

# “DC Fair Housing”

(DC Course # 439)



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## HISTORY OF FAIR HOUSING IN AMERICA

Not surprisingly, the beginning of housing discrimination in America can be traced to the first colonial settlements. Even in the early 1600's, in the Jamestown Colony, there were differences in the treatment of black and white indentured servants. As the colonies grew, slavery of people of African descent became increasingly common. For the most part, slavery was not considered immoral by society.

Neither the Declaration of Independence nor the American Revolution produced any rights or freedom for the black man. Even Article I of the U.S. Constitution treated slaves as three fifths of a person for purposes of determining a state's population for representation in Congress.

Prior to the Civil War, the courts refused to recognize any rights for persons of African descent, whether they were slaves or free. The federal government did nothing to prohibit discrimination, and even those states that had abolished slavery treated blacks as inferior. The ideology of the time is well illustrated in the 1857 U.S. Supreme Court case entitled *Dred Scott v. Sanford*, in which the Court held that persons of African descent were not citizens of the United States entitled to any rights. According to the Court, the black man had no rights the white man was bound to respect. The Court stated that this principle applied to all black persons, slave or free:

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

Shortly before the Civil War, the abolitionist movement gained strength. Abraham Lincoln's emancipation proclamation at least on paper marked the end of slavery, although it did little to advance modern day civil rights. At the end of the Civil War, the Thirteenth Amendment was enacted to abolish slavery and to give Congress authority to enact appropriate legislation to enforce the abolishment of slavery. In 1866, the Reconstruction Congress passed the Civil Rights Act of 1866, which guaranteed property rights to all citizens regardless of race. The act specifically provides that all citizens shall have the same rights as white citizens to inherit, purchase, and sell real and personal property. Governmental discrimination was also prohibited by the Fourteenth Amendment (enacted in 1868) and the Fifth Amendment's due process clause that applies to the federal government.

But soon thereafter, the nation's commitment to civil rights deteriorated. In retrospect, the 1866 Civil Rights Act guarantee of equal rights to all races was, unfortunately, an empty promise. For over a century, the courts prohibited racial discrimination only with regard to state (governmental) discrimination, such as racial zoning or the court enforcement of racially restrictive covenants governing real property. Therefore, the 1866 Act was essentially ineffective in combating private discrimination.

The first major setback to the legal rights of African Americans came in the U.S. Supreme Court's decision in the Civil Rights Case (1883). In that case, the Court held that the equal protection clause of the U.S. Constitution (i.e., the 14th Amendment) did not prohibit private acts of discrimination, rather it merely prohibited discrimination that was the product of

government action. A few years later, the U.S. Supreme Court made its infamous ruling in *Plessy v. Ferguson* (1896), which held that the enforcement of racial segregation of private or public facilities did not violate the U.S. Constitution as long as the separate facilities were equal. This ruling permitted institutionalized segregation in the United States. The *Plessy* case was not overruled until 1954, almost six decades later.

On the other hand, some of the more blatant forms of racial discrimination by the government were outlawed by the Court. In 1917, in *Buchanan v. Warley*, the U.S. Supreme Court struck down a local zoning law that limited African Americans and other minorities to specific areas of town. The Court held that governmental zoning laws that discriminate, based upon race, violate the equal protection clause of the Fourteenth Amendment. This court case did not, however, ban any form of private discrimination. Again, private persons were free to discriminate based upon race.

In 1948, in *Shelley v. Kraemer*, the U.S. Supreme Court held that state court enforcement of a private racially restrictive covenant constituted a sufficient government involvement so as to violate the equal protection clause of the Fourteenth Amendment. Therefore, persons could not use the court system to enforce racial deed restrictions.

Although some states and municipalities enacted fair housing laws, the federal government neglected to pass any laws to prevent housing discrimination. In fact, to a certain extent, the federal government was counterproductive in efforts to defeat segregation. For example, the Federal Housing Administration (FHA) instructed its staff and appraisers to consider the racial makeup of a neighborhood. Also, it is important to note that discrimination in housing was certainly not limited to African Americans. Other minorities and religious groups were commonly discriminated against, as were women.

Finally, in 1954, the U.S. Supreme Court rendered its landmark decision in *Brown v. Board of Education*, reversing the "separate but equal" decision in *Plessy*. The *Brown* case outlawed segregation in schools and marked the beginning of the end of the era of legalized segregation.

In November 1962, President Kennedy signed an executive order, entitled *Equal Opportunity in Housing*, prohibiting discrimination in housing that is owned, operated or assisted by the federal government. The order required federal agencies to take action to prevent discrimination based upon race, color, creed or national origin. Although the executive order was the first federal anti-discrimination initiative of the 20th century, it had limited impact on the housing market.

Two years later, Congress enacted Title VI to the Civil Rights Act of 1964, which prohibited discrimination in programs receiving federal financial assistance. Once again, this Act had little effect since it did not prohibit discrimination in the private housing market.

The real change in fair housing came in 1968, a year that is considered the birth of modern fair housing. In addition to the assassination of Rev. Martin Luther King, Jr., two historic events occurred that year that forever changed the housing market.

First, in April, Congress enacted the Fair Housing Act (Title VIII of the Civil Rights Act of 1968). This Act bans discrimination on the basis of race, color, religion, and national origin in most types of housing transactions. The Act also contains a variety of remedies to attack housing discrimination, including private discrimination. Second, in June, the U.S. Supreme Court rendered its decision in *Jones v. Alfred H. Mayer Co.*, and held that the Civil Rights Act of 1866 banned private, as well as government, racial discrimination in housing. Thus the 1866 Act was given new life, and could be used to fight racial discrimination.

The Fair Housing Act outlaws a variety of private discriminatory acts, including refusal

to rent or sell, discrimination in the terms of sale or rental, blockbusting, and discrimination in advertising and in the use of real estate services. In 1974, the Fair Housing Act was expanded to include prohibition of gender discrimination, and Section 8 programs were created. In the same year, Congress passed the Equal Credit Opportunity Act, which prohibited credit discrimination in housing on the basis of race, color, religion, national origin, gender or marital status, and age.

In the 1970's various federal legislation was enacted to prohibit discrimination in federal programs, and to include additional protected classes. Congress enacted Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against handicapped persons in all federally assisted programs, including housing. Later, Congress enacted the Age Discrimination Act of 1975, which prohibited discrimination on the basis of age in programs receiving federal financial assistance. In 1980, President Carter expanded Kennedy's executive order to include gender-based discrimination, and to grant HUD additional authority to issue regulations to further fair housing in federal programs.

After the enactment of the Fair Housing Act, the U.S. Supreme Court rendered several important decisions favorable to attacking housing discrimination. In 1972, the Court held in *Trafficante v. Metropolitan Life Insurance Co.* that the Fair Housing Act should be broadly construed, and that HUD's interpretation of the act should be given great weight. As a tremendous, practical importance, the Court also upheld the right of housing organizations and other residents to sue persons or municipalities that violated the Fair Housing Act. In 1982, the Court rendered an important decision entitled *Havens Realty Corp. v. Coleman*, which permitted housing organizations and testers to sue in racial steering cases. These court cases enable private and public organizations to investigate fair housing violations and to file actions for civil penalties and damages.

On September 13, 1988, former President Ronald Reagan signed the Fair Housing Amendments Act of 1988. The Amendment became effective March 12, 1989. The 1988 Amendment was enacted to expand the coverage of the Fair Housing Act and to enhance enforcement of the act.

The 1988 Amendment made major changes to Title VIII, including adding two protected classes to the Fair Housing Act: (1) families with children and (2) handicapped persons. The Amendment also modified the administrative process for HUD complaints, and essentially provides that HUD has a higher degree of authority to enforce the Fair Housing Act. The Amendment removed the cap on punitive damages and increased the available damages and civil penalties. The Amendment also extends Title VIII to other discriminatory practices, relating to real estate loans for repairs and improvements, certain secondary market activities, and real estate appraisals.

**FAIR HOUSING IN AMERICA.  
CHRONOLOGY OF IMPORTANT CONSTITUTIONAL  
ACTS AND FEDERAL LEGISLATION**

<b>1787</b>	U.S. Constitution (Article 1, Section 2)	For purposes of number of representatives, slaves count as three-fifths of a person.
<b>1791</b>	Bill of Rights (First 10 Amendments)	Fifth Amendment guarantees right to due process.
<b>1865</b>	13th Amendment	Slavery abolished, and Congress given power to enact appropriate legislation to enforce this article.
<b>1866</b>	Civil Rights Act of 1866 (42 U.S.C. 1982)	Enacted under authority of 13 <sup>th</sup> Amendment, this Act guarantees all property rights enjoyed by white citizens to all U.S. citizens regardless of race.
<b>1868</b>	14th Amendment	14th Amendment (and 5 <sup>th</sup> Amendment) prohibits government discrimination.
<b>1962</b>	Executive Order 11063	President Kennedy directs all federal agencies to take all action necessary to prevent discrimination because of race, color, creed, or national origin.
<b>1964</b>	Civil Rights Act of 1964 (Title VI)	<ol style="list-style-type: none"> <li>1) Prohibits discrimination based upon race, color and national origin in federally assisted programs, including public housing.</li> <li>2) Authorizes withholding of federal funding from state or local grantees engaging in discriminatory activity.</li> </ol>
<b>1968</b>	Civil Rights Act of 1968 (Title VIII - The Fair Housing Act)	<ol style="list-style-type: none"> <li>1) Outlaws private discrimination in housing, including refusal to Fair Housing Act) rent or sell.</li> <li>2) Also outlaws private discrimination in advertising, terms of sale or rental, blockbusting, and use of real estate services.</li> <li>3) Exemption for individual owners of single-family home (where no real estate broker is used) if owner does not own more than three such homes.</li> <li>4) Exemption for housing operations by qualifying religious groups or private clubs.</li> </ol>

<b>1973</b>	Rehabilitation Act of 1973 (Section 504)	Prohibits discrimination against handicapped persons in all federally assisted programs, including housing.
<b>1974</b>	Equal Credit Opportunity Act (ECOA)	Prohibits credit discrimination in housing, based upon race, color, religion, national origin, sex, marital status, or age.
<b>1974</b>	Housing and Community Development Act of 1974	<ol style="list-style-type: none"> <li>1) Expands Fair Housing Act to include prohibition of sex discrimination in housing.</li> <li>2) Creates Section 8 programs.</li> <li>3) Establishes Block Grant program and Urban Development Action Grant program.</li> </ol>
<b>1975</b>	The Age Discrimination Act of 1975	Prohibits discrimination on the basis of age in programs receiving federal financial assistance
<b>1980</b>	Executive Order 12259	President Carter expands Kennedy's 1962 Executive Order to include sex-based discrimination, and grants HUD secretary additional authority to issue regulations.
<b>1988</b>	Fair Housing Amendments Act of 1988	<ol style="list-style-type: none"> <li>1) Broadens Title VIII, to include protected classes of handicapped persons and familial status (with exception for older person housing).</li> <li>2) Mandates handicapped accessibility requirements for new multi-family properties, and permits handicapped tenants to modify existing housing (at tenants' expense).</li> <li>3) Increases civil and administrative enforcement relating to potential monetary awards, punitive damages, and attorneys' fees.</li> </ol>

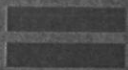
**FAIR HOUSING IN AMERICA  
CHRONOLOGY OF IMPORTANT  
U.S. SUPREME COURT CASES**

- 1857** Dred Scott v. San ford      Persons of African descent, whether they be slaves or free, are not citizens of the United States entitled to the privileges and immunities of white citizens.
- 1883** Civil Rights Cases      14th Amendment prohibits discrimination only if it is the product of State (government) action. The 14th Amendment does not prohibit private acts of discrimination.
- 1896** Plessy v. Ferguson      Court sets forth separate but equal rule, thus permitting institutionalized segregation.
- 1917** Buchanan v. Warley      Court strikes down racial zoning law (on equal protection grounds) which had specifically limited blacks and other minorities to specific areas of town.
- 1948** Shelley v. Kraemer      Court held that state court enforcement of private restrictive covenants (based upon race) amounted to sufficient government involvement to violate the equal protection clause of the 14th Amendment.
- 1948** Hurd v. Hodge      The Shelley rule applies equally to federal courts (in this case, the District of Columbia), as well as state courts.
- 1954** Brown v. Board of Education      Court finally reverses Plessy decision, ending the separate but equal era.
- 1967** Reitman v. Mulkey      Court held that California state constitutional amendment, which effectively nullified California's fair housing laws, violated the equal protection clause, since the amendment encouraged private racial housing discrimination.



- 1968 Jones v. Alfred H. Mayer Co. Court gives new life to the 1866 Civil Rights Act by holding that section 1982 bars racial discrimination (private as well as public) in the sale or rental of property.
- 1972 Trafficante v. Metropolitan Life Insurance Co. In the Court's first Title VIII decision, Court held that Fair Housing Act should be broadly construed, that Title VII (federal employment discrimination) court cases can be used to interpret Title VIII, and that HUD's interpretations of the Act should be entitled to great weight.
- 1977 Village of Arlington Heights v. Metropolitan Housing Development Corporation Court holds that a housing corporation and neighborhood residents had standing to challenge municipality's denial of rezoning, which was alleged to have a racially disproportionate impact. (But Court also held that some discriminatory intent or purpose was required to prove unconstitutional behavior.)
- 1979 Gladstone Realtors v. Bellwood (1979) Court upholds municipality and residents' standing to sue local real estate brokers for racial steering.
- 1982 Havens Realty Corp. v. Coleman Extends standing to sue in racial steering cases to fair housing organizations and testers who investigate housing discrimination complaints.





DISTRICT OF COLUMBIA

# FAIR HOUSING LAW

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code Section 2-1401.01 *et seq.*, (Act) the District of Columbia does not discriminate on the basis of actual or perceived:

**Race**  
**Color**  
**Sex (Gender or sexual harassment)**  
**National Origin**  
**Religion**  
**Age**  
**Marital Status**  
**Personal Appearance**  
**Sexual Orientation**  
**Gender Identity or Expression**

**Familial Status**  
**Family Responsibilities**  
**Matriculation**  
**Political Affiliation**  
**Disability**  
**Source of Income**  
**Place of Residence or Business**  
**Victim of an Intra-Family Offense (Domestic violence)**  
*Genetic Information*

Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

It is unlawful for any person to practice discrimination in the rental or sale of housing accommodations and commercial space in the District of Columbia on the basis of the above categories.

The D.C. Human Rights Act of 1977, Section 2-1402.21 of the D.C. Code, prohibits acts performed wholly or partially for a discriminatory reason:

“To interrupt, or terminate, or refuse, or fail to initiate or conduct any transaction in real property; or to require different terms for such transaction; or to represent falsely that an interest in real property is not available for transaction;...”

Similar prohibitions apply to “blockbusting,” “steering,” and financing.

## COMPLAINTS OF POSSIBLE VIOLATIONS OF THIS LAW MAY BE FILED WITH:

**Government of the District of Columbia**  
**The D.C. Office of Human Rights**  
 441 4th Street N.W., Suite 570N  
 Washington, D.C. 20001  
 Telephone (202) 727-4559 • Fax (202) 727-9589  
[www.ohr.dc.gov](http://www.ohr.dc.gov)  
 Vincent C. Gray, Mayor

## DC ADDITIONAL PROTECTED CLASSES

**Age** - Individuals cannot be discriminated against based on age (provided they are of legal age).

**Marital Status** – Individuals cannot be discriminated against based on whether they are married or single.

**Personal Appearance** – Individuals cannot be discriminated against based on their outward appearance of hair styles, beards or manner of dress.

**Sexual Orientation** – Individuals cannot be discriminated against based on the identification of an individual as to male or female heterosexuality, homosexuality, or bisexuality.

**Gender Identity or Expression** – Individuals cannot be discriminated against because they are transsexual or transgender. (See attached fact sheet.)

**Family Responsibilities** – Individuals cannot be discriminated against because of family responsibilities, i.e., caretaker or caregiver.

**Matriculation** – Individuals cannot be discriminated against because they are students.

**Political Affiliation** – Individuals cannot be discriminated against based on their political affiliation, i.e., Democrat, Republican, Libertarian, Socialist, etc.

**Source of Income** – Individuals cannot be discriminated against based on any lawful source of income, including government housing subsidies.

**Place of Residence or Business** - Individuals cannot be discriminated against based on the location of their residence or business.

**Victim of an Intra-Family Offense (Domestic Violence)** – Individuals cannot be discriminated against based on their being a victim of domestic violence.



District of Columbia Office of Human Rights

Equal Justice Program

441 4th Street, N.W., Suite 570N

Washington, D.C. 20001

Phone: (202) 727-4559; Fax: (202) 727-9589

## How do I comply with the new "Gender Identity or Expression" Legal Protection?

### THE LAW:

The Human Rights Act of 1977 was amended on March 8, 2006 to add "*gender identity or expression*" to the list of illegal forms of discrimination, providing legal protection from discrimination for people who are transgender or transsexual. This protection covers individuals from discrimination in the District regarding employment, housing, public accommodations, educational institutions and services or programs of the District of Columbia government. The DC Office of Human Rights enforces this protection so that individuals are treated according to their gender identity and expression and not their presumed or assigned sex.

### WHO IS PROTECTED?

Gender identity or expression refers to a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth. Transgender is an umbrella term that refers to any individual whose identity or behavior differs from stereotypical or traditional gender expectations, including transsexual individuals, cross-dressers, androgynous individuals, and others whose appearance or characteristics are perceived to be gender-atypical.

### COMPLIANCE RULES REGARDING GENDER IDENTITY OR EXPRESSION:

**Restrooms and other gender specific facilities:** Covered entities shall allow individuals the right to use gender specific restrooms and other gender specific facilities that are consistent with their gender identity or expression. In cases of single-stall restrooms, they must have gender-neutral signs.

**Accommodations for health care needs:** When requested, an employer shall make reasonable accommodations, including medical leave, for transgender-related and other health care needs that are consistent with such accommodations that are provided for other medical needs.

**Dress and grooming standards:** No covered entity shall require individuals to dress or groom themselves in a manner inconsistent with their sex or their gender identity or expression.

**Gender specific facilities where nudity in the presence of others is customary:** Covered entities shall make reasonable accommodations to allow an individual access to that facility that is consistent with that individual's gender identity or expression regardless of whether the individual has provided identification or other documentation of their gender identity or expression.

**Recording of gender and name:** In situations where an applicant is asked for their gender and the selected gender is not consistent with presumed gender, it shall not be considered fraudulent for the purpose of the application. The use of a person's legal name may be required only in situations required by law or for a reasonable business purpose.

**Confidentiality:** If a covered entity learns that a person is transgender, an adverse action against the person cannot be taken and the entity shall take reasonable measures to preserve the confidentiality of information.

**Harassment and hostile environment:** All harassment and actions that create a hostile environment based on gender identity or expression shall be prohibited.

### FOR MORE INFORMATION AND TO FILE A COMPLAINT:

If you feel you have been discriminated against based on your "*gender identity or expression*", please contact the Office of Human Rights at (202) 727-4559 or visit us at [www.ohr.dc.gov](http://www.ohr.dc.gov).

*\*This fact sheet is intended to be a summary of rules. Businesses and government agencies are responsible to become familiar with these and other provisions under the law and regulations. You can obtain a copy of the regulations by visiting [www.ohr.dc.gov](http://www.ohr.dc.gov).*

# Gender Identity or Expression Fact Sheet\*

D.C. OFFICE OF HUMAN RIGHTS

# Fair Housing Defined

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The Federal Fair Housing Law is administered by the US Department of Housing and Urban Development (HUD). The Federal Fair Housing Act makes it unlawful to discriminate in the sale, rental and financing of housing and the provision of brokerage and appraisal services base on: Race, color, religion, sex, handicap, familial status or national origin.

## Federally Protected Classes

### **Race:**

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A local geographic or global human population distinguished as a more or less distinct group by genetically transmitted physical characteristics; any group of people united or classified together on the basis of common history, nationality, or geographical distribution; mankind as a whole. For Section 1982 litigation in fair housing, race has been expanded to mean those persons not considered white in the year 1866.

### **Religion:**

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The expression of one's belief in and/or reverence for a supernatural power(s) regarded as the creator and/or governor of the universe; or lack thereof.

### **Color:**

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The complexion of a person's skin; usually refers only to skin color or pigmentation of a person not categorized as white.

### **Sex:**

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The condition or character of being male or female; the physiological, functional, and psychological differences that distinguish the male and female.

### **National Origin:**

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Characteristic of or peculiar to the people of a nation; of or relating to ancestral beginnings.

### **Handicap:**

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A person who (1) has a physical or mental impairment (including, but not limited to, hearing mobility, visual impairments, chronic alcoholism, chronic mental illness, AIDS and AIDS related complex, and mental retardation) that substantially limits one or more

major life activities; (2) has a record of such an impairment, or (3) is regarded as having such an impairment. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing hearing, speaking, breathing, learning and working.

### **Familial Status:**

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This makes it illegal to deny housing to persons with children, such as adults-only communities, excepting those communities which meet the standards for housing for the elderly. Children include individuals under 18, living with a parent or legal guardian, or with a designee having written custody as well as persons who are pregnant or in the process of securing legal custody.

### **Examples of Discriminatory Behavior**

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- Blockbusting
- Steering
- Unsolicited Remarks
- Indifference of Service Providers
- Unequal Education of Prospective Buyers and Tenants
- Differing Availability, Prices, Rents, Incentives, Financing & Insurance
- Cultural Perceptions
- Actions which "have the effect" of denying housing to protected classes

### **Other Fair Housing Definitions**

#### **Dwelling:**

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Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as a residence by one or more families and any vacant land which offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

It covers cooperatives, time-shares, condominiums, mobile home parks, foster care facilities and all other residential property.

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### **Americans with Disabilities Act**

The 1988 amendment to the Fair Housing Law, made persons with disabilities a protected class. In 1990, the Americans With Disabilities Act, generally referred to as



ADA, required all companies doing business with the public to make their place of business, and the services being offered, accessible to persons with disabilities as defined by the Act. It also requires that housing providers follow policies and procedures which include persons with disabilities.

## Who is Covered

- Hearing or vision impaired
- Physically disabled
- Mental illness or retardation
- AIDS or HIV infection
- Epilepsy
- Cerebral Palsy
- Use of a wheelchair or walker
- Use of a personal care attendant
- Use of a service animal
- Persons who have a record of a disability or who are currently under treatment for same or who are regarded as such
- Alcoholics, in treatment or not
- Prior drug users who have completed a rehab program
- Persons using prescription drugs under a physician's direction

## Who Is Not Covered

- Current illegal users of controlled substances
- Transvestites

## Notes on Companion Animals

Companion animals differ from service animals, like guide dogs, with which we are familiar. Companion animals have been prescribed by a doctor as part of the patient's therapy. Therefore persons qualifying for coverage under ADA have a right to keep them regardless of an owner's refusal to allow pets in the home or unit. All of the following apply;

- owner may not prohibit without unusual circumstances, i.e. owners own allergies and imminent return
- tenant must request and show documentation
- no extra deposit may be required

## Rentals and Reasonable Modification

Reasonable accommodation refers to the right of the disabled to modify rental housing in order to accommodate their disability. Owners and landlords must do so under the following guidelines;

- Must be requested by the tenant
- The modifications must be practical & feasible
- All costs are paid by the tenant
- Changes which *will not* be acceptable to future tenants must be returned to their original state at the tenant's expense upon expiration of the lease or termination of tenancy.
- Owner has the right to approve the plans, the contractor, and the quality of the work
- Owner has the right to require money to be placed in escrow to ensure compliance and any interest would accrue to the tenant. This escrow is not a deposit and may not be accessed by the owner for any purpose other than to return the property to its original condition.

## Owners and Compliance

- Owners may not ask about a disability.
- Owners may ask for financial, credit and tenant history as they would any other applicant

## Handicapped Accessible

The standards for a home to be marketed as Handicapped Accessible are as follows:

- All doors which allow passage into and within all premises must be sufficiently wide to accommodate persons who use wheelchairs (39")
- There must be an accessible route into and throughout the dwelling
- Light switches, electrical outlet, thermostats, and other environmental controls must be placed in accessible locations
- Reinforcements must be installed in bathrooms to allow for later installation of grab bars, and
- Kitchens and bathrooms must allow persons in wheelchairs to maneuver about the space



## Occupancy

The maximum number of persons who will be allowed to occupy a dwelling is usually calculated one of two ways; by the Federal guideline of 2 persons per bedroom plus 1, which is referred to as the Keating Memorandum or by the BOCA standard.

BOCA National Property Maintenance Code/1993 (PM-405.3 & Table PM 405.5)

"Every dwelling unit must contain a minimum gross floor area not less than 150 square feet for the first occupant and 100 square feet for each additional occupant. Every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one person shall contain at least 50 square feet of floor area for each occupant"

"In determining floor areas of rooms occupied for sleeping purposes, the term 'floor area' shall not include floor area of halls or walkways, bathrooms, stairs, kitchens, laundry areas, closet or other storage areas, but may include dining room areas where consistent with other provisions of the BOCA Code." -- HUD General Counsel, Nelson Diaz, July 12, 1995

Keating Memorandum, HUD General Counsel, March 20, 1991

... Specifically, the Department believes that an occupancy policy of two persons per bedroom, as a general rule, is reasonable under the Fair Housing Act. ...

Thus, in reviewing occupancy cases, HUD will consider the size and number of bedrooms and other special circumstances .... Size of bedrooms and unit, ... Age of Children, ... Configuration of unit, ... Other physical limitations of housing, ... State and local law...

An occupancy policy which limits the number of children per unit is less likely to be reasonable than one which limits the number of people per unit. ...

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## Fair Housing Enforcement

HUD Fair Housing Enforcement Office -- Washington, DC  
US Department of Housing & Urban Development  
Fair Housing & Equal Opportunity Division  
820 First St., NE Suite 450  
Washington, DC 20002-4255  
Mr. James Black, Director

## Complaints From The Public

Complaints from the public could be filed directly with HUD (202-275-0848) but are normally filed either with a local Fair Housing Office (see local sections) or with the Fair Housing Council.

The Fair Housing Council of Greater Washington  
1212 New York Ave., N.W.  
Suite 500

Washington, DC 20005  
202-289-5360  
David Berenbaum, Executive Director

## Subsidiary Offices

The Fair Housing Center of Suburban Maryland  
1801 McCormick Drive  
Landover, MD 20785  
301-925-8223

Michael Mitchell, Program Coordinator  
The Fair Housing Center of Northern Virginia  
9401 Lee Highway  
Suite 420  
Fairfax, VA 22031  
703-273-9715  
Nick Novak, Program Coordinator

## Complaints Concerning The REALTOR Community

Complaints concerning the behavior of REALTORS involved in a transaction may be directed directly to an Equal Opportunity Office in your local jurisdiction, to the Fair Housing Council, or to the Staff Liaison connected to the Professional Standards Committee of your local REALTOR Association, or to the State Departments of Fair Housing Regulation

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## Housing Subsidies

### Federal Subsidies - Section 8

When HUD eliminated Federally operated subsidized housing projects, they were replaced with a tenant subsidy program which either allows the tenant to supplement the HUD subsidy with money of their own (Voucher) or the HUD subsidy will cover the entire rent amount (Certificate). No matter which program the tenant is under, voucher or certificate, the tenant is responsible for a full security deposit, to maintain the property in accordance with the lease and pay for all substantiated damages. Applicants are subject to the same criteria of credit rating, landlord history and income (with Voucher) as any non-subsidized applicant.

### Leasing to a Section 8 Tenant:

1. Turn in Request for Lease Approval, IRS W-9 Form, Unsigned Sample Dwelling Lease, and 3 Rent Comparables. The prospective tenant will give you the first two documents. Complete the forms in detail, making sure the "Request" is signed by both parties. As soon as these forms have been received by the Department of Housing, a Housing Service Specialist will call you to arrange for a date to inspect the unit. Originals will be needed to complete the paperwork.
2. Inspection The dwelling must be inspected and must meet Section 8 housing quality standards. During the inspection they are mainly looking for basic health and safety hazards.
3. The Lease must be approved by the Housing Department before signing The lease must be for a period of at least one year. If the lease starts after the first of the month, it must run through the end of that month in the following year. The lease must contain an automatic renewal clause or must allow automatic indefinite extension of the term.
4. Sign the Housing Assistance Payment (HAP) Contract and Lease Addendum. Department of Housing will prepare a HAP contract and a Lease Addendum for all parties to sign, outlining program provisions.
5. Payments Before a check can be issued, the Department of Housing must have executed copies of the following: dwelling lease, lease addendum and contract. Once these documents have been received it can take up to ten working days to receive the first check from the Department of Housing. After the first check, the owner should receive checks from the Department of Housing on or before the first of each month.  
\* While local jurisdictions may not require property owners to accept Section 8 tenants, blanket refusal to accept will be construed as discriminatory. Section 8 tenants with good tenant histories, acceptable credit and the necessary security deposit may well be better tenants than those renting without subsidies.

## State & Local Subsidies

For State programs, please look under the sections on State or District of Columbia data. For local programs, please look under the section for the local jurisdiction in question.

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.<sup>1</sup>

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.

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<sup>1</sup> 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

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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.



## Fair Housing Word and Phrase List

Last update: 12/2009

Summary: This is a helpful resource for members when writing ads or the remarks and directions fields in MLS. It is an excellent tool for new member orientation when discussing Fair Housing. And, it makes for an excellent ANNUAL mailing to firms.

### Fair Housing Word and Phrase List :

The following list is compiled of words or phrases that are UNACCEPTABLE. Usage of any of the following terms will be immediately deleted from the listing and the Principal Broker will be notified of the purge.

Able bodied	Married
Adult community	Mature couple(s)
Adult living	Mature individual
Adults only	Mature person(s)
African	Membership approval required
Agile	Mentally handicapped, no
Alcoholics, no	Mentally ill, no
Asian	Mexican-American
Bachelor	Mormon Temple
Blacks, no	Mosque
Board approval required	(Nationality)
Catholic	Newlyweds
Caucasian	(# of) children
Chicano	Older person
Chinese	One Child
Children, no	One person
Colored	Oriental
Couple(s)	Physically fit
Couple only	Polish
Crippled, no	Puerto Rican
Deaf, no	Retarded, no
Drinkers, no	Seasonal worker, no
Employed, must be	Shrine
Empty nesters	Singles only
(Ethnic reference)	Single Person
Handicapped, not for	Smoker(s), no
Healthy only	Soc. Sec. Ins., no
Hispanic	Tenant (description of)
Impaired, no	Unemployed, no
Independent living	White
Indian	White only
Irish	
Integrated	(Religious reference)
Jewish	Reference to private clubs
Landlord	(# of) people
Latino	Reference to private schools

Reference to ANY of the protected classes: Race, Religion, Familial Status, Sex, National Origin, Color or Handicapped

In 1995, HUD, the Fair Housing Council of Oregon, and the Portland Metropolitan Area Boards and Associations of REALTORS® Multiple Listing Service, Inc. entered a conciliation agreement that identified words and phrases that potentially violate the Fair Housing Act. The list was the product of a negotiated settlement and not a ruling by a court or HUD, and HUD has not endorsed this list. Words not appearing on this list could be used to discriminate. Conversely, words appearing on the list will not always violate the law.

See attached Fair Housing Word and Phrase List