

Complying with Fair Housing Laws

Recommendations for Advertisers and Publishers in New Jersey



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Table of Contents

I. Basic issues, test and policy regarding housing advertisements	3
II. Seven rules for avoiding complaints.....	5
III. Seven subject areas that may be problematic	8
IV. Word list, organized by subject area.....	9
V. Other subject areas problematic under municipal law	14
VI. Word list, organized alphabetically	15

Complying with Fair Housing Laws

Basic Issues, Test and Policy Regarding Housing Advertisements

Background

Although the rest of these materials tend to focus on specific words and phrases that are generally either problematic or permissible in housing advertisements, why certain words and phrases are problematic in housing advertisements will not be clear to you unless you have some understanding of how housing discrimination laws interact with advertising.

Unfortunately, there are still a number of landlords and home sellers in this country who see nothing wrong with discriminating against prospective tenants and buyers on the basis of factors such as their race, their religion, their gender or because they have children. Such discrimination, of course, is illegal, but it is nonetheless still occurring. While blatantly discriminatory advertising (e.g., “whites only” or “no Jews”) is virtually never published today, some advertisers may either deliberately or inadvertently use what is considered “code” language intended to convey the same or similar messages without subjecting the advertiser to liability under the federal and state fair housing laws that prohibit such discrimination. For example, a number of neighborhood descriptions (e.g., “private neighborhood” or “exclusive neighborhood”) are considered suspect today under the fair housing laws because they may convey a message that people of a certain race, religion or ethnic group are not welcome there as tenants or homeowners.

“Reasonable reader” test for discriminatory advertising

In order to determine whether a particular housing advertisement violates fair housing laws, a court must decide whether a reasonable person reading the advertisement would feel certain people were not going to be treated equally if they tried to purchase or rent the home being advertised.

Thus, for example, if a landlord advertises an apartment “perfect for the empty nesters or retirees,” the advertisement would probably be held to be discriminatory, if a complaint was filed about it, because a reasonable reader might well feel that the landlord would prefer tenants without children. (The advertisement could still be found to be discriminatory, by the way, even if the landlord did not intend to give readers the idea that families without children would be preferred and actually did rent the apartment to a family with children.) Likewise, if an apartment is advertised as “suitable for one person,” a reasonable reader can infer that the landlord would prefer a single person rather than a mother with an infant as a tenant, so this advertisement also would probably be found to be discriminatory.

Given the complexity of our language and laws, it can be difficult to determine whether a particular housing advertisement is likely to be considered discriminatory under this test, for

two reasons. First, words can convey more than one meaning, so a particular reader might only see one innocuous meaning and assume an advertisement was not discriminatory, where someone else would notice another meaning and reach the opposite conclusion. Second, depending on the overall context of all the language used in a particular advertisement – that is to say, the complete story told to the reader by the entire advertisement – words and phrases which might, in one context, be considered discriminatory, may be fine in another. For example, if an advertisement for a home for rent describes a quiet neighborhood right across the street from a public park for the children to play in and includes “EHO” (an acronym for Equal Housing Opportunity) at the bottom, this probably is not discriminatory. Although “quiet” might be considered a “code” for “no children” and it is always safest to describe the property available for rent rather than the person or persons envisioned by the landlord as potential tenants, this advertisement probably would be all right under the fair housing laws because it clearly welcomes families with children – a group that is usually discriminated against – and indicates all applicants will be considered equally. Hence, a reasonable reader probably would not consider the advertisement discriminatory. (But beware: some municipalities have local fair housing ordinances prohibiting discrimination based on sexual orientation, and there such an advertisement might be held to be discriminatory because a reasonable reader arguably could get the impression that traditional heterosexual families would be preferred by the landlord.)

If, however, a different housing advertisement used the phrase “quiet neighborhood” without the EHO acronym and without describing a playground across the street, it might convey a different message to a reasonable reader and be considered discriminatory. Additionally, if the advertisement contained other questionable language in addition to “quiet neighborhood,” that would further increase the likelihood of it being found to be discriminatory. Thus, an advertisement describing an apartment for rent in a “quiet neighborhood” in a “secure” building “ideal for executives and professionals” probably would be found to be discriminatory.

Newspapers must set policy regarding acceptable degree of risk

Those advertisers and newspapers that wish to be virtually certain of avoiding any fair housing complaints can probably achieve this goal – if they are willing to run strictly factual housing advertisements along the lines of “three-bedroom detached home for rent, fenced yard, garage, \$500/month.”

But if advertisers and newspapers want to run eye-catching advertisements that stand out from the rest, in order to try to rent apartments and sell homes, there will inherently be a higher risk of being held to have violated fair housing laws. This risk can be minimized simply by keeping in mind the “reasonable reader” rule – and asking oneself, with every housing advertisement, is there any one group of people that is being preferred or discriminated against under this language? If so, the advertisement probably should be revised.

Similarly, the general rules and word lists on the following pages are intended to help advertisers and newspapers identify language that may be problematic – and explain why it may pose a problem. (Additionally, for a quick reference, NJPA has prepared an alphabetical “Words to Watch” sheet at the end of this package.) Because most newspapers prefer not to take a

chance of being sued even when they are expected to win, some of the recommendations we make are conservative. Consequently, failure to comply with the NJPA's recommendations would not necessarily be held to constitute a violation of fair housing laws. For those newspapers that wish to set a conservative policy and follow all of the NJPA's recommendations, however, the likelihood of facing a fair housing complaint is minimal. (It is never non-existent, because the interpretation of laws constantly changes and because complaints may be made that are without factual or legal basis.)

Using the alphabetical “Words to Watch” sheet

For those newspapers that wish to take a conservative, risk-averse approach to fair housing issues, the safest (and simplest) practice is to treat all words and phrases in both the “Avoid” and “Use Caution” categories of the NJPA's “Words to Watch” sheet as language that should not be used in housing advertisements absent exceptional circumstances. Note that language similar to the words and phrases in both of these columns also may be problematic, so classified personnel should not assume that language not listed on the sheet automatically passes muster under fair housing laws.

When using language from the “Clearly O.K.” column of the “Words to Watch” sheet in a housing advertisement, the safest course is to use exactly the same language, as even a slight change can sometimes pose problems. (For example, it is fine to say “children welcome” but problematic to say “children o.k.”)

Seven Rules for Avoiding Fair Housing Complaints

1. You may describe desirable features of the property.

Such as:

DUTCH COLONIAL HOME
FAMILY ROOM
FRENCH DOORS
MASTER BEDROOM
VIEW OF ...
WALK-IN CLOSET
WALK-OUT BASEMENT

Explanation:

These terms are permissible because they are simply providing a factual description of a desirable feature of the property and are not intended to discriminate against anyone. Note, however, that although newspapers and advertisers would almost certainly win any complaint filed solely over such language, a few extremists have contended that at least some of the above terms are discriminatory. Consequently, it is conceivable but, we believe, very unlikely that the use of any of these terms would result in a complaint.

2. In general you should be careful not to describe:

A. The person(s) who may rent or purchase the property. Describe the property, not the person!

Do NOT Use:

ONE CHILD O.K.
CHRISTIAN HOME
PERFECT FOR RETIREE
SENIOR CITIZEN DISCOUNT
ETC.

B. The neighborhood, as many such descriptions might be felt to indicate a preference for certain persons as tenants or purchasers depending on their age, physical condition, family size, gender, race/ethnicity or religion.

Do NOT Use:

EXCLUSIVE NEIGHBORHOOD
PRIVATE NEIGHBORHOOD
GO RIGHT AT ST. MARY'S CHURCH
ETC.

3. A few exceptions, such as those listed below, apply where the use of a descriptive term encourages persons, who traditionally have been targets of discrimination, to seek the housing described.

O.K. to Use:

CHILDREN WELCOME
HANDICAPPED-ACCESSIBLE
WHEELCHAIR-ACCESSIBLE

BUT NOTE: You should NOT use the phrase "CHILDREN O.K." because it has been interpreted as indicating only a lukewarm agreement to comply with the requirements of fair housing law, rather than making welcome a group traditionally discriminated against.

4. Exercise care regarding artwork; use representative models (both in photos and in artists' renderings) and do not use symbols with religious significance (e.g., Christian cross, Jewish menorah, etc.).

Explanation:

Using only photographs or artwork depicting persons of a certain age, race or gender in housing advertisements could violate the fair housing laws. Hence, housing advertisers – if they use models at all – should run photographs or artwork that are representative of a broad group of persons. Although the individual advertisements obviously cannot contain certain persons of

each and every racial and ethnic group, gender, age, etc., and hence it is permissible to run a housing advertisement containing a single blond-haired boy, models used in the overall advertising campaign should be representative.

5. Find out whether any municipal laws impose additional requirements.

Explanation:

Advertising which runs in and/or concerns properties in certain cities must also comply with additional fair housing advertising restrictions under municipal law. These restrictions may include prohibitions against discriminating on the basis of sexual orientation and source of income. Copies of the fair housing ordinances enacted by municipalities are available from the municipal offices in those locals.

6. Consult a word list if language is questionable.

Explanation:

The attached “Words to Watch” sheets prepared by NJPA (one of which is organized by subject, the other alphabetically) are designed to illustrate, generally, the type of language that should be avoided.

Note that many words are fine in one context (e.g., “contemporary home” or “white kitchen cabinets”), but are questionable or clearly prohibited in others (e.g., “contemporary lifestyle” or “whites only”).

Also, although a number of the listed words might not be found to be discriminatory if a court had to decide the issue, the lists err on the side of conservatism. That is because most newspaper publishers prefer to avoid advertising that might possibly result in litigation, even when they think they would win.

Finally, please note that no word list can contain all language that might violate fair housing laws. Consequently, if the particular word or phrase you are looking for is not listed, it is important to try to determine whether any similar word or phrase is listed as language to avoid. If so, it is generally best not to use the language or to call NJPA for clarification if you feel there is good reason why your word or phrase should be treated differently.

7. When in doubt, leave it out – and/or call the NJPA Legal Hotline at (201) 896-4100.

In general, do not use terms that fall into seven subject areas:

AGE	See Page 9 for list of age-related words
FAMILIAL STATUS	See Page 9 for list of words related to familial status
GENDER	See Page 10 for list of gender-related words
NEIGHBORHOOD	See Page 10 for list of words considered problematic when used along with “neighborhood”
PHYSICAL OR MENTAL ABILITY, DISABILITY OR HANDICAP	See Page 11 for list of ability-related words
RACE/RELIGION/ETHNICITY	See Page 12 for list of racial, religious and ethnic terms
RESTRICTIVE COVENANTS, REQUIRED MEMBERSHIP, ETC.	See Page 13 for list of terms related to restrictive covenants and the like

Words to Watch – Subject List

Age-related language:

Do Not Use: GOLDEN-AGERS
MIDDLE-AGED
RETIREE(S)
YOUNG
YOUTHFUL

Language related to Familial Status:

Do Not Use: ADULT COMMUNITY
ADULT LIVING
ADULT(S) ONLY
BACHELOR APARTMENT, PAD, ETC.
CHILD/CHILDREN, ONE O.K., TWO O.K., ETC.
CHILDREN O.K, NO CHILDREN O.K. – Permitted: “children welcome”
COUPLE (S)
EMPTY NESTERS
GOLDEN AGERS
MATURE ADULT(S)
NEWLYWEDS
ONE PERSON, TWO PERSONS, ETC. -- Permitted: “very small apartment”
PLAY AREA, NO PLAY AREA
RENT THAT IS DETERMINED ON A PER PERSON BASIS
RETIREES
SENIOR(S), SENIOR CITIZENS(S)
SINGLE(S), SINGLE OCCUPANCY UNIT
SLEEPS ____ (fewer than five persons)
SUITABLE FOR ____ PERSON (S) (any number)

Exception: Certain adult communities may legally be advertised as “housing for older persons” in compliance with fair housing laws, if they meet stringent state statutory requirements. It is unusual for a community to fall within this category, however, so we recommend that you avoid any reference to adults in housing advertisements as a general rule.

Gender-related language

Do Not Use: FEMALE
GAL
GUY
MALE
MEN
OLD MAID
WOMEN

Note: Gender of person seeking roommate may be used. Ad should make clear who is being described. However, there is disagreement as to whether gender of person being sought as a roommate may be described in housing advertising.

Neighborhood descriptions

Do Not Use: EXCLUSIVE NEIGHBORHOOD
PRIVATE NEIGHBORHOOD

Gray areas: DESIRABLE NEIGHBORHOOD
QUIET NEIGHBORHOOD
ETC.

Note: The safest course is to avoid using “gray areas” words unless your newspaper is interested in spending a significant amount of money in legal fees to help pay for a test case to determine whether this language is or is not permissible under fair housing laws.

Language regarding Physical or Mental Ability, Disability, Handicap

Do Not Use: ABLE, ABLE-BODIED
CRIPPLED, NO CRIPPLED
NO DEAF
NO ETC.

You Can Use: HANDICAPPED-ACCESSIBLE
OCEAN VIEW
STEPS FROM... – Preferred: close to/near...
VIEW OF...
WALKING DISTANCE TO...
WHEELCHAIR-ACCESSIBLE

Note: There have been some unusual fair housing cases in the disability category – for example, one woman sued her condominium homeowners' association in another state contending that she had been discriminated against under fair housing laws because her allergic sensitivities were not appropriately accommodated. Persons suffering from mental impairment, mental illness and substance abuse also may be able to state a claim under fair housing laws. (One recent case in another state in a related area – alleged employment discrimination based on a worker's "handicap" – the employee's admitted noxious body odor – was won by the employer, but only after incurring extensive legal fees.) Consequently, any language that a reasonable reader could view as indicating a preference for those without physical or mental handicaps should be handled with care.

Language regarding Race, Religion, Ethnicity

Do Not Use: AFRICAN
AMERICAN
AMERICAN INDIAN
ASIAN
BLACK
CAMBODIAN
CATHOLIC
CAUCASIAN
CHICANO
CHINESE
CHRISTIAN
COLORED
GERMAN
GREEK ORTHODOX
HISPANIC
INDIAN
JEWISH
LATINO
NATIVE AMERICAN
NEGRO
PROTESTANT
SPANISH
ETC.

Language regarding Restrictive Conditions, Memberships and the like

Do Not Use: MUST QUALIFY FOR MEMBERSHIP

Gray Areas: COUNTRY CLUB LOCATION
NEAR COUNTRY CLUB
GATED COMMUNITY
PROTECTIVE COVENANTS
RESTRICTIVE COVENANTS

Note: The language that falls within “gray areas” in this category is particularly difficult to deal with when developing an advertising policy, because a number of these terms are, in NJPA’s view, perfectly acceptable in many circumstances. Consequently, it is almost impossible to develop a general, easy-to-follow rule distinguishing problematic language in this category from words and phrases that generally do not pose a risk of being found to be discriminatory. For example, some restrictive covenants — e.g., fence height, location, etc. — obviously are not discriminatory, where others — e.g., permitted race of occupants — obviously are. (Although covenants based on race have not been drafted for new developments for decades, some are still on deeds for properties in developments established many years ago.)

In this category, it may be best to designate a specific person or persons on the classified staff to serve as an expert concerning restrictive covenants, memberships and the like, and to route all such advertising through the designated staff member(s).

Exception: It is DESIRABLE for a housing advertisement to include descriptions of amenities which AUTOMATICALLY are provided to ALL renters or purchasers of homes in a particular apartment complex, housing development, etc. — just be sure that the advertisement clearly states that everyone who moves into the community is entitled to these perks.

For example, it is not only permitted but encouraged to advertise “automatic swimming pool membership (or country club, tennis club, membership, etc.) included when you purchase/rent one of our homes.” Such advertising helps protect the rights of the prospective tenants and purchasers by making them aware of what other buyers and renters are getting, and hence discourages illegal discrimination.

Also prohibited in some municipalities is discrimination regarding Sexual Orientation

Do Not Use: HETEROSEXUAL
STRAIGHT

Gray Areas: TRADITIONAL FAMILY NEIGHBORHOOD
ETC.

Note: The safest course is to avoid using “gray areas” words unless your newspaper is interested in spending a significant amount of money in legal fees to help pay for a test case to determine whether this language is or is not permissible under fair housing laws.

Source of Income

Do Not Use: EXECUTIVE
PROFESSIONAL
SECTION 8 O.K. – Permitted: Section 8 approved, Section 8 certified

Words to Watch – Alphabetical List

A

able-bodied
adult (see Note 1)
African American
Asian American
ancestry (any)

B

Black
blind
Buddhist

C

Catholic
Caucasian
Chicano/Chicana
child/children
Chinese
Christian
church
color
colored (any, when used to describe persons)
couple
crippled

D

deaf
disability (see Note 2)
disabled

E

empty nester
ethnic neighborhood
ethnic group

F

Foreigners

H

handicapped
Hindi
Hispanic

I

ideal for... (a type of person)
immigrants
independently (capable of living)
Indian
integrated
interracial
Irish

J

Jew/Jewish

L

Latino/Latina

M

mentally handicapped
mentally ill
mentally retarded
Mexican-American
Middle Eastern(er)
minority
mixed community
Mormon
Moslem
mosque
Muslim

N

nationality (any)
newlyweds

P

parish, near
perfect for... (any type of person)
Polish
prefer
Protestant
Puerto Rican

R

race (any, when used to describe persons)
 religion (any, when used to describe persons)
 retarded
 retired persons, retirees (See Note 3)

S

segregated
 Senior (See Note 4)
 suitable for...
 synagogue

T

temple

W

White

Y

young
 youthful

Note 1 – Adult

If housing is “housing for older persons” it is appropriate to say so. However, the term “adult” standing alone is not appropriate as this word implies a restriction different than 55 and over or 62 and over, which are the two types of housing for older persons allowed as “housing for older persons.” Any other restrictions based upon age or which has a disparate impact upon families with children will violate the age or familial status provisions. Equivalent phrases referring to persons 55 and 62 and older – such as “adult community, 55 and over,” “adult community, 62 and over,” “adult 55+,” “adult 62+” – to describe “housing for older persons” will also be acceptable. The term adult alone or with terms that do not meet housing for older persons requirements will remain unlawful terms as a description of housing for older persons.

Note 2 – Disability

It is acceptable to describe housing as accessible to persons with disabilities. It is not acceptable to attempt to limit the housing to certain persons by stating that it is not accessible.

Note 3 – Retired Persons

If it is “housing for older persons,” use that phrase, as many people who are retired may not qualify for housing for older persons while many people still working may be eligible for housing for older persons. “Retirement community/housing” may be used, if the advertiser provides a statement formally, in writing, to the newspaper/publisher that the property being advertised meets the requirements for housing for older persons.

Note 4 – Senior

Use “housing for older persons”— see note under adult and retired persons – many people who do not consider themselves senior may be eligible for housing for older persons. “Senior community/housing” may be used, if the advertiser provides a statement formally, in writing, to the newspaper/publisher that the property being advertised meets the requirements for housing for older persons.

Please Note: Any of the words on the words to watch list may, of course, be used if they are part of an address. For example: addresses such as: Poplar Church Street, Lutheran Street, Black Ridge, Indian Hills, etc., are permissible.

