



COLORADO REAL ESTATE JOURNAL

THE COMMUNICATION CHANNEL OF THE COMMERCIAL REAL ESTATE COMMUNITY

NOVEMBER 6, 2013 – NOVEMBER 19, 2013

Senior Housing For Sale? Advertising Don'ts

It's been said again and again: The aging of the Baby Boomers will create a Silver Tsunami. The U.S. Department of Health and Human Services' Administration on Aging projects that Colorado's "over 85" population will grow by more than 50 percent from 2015 to 2030. That growth should fuel an unprecedented demand for senior housing. In turn, many will aim to satisfy that demand by developing and operating new senior housing communities. Most likely, advertising will be utilized to announce these new communities and, in that regard, developers should take care to remain in compliance with the Fair Housing Act's regulations.

The Fair Housing Act, codified at 42 U.S.C. 3600, et seq., was enacted as Title VIII of the Civil Rights Act of 1968. The Act prohibits discrimination in the sale and rental of housing based on race, color, religion, sex, handicap, familial status or national origin. While Section 807(b) of the Act exempts senior housing from the prohibitions regarding familial status, senior housing is subject to the Act with respect to the other six types of discrimination.

Section 804(c) of the Act makes it illegal to print or publish any advertisement for the sale or rental of housing that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin. The use of the word "indicates" is very important. It means that the potential perception of the



Kevin Kelley

Partner, Husch Blackwell LLP,
Denver

reader or listener, rather than the intent of the advertiser, determines if an advertisement violates the Act. As such, it is important ensure that advertisements do not indicate any such illegal preference, limitation or discrimination.

The U.S. Department of Housing and Urban Development enforces the Act. HUD has adopted regulations to assist in the creation of advertisements that comply with the Act. While there is always some gray area in the law (if there weren't, there would be no need for lawyers), HUD's regulations provide some pretty clear guidance on certain things to avoid in advertising. Those are:

1. Words that can indicate a discriminatory preference, limitation or exclusion based on race, color, religion, sex, handicap or national origin. For example, describing a community as

"Hispanic," "Catholic" or "for women" can be interpreted to imply that applicants are granted or denied admission on the basis of race, national origin, religion or sex. Given the purpose of the Act, the need to avoid these types of words is fairly evident but there are other words that should be avoided that are not so evident. For example, referring to a community as a community for "active adults" can be interpreted to imply the exclusion of handicapped individuals. So it is better to describe the facilities, activities and services that a community offers, such as a fitness room, yoga classes and tennis lessons.

2. Symbols that can suggest discrimination, such as a Cross or a Star of David.

3. Directions or area descriptions that can imply discrimination. For example, directions or area descriptions that reference a nearby facility that caters to one race, such as an African-American cultural center can be construed as advertisement favorable to African-Americans. Similarly, directions or area descriptions that tie to a particular synagogue or chapel can indicate a religious preference.

4. Images that can imply discrimination. For example, an advertisement in which all individuals are white can indicate discrimination against people of color. Similarly, an advertisement in which all individuals are able-bodied can indicate discrimination against the handicapped. It is best to use a mix of models or actors in advertisements that reflect the diversity of the community's neighborhood.

5. Selective Advertising

or selective placement of ads. For example, advertising a new community exclusively in Jewish publications can imply discrimination against individuals of other religions. Delivering direct mail brochures only to neighborhoods with a predominately white population can imply discrimination against people of color. Advertising only on Hispanic television stations can indicate an illegal preference on the basis of national origin.

HUD's regulations also provide that the implementation of certain practices and policies will be considered as evidence of compliance with the Act's prohibitions against discrimination. In that regard, all advertising should contain an equal housing opportunity logo or slogan to inform prospective tenants that the advertised community is available to all persons regardless of race, color, religion, sex, handicap or national origin. In some instances, the use of the equal housing logo or slogan can overcome the use of a word, symbol, description or image that might otherwise be considered discriminatory.

While the foregoing is by no means an exhaustive explanation of the Act's application to senior housing advertising, it should provide a general lay of the land regarding the primary issues to consider when creating an advertising campaign or media placement schedule. Attorneys that specialize in the housing industry can also provide more detailed guidance.