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What Is Fair Housing?

Fair Housing is a right - not just a privilege.
Fair Housing is the law - not just an idea.
Fair Housing is no longer only an issue of color or race; it also includes issues such as the presence of children in a household, disability, gender, national origin, religion and sexual orientation.



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Definition

- The right of all people to live wherever they choose. To have housing (seek, purchase, sale, lease or rent) and enjoy the full use of their homes without unlawful discrimination, interference, coercion, threats, intimidations by owners, landlords, real estate agents or any other persons.

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Fair Housing History

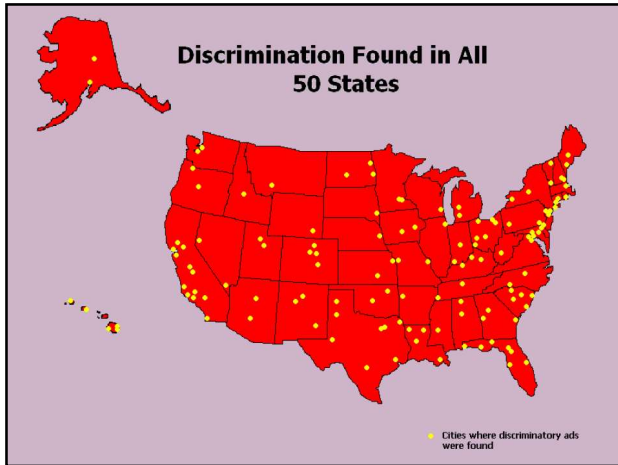


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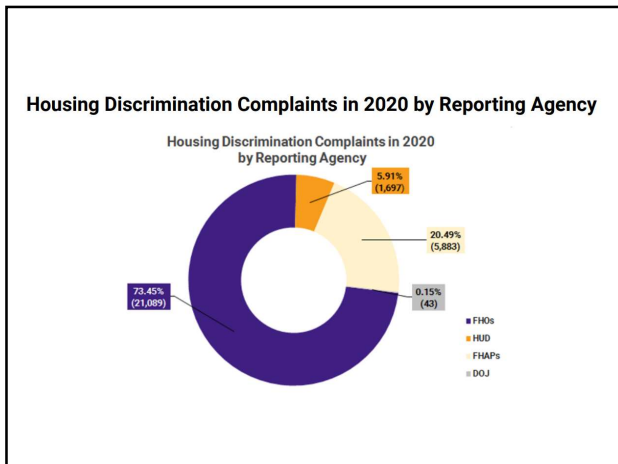
2022 NAR Fair Housing Graphic



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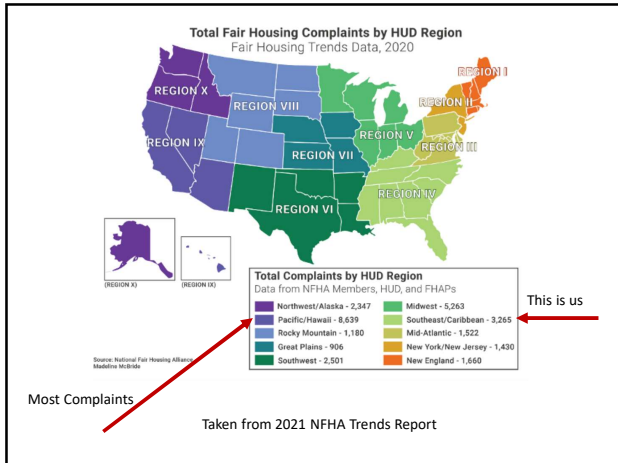
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Fair Housing Complaint Data by Agency, 2010-2020

Year	NFHA Members	HUD	FHAPs	DOJ	TOTAL
2010	18,665	1,943	8,214	30	28,852
2011	17,701	1,799	7,551	41	27,092
2012	19,680	1,817	6,986	36	28,519
2013	18,932	1,881	6,496	43	27,352
2014	19,026	1,710	6,758	34	27,528
2015	19,645	1,274	6,972	46	27,937
2016	19,740	1,371	7,030	40	28,181
2017	20,595	1,311	6,896	41	28,825
2018	23,407	1,784	5,987	24	31,202
2019	21,117	1,771	5,953	39	28,880
2020	21,089	1,697	5,883	43	28,712

Taken from 2021 NFHA Trends Report

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Fair Housing Complaint Data by Basis and Agency in 2020

Basis	NFHA Members	HUD	FHAPs	DOJ
Race	13.37%	26.8%	26.2%	11.6%
Disability	52.31%	60.2%	61.1%	37.2%
Familial Status	7.14%	10.4%	10.0%	4.7%
Sex	5.83%	13.7%	10.6%	20.9%
National Origin	4.55%	8.1%	9.1%	4.7%
Color	2.63%	2.1%	3.7%	0.0%
Religion	0.82%	1.5%	2.2%	7.0%
Other	13.34%	9.3%	13.0%	18.6%

Note: Some reported complaints included more than one basis of discrimination.

Taken from 2021 NFHA Trends Report

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- The “other” category of complaints reported by fair housing organizations included the following:
 - Source of Income (1,363 complaints)
 - Age/Student Status (148 complaints)
 - Sexual Orientation (207 complaints)
 - Gender Identity/Expression (128 complaints)
 - Marital Status (82 complaints)
 - Criminal Background (66 complaints)
 - Victims of Domestic Violence (85 complaints)
 - Arbitrary (in California Rentals Only) (38 complaints)
 - Military/Veterans Status (84 complaints)
 - Retaliation (22 complaints)
 - Immigration Status/ Citizenship (8 complaints)

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Discrimination Complaints by Transaction Type in 2020

	Rental	Sales	Lending	Insurance	Harassment	Advertising	HOA/Condo	Other	Total
NFHA Members	15,795	208	108	19	1,071	327	122	3,439	21,089
HUD	1,144	121	59	0	0	0	0	373	1,697
FHAPs	3,904	418	70	1	0	0	0	1,490	5,883
DOJ	17	0	1	0	0	0	0	25	43
Total	20,860	747	238	20	1,071	327	122	5,327	28,712
Percent of Total	72.65%	2.60%	0.83%	0.07%	3.73%	1.14%	0.42%	18.55%	100.00%

Taken from 2021 NFHA Trends Report

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Case Completion Type	HUD	FHAPs	Total
Administrative Closure	254	515	769
Charged or FHAP Caused	36	453	489
Conciliation/ Settlement	645	1,125	1,770
DOJ Closure	6	0	6
No Cause	744	3,391	4,135
Withdrawn after Resolution	143	394	537
Total	1,828	5,878	7,706

Taken from 2021 NFHA Trends Report

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DOJ obtained 26 settlements in FY2020, resulting in a total of \$6,000,000 in monetary relief.



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Where Life Comes Together®

- The Department filed and settled various cases challenging the inaccessible design and construction of residential properties.
- For example, in *United States v. Epcon Communities* (S.D. Ohio), a case involving accessibility violations at 32 condominium properties in Ohio, the consent order required defendants to pay up to \$2,200,000 to correct inaccessible features at the properties, establish a \$300,000 settlement fund to pay damages to people who suffered harm, pay \$40,000 in damages to the fair housing group that filed the HUD complaint that initiated the case, and pay a civil penalty of \$51,303.

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ATLANTIC
DEVELOPMENT
GROUP LLC

- In another case, *United States v. Atlantic Development Group, LLC and Peter Fine* (S.D.N.Y.), the consent order required defendants to make extensive retrofits to 71 apartment buildings containing over 6,000 units, establish a \$600,000 compensation fund for aggrieved persons, and pay a \$30,000 civil penalty.

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- HUD reached a voluntary compliance agreement with the Decatur Housing Authority (DHA) in Decatur, Alabama, resolving claims that the housing authority discriminated against Black applicants for DHA senior housing by repeatedly skipping over Black applicants on the waiting list for desirable properties and steering them to less desirable units in racially and ethnically concentrated properties.
- DHA has agreed to create a \$200,000 fund to compensate individuals harmed by its policies; update its admission and occupancy policies; and appoint a compliance agreement administrator. The housing authority will appoint a compliance agreement administrator to ensure that the compliance agreement is followed and will require its employees to participate in fair housing training.

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REDFIN

- In October 2020, the National Fair Housing Alliance and nine local fair housing organizations sued Redfin, a national real estate firm based in Seattle, Washington, alleging that Redfin engages in policies and practices that have a discriminatory impact and redlining effect in violation of the Fair Housing Act in at least ten metropolitan areas.
- The plaintiffs charged that Redfin discriminates against communities of color by setting minimum home listing prices in housing markets under which it will not offer any real estate brokerage services to buyers or sellers.
- According to the plaintiffs, buyers and sellers of homes in non-White areas are far less likely to be offered Redfin's services and discounts than buyers and sellers of homes in White areas. The plaintiffs have asked the court to order declaratory and injunctive relief, and award actual and punitive damages.

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Fair Housing Law

There are a number of laws concerning discrimination in housing.

While the Fair Housing Act is the law most frequently cited, the federal government has a number of laws and executive orders addressing the issue.

The more prominent of these are summarized on a web page you can find by searching the following:

Federal Fair Housing Law Summary

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Basic Components of Fair Housing Violations

Generally speaking, there are four basic components to any complaint of illegal housing discrimination:

- ❖ A protected class that is covered by the law,
- ❖ A discriminatory act or practice that is covered by the law,
- ❖ The most recent discriminatory act occurred within one year that the formal complaint was initiated,
- ❖ The complaint involves a kind of housing covered by the law(s)

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The Protected Classes - Federal

- Race
- Color
- Religion
- National Origin
- Sex (gender)
- Disability
- Familial Status



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The Protected Classes - Tennessee

- Race
- Color
- Religion
- National Origin
- Sex (gender)
- Disability
- Familial Status
- **Creed**



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The Protected Classes - NAR

- Race
- Color
- Religion
- National Origin
- Sex (gender)
- Disability
- Familial Status
- Sexual Orientation & Gender Identity



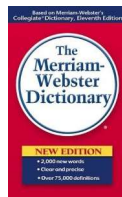
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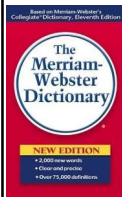
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Definitions

- Race - Each of the major divisions of humankind, having distinct physical characteristics
- Color – A person's skin color
- Religion - A person's religious or spiritual beliefs and practices, or his or her denominational affiliations.



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- National Origin - The country where a person or his or her ancestors originated or came from.
- Sex (gender) - "**Sex**" refers to the biological and physiological characteristics that define men and women. "**Gender**" refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women.

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- Disability - A physical or mental impairment that substantially limits one or more major life activities, a record of having such an impairment or being regarded as having such an impairment.
- Familial Status - Whether persons are members of families in which one or more children under 18 years old lives with a parent or legal custodian. Also a person whose household includes one or more minor or adult relatives.



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- Creed - A system of Christian or other religious belief; a faith
- Sexual Orientation - Having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such a preference.



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What Housing Is Covered?

- The Fair Housing Act of 1968, as amended, covers "dwelling," which are structures designed or occupied as residences or land offered for sale for a residence. A "dwelling" is broadly defined and can include a homeless shelter or a summer home.



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Exemptions

1. Religious Organizations
2. Private Clubs
3. Occupancy Standards
4. Drug Conviction
5. Some single family housing
6. Mrs. Murphy's Exemption
7. Familial Status – Housing for older persons



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Exemption-Religious Organization

- May discriminate with respect to it's non commercial property, provided that the religion itself does not discriminate on the basis of race, color or national origin.



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Exemption-Private Club

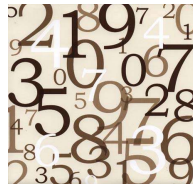
- Does not prohibit a private club, not in fact open to the public, from limiting the rental or occupancy of noncommercial lodgings to members.



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Exemption-Occupancy Standards

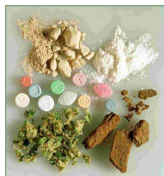
- The act does not limit the applicability of any reasonable local, state or federal restrictions regarding the maximum number of persons permitted to occupy a dwelling.



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Exemption-Drug Conviction

- The act does not prohibit conduct against a person because such person has been convicted in a court of law for the illegal manufacture or distribution of a controlled substance. Allows landlords to protect tenants.



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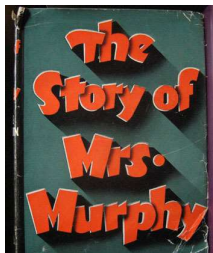
Exemption-Single Family Housing

- The owner does not own or have interest in more than 3, Single Family Dwellings at any one time
- The house is sold or rented without the services of a real estate agent or the services of any person in the business of selling or renting dwellings.
- The exemption WILL NOT APPLY if a person in the real estate business is involved or if discriminatory advertising is used.

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Exemption-Mrs. Murphy

- The act does not cover owner-occupied dwellings designed for occupancy by no more than 4 families living independently of each other.



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Exemption-Familial Status

- Discrimination based on familial status will not apply to housing qualifying for exempt status as housing for older persons.



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Housing For Older Persons Exemption

- 100% of the occupants must be 62 years of age or older or
- 80% of the occupied units must be occupied by at least one person who is 55 or older
- the housing facility or community publish and adhere to policies and procedures that demonstrate its intent to qualify for the exemption

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SOME... Discriminatory Housing Practices



- To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, handicap or national origin.

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- To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, handicap, familial status or national origin.



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- To represent to any person because of race, color, religion, sex, handicap, familial status or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.



43

- For profit, to induce or attempt to induce any person to sell or rent any dwelling by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status or national origin.



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- To discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of,
 1. That buyer or renter
 2. A person residing in or intending to reside in that dwelling after it is sold, rented or made available
 3. Any person associated with that buyer or renter.



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- Refusing to permit, at the expense of the handicapped person, reasonable modification of existing premises occupied or to be occupied by such person, if such modifications may be necessary to afford such person full enjoyment of the premises. EXCEPT in the case of a rental where the landlord may require, as a condition for modification, the renter agrees to restore the interior to the condition that existed before the modification.



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- To refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use or enjoy the dwelling.



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Testers



- The Supreme Court of the United States has recognized that the use of *testers* is a necessary and essential means of enforcing this country's fair housing laws.
- Testers are described as, "individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful practices."

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National Fair Housing Alliance Settles Race Discrimination Complaint with Real Estate Groups in Jackson, Mississippi

- The National Fair Housing Alliance (NFHA) has settled a housing discrimination complaint with Lorgroup, LLC, DBA RE/MAX Alliance, and The Lee Garland and Rita Jensen Team (Lorgroup).
- The investigation included telephone and in-person testing.
- Lorgroup will pay \$46,000 to NFHA, participate in fair housing trainings, and display fair housing signs in its offices. Additionally, Lorgroup has agreed to promote fair housing in the communities where it does business and to expand equal housing opportunities for all consumers.

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HUD charges Facebook with housing discrimination

by Tracy Jan, [The Washington Post](#). Updated: March 28, 2019



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Enforcement

- An aggrieved person may file a complaint with HUD within one year after an alleged discriminatory housing practice has occurred.
- An aggrieved person is an individual who claims to have been injured by a discriminatory housing practice or believes that such person will be injured by a discriminatory housing practice that is about to occur.
- Once the complaint is filed, HUD must investigate and complete the investigation within 100 days.

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Relief & Penalties

1. Actual Damages
 2. Punitive Damages
 3. Civil Penalties
 4. Injunctive Relief
 5. Equitable Relief
- Max amounts by HUD
 - \$10,000 1st offense
 - \$25,000 if there has been a prior offense within 5 years
 - \$50,000 if there have been two or more offenses within 7 years



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What Would You Do?



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Fair Housing & Advertising



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What is Advertising?

- Under the Act, real estate advertising encompasses more than billboards, commercials or newspaper and online advertisements, it also includes flyers, brochures, banners, leaflets, signs, posters, deeds, applications, pictures, and even property-based roommate ads. In fact, just about anything you verbally *say or imply* to prospective buyers, sellers & renters in person, writing, or by phone can be considered advertising.


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Section 804-C


- Section 804(C) of the Fair Housing Act makes it unlawful to make, print, or publish or cause to be made, printed or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status or national origin, or an intention to make such preference, limitation or discrimination.

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3 Points About 804(c)

- It applies to newspapers and other media.
- The provision does not violate the First Amendment's guarantee of freedom of speech.
- Whether or not an advertisement violates the Act will be determined by how an **ordinary reader** would interpret the ad.




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Fair Housing & Advertising

- 1989 HUD Advertising Guidelines - Part 109
 - Categorizes discriminatory advertising into three groups:
 - Advertising that contains words, phrases, symbols, or visual aids that indicate a discriminatory preference or limitation
 - Advertising that selectively uses media, human models, logos and locations to indicate an illegal preference or limitation
 - Various types of discriminatory advertising practices condemned by the Fair Housing Act


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Use of Words, Phrases, Symbols and Visual Aids

- Words descriptive of dwelling, landlord, and tenants:
 - White private home, colored home, Jewish home, Hispanic residence, adult building
- Words indicative of race:
 - Negro, black, Caucasian, Oriental, American Indian
- Words indicative of color:
 - White, black, colored


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Use of Words, Phrases, Symbols and Visual Aids

- Words indicative of religion:
 - Protestant, Catholic, Christian, Jew
- Words indicative of national origin
 - Mexican American, Puerto Rican, Philippine, Polish, Irish, Italian, Chicano, African, Hispanic, Chines, Indian, Latino


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Use of Words, Phrases, Symbols and Visual Aids

- Sex – the exclusive use of words in advertisements, including those involving the rental of separate units in a single or multifamily dwelling, stating or intending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved.


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Use of Words, Phrases, Symbols and Visual Aids

- Words indicative of handicap:
 - Crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit
- This section does not restrict inclusion of information about the availability of accessible housing.


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Use of Words, Phrases, Symbols and Visual Aids


- Words indicative of familial status:
 - Adults, children, singles, mature persons
 - Remember the exemption for housing for older persons
- Catchwords:
 - Restricted, exclusive, private, integrated, traditional, board approval or membership approval.

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Symbols or Logotypes

- ANY that imply or suggest race, color, religion, sex, handicap, familial status or national origin.




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Directions To Real Estate For Sale or Rent

- Directions can imply a discriminatory preference, limitation or exclusion.
- References to a location that have racial or national origin significance, such as existing black development or an existing development known for it's exclusion of minorities.
- References to a synagogue, congregation or parish may indicate a religious preference.


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Area Description

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


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Selective Use of Media or Content

- Selective use of human models in advertisements may have a discriminatory impact.
 - It is required that when human models are used in display advertising, the models should be clearly defined as reasonably representing majority and minority groups, both sexes and when appropriate, families with children.


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Selective Geographic Advertisements

- This may involve the strategic placement of billboards, brochure advertisements distributed within a limited geographic area by hand or by mail, advertising in a particular geographic coverage editions of major metropolitan newspapers or newspapers of limited circulation that are mainly reaching for a particular segment of the community or displays of announcement only in selected sales offices.


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Selective Use of Equal Opportunity Slogan or Logo

- Placing the equal opportunity slogan or logo in advertising reaching some geographic areas but not others or with respect to some properties but not others.
- According to HUD, all advertising of residential real estate for sale or rent should contain an equal housing opportunity logotype, statement or logo.
 - Choice will depend on the type of media used and in space advertising the size of the advertisement.

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EQUAL HOUSING OPPORTUNITY

- HUD has published tables to serve as a guide with respect to the size of the logotype in display advertising.
- At no time should the logotype be smaller than ½ inch by ½ inch.
- Not required in advertising of less than four column inches.
- May need to use the slogan....

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Ads & Issues

- The most common Fair Housing Act violation found on the Internet was advertising discriminating against families with children. Ads stating preferences for tenants who were “single” or “a couple of individuals.” Phrases such as “perfect for young couple” or “three adults” were found in ads for houses or apartments with multiple bedrooms. These ads indicate an illegal preference or limitation and discourage families with children from even considering contacting a landlord.

72

- Approximately 5.4% of all ads posted to Craigslist at any given time potentially violate the law
- Familial Status is the most common discrimination problem found in ads for rental property



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- HUD offers some examples of intentionally discriminatory conduct one might experience from a landlord:
 - “There’s a lot of traffic. It isn’t safe for kids.”
 - “The apartment I told you about on the phone has already been rented.”
 - “My insurance won’t cover a ramp if you get hurt.”
 - “We only take English-speaking people.”
 - “The ad is wrong. The rent is really \$75 higher per month.”
 - “Steps are what we have. We can’t accommodate a walker.”



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- 2BR: “Mature couple or single with no children” Brooklyn, NY
- 3BR: Duplex: “Christian atmosphere” Evansville, IN
- 2BR: “PERFECT FOR 2 ADULTS....seeking a maximum of 2 tenants” New Haven, CT
- 2BR: “Couples preferred” Chicago, IL
- 4BR: “Looking for responsible adults to enjoy home” Newport, VT



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Fair Housing Advertising Word/Phrase List

IMPORTANT: This list is not all-inclusive but is provided to SmartMLS members as a Fair Housing reminder when writing any public or member only listing description. A rule of thumb is that the listing agent should promote the features of the listing and not use any language for describing the type of buyer or tenant, or the type of neighborhood. SmartMLS is not offering legal advice; if you have any questions you should consult with your own legal counsel.

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USE
THIS
LIST
AT
YOUR
OWN
RISK

UNACCEPTABLE			
able-bodied	Chinese	Hindu	Mexican-American
adult community*	Christian	Hmong	migrant workers, no
adult living*	colored	HIV	Mosque
adults only*	couple, no	Hispanic	Muslim
adult park*	Couples only	impared, no	Must comply with
African	church	Indian	(nationality)
agile	deaf, no	Irish	Negro
AIDS	disabled, not suitable for	Italian	newlyweds
alcoholics, no	employed, must be	Japanese	non-smokers
American Indian	empty nesters*	Jewish	older person(s)*
Appalachian Asian	English only	landlord, (description)	one child
(black(s))	(ethnic references)	Latino	Oriental
blind, no	executive	married	park rules,
board approval required	business ages*	native couple*	must comply with,
Catholic	group homes	native individual*	physically fit only
Caucasian	handicapped,	native person(s)*	Polish
Chicano	not suitable for	membership required	predominant community
children, no	healthy only	mentally disabled, no	
child(ren), (number of)		mentally ill, no	
CAUTION			
55 and older community*	Fisherman's retreat	Monks Temple	quality neighborhood
62 and older*	(gender)	mother-in-law apt.	restricted
active bachelor	grandfather's farm	many's room	retired retiree(s)*
bachelor pad	grandma's home	new	retirement home*
close to	golden ages only*	newlyweds	safe neighborhood
country club, near	handicap	one person	secure
couple	handyman's dream	older person*	working same
complex only	ideal for ...	perfect for ...	visitor(s)*
female(s) only	male(s) only	person(s), (number of)	senior citizen(s)*
female roommate	male roommate	play area, no	senior housing*
	man, men only	prettiness	
ACCEPTABLE			
accessible	Equal Housing Opportunity	(neighborhood name)	quiet
admitted, no	family room, first upper	luxury	quiet neighborhood
assistance animals only	golf course, near	moving home	references required
basement, (number of)	great view	places of worship, near	(school district)
bat, near	guest house	play area	(school name)
convenient home	handicap accessible	private	seasonal rates
convenient to	hobby farm	private driveway	secluded
credit check required	luxury townhouse	private entrance	security provided
den	main bedroom	public property	senior discount*
desirable neighborhood	master bedroom	public setting	single family home
dogs, no	membership available	public transportation, near	sleeping area(s),
dog run, no		quality construction	starter home
			stainless, no
			(square feet)
			townhouse
			traditional style
			transit setting
			verifiable income
			view, with
			wheelchair accessible
			winter rental rates

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- Remember, when in Doubt:
 - NEVER USE ethnic references (e.g. Black, Caucasian/White, Asian, American Indian)
 - NEVER USE nationalities (e.g. Chinese, African, German, Italian)
 - NEVER USE religious references (e.g. near temple, mosque, church, Christian, Muslim, Catholic)
 - NEVER USE sex, gender or sexual orientation (e.g. male, female, transgender, homosexual, gay)

DESCRIBE THE PROPERTY NOT THE PEOPLE

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- Treat everyone alike.
- Provide consistent and complete information to everyone.
- Make decisions based only on objective criteria.
- Do not make credit assumptions based on non-credit factors.
- Know the law.



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Adoption of a Fair Housing Advertising Policy

- Real Estate Firms should have a Fair Housing Advertising Policy that provides clear guidelines for Agents and employees to follow. It should inform them that your firm is aware of its obligations under Fair Housing Law, and intends to comply with those obligations. The Policy should also provide for meaningful enforcement mechanisms. It should make clear that your firm will not do business with anyone who is engaging in discrimination, and should make clear to Agents and employees that compliance with the Policy is a term and condition of affiliation and employment.

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REALTOR® FAIR HOUSING DECLARATION



I agree to:

- ✓ Provide equal professional service without regard to the race, color, religion, sex, disability, familial status, national origin, age, sexual orientation or marital status of any prospective client, customer, or the residents of any community.
- ✓ Keep informed about fair housing law and practices, improving my clients' and customers' opportunities and my business.
- ✓ Develop advertising that indicates that everyone is welcome and no one is excluded, expanding my client's and customer's opportunities to see, buy, or lease property.
- ✓ Inform my clients and customers about their rights and responsibilities under the fair housing laws by providing brochures and other information.
- ✓ Document my efforts to provide professional service, which will assist me in becoming a more responsive and successful REALTOR®.
- ✓ Refuse to tolerate non-compliance.
- ✓ Learn about those who are different from me, and celebrate those differences.
- ✓ Take a positive approach to fair housing practices and aspire to follow the spirit as well as the letter of the law.
- ✓ Develop and implement fair housing practices for my firm to carry out the spirit of this declaration.

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Fair Housing Training

- Real Estate Firms must also ensure that Agents and employees receive appropriate training, and that customers and clients are informed of the Firm's Fair housing Policy. HUD regulation [24 C.F.R. § 109.30(d)] specifically provide that the Firm should:
 - (1) Provide a printed copy of the Firm's nondiscrimination policy to each Agent and employee.
 - (2) Post a copy of the Firm's nondiscrimination policy in a conspicuous location for customer and client visitors to view


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