

Fair Housing Rules – What to Say or Not Say

1. What rules govern advertising requirements?

The Federal Fair Housing Act (the “FHA”), the California Fair Employment and Housing Act (“FEHA”), and NAR’s Code of Ethics (the “Code”) all prohibit the use of **words, images or symbols** that imply or explicitly indicate **preference for, limitation to, or discrimination against**, persons based on their protected characteristics in advertisement.

2. What are protected characteristics?

Under the FHA and the Code, there are nine protected characteristics: race (criminal history information), color, religion, sex, disability (handicap), familial status, national origin, sexual orientation, and gender identity. Under FEHA, there are additional thirteen protected characteristics: ancestry, gender, gender expression, marital status, source of income, medical condition, genetic information, citizenship, primary language, immigration status, age, veteran/military status, and any arbitrary characteristics.

3. Does discrimination have to be intentional to be problematic?

No. Proof of actual discriminatory intent by the speaker or writer is not required. FEHA regulations set the method of proof to that of an “**ordinary reader or listener**.” In more simple terms, an advertisement is considered discriminatory if an ordinary person understands the advertisement to indicate a preference based on a protected characteristic.

4. Isn’t there a prohibited words list?

Many years ago, there was an FHA regulation that contained a list of prohibited words. However, that regulation was withdrawn and never replaced. Because language and word usage evolve with time, having a static prohibited word list would not adequately serve fair housing goals. Whether a word is considered discriminatory and therefore prohibited will be determined by the ordinary person standard discussed above.

5. Other Advertising Rules

When using human models, a diverse cast should be used to show people of all backgrounds are welcome to apply for the housing opportunity and not to not imply only certain types of persons would be welcome. Marketing should be done to make the property available to a wide general audience. FHA fair housing logo should be displayed.

6. Are there any current enforcement actions for advertisements that are found to be discriminatory?

Yes, the Department of Fair Employment and Housing has an active campaign to root out advertisements that specifically target source of income (HUD section 8 vouchers) and race (criminal history information). “Professionals only”, “No Section 8,” “No felons” are examples of violations.

Furthermore, under the Code, MLS listing photos containing in the background a display of Confederate flag was also found to be in violation because an ordinary person seeing the Confederate flag would feel that Black persons were not welcome to apply for that housing opportunity.