

Is Your Social Media in Compliance with Federal Fair Housing Law?

The Federal Fair Housing Act (the "Act") prohibits racial discrimination in the sale or rental of dwellings, including independent living and assisted living communities. The law prohibits discriminatory notices, statements, and advertising. A number of court decisions have held that a plaintiff need not show actual intent to discriminate to prevail in a claim for discrimination. Rather, successful claims have been brought simply by showing that the selective use of one racial or national origin segment of the population in advertising has the effect of discouraging prospective minority residents from applying for admission and thus violates the Act. The United States Department of Housing and Urban Development (HUD) guidelines also indicate that such selective use indicates preference for that particular group in violation of the law.

In advertising, the Act prohibits the use of words, phrases, symbols, or visual aids to convey discriminatory preferences. For example, a provider may not use words or symbols that suggest the community is limited to a certain race, color, religion, sex, handicap, familial status, or national origin. In addition, a provider may not selectively use human models of one race or national origin without complementary advertising that is directed at other groups. For instance, a provider would violate the Act if it includes only Caucasian models in its photographs on its website.

These advertising regulations apply across all advertising vehicles, from traditional print materials to Facebook, webpages, and other social media platforms. The fact that social media platforms may contain photographs of actual residents is not a defense. If a Facebook page or webpage shows a selection of only one race of residents, even if the photos are of pictures of actual residents in the community, the effect of such advertising can be the same as an intentionally discriminatory publication. As such, it would be a violation of the Act. Moreover, the fact that all of your residents may be the same race may tend to prove that the alleged policy of discrimination exists and has been effective.

To avoid allegations of racial discrimination, all of your marketing materials, including photos of actual residents, should reflect the racial diversity of the metropolitan area (not the particular town) in which you are located. Government enforcement agencies will review your advertising materials as a whole rather than focus on

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one particular picture. However, the inclusion of racially diverse employees in your marketing materials will not help in defending an allegation of racial discrimination in violation of the Act. In fact, if employees of a different race are depicted in subservient positions, their inclusion may actually hurt, rather than help, your cause.

We are aware of lawsuits that have been brought against assisted living or continuing care retirement communities located in the metropolitan areas of Los Angeles, Dallas, New Orleans, New York City, Washington, D.C. and Boston. In most of these situations, the lawsuit was filed by a nonprofit, fair housing advocacy group. In each case, the lawsuits were brought based solely upon brochures or published advertisements that depicted only Caucasian residents. In one case, the community in question was careful to include actual minority residents in the photographs in its brochures and advertisements, but failed to check its website. While most of these cases have involved print advertisements and brochures, we expect they will extend to social media platforms as well. Some advertising discrimination claims have led to significant judgments or settlements against assisted living and other seniors communities, including a 1997 settlement with a Michigan retirement community for \$569,000.

Providers should take some common-sense steps to reduce the risks of a claim of advertising discrimination, such as:

- Ensure that the residents posted on social media and on your website reasonably reflect the racial diversity of the surrounding metropolitan area;
- Regularly review your social media page to ensure the content as a whole represents the surrounding metropolitan area;
- Include the Equal Housing Opportunity slogan, logo or statement in all posts and on the website; and
- Take affirmative steps to place advertising in minority-oriented media.

For more information, please contact:

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