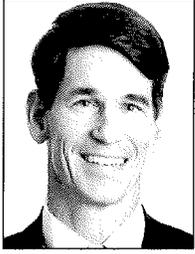


Advertising and Fair Housing Compliance: Just the Facts



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On the television show *Dragnet*, Sergeant Joe Friday was always calming down his excitable witnesses by telling them all he wanted was the facts, “just the facts.” Sergeant Friday’s advice is not bad for navigating the advertising restrictions of the Fair Housing Act. The prohibitions against discrimination in the sale of homes based on race, color, religion, sex, handicap, family status or national origin are familiar to most builders. Less obvious, however, are the many ways a builder may violate the Fair Housing Act.

A few years ago, the Miami Valley Fair Housing Center published a Fair Housing Advertising Word and Phrase List identifying words and phrases that, in its opinion, were not acceptable, were cause for caution or were acceptable for use in advertising homes for sale or rent. As a quick quiz, ask yourself which category applies to the following words, with the answers from the Miami Valley Fair Housing list to be given at the end of this article: adult community, Asian, bachelor pad, Catholic, no children, couples only, integrated, no children under age 16, single person, no smokers, and senior housing. No preset list of words and phrases is foolproof as context and visual images when considered with language may cause words to be forbidden in one instance but not another.

As a general rule, try to avoid using phrases that describe people or population and concentrate on using words that describe the home. For example, instead of “perfect for an active lifestyle” say “large pool and deck.” The same rule applies to community descriptions. For example, instead of using the phrase “great trail for runners,” identify the proximity of the community to trails and parks.

If the advertisement features human models, be careful to include photos that are representative of the larger community. For example, when advertising community amenities, do not show photographs featuring only young, white men engaged in activities or white men and women engaged in activities with no inclusion of other racial or ethnic

groups. Be careful that the community’s home owners association web site does not cause problems with compliance with the Fair Housing Act. For example, a builder may violate the Fair Housing Act if the builder’s web site is linked to the home owners association’s web site and photographs on the site are not representative of the larger racial and ethnic makeup of the community.

Family status advertising can be particularly troublesome as phrases identifying a particular target age group or limiting the number or ages of children are not permitted. Limiting sales in a community to persons who are over 55 years of age and including this restriction in advertising is permitted if the builder follows the strict guidelines set out in 42 U.S.C. 3607 (b) (2) (C) to establish an age restricted community, including requiring at least 80% of the owners to be age 55 or older, establishing policies and procedures for maintaining such age restriction and requiring verification of age from residents with records maintained by the homeowners association.

Builders should be careful to include the Equal Housing Opportunity logo or statement in all advertising. The inclusion will help the builder avoid damages in an enforcement action brought by the government. The regulations implementing the Fair Housing Act logo and slogan are set out in the Federal Code of Regulations at 24 C.F.R. 109.30. When in doubt, think of Sergeant Friday and focus on the facts related to the home, its features and the community, and don’t misplace your focus on descriptions of the people and their lifestyle. **Bm**

¹42 U.S.C. 3601 et seq.; Section 213.040 RSMo. creates a state law that is the equivalent of the federal Fair Housing Act.

²Miami Valley Fair Housing Center, Inc., Fair Housing Advertising Word and Phrase List (Rev. 5-1-09)

³All but no smokers were considered unacceptable, the word “Catholic” was to be used with caution and the phrase “senior housing” may only be used when the complex qualifies as housing for older persons under strict guidelines set by the Fair Housing Act and regulations. Illustrating how illusive this categorizing can be, the conciliation agreement entered into in 1995 by HUD, the Fair Housing Council of Oregon and the Portland Metropolitan Area Boards and Associations of Realtors Multiple Listing Service, Inc. was even more restrictive.