

Fair Housing Law and Advertising

Hello Michigan Realtors® and welcome back to Letter of the Law, a monthly video series designed to provide a primer on various legal issues impacting your industry. I'm Brian Westrin and I am pleased to be here with you as we celebrate Fair Housing Month this April and place additional focus on some of the emerging trends and considerations for Brokerages as they work toward fair housing compliance. Today's legal primer will be on the topic of "Fair Housing Law and Advertising."

As Realtors® are well aware, Fair Housing law prohibits advertising that indicates a preference for or against buyers or renters who belong to a protected class. By way of quick overview, those "protected classes", are 1) race, 2) color, 3) national origin, 4) sex, 5) handicap, 6) religion, and 7) familial status. Some states have enacted statutes that protect additional classes of individuals who are not included in the Fair Housing Act protections. Michigan enacted the Elliott-Larsen Civil Rights Act in 1976 to include "age" and "marital status" to the group of protected classes. The act was later amended to add protection for classifications of "weight" and "height".

As of today, the state of Michigan has not added "sexual orientation" to its list of protected classes, but other states and local Michigan municipalities have enacted statutes that do so. Further, the National Association of Realtors® has included both "sexual orientation" and "gender identity" in the Realtor® Code of Ethics, affirming that the right to rent or purchase should not be limited because of sexual orientation or gender identity.

Balancing Creativity and Content

When it comes to balancing creativity in advertising with mindful fair housing compliance, it is not always as simple as common sense to determine whether or not an advertisement is discriminatory. With advertising, it is essential to understand the relationship between content (meaning the use of words and phrases), context (meaning the manner in which they appear and to whom), and perception (meaning the way in which the content is viewed by the public). A continual monitoring and education platform aimed at advertising best practices is important for all brokerages. The goal should be to keep up with enforcement and

compliance trends - and to train Realtors® within a firm to look at advertising from a nuanced and analytical perspective - by looking at the words in their full context and how they might be perceived. From a risk management perspective, it's a matter of slowing down the process and engaging in a meaningful review.

Context & Perception

It is well understood that expressly discriminatory words will create trouble for Realtors®. However, Realtors® also need to understand the connection between context and perception. The discriminatory nature of an advertisement can be imbedded (even inferred) through subtle code words. Take for example the terms, "Exclusive neighborhood" or "traditional neighborhood". The words, on their face, are not discriminatory. Looking at the surrounding context, what about discriminatory impact? If those words were in an advertisement featuring all white physical models, would they lead the reader to believe that they were excluded in any way? Could the language or visuals be considered targeted at protected classifications, regardless of intent? With further testing and study, could a fair housing advocate determine that the advertising may well indicate a preference? Realtors® should work toward viewing the advertisement creation process through this prism. Placing Content and Context on similar footing is an absolute best practice.

Social Media

An area of growing concern for brokers and agents alike is the use of social media for marketing. Realtors® are in a very unique position today with the many ways they can market property and real estate services. The casualness of social media, however, opens the door for less review when developing advertising. It also raises the issue of ensuring that a licensee clearly and appropriately identifies the employing broker and presents the minimum required information under the occupational code in each posting. Further, it is in real time, immediate, and virtually impossible to undo.

The posting of an advertisement is often accompanied by comments, shares, and other forms of expression. Bear in mind that there is a very thin line between your personal page and your business page in the social media realm. Many Realtors® double-up their efforts on both

pages, and don't always take great care to satisfy the minimum advertising standards identifying the broker and the phone number or address. This is one area of concern. The other is security. Controlling the use of social media is a very important consideration for a brokerage. Allowing other people to comment on your postings without some kind of security measure or policy is a dangerous proposition.

One can easily see the potential for fair housing concerns and unfiltered editorial by reviewing a thread that starts with promotion of a listing and generates various comments and replies about that property. Up until now, social media is an area where advertising and publishing attribution for fair housing purposes have not been heavily scrutinized. However, it is a quickly growing medium for real estate advertising. Policing your own advertisements in the world of social media is arguably even more important than in more traditional mediums due to the rapid transfer of the information and the unbridled scope of an audience. The National Association of Realtors® has developed guidelines for social media policy development – available on its website. While every brokerage is different, it may be a critical resource for planning for the present and future of online marketing.

Seller Narratives

Another critical advertising concern for real estate licensees is an emerging trend whereby sellers and buyers insist on contributing to the advertising process. Meaning, the seller is interested in writing a seller's narrative on why the property is special for prospective buyers and the prospective buyer insists on submitting a letter to the seller on why that buyer is the perfect buyer of that property. The baseline problem for both approaches is that they automatically make assumptions based on individual experience.

A seller narrative might sound something like, "The property is the perfect traditional family home, so close to the Catholic Church where all our children were baptized, perfect for morning jogging and hiking up to the highest point in town where the view is fantastic". This advertisement may seem well-intended, but it puts a direct focus on the occupant of property – both present and future. This is a BAD idea for a seller from a legal and business perspective. The practice may well get you into Fair Housing trouble because you're starting to describe what would be perceived as the ideal occupant of the property, not the property itself. Further, the

seller is shrinking the pool of perspective motivated buyers with their own marketing efforts. From a liability standpoint, it is best to avoid seller narratives. Be very frank with your clients on the fair housing concerns that come with additional and unchecked marketing efforts.

Buyer Letters

You should also be cautious in using buyer letters. These are personal letters from the buyer that accompany an offer in an attempt to appeal to the seller on a human level. These have admirable intentions but potentially awkward ramifications. They put the seller in a precarious position because, through the letter, the seller could potentially learn information about a buyer relative to a protected classification. Entertaining a Buyer's Letter and then turning down that buyer's offer could raise the question, was the offer rejected because it was a bad offer or was it something else? It's a sticky situation that could lead to the unintended consequences of a fair housing violation, which is why it's probably best to avoid using buyer letters and circumvent the situation altogether. If you're explaining yourself, or the rationale behind a seller's decision, you're probably not in an enviable situation.

Thank you for tuning in and watching this legal video primer. We hope that you take the time to reach out to your local fair housing center to discuss training and further educational opportunities. Also, stay tuned to Michigan Realtors® this month for On Demand Continuing Education opportunities focused on Fair Housing Compliance. As always, If you have questions or would like to suggest topics for future videos, please send suggestions to the email below. Springtime is here, the housing market is coming alive, and it's Baseball Season. We wish you much success. Thanks for watching and see you next time.