approved by the courts.

Thus, federal law would not bar ads run by a developer to attract minority homeseekers to a traditionally white complex or area under development by HUD, even if the ads used references which might otherwise be impermissible. Indeed, under separate provisions of the HUD regulations, developers who seek to participate in HUD housing programs are required to develop and implement affirmative fair housing marketing plans for the housing, which must include advertising designed to appeal to groups which are not likely to apply for the housing. It is also permissible to publish remedial advertising designed to counteract the effects of past advertising discrimination.

In this regulation, HUD makes clear that neither publishers nor advertisers should read the Fair Housing Act so strictly as to prevent them from publishing real estate advertising which is designed to further fair housing goals.

Advertising Handicapped Access. The HUD regulations also make clear that the Act's prohibition against advertising which discriminates on the basis of "handicap" is not intended to prohibit any real estate company from including information which highlights the availability of handicapped accessible housing. Real estate advertising may state that a dwelling that is accessible to people with disabilities, or may describe other features which make it accessible, without violating any legal prohibition.

Senior Complexes. As noted above, the Fair Housing Act creates a limited exemption from the housing discrimination laws for qualified "housing for older persons," as defined in the statute. In describing this provision of the Act, the HUD regulations make clear that advertising for exempt housing which makes reference to the fact that the housing is for older persons is permissible.

At the same time, publishers and advertisers should be aware that this exemption for advertising for housing for older persons applies *only* to the familial status prohibitions of the Act. In other words, while advertising for such a complex may express a preference for older persons, it may not express any preference on the basis of race, color, religion, sex, handicap, or national origin. For example, developers of qualified housing for older persons could not publish advertising seek "active" older persons, or use other terms to suggest discrimination on the basis of handicap.

Although this Manual is not intended to cover every rule governing housing for older persons, you should be aware that the HUD regulations contain complex rules concerning the eligibility of new housing developments and developments that are occupied by employees of the housing facility under 55 years of age.

Advertising For Roommates. The HUD regulations adopt special rules which apply with respect to advertisements seeking roommates. Such advertisements may refer to the desired sex of the tenant, but only where the sharing or living areas is involved, or where the advertisement is for a dormitory for an educational institution.

Such a reference is *not* permissible where the advertisement merely involves the rental of separate units in a single or multi-family dwelling. For example, a landlord who seeks to rent a basement apartment (with no shared living quarters) could not advertise

for a male tenant.

Moreover, the only exception with respect to advertising for a roommate is with respect to the person's sex. In no case may a housing advertisement seek a roommate of a particular race, religion, or other protected class.

Notification to Employees And Clients. The HUD regulations also provide that all publishers and all businesses engaged in the sale, rental or financing of real estate should give notice to their employees and clients that they follow a nondiscriminatory advertising policy.

In particular, publishers and real estate businesses are called upon to provide a printed copy of their nondiscrimination policy to each employee and officer. They are also called upon to post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising, and to have copies available for all firms and persons using their advertising services.

Implicit in this language, of course, is that HUD contemplates that each publisher and real estate business engaged in advertising will develop a nondiscrimination policy spelling out the real estate advertising it will not accept. The authors of this Manual strongly urge that every publisher and advertiser adopt and enforce a written nondiscriminatory advertising policy spelling out, in detail, the policy of the business not to publish discriminatory advertising, the specific obligations of their employees under the policy, and the consequences of a failure to follow that policy.

Equal Housing Opportunity Symbols. The HUD regulations provide that all advertising for the sale, rental or financing of housing should contain an equal housing opportunity ("EHO") logotype, statement or slogan. This serves as a means of educating the home-seeking public that the property is available for all persons regardless of race, color, religion, sex, handicap, familial status, or national origin.

Advertisers and publishers concerned with their potential legal liability should adopt and follow the HUD standards concerning EHO logos and statements. The specific language and sizes of the logos and statements are set forth in Part D.

There are several points to keep in mind with respect to EHO logos and statements. *First*, the HUD regulations make clear that EHO logos or statements should be included in advertising of all types, whether visual or auditory. In other words, the inclusion of EHO logos is not limited to newspaper advertisements. As an advertiser, you should be sure to include an EHO logo or statement in all of your written material, as well as a statement to the same effect in any radio, television, or video advertising.

Second, you should make sure that the EHO logo or statement is a visible part of the ad. In depicting EHO logos, the symbol should be placed in a visible location and comparable in *size* to other symbols used in the ad. In using an EHO statement, the print should be in a type *size* comparable to other type used in the ad.

Third, publishers in particular should note that the HUD regulation extends not only to advertising for the sale or rental of housing but also to advertising for the *financing* of housing. Such advertising should also include an EHO logo or statement.

YOUR OBLIGATIONS UNDER THE LAW

To review, the basic obligations which every publisher and every advertiser should follow are three-fold: (1) screen your real estate advertising for discriminatory content; (2) develop and enforce a nondiscrimination policy in the area of real estate advertising; and (3) train and inform your employees and clients.

If you are a publisher, you must also insure that an appropriate publisher's notice is included in any real estate advertising sections you publish. If you are an advertiser, you also have an obligation to insure that your advertising does not involve the selective use of particular media catering to limited groups, or other, similar selective advertising strategies.

Beyond these concrete steps, every publisher and advertiser involved with real estate advertising should have a working knowledge of the requirement of the applicable laws, and be sensitive to other legal issues that may arise concerning real estate advertising.

SCREENING OF ADVERTISING

As an advertiser or publisher, you should engage in a pre-publication review of real estate ads including at least the following checks: (a) you should screen for the use of discriminatory words, phrases, symbols, directions, or other verbal cues; (b) you should screen for the composition of human models depicted in ad campaigns and for any other visual cues; and (c) you should screen for the use of the appropriate Equal Housing Opportunity logotype or statement. Examples of the type of advertisements which may be discriminatory and should not be published or disseminated are discussed in detail below in Part D.

In setting up screening procedures, publications should not forget that advertising for residential real estate may appear in sections other than a formal real estate section. For example, ads for senior complexes may be published on the health or living pages. Seasonal real estate inserts or special pull-out sections may be included from time to time. A newspaper magazine may sometimes include real estate ads. No matter which section of the newspaper a real estate advertisement will appear in, to protect your publication against potential liability, the ad must be reviewed in advance of publication for compliance with the discriminatory advertising laws.

Advertisers such as developers, ad agencies, real estate companies, and others engaged in the real estate business must remember that the Fair Housing Act broadly applies to any “notice, statement or advertisement.” Be sure to screen for discriminatory content not only your newspaper ads, but also any other materials you distribute or display. This includes flyers, brochures, deeds, applications, signs, banners, posters, billboards, and informational materials of any type, including MLS listings and other electronic messages. Your review should also include any advertising you do in non-print media, such as television or radio ads, sales videos, audiovisual displays, signs in sales offices, and so on. Each of these could be considered a “notice, statement or advertisement” with respect to a dwelling, and none may be discriminatory.

ADOPTION OF A FAIR HOUSING ADVERTISING POLICY

Major newspapers in the Summit County area, including *The Beavn Journal*, have had in place fair housing advertising policies applicable to all real estate advertising in those papers. As an area publisher or advertiser, you need to adopt and enforce such a policy as well.

A fair housing advertising policy should provide clear guidelines for your employees and clients to follow. It should inform them that your company is aware of its obligations under federal, state, and local law, and intends to comply with those obligations. The policy should also provide for meaningful enforcement mechanisms. It should make clear to clients that your company will not accept business from those who are engaging in advertising discrimination, and should make clear to employees that compliance with the policy is a term and condition of employment. Specific standards included in advertising policies adopted by major Summit County area publications are discussed in Part F below.

You need to be aware that ensuring compliance with the fair housing laws is an active, ongoing process. Simply adopting a fair housing policy on paper and passing it out will not insulate you from liability if you have not taken steps to apply and enforce that policy in practice. A business which simply gives a copy of a fair housing policy to employees, and does not make enforcement of that policy a part of the employees’ job responsibilities, runs the risk of lawsuits.

Enforcing a fair housing policy requires dedication and vigilance. Competition for advertising business is keen, and advertising-related businesses are under pressure to generate revenues. Advertising personnel are frequently oriented toward seeking to please the client. Employees need to understand the very serious consequences of publishing discriminatory advertising, and to appreciate that compliance with your fair housing advertising policy is in the interest of both your business and your clients.

TRAINING AND NOTIFICATION

Your business must also ensure that your employees receive appropriate training, and that any clients are informed of your fair housing advertising policy. The HUD regulations specifically provide that you should:

- (a) provide a printed copy of your nondiscrimination policy to each employee and officer;
- (b) post a copy of your nondiscrimination policy in a conspicuous location wherever persons place advertising; and;
- (c) have copies of your non discrimination policy available for all firms and persons using your advertising services.

A MODEL PUBLISHER'S NOTICE

Under the HUD regulations, discussed above, publishers should include at the beginning of their real estate advertising section a Publisher's Notice. The following language would be an acceptable form of such a notice in the greater Summit County area, making reference to federal, state, and local law:

All real estate advertised herein is subject to the Federal Fair Housing Act, which makes it illegal to advertise "any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or intention to make any such preference, limitation or discrimination." State and local laws forbid discrimination based on factors in addition to those protected under federal law.

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis.

As a public service, some newspapers have included in their Publisher's Notice telephone numbers for local fair housing organizations and for HUD. In the Summit County area, the language of such a public service statement could read:

If you feel you have been wrongfully denied housing or discriminated against, call the Fair Housing Advocates Association (FHAA) at 330-253-2450 for more information.

The authors of this handbook encourage Summit County area publications to include a statement to this effect in their Publisher's Notice.

You should be aware that some publications may need to include more than one publisher's notice in their paper. Some newspapers publish real estate advertising in several different sections, such as a classified advertising section and a real estate section. The HUD regulations indicate that publishers should be sure to include a Publisher's Notice in each section of their newspaper which carries real estate advertising.

SELECTIVE PLACEMENT OF ADVERTISING

Advertisers need to be sensitive to the placement and targeting of their overall advertising program. As noted above, the HUD regulations caution against the selective use of media catering to particular protected classes, the selective use of advertising directed at limited geographic locations, the selective use of EHO logos, and the selective use of human model advertising.

This is essentially a common sense test. Of course, advertisers work on a fixed budget, and must necessarily target their advertising to where it will bring in the most customers. In developing this targeting, however, it is important to be sensitive to whether your advertising is or *could be perceived as* directed at or against a particular racial, ethnic, or other group. If this is the case - if, for example, a promotional mailing you are planning would go out only to neighborhoods which are predominately white - it is important to devote part of your advertising budget to complementary attempts to reach other racial groups.

REFERENCES TO PROTECTED CLASS WHICH MAY BE PERMISSIBLE

As discussed in preceding sections, the exceptions in which preferential advertising is permitted are limited. To review those exceptions, they include the following situations:

Advertisements For Roommates. Advertisements for roommates may specify gender, but only in two cases:

If the accommodation involves shared living space,

or

If the housing is a dormitory in an educational institution.

Keep in mind:

Advertisements for apartments or housing not involving shared living space may *not* specify gender.

Where living space is shared, *only* the gender of a roommate may be specified, and the ad may *not* specify race, religion, or any other protected class.

Handicapped Access. Advertisers may include information in their real estate advertising about the availability of handicapped accessible housing. For example, advertisers may promote such features as:

- * Availability of handicapped accessible units
- * Exception from a no-pets policy for guide dogs

Housing For Older Persons. Advertising for housing intended and operated for occupancy by older persons which meets the federal law qualifications for “housing for older persons” may make reference to age. Such advertising may permissibly use such phrases as:

- * Housing for older persons
- * Senior Complex

However, such advertising is permissible *only* if the housing advertised meets the legal requirements. As noted above, the legal rules in this area are complicated, and real estate companies working in this area may wish to seek legal advice.

Affirmative Advertising Efforts. Advertisers may make reference to protected classes, including race, in advertising which is either:

Part of an affirmative marketing program to attract persons to dwellings who would not ordinarily be expected to apply to the housing

or

Undertaken to remedy the effects of prior real estate advertising or marketing discrimination

Religious Groups. A limited exception allows religious groups or organizations to advertise:

- * Housing they operate on a *noncommercial basis*,
- * Can state a preference for or limitation to *members of their religion*
- * If the religious group does not discriminate on the basis of race, color or national origin

However, such an advertisement may not state any preference other than a preference for members of the religion (e.g., one based on race, gender, or other protected class).

Private Clubs. A limited exception allows private clubs to advertise:

- * Housing it operates or owns *incident* to its primary purpose
- * Can state a preference for or limitation to *members of the club*
- * If the club is not in fact open to the public

USE OF PHOTOS AND DRAWINGS

As discussed at length in the preceding sections, the Fair Housing Act’s prohibition against advertising that “indicates any preference, limitation or discrimination” has been interpreted to apply to the use of human models in advertising. Pictorial ad campaigns may not include only or mostly models of a particular race, gender, or other protected class.

You should review the advertising campaign for each development separately. You should be sensitive to advertising campaigns such as those which depict:

- * All or predominately models of a single race, gender or ethnic group

- * No families or children
- * Particular racial groups in service roles (maid, doorman, servant, etc.)
- * Particular racial groups in the background or obscured locations
- * Any symbol or photo with strong racial, religious, or ethnic associations
- * Minorities who are not residents of the complex
- * Advertising campaigns depicting predominately one racial group are particularly vulnerable to legal challenge if one or more of the following factors are present:
 - * The complex is located in a neighborhood which is predominately white or known historically as being racially exclusive and the models are white
 - * The complex is located in a neighborhood known to be a black or minority area and the advertising depicts minority-race models
 - * The campaign includes a number of different ads, none or few of which include models of other races
 - * The ads fail to contain EHO statements or logos, or logos which are not readily visible
 - * The campaign runs over a long period of time, or involves ads published on many occasions
 - * The ad campaign involves group shots or photos or drawings depicting many people, all or almost all of whom are from one racial group
 - * The campaign involves full-page or color ads which are visually prominent

Remember that real estate advertising may be illegal not only if it includes predominately white models, but also if it includes predominately minority models, particularly if the advertising involves complexes in neighborhoods or suburbs known to be welcoming to minorities.

The basic test is:

Would the ordinary reader construe the advertising as sending a message of preference for or against a particular class of homeseekers?

THE EQUAL HOUSING LOGO AND STATEMENT

As discussed above, the HUD regulations provide that all advertising for the sale, rental or financing of residential real estate should contain an equal housing opportunity logotype, statement or slogan.

The specific HUD standards for the content and size of EHO statements and logos are as follows:

In choosing which EHO symbol to include in an advertisement (a logo, statement, or slogan), the HUD standard provides that:

- * Advertising 4 column inches or less should include the Equal Housing Opportunity Slogan
- * Advertising 4 column inches or less can also be grouped under a caption which states that

the housing advertised is available to all without regard to race, color, religion, sex, handicap, familial status or national origin

* All other advertising may include either an Equal Housing Opportunity Statement or an Equal Housing Opportunity Logo.

Size and Placement of EHO Symbol:

If the Statement is used, it should be clearly visible and in print size comparable to that used in the rest of the advertisement.

If logos are used, HUD provides the following size standards:

Size of Ad	Size of Logo
1/2 page or larger	2" x 2"
1/8 page to 1/2 page	1" x 1"
4 column inches to 1/8 page	1/2" x 1/2"
Less than 4 column inches	Slogan not logo

If these sizes are not relevant (for example, for a small pamphlet), the EHO logo should be of a size at least equal to other logotypes in the ad. If there are no other logos, the EHO logo should be in bold display face which is clearly visible. If an EHO statement is used instead, it should take up 3 to 5 percent of the ad.

Keep in mind, advertisements may be in violation of the law even if they include an EHO statement or logo (e.g., a single-race advertising campaign may indicate a racial preference even if an EHO statement is shown). Be sure that your advertising review process goes beyond simply review for the EHO language or symbol.