



'THE LIST' REVISITED

By Jo Becker on behalf of Fair Housing Council of Oregon
Originally published in housing publications across Oregon in 2007

In 1994 the following article by Rob Selleck, RE/MAX Times Associate Editor, was published by the National Fair Housing Advocate Online (http://www.fairhousing.com/index.cfm?method=page.display&pagename=March-April_1994_Page5).

How many potential violations of the U.S. Fair Housing Act can you spot in this advertisement?

Two bedroom executive home in exclusive neighborhood. Walking distance to country club. Active adult living at its finest. Perfect environment for empty nesters looking for quiet, private neighborhood.

If you missed any of the eight potential pitfalls, you're exposing yourself and your office to some costly penalties - or at least to some legal hassles that can easily be avoided.

<Author's note: Despite rampant urban legends, I only count seven sensitive words or phrases in the sample ad: "Two bedroom executive home in exclusive neighborhood. Walking distance to country club. Active adult living at its finest. Perfect environment for empty nesters looking for quiet, private neighborhood." Some of these words may, in fact, be fine if qualified but generally speaking, as a former Realtor® myself, I would conservatively prefer to avoid using them. Others you might assume are problematic aren't, in fact, in our view.>

Why take the risk?

The National Association of Realtors® and groups such as the Oregon Newspaper Publishers Association have created comprehensive publications that guide real estate agents and brokerages through the requirements of the Federal Fair Housing Act in general - and its advertising impacts in particular. <FHCO does not have these resource materials; please contact NAR or the Oregon Newspaper Publishers Assn. directly if you're interested in a copy.>

The Act prohibits housing discrimination based on race, color, sex, handicap, familial status and national origin. Some state and local provisions cover marital status and other classifications as well. <See the first footnote below for a localized commentary on protected classes in our area.¹>

The manual produced by the Oregon Newspapers group states, "Charges of discrimination are more likely now, whether or not they will be proven ultimately before a judge. ...There are 'fair housing councils' active in many localities that are pursuing creators and publishers of alleged illegal advertising. It is to everyone's benefit, especially to the benefit of the advertisers and readers of newspapers and the consumers of residential housing, if we are scrupulous about learning the provisions of the law."

¹ Federally protected classes under the Fair Housing Act include: race, color, national origin, religion, sex, familial status (children), and disability. Oregon law also protects marital status, source of income, sexual orientation, and domestic violence survivors. Additional protected classes have been added in particular geographic areas; visit FHCO.org/mission.htm and read the section entitled "View Local Protected Classes" for more information.

The Oregon newspapers group created the manual in response to a battery of fair housing violation charges levied against 13 Oregon newspapers in late 1991 by the Fair Housing Council of Oregon.

The fact that newspapers are included in the liability loop doesn't mean real estate agents and brokerages placing advertisements are excluded legal responsibility and risk. Additionally, as the Oregon manual notes, the discrimination doesn't have to be intentional. Ignorance of the law's particulars is no excuse.

And while fairness and common sense go far in assuring compliance with the Act, it takes closer study to truly understand the laws' scope and consequences as the example ad at the opening of this article demonstrates.

The most effective general guideline emphasized by both NAR and the Oregon Newspapers group is succinctly stated in the Oregon manual: "The English language is rich and so are writers' imaginations. We can write enticingly and persuasively about the property. Just avoid referring to the kinds of people who might live in a particular dwelling, because that is where discrimination sneaks in."

In other words, mention number of bedrooms not number of people; in a rental ad specify "no drinking" and "no smoking," not non-drinkers and non-smokers. Even a phrase as seemingly innocuous as "handyman's dream" should raise a caution flag. In the wrong context it could be construed as indicating preference for a single male. The solution? Stick to "fixer-upper."

Emphasize amenities, not potential participants: tennis courts, not tennis players; paths, not bicyclists.

Emphasizing a property's proximity to certain landmarks also creates some potential problems. A home billed as near a "church," or "synagogue," or "temple," could be interpreted as an attempt to steer a certain religious group to or away from the area. Even some neighborhood names in certain cities have taken on a type of code status that suggests poverty, affluence, ethnic background or national origin.

The Oregon manual suggests sticking with geographical-type locations such as northwest, southeast, or street names.

While the tone of this article is, perhaps, a tad bitter, I do agree with much of what it has to say. The FHCO and other fair housing organizations across the country have, in fact, as part of our missions helped enforce fair housing laws including the federal Fair Housing Act's (FHA) provision that it is illegal to publish, or cause to be published, any illegally discriminatory statement. It is true, as well, that intent is not the barometer used to determine if any portion of the FHA has been violated. In fact, HUD has very recently provided clarity on the matter, codifying a long-used legal precedent that FHA prohibits practices that result in illegal discrimination "regardless of whether there was intent to discriminate." (You can view HUD's 02/15/2013 document at <http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>).

Likewise, the advice given to 'describe the property, not the people' is solid. It is, in fact, the crux of our advice on advertising. To help dispel the myths and provide greater clarity on the issue, FHCO drafted an article entitled "The LIST" a number of years ago. You can read it at <http://www.jobecker.weebly.com/writing-and-media.html>.