



## Fair Housing and MLS

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By now, everyone knows that you can't discriminate in housing based on race or national origin. No REALTOR® would put a listing into MLS with remarks like "whites only" or "no Irish." We are grateful that that is a thing of the past. However, fair housing laws protect against discrimination on the basis of a wide variety of other characteristics (religion, familial status, marital status, sexual orientation, etc.). REALTORS® struggle when writing their remarks to avoid using expressions that might discriminate on one of these bases. This article is designed to provide some tips.

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### First and foremost...

...describe the property, not the buyers that you think are appropriate for it. Here are some examples of good and bad ways of describing properties:

Great workroom for Dad (Bad: what about the single mom?)

Great workroom with built-in work bench (Good: it says what I'll find there.)

Large his and her closets in master bedroom (Bad: what about two men or two women sharing the bedroom?)

Two large walk-in closets in master bedroom (Good: it tells me something about the property.)

Nice home for small family (Bad: why do you decide how big my family should be? Other MLS fields will say how big the home is; use the remarks to describe some other aspect of it.)

Here are some other tips about words and expressions you should not use or should think very carefully about using.

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## **Religion**

This one crops up from time to time. Agents want to say that a home is "close to St. Agnes' Catholic Church and school," or "near good Lutheran school." This is NOT acceptable. You can say "close to private school." Referring to a school or church of a certain denomination (even if you don't mention the name of the denomination) would likely be seen as expressing a preference for persons who espouse that faith.

This is hard in a part of St. Paul known as "Nativity Parish" after a church in the area. Many people know the area by this name, but you should avoid it as it has unmistakable religious overtones.

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## **Singles, Couples & Families**

It is illegal to discriminate against families with children, and it's dangerous to try to impose your notions about what size family can fit in a particular size of home. If you discuss a property's appeal to families, do it in a general way, and do it positively. It's o.k. to say that a house or neighborhood is great for families, but don't say "great neighborhood for households without kids." Don't try to tell buyers how big their families should be or what ages their children should be. Even if the house has only two bedrooms, don't say "great for a small family."

Definitely do not say "great for the couple or single"; this suggests "no kids." It doesn't matter how small the house is; it is not the listing agent's decision how big a family can live in it. If a single person is looking to buy a house, her agent will undoubtedly be searching MLS for certain price range, square footage range, or amenities important to the buyer. Your assessment of what home would be perfect for a "single" is probably of very little value, whether your listing has one bedroom or five.

To "solve" this problem, sometimes REALTORS® will say something like "great home for singles, couples, and families." Clearly, this doesn't discriminate against any of these groups because it names them all. But why is the agent raising this issue at all? (It's sort of like saying "great home for persons of all races.") Such an expression says absolutely nothing about the property, offers little or no value to the prospective buyer or her agent, and makes the reader wonder whether you aren't trying to hint at something different than what you're saying.

Do not use the expression "empty-nester" – EVER; it essentially says "no kids," and that's illegal. Do not use other words as code-words for "empty-nester" (e.g., "great home for the mature family," "great for retirees").

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## Senior citizens

If the property is a qualified senior housing development, you may describe it as such, but don't do so by saying "adults only" or "no kids." Say that it is a senior housing development (and it would be helpful to mention whether it is 55+ or 62+ as these classifications might be valuable to the buyer).

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## A note about the word "executive"

In other parts of the country, this word has been identified as having a "code-word" status. You might not agree that the word "executive" can suggest racial discrimination, but covering yourself by avoiding it will cost very little. What does "executive" mean, anyway? Generally, if I use it to describe a \$500,000 home, it will be redundant; who else but an executive or wealthy person could afford that much? If I use "executive" to describe a \$50,000 home, my assertion will probably be met with skepticism. If using the word is either redundant or at worst laughable, why bother? Use the space to say something meaningful about the property instead.

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## Final word

Obviously, this is a very simplified examination of the question of fair housing and MLS remarks. There are other words and expressions that could get you into trouble. The easiest way to avoid all these problems is to avoid describing the people. Just say what's good about the property.

The civil penalties for violating the fair housing laws can be very expensive; you don't want to be involved in litigation as a result of making poor choices about what language to use in your advertising and remarks. Following the guidelines above will help you prevent that.

` This article is not intended as legal advice. If you have a question about the legality of using any expression in your MLS remarks or advertising, contact your attorney. SoCalMLS does review MLS listings in order to prevent violations of fair housing laws. In the event SoCalMLS makes a change to one of your listings, your broker and Board/Association will be notified in writing by SoCalMLS.



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## With Liberty And Advertising For All

Does a phrase like "walk-in closet" in a real estate advertisement signal discrimination against a potential homebuyer who happens to be restricted to a wheelchair? Probably not, but until very recently the phrase likely would have drawn a blue pencil from newspaper publishers determined to avoid liability under federal and state fair housing laws. In January, Roberta Achtenberg, then assistant secretary for fair housing and equal opportunity at the U.S. Department of Housing and Urban Development (HUD), issued a memo on real estate advertising to the agency's enforcement officers. Two months later, the California Department of Fair Employment and Housing (DFEH), which is under contract to investigate complaints forwarded to it by HUD, announced that it will adopt Achtenberg's memo as a guideline for its own investigators.

Conformance between federal and state enforcement guidelines pleases publishers because it allows them to work primarily with just one set of rules. "The faster California can comply with the federal government in all changes, the better," says John Leonard, director of classified and national advertising at the Santa Barbara News-Press. "If it's all the same language all the same laws apply, that will make everybody's life a lot easier."

What makes publishers'-and real estate agents '-lives difficult is that federal and state restrictions on discrimination in real estate advertising have been painted with such a broad brush. Until the HUD memo came out, there wasn't even a basic list of words that could and couldn't be used safely. Publishers can be fined thousands of dollars for their mistakes and, if they guess wrong, they also can be sued-even by private parties.

Under conditions like these, publishers understandably become very cautious. "For a while, we had REALTORS laughing at us when we told them we couldn't say, 'room with a view,'" recalls Erin Coats, director of classified advertising for the San Diego Union Tribune. "If those [old] guidelines had stuck, you could have gone down to your local grocery store and highlighted tons of material that probably could have been construed as discriminatory against somebody."

Publishers themselves knew the paranoia over real estate ad copy had become extreme in some instances. "If someone is going to interpret 'near jogging trails' as offensive to handicapped people, that's reaching," says Ken Martz, publisher of Property Pages Magazine, a tabloid circulated on behalf of realty boards in San Jose and Southern Alameda County.

## **GOOD WORDS AND AD WORDS**

While the HUD memo isn't an official listing of acceptable and unacceptable words and it is by no means comprehensive, it does take publishers off the hook for some usage. Such terms as "fourth floor walk-up," "walk-in closet" and "walk to bus stop" are phrases they now can allow without drawing the attention of an enforcement officer. Such salutations as "Merry Christmas" and "Happy Easter," which previously might have been interpreted as showing a religious preference, also are permissible, according to HUD's new guidelines.

Further, the memo reinforced many existing restrictions. Describing potential property purchasers or rental tenants by race, color or national origin clearly is an infraction, as in an expression of a religious preference (e.g., "Christian home"). Generally, preferences based on sex are banned, although it is acceptable to say "master bedroom" or "bachelor apartment." While it remains illegal for an advertisement to state a preference based on family status (e.g., a ban on children or a preference for couples or singles), it is acceptable to use such terms as "family room" or "no bicycles allowed."

Another important clarification is that the HUD memo reaffirmed and made explicit HUD's guideline that ads should be interpreted through the eyes of "an ordinary reader." That means if ordinary reader would not find a usage discriminatory, it would not result in a prosecution. One caveat: The context always must be considered along with the individual words used. The memo also explicitly relieves publishers of responsibility for misinformation brought to them by advertisers in some situations.

While the HUD memo gives publishers breathing room in accepting ad copy, it doesn't absolve them of their need to scrutinize ads for discriminatory phrasing. "The HUD clarification only covers a small spectrum," says Renee Nash, an attorney for the California Newspaper Publishers Association (CNPA). "The HUD memo was a great help to make the law make sense. Unfortunately, there are still some issues that remain unclear," she states. One question concerns what advertisers can say about nearby schools without violating familial status protections. According to Nash, the DFEH recently advised that an ad describing a property as being near an elementary or secondary school for gifted children would violate familial status protections.

Donna M. Campbell, deputy director of the DFEH, notes that while federal law includes regulations. "There are no regulations that modify or interpret the broad letter of the law," she says. "I don't mean to say this is a small problem, but we do not have, to my knowledge, any complaints filed against any newspaper publisher." Moreover, the DFEH is inundated with other kinds of discrimination complaints, Campbell adds.

## **THE TROUBLE WITH WORD LISTS**

One reason why there are so many restrictions as to what can be printed in an ad is that publishers have tried to create safety zones for themselves by assembling word lists. Many papers still use such lists, but savvy publishers know those compilations aren't the

whole answer to creating acceptable ads. In fact, lists can create as many problems as they solve. "Lists are unhelpful and potentially dangerous says the CNPA's Nash. "It's impossible to say whether a word will be legal. If you rely on lists, you may think you're safe, when really you're really not."

To help publishers, the CNPA publishes a training manual for ad reviewers that contain words that might be red flags; however, the cardinal rule may be the recommendation in the manual that states: "Limit the advertisement to a physical description of the property itself." If there is one guideline publishers have adopted, this "describe the place, not the people" rule is it. Yet physical landmarks aren't always safe. For instance, even if an area has been designated officially as "Chinatown," including that description in an ad could be viewed as an implied preference on the basis of race, according to the CNPA.

## GETTING THE WORDS OUT

Publishers work hand-in-glove with advertisers to achieve a dual protection because individuals placing ads can be held liable for discriminatory content along with the publishers. "Real estate agents and brokers need to understand that when newspapers say no, they're saying no because both the broker and the agent could be sued. We're in this together. It's not an us-versus-them situation."

Indeed, Nash spends a lot of time conducting seminars for newspaper staff and real estate advertisers. In some areas, publishers, real estate professionals and fair housing advocates have formed task forces to cooperate in making sure advertising is both fair and legal. At the Orange County Register in Santa Ana, the HUD memo helped occasion a complete review of real estate ad policy, according to Denise Davidson, real estate ad manager. " We are going to relook at everything and have our lawyer relook at it," she says. " It's involved, so it's going to be a couple of months before we have any changes or no changes."

The Register also has joined other Southern California newspapers on a task force to review and discuss real estate advertising. Real estate agents, builders, ad agency representatives and staff from HUD's Los Angeles office are part of the task force too. One of the other participating newspapers is The Los Angeles Times. As part of its contribution to the task force and the fair housing effort, the Times is producing a video about the benefits of nondiscriminatory practices in real estate advertising, according to Neal Zimmerman, the Times' real estate advertising manager. " Any responsible publisher cannot ignore the responsibility to help support the fair housing guidelines. We undertook producing this video to help real estate professionals get a better sense of how ad copy is perceived and how it can benefit them throughout the marketplace," he says. Zimmerman adds the Times' advertising representatives will be able to share the video with real estate clients as soon as it is completed.

## FAIR ADS, FAIR HOUSING

Although real estate professionals are equally liable along with publishers for discriminatory ad copy, the fact that publishers are the last to see an ad before it's printed and first on the line of fire if it's not acceptable has placed a greater burden on their shoulders to be sure ads are in compliance. Real estate practitioners have been only too happy to let publishers bear this burden. For one thing, newspaper ad departments, rather than real estate agents, generally rewrite problematic ads. "A lot of real estate agents aren't even aware of the guidelines," says Cindy Shannon, production manager at San Jose's Property Pages, where MLS listings are downloaded and rewritten by the publication's staff. "We've been following the fair housing guidelines for years, and we haven't had one REALTOR complain about rewriting," she says.

Many advertising departments have tried to seize upon the positive aspects of fair housing laws to make compliance less burdensome. Most agree the laws not only have curtailed discriminatory ad practices, but also have made society as a whole more sensitive to the needs of individuals in the protected classes. "The intent of the law is good," says Bob Balzer, advertising director for the San Bernardino County Sun. "The interpretation of the law has sometimes been in the way of what it's trying to accomplish. In 25 years, I've never had a call from a prospective buyer over anything that has to do with real estate, but some people don't use common sense. That's why fair housing [regulations] had to happen.

Laura Pearre, classified account manager at the Modesto Bee, has used the fair housing regulations to help convince REALTORS they need to be more creative in writing ads. "Agents are in a hurry and must write ads on deadline, so they don't take the time to make each property appeal to the widest group possible," she believes. To respect the diversity of most California markets, Pearre recommends using the word "you" in advertisements, as in: "This Is Your Dream House." She also tries to follow the property-not-people rule. "That way, you get past the legal issues and still make marketing sense. The real crime is that people write ads without thinking about how to communicate. My job is to help make an effective ad that's going to get phone calls that get results," she notes.

Thomas F. Honore' is director of the fair housing division of HUD's office in Los Angeles, a 26-year veteran of working to end housing discrimination and a member of the Los Angeles area task force on advertising. Honore' thinks enforcement of the advertising laws has helped fight discrimination and has made advertisers who might have discriminated in the past much more careful. But the battle is far from won, he adds. "The only way you can really know the effectiveness of a law like this, where

people can violate it in subtle and sophisticated ways, is to have audits and tests to see if discrimination has started to abate." Honore' suggests that most publishers and real estate practitioners, once they understand the scope of discrimination, honestly want to exert pressure against it. "This is not about being politically correct," he says. "This is about whether an ad indicates equal opportunity or states a preference based on an accidental characteristic that the potential renter or buyer can do nothing about," Honore's

suggests the real estate industry can write a positive advertisement for itself, when it comes to ending discrimination. He says, " This is a chance to challenge people to go beyond making money and to make the good society."

## Words And Phrases That Ad Up

Not sure which words and phrases you can use in property advertisements? Some of that uncertainty is ended, thanks to clarification from the U.S. Department of Housing and Urban Development (HUD) and the California Department of Fair Employment and Housing (DFEH).

The general prohibitions on advertising are clear. The federal Fair Housing Act prohibits the making, printing and publishing of advertisements stating a preference, limitation or discrimination on the basis of race, color, religion, sex, handicap, national origin and familial status. What has caused so much confusion are such descriptions as "great view," "master bed-room," "nonsmoking" and "walk to bus stop". Are these terms acceptable? Or would they catch the attention of enforcement officers? The chart below clarifies HUD's policy on some commonly used words and phrases.

REAL ESTATE ADVERTISEMENTS	ACCEPTABLE	VIOLATION
<b>RACE, COLOR, NATIONAL ORIGIN</b> *****	*****	*****
Discriminatory preference or limitation on the basis of race, color or national origin. Use of words describing the housing, or current or potential residents, or the neighbors or neighborhood in racial or ethnic terms (e.g., "white family home," "no Irish").		XXX
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Facially neutral ads. Ads containing such phrases as "master bedroom," "rare find" or "desirable neighborhood."	XXX	
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<b>RELIGION</b> *****	*****	*****
Explicit preference, limitation or discrimination on the basis of religion (e.g., "no Jews," "Christian home.")		XXX
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Legal name of an entity which uses a religious reference (e.g., "Roselawn Catholic Home") or a religious symbol (e.g., a cross) standing alone.		XXX
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Legal name of an entity which use a religious reference (e.g., "Roselawn Catholic Home") or a religious symbol (e.g., a cross) and also 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."	XXX	
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Descriptions of properties (e.g., "apartment complex with chapel") or services (e.g., "kosher meals available")	XXX	
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REAL ESTATE ADVERTISEMENTS (cont.) | ACCEPTABLE | VIOLATION

Secularized terms or symbols relating to religious holidays such as Santa Claus, Easter Bunny or St. Valentine's Day images or such phrases as "Morry Christmas," "Happy Easter" or the like. | XXX |

SEX | \*\*\*\*\* | \*\*\*\*\*

Explicit preference, limitations or discrimination based on sex in ads for single-family dwellings or separate units in a multifamily dwelling. | | XXX

The term "master bedroom." | XXX |

Such terms as "mother-in-law suite" and "bachelor apartment." | XXX |

HANDICAP | \*\*\*\*\* | \*\*\*\*\*

Explicit exclusions, limitations or other indications of discrimination based on handicap (e.g., "no wheelchairs"). | | XXX

Descriptions of properties (e.g., "great view," "fourth floor walk-up," "walk-in closets"), services or facilities (e.g., "jogging trails," or neighborhoods (e.g., "walk to bus stop"). | XXX |

Descriptions of conduct required of residents (e.g., "non smoking," "sober"). | XXX |

Descriptions of accessibility features (e.g., "wheelchair ramp"). | XXX |

FAMILIAL STATUS | \*\*\*\*\* | \*\*\*\*\*

Explicit preference, limitation or discrimination based on familial status. | | XXX

Limitations on the number or ages of children or ads stating a preference for adults, couples or singles. | | XXX

Descriptions of property (e.g., "two bedroom," "cozy," "family room") or services and facilities (e.g., "no bicycles allowed") or neighborhoods (e.g., "quiet streets"). | XXX |

HUD's memorandum of January 9, 1995, 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. Note that California law is broader in it's coverage; be aware that California real estate advertisers are prohibited from any statement or preference or limitation based on marital status or sexual orientation.

FAIR HOUSING ADVERTISING WORD AND PHRASE LIST

(This Word List taken from the Oregon Newspaper Publishers Associations 1995)

DO NOT USE:

Active	"Handicapped, not for"	"Person(s), (number of)"
Able-bodied	Handyman's dream	Physically fit only
Adult Living	Healthy only	"Play area, no"
Adult Community	Hispanic	Polish
Adults Only	"Impaired, no"	Private
African	Indian	Puerto Rican
Agile	Irish	Quiet tenant(s)
"Alcoholics, no"	Integrated	Responsible
Asian	Jewish	Restricted
Bachelor	"Landlord, (description of)"	Retired
Bachelor pad	Latino	"Retarded, no"
Black(s)	"Lesbian(s), no"	Retiree(s)
"Blind, no"	Male(s) only	"Seasonal workers, no"
Board approval required	Male roommate	"Section 8, no"
Catholic	"Man, men only"	Secure
Caucasian	Married	Senior(s)
Chicano	Mature	Senior (citizen(s))
"Child(ren), (number of)"	Mature Couple	Senior housing (sex or gender)
Chinese	Mature Individual	Shrine
"Children, no"	Mature Person(s)	"Single woman, man"
Close to	Membership approval required	Singles only
"Country club, near"	"Mentally handicapped, no"	Single person
Colored	"Mentally ill, no"	"Smoker(s), no"
Couple	Mexican-American (nationality)	"Social Security Insurance (SSI), no"
Couples only	Mormon Temple	Sophisticated
"Crippled, no"	Mosque	Stable
"Deaf, no"	Nanny's room	Straight only
"Drinker(s), no"	Near	Student(s)
"Employed, must be"	Newly-weds	"Students, no"
Empty nesters (ethnic references)	Non-drinkers	Synagogue
Female(s) only	Non-smokers	Temple
Female roommate	Older person(s)	"Tenant(s), (description of)"
Fisherman's retreat	One child	Two people
"Gay(s), no" (gender)	One person	"Unemployed, no"
Gentleman's farm	Oriental	"White, white only"
Grandma's house	"Park rules, must comply with"	"Woman, women only"
Golden agers only		

**ACCEPTABLE :**

"Bedrooms, (number of)"	Luxury townhouse (neighborhood name)	Quiet neighborhood (school district) (school name)
"Bus, near"	Nice	Secluded
"Church(es), near"	Nursing home	Security provided
Credit check required	Play area	Senior discount
Den	Privacy	"Sleeping area(s), (number of)"
Desirable neighborhood	Private driveway	"Smoking, no" (square feet)
Domestic quarters	Private entrance	Townhouse
"Drinking, no"	Private property	Traditional style
"Drugs, no"	Private setting	Tranquil setting
"Drug users, no"	"Public transportation, near"	Verifiable income
Equal Housing Opportunity	Quality construction	View of
Family room	Quality neighborhood	"View, with"
Fixer-upper	Quiet	
"Golf course, near"	Quiet neighborhood	
Hobby farm	Quiet	



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