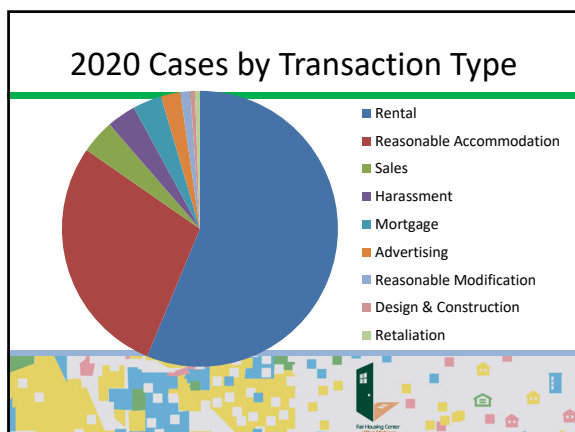
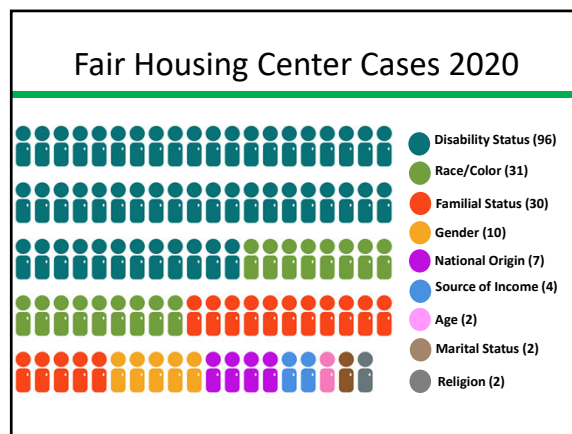


FHCWM Overview

- Our mission: to prevent and eliminate illegal housing discrimination, ensure equal housing opportunity, and promote inclusive communities. We achieve our objective through education, outreach, research, advocacy and enforcement.
- Founded in 1980 as a private, non-profit organization, grew out of a combined grassroots effort to desegregate schools and integrate neighborhoods.
- *Where* you live affects *how* you live so being able to choose freely is important.

Agenda

- Case Data
- Fair Housing Law and Advertising
- Descriptions, Human Models, Social Media
- Case Examples, Trends in Advertising
- Best Practices
- Questions & Evaluations



Why Should This Matter to Me?

- Advertisements for the sale or rental of housing involve special legal considerations requiring publishers to pay careful attention to the wording, graphics, and models depicted in every classified and display advertisement.
- Failure to properly screen advertisements can lead to lawsuits alleging violations of federal, state and local fair housing laws.
- 120 complaints nationally filed in 2019

Civil Rights Act of 1968 (Title VIII)

- **“The Fair Housing Act”**
 - Did not change protections under Reconstruction Acts
 - Prohibited discrimination based upon **race, color, religion and national origin**.
 - Made 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 based upon race, color, religion and/or national origin, or an intention to make any such preference, limitation or discrimination.



Protected Classes

FEDERAL:

- Race
- Color
- National Origin
- Gender, including Gender Identity or Sexual Orientation
- Religion
- Disability Status
- Familial Status

STATE:

Marital Status & Age

LOCAL:

- <https://library.municode.com/mi>
- <https://codelibrary.amlegal.com/regions/mi>
- Check with local government where property is located



Federal Fair Housing Laws Update

- February 11, 2021
- *Gender/Sex protections under the Fair Housing Act includes sexual orientation and gender identity
- HUD's Worden Memo (handout)
- Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (1/20/2021)



Michigan Fair Housing Laws

State Law

- Michigan enacted a law similar to the Federal Fair Housing Act

The Elliott-Larsen Civil Rights Act of 1976

- Extends protections to include **marital status and age**
- Interprets gender to include **sexual orientation and gender identity** (2018)



Michigan - Proposed Changes

State Law, the Elliott Larsen Civil Rights Act of 1976, *proposed* protections:

- Sexual orientation and gender identity
- “Race” is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles. For the purposes of this definition, “protective hairstyles” includes, but is not limited to, such hairstyles as braids, locks, and twists.



Fair Housing Laws

- It is unlawful to make, print, or publish or cause to be made, printed, or published
- This applies to written or oral notices or statements
 - Flyers
 - Brochures
 - Deeds
 - Signs
 - Banners
 - **ANY** document used with respect to sale or rental.



Fair Housing Laws

- Regardless of any exemptions, all housing providers are prohibited from advertising in a discriminatory manner.
 - Ex. 55+ or 62+ housing
- Advertising under the Fair Housing Act is broad and includes not only promotional materials and newspaper and internet advertisements, but any verbal statements made.
- See Sec. 804. [42 U.S.C. 3604] “to make, print or publish or cause to be made...”



How Do You Decide?

- There is no absolute test.
- “If words or phrases are given their common meaning, an ordinary reader would believe that members of a protected class are being discriminated against regarding the housing in question.”
- When in doubt, don’t publish or post the advertisement without changing the word(s) in question.



Gender Exception

- A person placing an ad for a roommate may use descriptive words to describe self but it would be a violation to add the words “seeking same,” with the exception of gender of a roommate.
- Gender preference language can be used in advertising for roommates or for persons who will share living areas (kitchen and bathroom).



Physical Space Descriptions

- Terms that describe a type of room or a type of property can be used
 - e.g. “bachelor apartment,” “mother in law suite” are examples given in the HUD guidance from 1995
- May want to use more generic descriptive words
 - “guest room suite”
- “Use of the term **master bedroom** does not constitute a violation of either the sex discrimination provisions or the race discrimination provisions.”



Physical Space Descriptions

- “Advertisements describing the properties (**two bedroom, cozy, family room**), services and facilities (**no bicycles allowed**) or neighborhoods (**quiet streets**) are not facially discriminatory and do not violate the Act.”
- “...complaints over use of phrases such as **master bedroom, rare find, or desirable neighborhood** should not be filed.”



Illegal Occupancy Restrictions

- “I am looking for 4 mature and responsible people to share a 6 bedroom 3 1/2 bath 4000+ square foot beautiful historic home.”
- “Two people per bedroom is our corporate policy. No exceptions.”
- “You have too many children to buy here but we will grandfather you in since you are single.”



Disability Status

- Make your advertising inclusive, not exclusive.
 - “Wheelchair accessible throughout”
- Be sensitive and use caution when describing property.
- Describe the property, not the people.
- Disabled people can determine what property is appropriate for themselves.



Disability Status

- Real estate advertisements should not contain explicit exclusions, limitations, or other indications of discrimination based on handicap (i.e., **no wheelchairs**).
- Advertisements containing descriptions of properties (**great view, fourth-floor walk-up, walk-in closets**), services or facilities (**jogging trails**), or neighborhoods (**walk to bus-stop**) do not violate the Act.
- Advertisements describing the conduct required of residents ("**non-smoking**", "**sober**") do not violate the Act.
- Advertisements containing descriptions of accessibility features are lawful (**wheelchair ramp**).



Implied Preferences

- Active
- Independent
- Stable
- Executive
- Restricted
- Mature
- Adult
- Traditional
- Family values
- Professional
- Mobile



Case – Advertising

- Colorado Condo
- 10 out of 12 ads stated subject property was available for a maximum of two people, each over 35 years of age
- “1 or 2 people max, both over 40 years of age, no exception.”
- Website described property as “[p]rivate, restricted, adult condominium community.”
- Told a 29 year old tester they would ‘further discuss renting’
- Told a tester with a 4 year old that the subject property was an older community, that they like to keep the community rules, and she did not think she could bend the rules for her.



Case – Familial Status

- 18 unit property in Georgia with sign: “2 or 3 bedroom apts for rent”
- Mother with 2 children called and heard voicemail recording:
- “Hi. This is Mike Parker of Parker Apartments in Richmond Hill. I have two-and three-bedroom units in the Richmond Heights area. I require twelve-month lease and don’t allow pets. No more than one child is allowed in a two-bedroom or two children in a three-bedroom. Clean-cut, non-smokers are preferred. Leave a message if you want more information. Thank you.”
- He also stated in an interview with HUD that he tries to discourage people from having too many children in an apartment.



Screening

- 5 bedroom home
 - ‘Neighborhood has sidewalks for walking and a walking trail
- Listing agent responds to inquiry with: “Do They Have Kids?” “Are they a couple?”
- Buyer’s agent asks, “is my showing approved for tomorrow morning?”
- Listing agent responds “This is a 5 bedroom. I need more info about the buyer before a showing....”



Phrases

- "Subject to suitable housing", "traditional home"
- "Take a walk", "take a stroll", "within walking distance"
- "Nice family friendly neighborhood with a retired couple on one side and the other a single mother with kids."
- "ADA compliant home"
- "This condo is ideal if you want an independent living space for an adult child, an aging parent, or a family member, or if you just like having a separate entertaining space."

Photos

- Photos of agent in bubble bath to promote 'certain lifestyle'
- Replaced photos of families with children with photos of agent himself
- Buyer love letters with photos...

Outreach

- We are a family of 7. John works for ABC Company and Jane is a stay-at-home mom...looking for a home near their church family...
- Facebook post: This is Bob and Barbara. They and their kids need your help...
- Special (private) Preview Days...

Descriptions

- **Important rule of thumb:**
 - Describe the property, NOT the people!
 - When in doubt, take it out!
 - Must still use caution and be sensitive to allegations of implied discrimination

Use of Human Models


- You can not do with pictures and graphics what you can not do in words.
- It is illegal to use photographs or graphics to indicate exclusivity or a preference for a certain type of individual thereby indicating a non-preference for individuals in a protected class.
- People used in advertisements are a direct indication of the people the advertiser is trying to attract.

Use of Human Models

- Two choices to avoid liability:
 - Adopt a policy prohibiting the use of human models in advertising campaigns
 - Familiarize yourself with the law and use models and model graphics legally.


Human Models

- If used, the advertisement should contain models that are clearly definable as fairly representing:
 - both minority and majority groups in the community,
 - should include both sexes
 - should include different types of families
- “Clearly definable” means that the reader can easily and quickly discern that the model is a minority.
- Excuses that do not work:
 - “But they are Armenian!”
 - “But they are actual residents!”
 - “But the advertiser gave it to us ‘camera ready’”




Social Media

- Same rules apply - Section 804(c) applies to advertising on web-based platforms.
- If you are advertising online, understand that including or excluding certain audiences or neighborhoods in the settings of your advertisements could be discriminatory.
- Consider all protected classes. For example, show males and females, people of different races, people with disabilities, a variety of ages, and families with and without children. Show diversity when using avatars, animated characters, and illustrations, too.



Social Media

- Posts must not position your listing as more or less suitable for someone based on membership in a protected class. Avoid things like racial or ethnic terms, references to religion, exclusions based on disability, and limitations based on familial status.
- Regularly review all social media posts and comments, especially with a fair housing lens.
- Display the Equal Housing Opportunity logo, share fair housing information.
- Develop a social media policy that includes fair housing compliance.



Case Study

I have 1 room available for rent in a 5 bedrooms (sic) home for professional (sic) only. The home is situated in a nice and quite (sic) neighborhood near **Redacted** IS 75. This house is situated in **Redacted** Golf course where our backyard is opening (sic) up to the great views of the golf course.


All utility (sic), water, internet are included in the rent.

You must be clean! No drugs! No criminal history!

If you feel you qualify, please response (sic) with your brief description about yourself, race and age; and a recent picture of you. ABSOLUTELY NO PETS!


If interested, please contact **Redacted**. Thank you for reading.

According to HUD, the landlord refused to rent the room to a black woman who answered the advertisement and told her that her race would make his wife and the other tenants uncomfortable.




Best Practice

- **Review advertising materials/social media for fair housing implications before publishing or posting.** Describe the property, NOT the people i.e., people for whom you may think the property is “ideal for”. Advertising under the Fair Housing Act is broadly defined and includes not only promotional materials and newspaper and internet advertisements, but any verbal statements made.
- When in doubt, take it out!




Best Practice

All advertising for the sale, rental, or financing of residential real estate should contain the equal housing opportunity slogan, logo or statement. These indicate to the public that the property is available to everyone under the provisions of the Fair Housing Act.




EQUAL HOUSING OPPORTUNITY

Specific requirements for size and location



Best Practice

- This indicates to the public that the property is available to everyone under the provisions of the Fair Housing Act.
- Specific requirements for size and location.



Equal Housing Opportunity
We Do Business in Accordance With the Federal Fair Housing Law
(The Fair Housing Amendments Act of 1988)

It is illegal to discriminate against any person because of Race, Color, Religion, Sex, Handicap, Familial Status, or National Origin

■ In the sale or rental of housing or residential lots	■ In the provision of real estate brokerage services
■ In advertising the sale or rental of housing	■ In the appraisal of housing
■ In the financing of housing	■ Blockbusting is also illegal

Access this link or the link below to download a poster about the provisions of housing discrimination: www.fhcwm.org

U.S. Department of Housing and Urban Development
Assistant Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20419

Resources

- HUD Achtenberg Memo
- HUD EHO Logo and Poster
- FHCWM Advertisers Checklist
- <https://nationalfairhousing.org/responsibleleadvertising/>
- <http://www.fhcwm.org/laws>
- www.fhcwm.org/publications
 - Publications, brochures, studies and guides by topic area
 - Fact Sheets

Questions?

<https://www.surveymonkey.com/r/GLAR2021>

Liz Keegan, Director of Education & Outreach
lkeegan@fhcmw.org
Fair Housing Center of West Michigan
20 Hall Street SE, Grand Rapids, MI 49507
616-451-2980
www.fhcwm.org



Fair Housing & Advertising



Fair housing is the right of individuals to obtain the housing of their choice (rent an apartment, buy a home, obtain a mortgage, buy homeowners' insurance, etc.), free from discrimination based upon classes protected by law. The federal Fair Housing Act and Michigan state law protect against housing discrimination based upon the following protected classes: race, color, national origin, religion, sex, familial status, disability status, marital status, and/or age. In addition, communities across the state have added protected classes at the local level, such as sexual orientation and source of income. Under law, housing discrimination includes discriminatory advertising.

Both the federal and state fair housing laws prohibit discriminatory advertising by making it illegal 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 based on one or more of the protected classes. Affirmatively, the federal law also states that all advertising for the sale, rental or financing of residential real estate should contain the Equal Housing Opportunity slogan, logo or statement. These indicate to the public that the property is available to everyone under the provisions of the Fair Housing Act.

Here are a few fair housing ideas for advertisers, provided by the Fair Housing Center of West Michigan:

- Advertisements should be free of words, phrases, symbols or visual aids which indicate or convey any preference, limitation or discrimination based upon race, color, national origin, religion, sex, familial status, disability, marital status and/or age. Protected classes under local fair housing ordinances also need to be considered.
 - Advertisements should **not** contain phrases such as, "No wheelchairs," "Prefer white male," "Singles or couples only," "Not for Christians," etc.
- Advertisements should **not** describe people (i.e. prospective/preferred tenants or buyers), but rather only the property and its amenities.
 - Advertisers should avoid using phrases such as, "Perfect for," "Looking for," "Ideal for," "Suited for," "Great for," etc. in conjunction with personal descriptions as the resulting phrase may be exclusionary and/or imply an unlawful discriminatory preference.
 - Advertisements should **not** contain phrases such as, "Married couple preferred," "Looking for two adults," "Great for females," "Ideal for Hispanics," etc.
- Advertisements should be free of any reference to landmarks or areas that could imply an unlawful discriminatory preference.
- Advertisements should be free of discounts or promotions that include an unlawful discriminatory preference.
- Any logos used in advertisements should be free of unlawful discriminatory preference and include Equal Housing logos.
- Advertisements should use models and model graphics in a nondiscriminatory way.
 - All protected classes should be adequately represented in reasonable proportion to their population in the metropolitan area and should be used for all, and not just some, of the properties advertised.
 - The model and model graphics should be clearly definable as representing minority and majority populations and should be represented in equal social settings.
- The advertisements should include an equal housing opportunity logo, statement or slogan. Equal Housing Opportunity logos are available in a variety of sizes and formats at <https://www.hud.gov/library/bookshelf11/hudgraphics>.

The Fair Housing Center of West Michigan is a private, non-profit organization established in 1980 to ensure equal housing opportunity as guaranteed under federal, state, and local fair housing laws. Please call 616-451-2980 or 1-866-389-FAIR for more information and training opportunities. You can also visit our website at www.fhcwm.org.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000



January 9, 1995

OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

MEMORANDUM FOR: FHEO, Office Directors, Enforcement Directors, Staff,
Office of Investigations, Field Assistant General
Counsel

FROM: Roberta Achtenberg, Assistant Secretary for Fair Housing and Equal
Opportunity, E

SUBJECT: Guidance Regarding Advertisements Under §804(c) of the Fair
Housing Act

The purpose of this memorandum is to provide guidance on the procedures for the acceptance and investigation of allegations of discrimination under Section 804(c) of the Fair Housing Act (the Act) involving the publication of real estate advertisements.¹

Recently, the number of inquiries involving whether or not potential violations of the Act occur through use of certain words or phrases has increased, and these issues cannot, in some situations, be answered by referring to decided cases alone. In some circumstances, the Advertising Guidelines, published at 24 C.F.R. Part 109, have been interpreted (usually by persons outside of HUD) to extend the liability for advertisements to circumstances which are unreasonable.

This guidance is meant to advise you of the Department's position on several of these issues.

Previous guidance already requires that Intake staff review a potential complaint, gather preliminary information to ascertain whether the complaint states a claim under the Act, and consult with counsel on any legally questionable matters before the complaint is filed. Likewise, jurisdictional issues such as standing and timeliness should also be established prior to filing.

¹ This memorandum does not address fair housing issues associated with the publication of advertisements containing human models, and does not address 804(c) liability for making discriminatory statements.

If the Advertising Guidelines, this memorandum, or a judicial decision clearly indicate that the language used in the advertisement is a potential violation of Section 804(c) and the criteria for establishing jurisdiction are met, the complaint should be filed and processed. Any complaint concerning an advertisement which requires an assessment of whether the usage of particular words or phrases in context is discriminatory, requires the approval of Headquarters FHEO before a complaint is filed. If the advertisement appears to be discriminatory, but the Advertising Guidelines, this memorandum, or a judicial decision do not explicitly address the language in question, supervisory staff must also obtain approval of Headquarters FHEO before the complaint is filed. Potential complaints regarding advertisements which do not meet the above descriptions should not be filed.

Where there is a question about whether a particular real estate advertising complaint should be filed, relevant information regarding the factual and/or legal issues involved in the complaint should be gathered, and counsel should be consulted prior to contacting the potential respondent publisher. The matter should then be referred to the Office of Investigations for review. Such referrals may take the form of a short memo, reciting the applicable advertisement language, and any factual or legal analysis which is appropriate.

Section 804(c) of the Act prohibits the making, printing and publishing of advertisements which state a preference, limitation or discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin. The prohibition applies to publishers, such as newspapers and directories, as well as to persons and entities who place real estate advertisements. It also applies to advertisements where the underlying property may be exempt from the provisions of the Act, but where the advertisement itself violates the Act. See 42 U.S.C. 3603(b).

Publishers and advertisers are responsible under the Act for making, printing, or publishing an advertisement that violates the Act on its face. Thus, they should not publish or cause to be published an advertisement that on its face expresses a preference, limitation or discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin. To the extent that either the Advertising Guidelines or the case law do not state that particular terms or phrases (or closely comparable terms) may violate the Act, a publisher is not liable under the Act for advertisements which, in the context of the usage in a particular advertisement, might indicate a preference, limitation or discrimination, but where such a preference is not readily apparent to an ordinary reader. Therefore, complaints will not be accepted against publishers concerning advertisements where the language might or might not be viewed as being used in a discriminatory context.

For example, Intake staff should not accept a complaint against a newspaper for running an advertisement which includes the phrase **female roommate wanted** because the advertisement does not indicate whether the requirements for the shared living exception have been met. Publishers can rely on the representations of the individual placing the ad that shared living arrangements apply to the property in question. Persons placing such

advertisements, however, are responsible for satisfying the conditions for the exemption. Thus, an ad for a female roommate could result in liability for the person placing the ad if the housing being advertised is actually a separate dwelling unit without shared living spaces. See 24 CFR 109.20.

Similarly, Intake staff should not file a familial status complaint against a publisher of an advertisement if the advertisement indicates on its face that it is housing for older persons. While an owner-respondent may be held responsible for running an advertisement indicating an exclusion of families with children if his or her property does not meet the "housing for older persons" exemption, a publisher is entitled to rely on the owner's assurance that the property is exempt.

The following is policy guidance on certain advertising issues which have arisen recently. We are currently reviewing past guidance from this office and from the Office of General Counsel and will update our guidance as appropriate.

1. **Race, color, national origin.** Real estate advertisements should state no discriminatory preference or limitation on account of race, color, or national origin. Use of words describing the housing, the current or potential residents, or the neighbors or neighborhood in racial or ethnic terms (i.e., **white family home, no Irish**) will create liability under this section.

However, advertisements which are facially neutral will not create liability. Thus, complaints over use of phrases such as **master bedroom, rare find, or desirable neighborhood** should not be filed.

2. **Religion.** Advertisements should not contain an explicit preference, limitation or discrimination on account of religion (i.e., **no Jews, Christian home**). Advertisements which use the legal name of an entity which contains a religious reference (for example, **Roselawn Catholic Home**), or those which contain a religious symbol, (such as **a cross**), standing alone, may indicate a religious preference. However, if such an advertisement includes a disclaimer (such as the statement "This Home does not discriminate on the basis of race, color, religion, national origin, sex, handicap or familial status") it will not violate the Act. Advertisements containing descriptions of properties (**apartment complex with chapel**), or services (**kosher meals available**) do not on their face state a preference for persons likely to make use of those facilities, and are not violations of the Act.

The use of secularized terms or symbols relating to religious holidays such as **Santa Claus, Easter Bunny or St. Valentine's Day** images, or phrases such as **"Merry Christmas", "Happy Easter"**, or the like does not constitute a violation of the Act.

3. **Sex.** Advertisements for single family dwellings or separate units in a multi-family dwelling should contain no explicit preference, limitation or

discrimination based on sex. Use of the term **master bedroom** does not constitute a violation of either the sex

4

discrimination provisions or the race discrimination provisions. Terms such as "**mother-in-law suite**" and "**bachelor apartment**" are commonly used as physical descriptions of housing units and do not violate the Act.

4. **Handicap.** Real estate advertisements should not contain explicit exclusions, limitations, or other indications of discrimination based on handicap (i.e., **no wheelchairs**). Advertisements containing descriptions of properties (**great view, fourth-floor walk-up, walk-in closets**), services or facilities (**jogging trails**), or neighborhoods (**walk to bus-stop**) do not violate the Act. Advertisements describing the conduct required of residents ("**non-smoking**", "**sober**") do not violate the Act. Advertisements containing descriptions of accessibility features are lawful (**wheelchair ramp**).

5. **Familial status.** Advertisements may not state an explicit preference, limitation or discrimination based on familial status. Advertisements may not contain limitations on the number or ages of children, or state a preference for adults, couples or singles. Advertisements describing the properties (**two bedroom, cozy, family room**), services and facilities (**no bicycles allowed**) or neighborhoods (**quiet streets**) are not facially discriminatory and do not violate the Act.