

# Best Intentions: ARE YOUR ADS FAIR?

**By Warren Berger**

Can you advertise property these days without embroiling yourself in a dispute over the legal tenor of your ad copy? No doubt that question is on your mind as you read accounts of stringent enforcement of the federal Fair Housing Act with respect to real estate ads.

Complaints filed by housing advocates, such as member agencies of the National Fair Housing Alliance, are on the rise. As a result, many newspapers reject ads that contain words or phrases that could be perceived to discriminate against or exclude a particular group.

"Practitioners are concerned that the everyday marketing terms they've always used are suddenly unacceptable and that they run the risk of getting sued," says George Naylor, a broker with Brenner Realty in Warminster, Pa., who heads the Equal Opportunity Committee at the Bucks County Board. However, the U.S. Department of Housing and Urban Development (HUD) last January provided some welcome relief for practitioners by clarifying the acceptability of some everyday terms that have lately caused some confusion. (For examples of words and phrases that don't violate Fair Housing Act protocol, see "How to Write a Nondiscriminatory Ad, by HUD.")

Although such concerns are understandable, they may be based more on perception than reality, according to fair housing experts in the industry, in government, and at newspapers. "The attention being given lately to this issue has created a mild panic among practitioners, who worry that they'll be attacked for accidentally using the wrong word," says Fred Underwood, vice president of equal opportunity at the NATIONAL ASSOCIATION OF REALTORS. "But for the most part, fair housing enforcement is reasonable--and it's going after actual discrimination in ads rather than the misuse of certain words."

Brenda Russell, a fair housing instructor and broker with Crye-Leike, Inc., in Memphis, Tenn., shares that assessment. "Although fair housing complaints against real estate ads are on the rise, the problem isn't that watchdogs are cracking down on harmless words. It's that some practitioners produce ads that discriminate in subtle ways, often without realizing it."

## **Newspapers Take It Personally**

Advertising runs into trouble when its language or images create the perception that one type of buyer is preferred over another on the basis of race, color, familial status, religion, handicap, national origin, or sex, says Shanna Smith, executive director of the National Fair Housing Alliance in Washington, D.C. If HUD, which enforces the Fair Housing Act, determines that an ad creates such a perception, it may levy fines of \$10,000 or more against violators, who may also be subject to discrimination lawsuits.

Those fines and lawsuits may be directed not only at the practitioners who create the ads but also at the media that carry them. Even MLS listings have come under scrutiny by HUD of late. (How does

HUD track down violations? It sets up a toll-free hot line, which consumers can call to place tips, and monitors many publications.)

Therefore, "it's incumbent on newspapers to make sure the ads they take are acceptable," says Anthony Marsella, vice president of real estate advertising at the New York City office of the Newspaper Association of America. After all, "advertising is the first outreach to homebuyers--it can dictate who has access to certain homes and who doesn't," says Smith.

## **The Folly of Lists**

As a safeguard, some newspapers refer to lists of potentially discriminatory words and phrases compiled by individual newspapers or associations. For example, the Oregon Newspaper Association lists about 80 words and phrases it considers unacceptable in ads. Adults only, exclusive, executive, and mature person appear on the list, along with words that refer to ethnic groups, age, physical condition, familial status, and religion.

Papers meticulously check for such terminology in ads. The Philadelphia Inquirer has gone so far as to program the computer handling its classified ads to beep, not unlike a spell checker, whenever it encounters an objectionable phrase.

But Underwood notes that lists won't solve the problem. "People figure they're safe as long as they don't use words on a list. But the real issue is the intent of the ads, not the wording." In addition, the lists that exist become outdated quickly. In fact, HUD's recent clarification put a stamp of approval on some wording that had previously been red flagged on some newspaper and association lists.

NAR's Equal Opportunity Committee has opted not to publish a word list, Underwood says, "because we've concluded that lists are counterproductive." Moreover, there's no universal list of discriminatory terms. "I don't think anyone can ever come up with a comprehensive list," Smith says, "because words take on different meanings, depending on their context."

Smith also believes practitioners may be hung up on particular words. "Our watchdog groups aren't interested in going after such language as master bedroom and walking distance. We've reviewed our members' complaints, and we haven't found any frivolous ones."

Most objections focus on ads with imagery or language that clearly excludes a group, Smith says. The greatest number of complaints stems from ads that exclude children with such terms as mature and adult. In those cases, "it's not a matter of using the wrong word--it's a matter of intent," she says.

## **Empathy Training and Ad Writing 101**

Examining and analyzing your ads' intent can be more difficult than simply checking ads against a word list. Discriminatory intent can be imbedded in an ad through subtle code words, such as exclusive or traditional neighborhood. You may automatically use such words without thinking about their connotations or their impact.

To change that, "examine any assumptions you have about who's going to buy the property," Underwood says. "Try to imagine that the ideal buyer--the one who's going to pay the highest price--is someone who's disabled or part of a minority group. Then read the ad over and ask yourself, 'Is there anything in my ad that'll somehow suggest that this house isn't for that person?'"

Perhaps the golden rule to follow when you prepare ad copy, experts say, is to focus all descriptions on the property--not the potential buyer. For example, it's better to say a house is near a jogging trail than "it's great for joggers," Underwood says. The former simply describes the location of the property, but the latter suggests the property is better suited for a certain type of person.

### **Be an Educator and a Broker**

Russell believes that it may be easier to abide by these practices if you're thoroughly schooled in the principles and complexities of fair housing. "Brokers need to take more responsibility for educating their salespeople," she says. For support, you can usually turn to your local association, which probably offers ongoing fair housing education. And Marsella points out that newspapers around the country also conduct fair housing workshops for practitioners. Contact your paper's classified advertising manager for information.

"But you also need to hold company meetings on the subject," Russell says. "Designate one of your salespeople as a fair housing officer for the company. That person can look for the latest articles and cases to keep everyone up to speed."

Will increased education keep you and your ads out of hot water? The Arizona Association stepped up its education efforts last year after a statewide audit of newspaper ads by the attorney general found that only about 10 percent met fair housing standards, says Alice Martin, of the association's member services department. A follow-up survey less than a year later showed that ad compliance rates had risen to almost 80 percent. According to Martin, "Member education had a lot to do with that turnabout."

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### **DO YOU WANT TO RUN THAT AD—THERE?**

In addition to worrying about what's in your ads, also consider where you place them. According to HUD, using advertising media selectively can lead to discriminatory results and may violate the Fair Housing Act.

Problems may arise when you advertise in particular geographic or "zoned" editions of major metropolitan newspapers or in smaller newspapers that reach a particular segment of the community.

"The concern is that a broker might use selective media as a way to keep a whole segment of the population from having access to certain properties," says Shanna Smith, of the National Fair Housing Alliance in Washington, D.C. "You're probably okay if you hit your area's largest paper because it will tend to cover a pretty diverse group."

If you advertise in several small newspapers that reach different audiences, be consistent with the properties and communities advertised in each paper. "Otherwise, it might seem as if you think one house is right for one ethnic group, for example, and a different house is right for another," says NAR's Fred Underwood.

The issue is complex because your media selection may be determined by budget. But Smith says, "We don't expect someone to advertise in every local paper. We look for obvious cases of excluding groups of people."

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## HOW TO WRITE A NONDISCRIMINATORY AD, BY HUD

Last year, the NATIONAL ASSOCIATION OF REALTORS' Equal Opportunity Committee (EOC) asked HUD to end the confusion surrounding common architectural or locational terms, such as "master suite" and "walking distance." The EOC believes such terms shouldn't automatically constitute a violation unless they're used in a context that shows discriminatory intent. In response, HUD last January released these ad guidelines:

**Race, color, and national origin**—Wording that describes the housing, the current or potential residents, and neighbors or neighborhood in racial or ethnic terms (white family homes, No Irish) is liable. But HUD won't investigate complaints about such racially neutral terms as master bedroom, rare find, or desirable neighborhood.

**Religion**—Ads with such blatant phrases are "no Jews" or "Christina home" aren't acceptable. Neither are ads that use the legal name of an entity that contains a religious reference, such as Roselawn Catholic Home, or a religious symbol, such as a cross, that may indicate a preference. An ad with a religious reference might pass muster, however, if it also includes a disclaimer: "Seller does not discriminate on the basis of race, color, religion, national origin, sex, handicap, or familial status."

In addition, because they've been secularized, terms (Merry Christmas and Happy Easter) and symbols (Santa Claus, the Easter bunny, and St. Valentine's Day images) related to religious holidays don't violate the Fair Housing Act.

**Sex**—HUD considers such terms as "mother-in-law suite" and "bachelor apartment" to be commonly used physical descriptions of housing units—not preferential or limiting terms.

**Handicap**—Although "no wheelchairs" would violate the Act, phrases describing property features (great view, fourth-floor walk up, walk-in closet), services or facilities (jogging trails), or neighborhood features (walk to bus stop) are okay.

**Familial status**—Likewise, descriptions of properties (two-bedroom, cozy family room) their services and facilities or lack thereof (no bicycles allowed), or their neighborhood (quiet streets) aren't discriminatory on their face. But ads that limit the number or ages of children allowed or that express a preference for adults, couples, or singles are taboo.

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## GOOD ADS ARE A MODEL OF DIVERSITY

If you plan to show people in ads or brochures, remember that diversity is essential. According to HUD, if you use models in display ads, make sure the models are "clearly definable as reasonably representing" majority and minority groups, both sexes, and, when appropriate, families with children (certain properties qualify as adult residences).

Does that mean every ad must feature every conceivable type of person? Not necessarily, says the National Fair Housing Alliance's Shanna Smith. "The problem arises when you show one type of group. We also look for patterns in a series of ads. If you run four ads, we expect some balance: Show single people as well as couples, and minorities as well as whites."

For some, picturing people is just too risky. "We don't use models in any of our literature," says Bruce Campbell, president of Wallace H. Campbell & Co., a property management and residential real estate company in Baltimore "There may be someone who's left out, so avoid trouble and just

show the property."

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