White Paper

Advertising

Revised September 2019

EQUAL HOUSING OPPORTUNITY

REALTOR®

Introduction

In the increasingly competitive real estate market, brokers and agents utilize many forms of creative advertising and marketing to reach existing and prospective clients. Although technological advances and the popularity of the Internet have presented new marketing media for real estate brokers and agents, the real estate industry and its advertising remain highly regulated. Advertisements and marketing tools that are not carefully worked and tailored toward certain legal regulations can trigger liability for both the broker and agent. Potential liability for incomplete, discriminatory, false, or imprecise advertisements can arise under contract, Truth in Lending regulation, and fair housing laws. In addition to such legal liability, false or misleading advertisements also can trigger Division of Real Estate and Professional Licensing sanctions such as suspending or revoking a broker's or agent's license, fines and reprimands. Accordingly, the purpose of this analysis is to provide a general outline of regulations affecting real estate advertising and to illustrate potential advertising pitfalls. Such guidance should enable those placing real estate ads to exercise their creativity and to explore new media within the existing legal confines.

I. REAL ESTATE ADVERTISING MUST COMPLY WITH OHIO LICENSING LAWS

In addition to any legal liability, incomplete or misleading real estate advertising may expose the broker and agent to sanctions under the Ohio real estate licensing laws. Possible sanctions include suspension or revocation of the real estate license, fines, and letters of reprimand.

A. Types of Advertising Governed by the Licensing Laws

The licensing law provisions concerning advertisements apply to any form of advertisement, including print, radio, television or display, and any materials intended to promote the brokerage, the individual licensee, or a property. The requirements are the same regardless of the type of advertising involved. For example, the Division of Real Estate and Professional Licensing has historically considered all of the following as advertising:

1) Business cards;
2) Stationary;
3) Yard signs, billboards;
4) Brochures, fliers;
5) Newsletters;
6) Television promotions;
7) Car/Vehicle wraps or decals;
8) Refrigerator magnets;
9) Door hangers;
10) Telephone solicitations;
11) Websites; and
12) Social media

To provide clarity on what types of communications the Division considers to be advertising the following provisions were added to OAC Section 1301:5-1-02:

For purposes of this rule, the term advertising or advertisement means any manner, method or activity by which a licensed real estate broker or salesperson makes known to the general public properties for sale or lease or any services for which a real estate license is required, through the use of, including but not limited to, newspapers, magazines, radio, television, signs, Internet websites, unsolicited mail, voicemail, e-mail, facsimile transmissions, social networking sites, blogs, business cards, or property listing data base service.

The term advertising or advertisement does not include forms of private communication between a licensee and a client, customer or prospective client, including but not limited to the dissemination of information about properties available for purchase or lease, private mail, voicemail, e-mail, password protected websites or facsimile transmissions, provided such communications are initiated at the request of a client, customer or prospective client.

Thus, private communications that are initiated at the request of a client or customer are not considered by the Division to be advertising.

B. Real Estate Advertising May Not Contain Misleading Statements

The licensing laws require that all real estate advertisements be truthful and free from any misleading statements, including any misrepresentation as to the property itself, the terms of the sale, or the property value. Even if the misrepresentations are made inadvertently, they may trigger liability. For example, if an owner tells the broker or agent that the property is within "ABC" school district, and the agent, relying on the owner's statement advertises the property as being within "ABC" school district, the agent may be subject to discipline if that statement is incorrect.

R.C. § 4735.18(A) (21) states that any broker or agent who publishes a false or misleading advertisement is subject to discipline by the Ohio Real Estate Commission. Ultimately, it is the broker or agent named in the advertisement who is liable for any misstatement, even if an unlicensed individual prepares the advertisement for the licensee.

Reference to the sales volume or other statistics of a particular broker or agent also may constitute impermissibly misleading advertising. Any statistical claim must be supported by adequate documentation. For example, brokers and agents should not violate the "double dipping rule." This rule refers to the method of calculating a specific dollar amount of property sold during a given period of time. When calculating this number, the Real Estate Commission found that it was misleading to double the sales price of a property which was both listed and sold by the same broker. For example, if a broker or an agent lists a property for $100,000, and then sells that same property for $100,000, he or she would not be able to advertise sales of $200,000 worth of real estate.

Similarly, if the advertisement contains statistics compiled by either the Local Board of REALTORS or MLS service, MLS rules require that the time period over which such statistics were calculated must be included. The ad also must indicate that the statistical claims are based upon Local Board or MLS records. When using these types of statistics, brokers and agents should check the Local Board or the MLS rules for any specific language required.

C. The Licensing Laws Regulate the Form of the Advertisement

All advertising must include the brokerage name and indicate it is a licensed broker. The brokerage name in the ad must be the same as it appears on the brokerage license unless one of the following exceptions apply:

- If the brokerage has been granted approval to use a "dba", then a trade name as it appears on the license is the name that must appear in all ads. If a brokerage has more than one approved trade name, at least one of the approved trade names must be included in the advertising.
- Words or abbreviations included in the licensed name that indicate the legal framework under which the licensee conducts business, such as "Inc." or "Co.", are not required to appear in the ads.
- The words "Realty" or "Real Estate" or the authorized use of a franchise name or insignia indicating membership in a real estate organization (i.e. "Realtor" or "R") may be included even though not part of the brokerage's licensed name.

Any licensee's name appearing in an advertisement must consist of his name as it appears on his license with one exception. A licensee may advertise in a first name other than the name on the license or advertise with the licensee's maiden name provided that the preferred first name or the maiden name is not misleading and is registered with the Ohio Division or Real Estate and Professional Licensing. The preferred name or maiden name must be registered with the Division prior to use by the licensee. Thus, even common nicknames like Jim, Patty, or Chris and initials, such as D.J. or J.R., must be registered.

According to R.C. § 4735.16, the name of the brokerage must be displayed in at least equal prominence with the name of the salesperson. When evaluating the prominence of a name, the person placing the ad should consider the size and type of print and whether the brokerage's name is placed in an equally prominent part of the ad. Because a franchise name is not part of a brokerage's licensed name, it is not included when determining the prominence of the agent's name in relation to that of the brokerage.

Ohio Administrative Code Section 1301:5-1-02(I) provides the only exception to the requirement that the brokerage name be displayed in equal prominence with the salesperson's name. The equal prominence requirement does not apply if the advertising, including any website, is not within the ownership or control of the licensee or his brokerage and the terms of use or the format of a website or other advertising medium does not allow the licensee to control the size and prominence of the brokerage and salesperson's names.

D. Real Estate Advertising on the Internet/Social Media

With respect to Ohio license law, the Ohio Administrative Code specifically addresses internet advertising and licensee's websites. Ohio Administrative Rule 1301:5-1-02 provides that an internet website established by a real estate licensee is considered to be advertising. As such, these sites must comply with the provisions regarding advertising that are contained in the license law. With the exceptions noted below, all internet advertising must disclose the brokerage name on every viewable page of the website. A web page is defined as one that may or may not scroll beyond the borders of the screen.

The two exceptions to the requirement that the brokerage name be included on every page are as follows:

1) When advertising in electronic messages of limited characters (i.e., twitter), a licensee must provide a direct link to a display that includes the brokerage name.
2) When advertising on a website not owned or controlled by the licensee or his brokerage and the website's terms of use limit the licensee's ability to include the brokerage name, the licensee must provide a direct link to a display that includes the brokerage name.

Information on a website maintained by a licensee which becomes outdated or expired, must be updated within fourteen days of the information becoming outdated or expired. Each website maintained by a licensee must disclose the date upon which the information contained on the site was most recently updated. If a licensee's website is maintained on the licensee's behalf by a third party, the licensee must provide to the third party written notice of any updates to outdated or expired information so that the site can be updated in a timely manner. A licensee who provides such timely notice will not be in violation of the license law if the third party fails to make the changes as notified.

The license law internet advertising requirements only apply to websites within the licensee's ownership or control. A licensee is not responsible for the accuracy of information taken from his website or advertising and placed on a website or in advertising not within the licensee's ownership or control.

E. Advertising Properties Listed by Another Broker or FSBOs

Section 1301:5-1-02 also addresses the issue of whether a licensee can advertise property that is not listed with the licensee. This could occur where a REALTOR mails a newsletter listing all of the available properties in a particular area, including those listed by him/her and those listed by competing REALTORS. This administrative rule clarifies that a licensee cannot advertise property that he/she does not have listed without the consent of the owner (title holder), or the owner's authorized agent (i.e., the actual listing broker or agent). It goes further and clarifies that such consent must be given in writing. When such permission is granted on property being offered for sale by the owner or listed with someone else, the licensee must disclose the fact that he does not have the property listed and must include the name of the listing broker. This must be done in a type size that is the same or larger than the type size used to describe the property. Per the Division, this rule applies to licensees advertising another broker's listing on social media. Thus, for a licensee to share or copy a post or URL of a property listed with another broker, written consent is required and the listing brokerage's name must be included.

F. Team Advertising

An increasing trend among Realtors is for two or more licensees with a brokerage to work together as a "team". The Division of Real Estate and Professional Licensing does not license or technically recognize such teams or groups. However, due to the increased number of licensees conducting business in this manner, the Division has adopted a regulation setting forth the advertising requirements as they apply to such entities.

Ohio Administrative Code Section 1301:5-1-21 defines "team" to include any group of two or more associated real estate licensees affiliated with the same broker or brokerage and/or other non-licensed professionals, such as administrative assistants and other professionals specializing in real estate related fields that advertise together and that group is not licensed. Under this rule, such a team or group must:

1) Include in the advertisement the full name of a licensee that is a member of such team. The licensee is not required to include in the advertisement the names of every member of the team;
2) Include in the advertisement the name of the broker or brokerage under whom the licensee is licensed;
3) Identify as non-licensed any unlicensed team members whose name is included in such advertising;
4) Display the name of the broker or brokerage in equal prominence with the team name;
5) Display the name of the broker or brokerage in equal prominence with the name of any salesperson in the advertisement.

The rule also addresses the use of photographs of a team in advertisement. The rule specifies that the names of all of the team members do not need to be disclosed as long as the above specified requirements are met.

G. The Regulations Governing Advertising Apply When Selling Your Property

A broker or agent also may be disciplined for a failure to follow the advertising requirements when selling his or her own property. For example, if broker Jane Doe is selling her house, the advertisement should identify her as:

- Jane Doe, Real Estate Broker/Owner

If salesperson John Doe is selling his house, then any advertisement should identify him as:

- John Doe, Real Estate Agent/Owner

The name of the brokerage with whom the licensee is affiliated would only be required to appear in the ads if the property is listed with the brokerage. Ohio license law does not require licensees to list their property for sale or lease with the brokerage with whom they are licensed. They can sell or lease their own property on their own as any other owner of real estate can do. However, handling a licensee's own property through the brokerage may be a condition of affiliation with that brokerage.

H. Licensees Must Obtain the Owner's Consent

In addition to the form and disclosure requirements, brokers and agents wanting to advertise certain real estate first must obtain the consent of the owner or person holding actual legal title.

The licensee must obtain this consent before a "for sale" sign may be placed on a property and before the property is otherwise offered for sale.

In some instances, a licensee may be approached to list a property by a buyer under a land contract or a person holding an option to purchase prior to that person acquiring title. Under Ohio license law, to advertise the property, the licensee must obtain the consent of the owner, which means the person currently holding legal title. Consent of the land contract buyer or the lessee exercising an option is not sufficient. And when appropriate, licensees should make clear in all representations regarding the sale of the property that the closing is contingent upon obtaining title.

Licensees often obtain a blanket consent to offer an owner's property for sale. Such consent merely authorizes a licensee to offer the owner's property for sale; they do not specify the types of advertisements and/or the advertising vehicles that the licensee will be utilizing. Although there is nothing in the licensing laws that suggests that a blanket consent is insufficient to justify any kind of advertising selected by the licensee, clearly the better practice would be to obtain a specific consent for the advertising medium that will be used. This is particularly true when the licensee is utilizing unusual forms of advertising, not customary in the marketing of real estate. This may include television or non-customary real estate internet sites. Listing real estate licensees owe fiduciary duties to the owner of the property to follow his or her instructions, and conceivably an owner could claim that these fiduciary duties were violated because the owner did not specifically authorize non-customary forms of advertising. This would be analogous to placing a listing in the multiple listing service which, among other things, is a form of advertising. Multiple listing services have always required the owner's consent before accepting a listing from a licensee, and now most multiple listing services in some way are requiring specific consent before allowing the listing to reach the internet.

II. REAL ESTATE ADVERTISING MUST COMPLY WITH THE CODE OF ETHICS

Article 12 of the Code of Ethics and Standards of Practice of the National Association of REALTORS reinforces the licensing law provisions requiring brokers and agents to present a true picture in their advertising. The Code imposes a duty on REALTORS to refrain from doing the following:

1) Offering a service as free of charge when the service is contingent on obtaining a listing or commission;
2) Offering prizes or merchandise in order to gain business without providing to their clients a clear, thorough, advance understanding of all of the terms and conditions of the offer;
3) Advertising the property without consent of the owner;
4) Prior to closing, a cooperating broker posting a "sold" sign without obtaining the consent of the listing broker; and
5) Using URLs or domain names that present less than a true picture.

Article 10 of the Code of Ethics addresses a REALTOR's duty not to discriminate, in providing their professional services or in their employment practices, against any person on the basis of a protected class. Standard of Practice 10-3 specifically addresses advertising and provides that REALTORS shall not print, display or circulate any statement or advertisement with respect to

selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

Unlike the licensing laws which are enforced by the Ohio Real Estate Commission, advertisements violating the Code of Ethics may expose the broker and agent to sanctions from a Professional Standards Panel of a Local Board of REALTORS.

III. REAL ESTATE ADVERTISEMENTS MUST COMPLY WITH FEDERAL, STATE AND LOCAL FAIR HOUSING ACTS

In addition to any potential liability incurred under Ohio licensing laws, real estate advertisements also must comply with federal, state and local fair housing laws. These laws prohibit using certain discriminatory terms in real estate advertising. Concerning the federal Fair Housing Act of 1968 and its 1988 amendments, 42 U.S.C. § 3601 et seq. Congress enacted the law to assure that all individuals with similar financial resources and interests in the same real estate market have a similar range of available property choices. As part of the federal fair housing prohibitions, Section 804 of the Fair Housing Act prohibits making, printing, publishing, or causing 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 based on race, color, religion, sex, national origin, disability or family status, or any intention to make any such preference, limitation or discrimination." 42 U.S. C. § 3604 (c). This prohibition applies to all forms of advertising, including fliers, brochures, billboards, mailings, radio and television advertisements, newspaper and magazine advertisements, internet advertising, real estate signs, business cards and even verbal representations. Anyone placing or publishing such a discriminatory advertisement may be subject to liability, including punitive damages for malicious acts and attorneys' fees. In cases involving real estate advertising by a broker or agent, the individual agent placing the advertisement and the broker or firm managing the agent both may be liable.

If an individual encountering such an ad believes that he or she has been discriminated against in violation of the Act, that person may pursue administrative complaint procedures through the United States Department of Housing and Urban Development ("HUD") or may file a civil action in federal court. Acting in the place of the complainant, the United States Attorney General also may proceed with a civil action in federal court if reasonable cause supports a belief any person or group is engaged in a pattern or practice of housing discrimination.

The Ohio Act prohibiting discriminatory real estate advertising, Ohio Revised Code § 4112.02 (H)(7) mirrors the Fair Housing Act, but the Ohio Act also explicitly states its prohibitions apply to the lease and sublease of housing and to the loan of money for such housing. The Ohio Act further prohibits discriminatory statements on the basis of ancestry and military status. An individual encountering any discriminatory real estate ad may file a complaint with the Ohio Civil Rights Commission within one year of the alleged discriminatory practice. R.C. § 4112.15 (B)(1). The Commission then investigates the alleged practice and determines whether it is probable that a discriminatory practice has occurred. Upon such a finding, the Commission may schedule the matter for informal conciliation or may refer a complaint to the state attorney general. R. C. § 4112.05 (B)(3)(a), § 4112.052. Similar to the federal act's HUD procedures, the state Commission

also may hold administrative hearings, and, upon concluding a party engaged in a discriminatory practice, it may assess actual damages, punitive damages and attorney's fees. R.C. § 4112.05(G)(1).

As an alternative to a complaint before the Civil Rights Commission, aggrieved persons may enforce their rights in an action in state court. R.C. § 4112.051(A)(1). A court determining that a party placed or published discriminatory real estate advertising then may assess actual damages, punitive damages, and attorneys' fees, and may issue court orders prohibiting such discriminatory practices. R.C. § 4112.151(D).

Many Ohio municipalities also have similar local ordinances prohibiting discriminatory real estate advertising. In addition to prohibiting ads discriminating on the basis of race, color, religion, sex, national origin, disability or family status, some municipalities also prohibit discrimination on the basis of marital status, age, sexual orientation, and gender identity. It is imperative that all advertising comply with federal, state, and local fair housing regulations.

A. Real Estate Advertising May Not Indicate a Preference for Particular Types of Persons

Ads or statements that impermissibly discriminate suggest to the ordinary reader or listener that a person of a particular race, color, religion, sex, national origin, disability, familial status, or other protected class is preferred. Even if the complainant demonstrates no discriminatory intent, the person placing or publishing the ad still may be liable.

Ads or statements exhibiting discrimination may not use any of the Act's discriminatory bases to describe the housing, the current or potential residents, or the neighbors. The courts will scrutinize any discriminatory use of words, phrases, photographs, illustrations, symbols or forms which convey that a property is available or not available to particular groups of persons. 24 C.F.R. § 100.75(b). However, if the ad is facially neutral, it probably will not trigger any liability. For example, an ad may not state the property is in a "nice White neighborhood" or that it is "close to a synagogue or church," but it may include the phrases "rare find" or "master bedroom." Without stating on its face any preference for a particular class, a permissible ad also may describe services that one class would use. An ad therefore may state that the apartment complex has a chapel or that kosher meals are available and may use secularized terms or symbols associated with religious holidays such as Santa Claus, the Easter Bunny, and "Merry Christmas."

B. Real Estate Advertising May Not Discriminate Against the Handicapped

Concerning ads or statements discriminating against the handicapped, "handicapped" includes not only physical limitations, but also mental impairments, specific learning disabilities, mental retardation, diabetes, speech and hearing impairments, cancer, heart disease, AIDS and HIV-infected patients, drug addiction, and alcoholism. 24 C.F.R. § 100.201. The definition includes persons who have a record of such a handicap and those who are regarded as having such an impairment. Despite this broad definition, Fair Housing Act protections for the handicapped do not protect persons who currently use or who currently are addicted to illegal substances. 42 U.S.C. § 3601(h); 24 C.F.R. § 100.201. As the Ohio Act sets forth a similar definition, it also explains that discrimination on the basis of a physical or mental impairment does not include: homosexuality or bisexuality, transvestism, gender identity disorders not resulting from physical impairments,

compulsive gambling or kleptomania, or psychoactive substance use disorders resulting from current illegal use of a controlled substance. R.C. § 4112.01 (A) (16) (b).

Permissible ads may describe properties, facilities or neighborhoods that predominantly able-bodied persons would enjoy. An ad may state the property has a great view, a fourth-floor walkup, or walk-in closets. It also may contain descriptions of accessibility features, such as a wheelchair ramp and may describe required conduct by residents, such as "non-smoking," or "sober."

C. Real Estate Advertising May Not Discriminate on the Basis of Familial Status

Under the federal and Ohio Acts, ads may not contain limitations on the number or ages of children and may not state a preference for adults, couples or singles. The regulations implementing the Act define familial status as pertaining only to:

"one or more individuals (who have not attained the age of 18 years) being domiciled with:

(a) A parent or another person having legal custody of such individual or individuals; or

(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person."
42 U.S.C. § 3602(k).

Protections against discrimination on the basis of familial status also apply to pregnant women and persons in the process of securing legal custody of any individual who has not yet attained eighteen years of age. 42 U.S.C. § 3602(k); 24 C.F.R. § 100.50. This definition, however, does not apply the "familial status" term to persons with children over eighteen.

The Fair Housing Act also clarifies in certain situations ads may make statements that the property is intended for senior housing or older persons. Such statements do not violate the Act's prohibition of discrimination on the basis of familial status if the property fits the definition of "housing for older persons." This definition includes three different types of housing: 1) that provided for under any federal or state program recognized by the Secretary of HUD as providing housing specifically for elderly persons; 2) that intended for, and occupied solely by, persons sixty-two years old or older; and 3) that intended and operated for occupancy by persons fifty-five years old or older. 42 U.S.C. § 3607(b) (2). To fall within the definition of housing intended and operated for occupancy by persons fifty-five years old or older, the housing also must meet the following additional criteria:

1) At least eighty percent of the units in the housing facility must be occupied by at least one person fifty-five years old or older per unit;
2) The housing facility or community must publish and adhere to "policies and procedures which demonstrate an intent . . . to provide housing for persons" fifty-five years old or older; and
3) The housing facility or community must demonstrate its compliance with rules to document its occupancy and to provide examples of its pertinent policies. 42 U.S.C. § 3607(b)(2)(C).

For the second and third prongs of these additional requirements, the following nonexclusive factors suggest whether the housing has procedures demonstrating an intent to provide housing for older persons:

1. The manner in which the housing facility is described to prospective residents;
2. The nature of any advertising designed to attract prospective residents;
3. Age verification procedures;
4. Lease provisions; and
5. Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations. 24 C.F.R. CH. 1, Subch. A, App. I, § 100.304.

If the property meets this definition of "housing for older persons," ads describing the property may use terms such as "senior housing," "housing for older persons," or "55 and older housing."

A 1995 amendment to the Fair Housing Act prohibitions provides a good faith defense against money damages when a person, in good faith, reasonably relies on an application of the 55-or older exemption. Even if the housing facility does not actually qualify for the 55-or older exemption, the person who states that the facility meets the exemption is not liable for the error if he or she shows good faith reliance on the facility's application. To satisfy this good faith defense, a person must show: 1) that he or she had no actual knowledge that the facility was not eligible for the 55-or older exemption; and 2) that the facility formally stated in writing that it complies with the exemption requirements.

D. Directions to the Property Should Not Express a Preference for One Type of Consumer

Advertisers also should be cautious when giving directions to the property through the use of maps or written instructions, for such directions may imply a discriminatory preference. Directions should not include significant landmarks preferred by one type of buyer, such as historically Black developments, synagogues, country clubs, or private religious schools. Such directions may indicate an impermissible preference on the basis of race, color, religion, sex, national origin, disability or familial status.

E. A Series of Advertising Using One Type of Human Model May Be Discrimination

Fair Housing Act litigation suggests that consistent and systematic use of one type of human model also may trigger liability. According to former HUD interpretations of the Fair Housing Act, models in real estate ads "should be clearly definable as reasonably representing majority and minority groups…" in the metropolitan area where the ad is placed. If models are used in photographs, drawings or other graphics, the advertisement should indicate to the general public that the housing is available to all "without regard to race, color, religion, disability, familial status, or national origin" and that the housing "is not for the exclusive use of one such group." Whereas publishing one ad with all White models does not violate the Act, some federal courts have held that a series of advertisements with such models may trigger liability. The Courts especially will scrutinize the ad when: 1) the advertiser uses a large number of models in one ad or places numerous ads with models of one particular group; or 2) the complainant can prove that the advertiser had some opportunity to include models of the protected group and did not include them. Suspect ads also may exhibit longstanding patterns for which white models portray potential

consumers while Black models portray service employees. Even the relationship between the use of certain models and the property's neighborhood may raise a court's suspicions. Advertisers therefore should not use predominantly Black models only for ads of predominantly Black neighborhoods.

In a 1991 decision from the United States Court of Appeals for the Sixth Circuit, the circuit - containing Ohio, a fair housing association sued The Cincinnati Enquirer for alleged violations of the Fair Housing Act because over a twenty-year period the paper published various real estate advertisements picturing only white human models. Housing Opportunities Made Equal, Inc. v. The Cincinnati Enquirer, Inc., 943 F.2d 644 (6th Cir. 1991). The Court compared the advertisements to the percentage of black persons in the City of Cincinnati, in Hamilton County, and in the metropolitan statistical area. The Court also relied upon a former HUD regulation in which the agency set forth guidance for nondiscrimination in real estate advertising. 24 C.F.R. § 109. The Court concluded that a single publication of an advertisement using a small number of all-white models does not violate the Fair Housing Act.

Whereas the Sixth Circuit in Housing Opportunities Made Equal relied upon 24 C.F.R. § 109, a HUD regulation concerning nondiscriminatory real estate advertising, in 1996 HUD repealed that section. Consequently, no current regulation sets forth explicit criteria for nondiscriminatory real estate advertising. Court applications of the regulation, however, remain enforceable law. Real estate advertisers running a series of ads therefore should include clearly definable models reasonably representing majority and minority groups from the metropolitan area where the ad is placed.

Given the federal and Ohio statutes, regulations and case law prohibiting discriminatory real estate advertising, ads generally should use language, artwork, and/or photography that is inclusive, not exclusive. They should describe the property, not the seller, the neighbors, the landlord, or any desired buyers or tenants. To assist advertisers in their analysis of any particular ad for Fair Housing Act violations, an attached appendix contains a non-exhaustive list of words that real estate advertisers should not use. Words not appearing on this list could be used to discriminate. Conversely, words appearing on the list will not always violate the law. For example, terms advertising a property that meets the definition of "housing for older persons." Although the list is not dispositive of whether the ad violates the fair housing regulations, it illustrates the breadth of terms triggering liability.

IV. TRUTH IN LENDING DISCLOSURE REQUIREMENTS IMPACT REAL ESTATE ADVERTISEMENTS

The federal Truth in Lending Act requires persons who advertise certain information about financing to make additional disclosures. Real estate brokers and agents are subject to the Act and its regulations when they provide credit for sales for their own accounts or when they arrange for the extension of credit to purchasers. As implemented by the Federal Reserve Board's "Regulation Z", the Act generally requires that the terms of the financing be disclosed to the consumer in a clear, uniform manner. If the advertisement contains any of the following or similar statements, it also must provide certain disclosures:

1) Amount or percentage of down payment:

2) Amount of required installment;
3) Number of installments;
4) Period of repayment; or
5) The amount of any finance charge.

When an advertisement contains any of those statements, it also must include the following disclosures:

1) In a credit sale, "cash price", or the amount of the loan as applicable;
2) In a credit sale, the amount or percentage of any required down payment (using the term "cash down payment"), or a statement that no down payment is required, as applicable;
3) The number, amounts and due dates for periods of payments scheduled to repay the debt;
4) The amount of the finance charge expressed as an "annual percentage rate." If the "simple interest rate" is also stated, the "annual percentage rate" must be shown in print of the same style and size as the "simple interest rate." The annual percentage may include insurance, discount and points not included in the contract rate; and
5) If the rate is variable, there must be a statement indicating that the rate is subject to change.

For example, the above disclosures are required if the advertisement makes any of the following or similar statements:

1) "Five percent down";
2) "Pay only $355.00 per month";
3) "Only 360 monthly payments";
4) "Pay less than $350.00 per month";
5) "30-year mortgage available."

In contrast, an advertisement making any of the following or similar statements need not make the Regulation Z disclosures:

1) "Easy monthly payments";
2) "Graduated payment mortgages available";
3) "Terms to fit your budget";
4) "V.A. and F.H.A. financing available."

Applying these Regulation Z requirements, the following advertisement copy discloses all of the required terms:

1) "Cash price of $50,000, $2500 down payment (5%), interest at 9 7/8 (10 ½ annual percentage rate). Mortgage $47,300 to be paid in 360 equal and consecutive monthly installments of $411.04 plus taxes and insurance."
2) "Purchase price $54,490 Minus $3,650 cash down payment. Mortgage amount: $50,800 at 9½% interest plus ½% Mortgage Insurance Premium with the following monthly payments:

Year Monthly Payment
1 $356.34
2 $367.03
3 $378.04
4 $389.88
5 $401.06
6 $413.09
7 $425.45
8 $438.25
9 $451.40
10 $464.94
Years 11-30 $478.89

For an Annual Percentage Rate of 10.06%. Taxes not included."

V. CONCLUSION

Because the real estate industry remains highly regulated by federal and state laws, brokers and agents must pursue advertising and new marketing opportunities with caution. Real estate advertisements can expose the broker and agent to liability under contract, Truth in Lending regulations, and the Fair Housing Act. In addition, provisions in Ohio licensing law and ethics regulations specifically prohibit false and misleading advertising and dictate the form that real estate advertising must take. Each time a broker or agent places an advertisement for real estate, he or she therefore should review the legal requirements and analyze any potential ad to assure that it is not false, misleading, missing necessary terms, or discriminatory.

The word and phrase list below, is intended as a guideline to assist in complying with state and federal fair housing laws. It is not intended as a complete list of every word or phrase that could violate the fair housing laws.

Fair Housing Act Words and Phrases That May NOT Be Used

Able-bodied
Adult community
Adult living
Adults only
Adult Park
African
No Aids
Agile
No alcoholics
American Indian
Asian
Bachelor pad
No Blacks
No blind
Catholic
Caucasian
Chicano
No children
Christian Churches nearby
Colored
Couple
Couples only
No crippled
No deaf
No disabled
No drinkers
Must be employed
Empty-nesters
English only
Any ethnic references
Exclusive
Golden agers only
No group homes
No handicap parking
Not for handicapped
Healthy only
Hispanic
No HIV
Indian
Integrated
Jewish
Description of landlords
Latino
Mature complex
Mature couple
Mature individual
Mature persons
Membership approval required
No mentally handicapped
No mentally ill
Mexican
Mexican-American
No migrant workers
Mormon Temple
Mosque
References to nationality
Newlyweds
Non-drinkers
Non-smokers
Number of children
One child
One person
Oriental
Parish
Physically fit
No play area
Puerto Rican
Quiet tenants
References to religion
No retarded
No seasonal workers
Senior discount
Shrine
Singles only
Single person
No smokers
No Spanish speaking
Stable
No SSI Income
Near Synagogue
Near temple
Descriptions of tenants
No unemployed
White
Whites only
No wheelchairs

Colloquialisms used regionally or locally that imply or suggest race, color, religion, sex, handicap, familial status or national origin

Symbols or logos which imply or suggest race, color, religion, sex, handicap, familial status, or national origin

---

The information presented in this White Paper is not intended to be--and should not be construed as--legal advice. Before applying this information to a specific legal problem, readers are urged to seek advice from their own legal counsel.

OHIO

REALTORS®