

Apartment Available - Perfect for a Single [Lawsuit]

How to Avoid Legal Issues in Rental Advertisements

February 25, 2010

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"Perfect for a single person" or "ideal for empty-nesters" are phrases that may be helpful in illustrating the small size of an available apartment, but the use of such language in a rental advertisement can lead to significant and costly legal issues even for a well-intentioned landlord. Under applicable fair housing laws, if a rental advertisement can be reasonably construed by an ordinary reader to create a preference against certain protected classes of individuals, the intent not to discriminate of a person or entity who publishes the advertisement is insufficient to shield potential liability for discrimination. As such, it is important to carefully scrutinize the language and images in rental advertisements.

The Fair Housing Act prohibits printing or publishing an advertisement for the rental of a dwelling that discriminates against potential tenants on the basis of race, color, religion, sex, handicap, familial status, or national origin.^[1] In order for there to be a violation of the Fair Housing Act, there must be a showing that either: (i) the individual or entity printing or publishing the advertisement actually intended to discriminate or (ii) an "ordinary reader" would find a discriminatory preference in the advertisement.^[2] Language or images subjected to an "ordinary reader" analysis are interpreted naturally as such language and images would be interpreted by a typical reader.

Certain advertising language is clearly discriminatory, such as "adults only," "no blacks," and "gays prohibited." Other more subtle and less insinuating words and images, however, also can be discriminatory if an average reader could reasonably infer that such language or images create a preference against certain protected classes of individuals. For example, a federal court held that an advertisement listing an apartment for rent in "a private white home" indicated a racial preference.^[3] Another federal court found that a rental company's use of only white models in its rental advertisements may create a preference against minority applicants as an ordinary reader may think "these apartments are not for me or my kind."^[4] Examples of other language that an ordinary reader may infer to create an impermissible preference include: "catholic church nearby;" "perfect for physically fit;" and "Hispanic area."

What Steps Should You Take to Avoid Legal Issues?

Basic steps can be taken to help prevent discriminatory rental advertisements, which include, but are not limited to, the following:

- review all advertising language and images before the advertisement is disseminated to the public on print, radio, television, text, email, or the internet;
- develop a nondiscrimination policy that includes measures to prevent discriminatory advertisements;
- educate employees and enforce the nondiscrimination policy;

- incorporate an equal housing opportunity logo and statement as provided for under HUD regulations;
- hire counsel to create the nondiscrimination policy and review all advertisement language; and
- attend fair housing training or obtain information (e.g. a list of words or phrases to avoid) at a local fair housing agency.

In sum, when creating an advertisement, private landlords or property management companies should be diligent and take proactive steps to ensure that no advertisement language creates a preference against certain protected classes of individuals.

(1) Section 804(c) of the Fair Housing Act (642 U.S.C. § 3604(c)).

(2) See *United States v. Hunter*, 459 F.2d 205, 215 (4th Cir.); *Housing Opportunities Made Equal v. The Cincinnati Enquirer*, 943 F.2d 644, 646 (6th Cir. 1991); *Spann v. Colonial Village, Inc.*, 899 F.2d 24 (D.C. Cir. 1990).

(3) *United States v. Hunter*, 459 F.2d 205 (4th Cir. 1972).

(4) *Saunders v. General Services Corp.*, 659 F. Supp. 1042, 1058 (E.D. Va. 1987).