



EQUAL HOUSING
OPPORTUNITY

Fair Housing Guidelines

**Pennsylvania Human Relations Commission
Pennsylvania Association of REALTORS®**

*This information has been brought to you by the
Equal Opportunity and Cultural Diversity Committee
of the
Pennsylvania Association of REALTORS®.*

Pennsylvania Association of REALTORS®
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NOTICE

The Pennsylvania Human Relations Act has been amended to include, as protected classes, familial status and age (persons 40 years of age or older). It also conforms with the federal law to provide that handicapped persons may, at their expense, make reasonable modifications of existing premises that may be necessary to afford full enjoyment of the property. Protection for families with children is intended to assure families, including one or more persons under the age of 18, access to real property except housing which qualifies under exemptions for property intended for older persons. The Pennsylvania Human Relations Act intends to preserve the right to freedom from discrimination in *public accommodations, housing accommodations, places of employment and commercial property.*

RESOLUTION

The Equal Opportunity and Cultural Diversity Committee of the Pennsylvania Association of REALTORS®, in conjunction with the Pennsylvania Human Relations Commission, has reviewed and approved sales guidelines, rental guidelines and advertising/marketing guidelines. These guidelines are designed to establish uniform procedures to assist in reducing the potential for discrimination.

THEREFORE, BE IT RESOLVED that these guidelines are approved by the Board of Directors of the Pennsylvania Association of REALTORS® for use in whole or in part by its individual members as they, in the operation of their offices, endeavor to comply with the various local, state and federal laws dealing with "Discriminatory Practices in Housing."

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Pennsylvania Association of REALTORS®

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ASSISTANCE

Whether you need assistance in developing general policies and procedures, providing training for your employees and agents, or guidance in a particular case, contact the Pennsylvania Human Relations Commission.

HEADQUARTERS OFFICE:

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SALES GUIDELINES FOR PROPERTIES

The right to purchase and sell real estate is a fundamental **RIGHT** of all persons and is **PROTECTED BY LAW**.

Fair Housing Laws merely **RESTATE** this fundamental right and prohibit discrimination explicitly against those groups which have traditionally been denied this right because of:

RACE
SEX
ANCESTRY
COLOR
RELIGION
NATIONAL ORIGIN
AGE
FAMILIAL STATUS
HANDICAP OR DISABILITY
USE OF A GUIDE ANIMAL DUE TO BLINDNESS/
DEAFNESS
HANDLING OR TRAINING OF SUPPORT OR
GUIDE ANIMALS**

REALTORS® have a special commitment to maintaining a free enterprise market open to all.

**Consult local ordinances for any additional groups which may be covered.

LISTINGS

Fair Housing concerns begin where the sales process begins: the listing process and agreement. Salespeople are sometimes confronted even before securing a listing with a seller who expects the firm to conspire with his/her intention to avoid selling to persons in the protected classes. Salespersons and brokers must be well prepared to handle these situations, and may, by following the recommendations in Appendix A, avoid any appearance of explicit or implicit willingness to honor the seller's discriminatory conditions, secure the listing without the illegal condition, and save another property in an open, free real estate market.

Once a listing agreement has been secured, the seller must by law receive a copy of the Notice as set forth in 16 Pa. Code 43.14: "Responsibilities of Owner of Real Property Under the Pennsylvania Human Relations Act." Many organizations have developed standard listing agreements with this notice pre-printed on the back. Firms not having access to such forms are encouraged to develop their own.

The content of this Notice should be reviewed with the seller at the time of the listing. This provides an opportunity for the salesperson to explain the law, note his/her firm's compliance with the law, and eliminate beforehand misunderstandings which might arise should the seller be presented with an offer from a person in the protected classes.

A seller may change the terms and conditions of sale as time goes on. It is essential that the listing broker have a clear, accurate and complete record of the initial terms and conditions and any changes in the terms and conditions made by the seller. Confirming letters to sellers are also desirable when changes occur. Such documentation prevents miscommunications with the public and also creates documentation for the agent should he/she become involved in a discrimination complaint or suit regarding the terms and conditions of sale.

AVAILABILITY

To assure that the public reviews consistent information regarding the availability of properties held for sale and from any and only authorized persons working in the same firm, each firm should develop written procedures governing how such information will be given to the public.

One recommended procedure utilizes an **INVENTORY RECORD**. This is a single, unified listing of all properties held for sale, whether on an exclusive basis, in cooperation with one or more brokers, or otherwise. It should then be maintained on a current basis and be accessible to all duly licensed employees who are authorized to disseminate information regarding listings. The record is controlled by two basic rules: only information on the record may be given to the public, and all information on the record regarding properties for which the prospect would qualify and which meet the explicitly stated requirements of the prospect must be disclosed.

In addition, a firm needs to develop written rules regarding the following:

- 1) Under what conditions a property is placed on or removed from the record.
- 2) Who is authorized to update the record and when this shall be done.
- 3) Explicitly, who may and who may not give information to the public.
- 4) How persons not authorized to give information should handle inquiries from the public.
- 5) What information should and should not be given over the telephone, if this differs from that to be given in person.
- 6) How properties will be handled for which qualified offers are pending the seller's acceptance or rejection.
- 7) What disciplinary act will be taken against those violating any of these rules or policies.

The Inventory Record should be **COMPLETE, ACCURATE, CURRENT, CONSPICUOUS, and ACCESSIBLE**. It should contain comprehensive data relating to each property and proposed sale. Properties whose availability for sale is known from sources such as listings of other brokers or multiple listing systems should be made available.

Information supplied to prospective buyers concerning the location, nature, condition, price, etc. of each property, as well as data regarding settlement costs and financing terms, should be consistent, accurate and specific.

QUALIFYING PROSPECTIVE BUYERS

Qualifying prospective buyers before discussing specific properties is highly recommended, but particularly so when using the Inventory Record information control system. By allowing the prospect to narrow his/her field of interest and objectively assessing his/her price range, all parties are served well.

In the process of qualifying prospective buyers, the following recommendations are made:

- 1) Offices should have a standard policy governing how prospective buyers are treated whether they inquire in person or over the telephone. This includes questions of courtesy, initial information given, explanations of the firm's policies and procedures, returning telephone calls, following through on promises, etc.

The issue is not absolute uniformity, but uniformity of and promptness in service and information, coupled with courtesy and the absence of reluctant service or the appearance of less than favorable treatment.

- 2) Prospects should be interviewed in a uniform manner. A standard form is helpful in assuring this, but similar questions should be asked of all prospects regarding the type of real estate sought, the features desired, the locational preferences, their financial profile, etc.
- 3) Assumptions should never be made about any prospect's preferences or financial ability.
- 4) All financial questions should be asked of each spouse or co-buyer, and any single prospect regardless of sex.
- 5) Every prospect should be given equal assistance and advice toward maximizing the limit of what they can reasonably and responsibly afford.
- 6) Determine the price range of a prospect objectively after providing such assistance.
- 7) Do not probe more deeply or imply disbelief in financial information because the prospect is a person in a particular protected class.
- 8) Never focus or attempt to focus the attention of a prospect on certain communities or neighborhoods before the prospect clearly indicates such a limitation.

SHOWING PROPERTIES

After qualifying a prospect:

- 1) All properties meeting the OBJECTIVES and FINANCIAL ABILITY of the prospect should be disclosed and discussed.
- 2) Keep all discussions objective and factual. Do not exaggerate or emphasize positive or negative features of properties located in neighborhoods you believe are compatible or hostile to the prospect's race, religion, etc. REMEMBER: STEERING NON-MINORITIES IS AS DANGEROUS AS STEERING MINORITIES.
- 3) Do not discourage or attempt to discourage the purchase of property by representing that it is located in an interracial or integrated area, or may in the future be so integrated.
- 4) Never misrepresent, invent, distort or exaggerate conditions, circumstances or incidents which even implicitly relate to the presence of one or another racial or ethnic group in a neighborhood.
- 5) Do not volunteer information about the racial, ethnic, etc. composition of a neighborhood or its schools. Advise prospects of the following: "Please do not ask, or expect to be shown homes according to the racial, religious or ethnic characteristics of the neighborhood in which the homes are located. *Company policy*, as well as *Federal Law*, prohibits us from placing any such restrictions on showings or information about the availability of homes for sale or rent."
- 6) Allow the prospect to decide which properties he/she wishes to see and show them in an order decided by the prospect, or at least in an order which does not have the effect of steering the prospect to racially, etc. compatible areas first.
- 7) Do not refer prospects in the protected classes to listing information or suggest they drive by the properties selected rather than showing the properties unless this is your firm's standard procedure for all prospects.

- 8) Do not engage in a negative salespersonship and honesty-to-a-fault while showing a property to a person in the protected classes unless you have indicated the same negative aspects of the property to all prospects. Likewise, positive features of each property shown should be pointed out to all prospective buyers.
- 9) Never give up on a prospect until they give up on you.
- 10) Maintain good records of what properties were shown, when and to whom as a defense against charges of steering.
- 11) Recognize when information is needed by a prospect and follow through promptly on this and all promises.
- 12) **MONITOR YOURSELF.** Compare your performance for servicing *all* buyers having similar qualifications by comparing:
 - a) The number of homes *disclosed* to each;
 - b) The number of homes *shown* to each;
 - c) The *location* of the homes disclosed and shown;
 - d) The *prices* of the homes disclosed and shown;
 - e) The amount of time which elapsed between initial contact and actual selling.

Note: Asking questions, gathering information, keeping records or using application forms containing information regarding the race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability is not permitted by the Pennsylvania Human Relations Act.

OPEN HOUSES

When showing one home to many prospects, uniform information, assistance and positive salespersonship should be given to all guests. The most common problems in this context are salespersons who neglect to provide follow-through information, give less attention to the use of a guest book and are not as diligent in discussing financing arrangements with persons in the protected classes as they are for other persons.

OFFERS

Once a prospect has found the property of their choice:

- 1) Never assume that the prospect knows the next step. Promptly explain the necessary steps and the need to act quickly.
- 2) Prevent misperceptions and misunderstandings from arising by explaining thoroughly and clearly the sales process. Prepare the buyers for possible rejection or other hurdles — and how these can be overcome. Explain why the "best offer" is not just price, but may involve the amount of the down payment, the proposed financing or settlement date, etc.
- 3) Discuss financing immediately including the types available, the best terms available, the assistance you and your firm can or cannot provide, and what types are likely to be attractive or unattractive to the seller and *why*. Explore all alternatives with the buyer.
- 4) Never suggest to a buyer in a protected class that they should offer top prices and terms (or better) if they really want the property because anything less would permit the seller to discriminate using the pretext that their offer was less than the seller desired. Nor should they be advised to make an unrealistically low offer the agent knows will likely be rejected.

- 5) Provide realistic, sound advice to buyers along with encouragement, but do not provide false hopes.
- 6) Promptly submit offers to the seller without comment about the race, etc. of the buyer. Nor should the seller be dissuaded from accepting the offer on any but objective, factual grounds related to the terms of the offer and the buyer's ability to perform on the contract.
- 7) If an offer is rejected, let the buyer know promptly and provide specific suggestions for preparing a successful counter offer. If another offer has been accepted, explain why and immediately attempt to interest the prospective buyers in other comparable homes.
- 8) Avoid verbal agreements, but where unavoidable, always document the seller's acceptance (including the date and time) in a confirming letter or telegram.

CAUGHT IN THE MIDDLE

Unfortunately, brokers and salespersons sometimes learn that another party involved in, or whose actions can affect the success of, a sale appears to be committing a violation of fair housing law. The innocent broker or salesperson may be perceived by the customer or client to be conspiring or cooperating with this other party who may be a seller, another broker or salesperson, lender, builder, appraiser, government official, etc.

To protect oneself from becoming a co-defendant, the following steps should be taken:

- 1) Attempt to prevent discrimination by suggesting an appropriate course of action consistent with the law.
- 2) Make clear to all parties that you strongly oppose any illegal discriminatory acts and make sure all your actions are consistent with that position.
- 3) Advise the persons involved that discrimination may have taken place and that they can seek the assistance of the Pennsylvania Human Relations Commission.
- 4) Consider filing your own complaint with the Pennsylvania Human Relations Commission if you consider yourself an aggrieved party.

INTIMIDATION AND HARASSMENT

Brokers, salespersons, and their clients and customers can be the targets of those attempting to prevent persons in the protected classes from moving into a neighborhood. There are federal and state laws providing for both criminal and civil sanctions against anyone who engages in intimidations, harassment, or violence against others exercising their fair housing rights, including brokers, salespeople and sellers. Contact should be made with the Pennsylvania Human Relations Commission, or if the situation poses an immediate threat to life or property, contact should be made with the Federal Bureau of Investigation and local or state police.

Brokers who attempt to advise property seekers of actual or potential problems associated with a neighborhood risk their remarks being misinterpreted. Such information could have the effect of steering or chilling a buyer's interest. Yet a buyer could blindly buy unwanted risks if information is withheld. If the buyer **initiates** the question, and the agent believes that a problem exists, the buyer should be referred to PHRC for factual information. If the buyer **does not initiate** the question, and the agent is

aware of past problems in the neighborhood, the agent should contact PHRC rather than alarming the buyer. Whether PHRC contacts a buyer depends on the circumstances of each case. In most cases, PHRC will organize police monitoring and other appropriate security.

TRAINING & MONITORING

Brokers should provide in-house training regarding the policies and procedures adopted by the firm and avail themselves and their agents to outside training opportunities whenever possible. Periodic reinforcement of the training should occur on a regular basis with continual emphasis placed on the importance to the firm of adherence to the policies and procedures. Records of all fair housing training sessions and participants should be maintained.

Because brokers are liable for the actions of their agents, it is imperative that they continually monitor the activities of their salespeople and take disciplinary action whenever appropriate.

GENERAL GUIDELINES

Many members of classes who have traditionally been victims of housing discrimination enter the real estate market with suspicion and distrust. Hence, throughout the sales process, the following general rules should be remembered:

- 1) Do not rely on your intentions or your commitment to fair housing principles. Monitor your own **ACTIONS** for their **APPEARANCE** and **EFFECTS**.
- 2) Inadvertent discrimination (de facto different treatment) can be prevented by adhering to **STANDARD POLICIES** and **PROCEDURES**.
- 3) Public perceptions of possible discrimination can be reduced by good communication, good service, good manners, and focusing on the customer's desires and needs.
- 4) Avoid any false representations: "White lies" can be perceived as white lies.
- 5) Never communicate racial, ethnic, etc. jokes or stereotypes — whether the intent is positive or negative.
- 6) Maintain and retain accurate records/notes on all key conversations, dealings and showings.

All records, documents or other data pertaining to the sale of housing should be retained for 120 days. However, such records should be retained for up to six (6) years for your own protection since Fair Housing suits may be filed up to six (6) years after an alleged incident of discrimination.

RENTAL PROCEDURES

AVAILABILITY

To assure that the public receives the same information regarding the availability of rental units, and from any and only authorized persons working in the same firm, each firm should develop written procedures governing how such information will be given to the public.

One recommended procedure utilizes a single, unified listing of all available rental property. It is intended that all properties be made available from the record without consideration for race,

religion, sex, or any other prohibited classification under the law. Only the information on the list may be given to the public.

In addition, a firm needs to develop written rules regarding the following:

- 1) Under what conditions a property is placed on or removed from the list.
- 2) Who is authorized to update the list and when this shall be done.
- 3) Explicitly, who may and who may not give rental information to the public.
- 4) How persons not authorized to give information should handle inquiries from the public.
- 5) What information should and should not be given over the telephone, if this differs from that to be given in person.
- 6) What disciplinary action will be taken against those violating any of these rules or policies.

TERMS AND CONDITIONS

Equally important is *accuracy, completeness* and *uniformity* in the information given about any specific unit on the unified list. Prospective tenants who are given incorrect or incomplete information about a unit, and are then told they must be rejected in light of the corrected or new information, often perceive such reasons for being denied a unit to be pretextual. Even if prospective tenants are not denied a unit, the resulting delays and frustration caused by miscommunication may result in complaints or suits being filed.

To avoid such problems, every broker and agent should for his/her own protection:

- 1) Develop a listing/management agreement which clearly and precisely defines the roles of the owner and the broker. It should specify what policies and decisions will be left to the broker's sole discretion, and which, if any, have been predetermined by the owner. By law, the agreement should be accompanied by a copy of the OFFICIAL NOTICE: Responsibilities of Owners of Real Property under the Pennsylvania Human Relations Act.
- 2) Discuss what policies and procedures the broker will be using with the owner even if the broker is given complete authority to select a tenant. This helps eliminate the problem of an owner raising objections or concerns about a tenant after the fact. Moreover, it needs to be perfectly clear in writing who has the authority to accept/reject applicants under what circumstances.
- 3) Discuss, in particular, what criteria will be used in the selection of a tenant. For example, whether the first qualified tenant will be accepted or the most qualified will be chosen from an applicant pool and what exclusions will be made (such as pets). Make sure that the owner has no undeclared assumptions about what is necessary for the acceptance, or sufficient for the rejection, of a prospective tenant.
- 4) Discuss with the owner when a unit will be available for occupancy, and whether there are any reasonably foreseeable factors which may alter this date; policies and procedures for showing the unit; whether anyone else has been or may be authorized to discuss, show or commit the unit; and whether the owner may be considering selling rather than renting.

- 5) Incorporate in the agreement any understandings between the owner and the broker which are unusual, special, or any requirements mandated by the owner. Have the owner sign and date the agreement.

Once the broker and owner believe they will be speaking with one voice about the rental of the unit (ACCURACY and COMPLETENESS of INFORMATION), the broker must assure that this information is given to the public in a UNIFORM manner.

Brokers should, therefore, consider the following procedures:

- 1) Prepare a listing sheet for each unit on the Master Registry which would include the usual information regarding the location, size, physical layout, desirable features, terms of rental, etc.
- 2) Clearly instruct *all* employees (whether secretarial, maintenance, etc.) whether or not they are authorized to provide information about housing opportunities to the public. This should include preparing or updating job descriptions to explicitly define the limits or scope of each employee's authority and by sending memos to all personnel (with periodic reminders) stating the policy.
- 3) Instruct employees authorized to give information to the public to provide all and only the information on the listing sheets when asked for information regarding rental units.
- 4) Instruct employees to give information regarding the rental application process in accordance with the written, general policies and procedures governing the office and give any special exceptions applying to a particular unit which should also be included on the listing sheet.
- 5) Instruct employees about what information should be given over the phone if this differs from that to be given in face-to-face meetings.
- 6) Closely monitor compliance with these instructions.
- 7) Document information in writing and discipline appropriately.

APPLICATION PROCESSING & TENANT SELECTION

A uniform application procedure should also be designed, placed in writing, and consistently used and monitored. Well defined procedures should include the following:

- 1) Under what circumstances applications are to be offered to prospective tenants.
- 2) Use of a uniform application form which asks no information regarding race, color, sex, natural origin, religion, handicap or disability, or use of a guide dog due to blindness or deafness of a user, age or familial status. Because some localities have the additional protected classes, local ordinances should be consulted.
- 3) Instructions to make no explicit or implicit adverse decisions about prospective tenants until their application has been completed and processed.
- 4) Instructions to employees to provide equal assistance and advice to applicants who are completing the applications.
- 5) Instructions to agents to review completed applications with applicants to assure completeness, accuracy, thoroughness, and sufficiency of the information given.

- 6) Verifiable, measurable criteria for selecting tenants such as current income (net or gross) and debts, credit history, past rental and employment history, future employment, etc.
- 7) Uniform application of the criteria to all applicants.
- 8) Instructions to use only information on the application, or information obtained as part of your verification procedures, in tenant selection procedures. If an issue such as criminal records is important enough to influence your selection process, it should be incorporated as a uniformly applied criteria.
- 9) Notice to rejected applicants giving the basis of their rejection.

RETENTION OF TENANT APPLICATIONS & MAINTENANCE OF WAITING LISTS

All rental applications should be retained for 120 days. Applications should, however, be retained for up to six (6) years for your own protection since Fair Housing suits may be filed up to six (6) years after an alleged incident of discrimination. Applications should always be dated and, if possible, time stamped.

If your business has a need for a "waiting list," all applications should be recorded on a waiting list which clearly indicates each applicant's position for which type, location, etc. of property being sought. Procedures should specify when, by whom, and how the waiting list should be updated. The waiting list should be made available for inspection by all rental applicants. The waiting list should show the manner and date of disposition of each application.

TRAINING & MONITORING

Persons authorized to provide housing information to the public should be trained in the application of the policies and procedures adopted by the firm. Periodic reinforcement of the training should occur on a regular basis with continual emphasis placed on the importance to the firm of adherence to the policies and procedures. Records of all fair housing training sessions and participants should be maintained.

ONE AMERICA PROGRAM

The National Association of REALTORS® diversity certification, "At Home with Diversity: One America" is granted to licensed real estate professionals who meet eligibility requirements and complete the NAR "At Home with Diversity" course. The course focuses on diversity awareness, building cross-cultural skills, and developing a diversity business plan.

The certification signals to customers that the real estate professional has been trained on working with diversity in today's real estate markets. Certification allows the real estate professional to display NAR's diversity marks and the HUD "One America" mark and logo. The coursework provides valuable business planning tools to assist real estate professionals in reaching out and marketing to today's diverse housing market.

ADVERTISING & MARKETING GUIDELINES FOR PROPERTIES

The following list of real estate advertising practices has been formulated to assist brokers in avoiding practices which might be considered illegal, unethical or of questionable motive. Adherence to these regulations will minimize a broker's risk of inadvertently violating various laws of ethical codes or encountering adverse public opinion, without diminishing any advertisement's effectiveness. Please refer to Appendix B for regulations relating to advertising promulgated by the Pennsylvania Human Relations Commission.

For the purpose of these guidelines, the term ADVERTISEMENT and related terms refer to any statement intended to solicit business from, or inform the public of, real estate opportunities — whether or not printed or howsoever published or circulated, and includes verbal statements.

- 1) No advertisement relating to the sale, lease, rental or acquisition of real estate should indicate any preference, limitation, specification or discrimination based upon the following PROTECTED CLASSES:
 - RACE
 - SEX
 - ANCESTRY
 - COLOR
 - RELIGION
 - NATIONAL ORIGIN
 - AGE
 - FAMILIAL STATUS
 - HANDICAP OR DISABILITY
 - USE OF A GUIDE ANIMAL DUE TO BLINDNESS/ DEAFNESS
 - HANDLING OR TRAINING OF SUPPORT OR GUIDE ANIMALS
- 2) No advertisement may imply, or be so worded or pictured that it could be construed to imply, any preference, exclusion or limitations based on the above protected classes. For example:
 - a) References to specific religious or ethnic institutions, buildings, landmarks, services, etc. located nearby.
 - b) Use of words or symbols (including colloquialisms) which suggest racial, religious, sexual or ethnic exclusion, or suggest the racial, religious, sexual or ethnic composition of a neighborhood or building.
 - c) Use of human models which consistently depict exclusively one race, sex, etc.
- 3) No marketing effort should have the effect of creating, abetting or attempting to exploit an atmosphere of panic selling including:
 - a) Initiating or increasing solicitation or other marketing activities in areas where there is a possible perception and that such solicitation has a racial connotation.
 - b) Inducing, soliciting, or attempting to list properties in neighborhoods where such activities could be construed as panic selling.
 - c) Steering persons in the protected classes to sensitive neighborhoods.
 - d) Advertising properties available in sensitive neighborhoods only in news media oriented to persons in the protected classes.

- 4) No advertising should misrepresent, by actual statement or innuendo, the availability, condition, terms of sale or rental, etc. of any advertised property. Specific practices to be avoided are:
 - a) Misrepresenting or otherwise mis-advertising within a neighborhood that any property within such neighborhood is available for sale or rent in any context where such misrepresentation would have the effect of fostering an impression that there has been or will be an increase in real estate activity within such neighborhood due to residence, or anticipated increased or decreased residence of protected class persons.
 - b) Advertising a property as being "For Sale or Rent" when only one form of transaction is actually available. Also advertising one type of transaction when only the other is available.
 - c) Advertising properties being handled under Lease-Purchase agreements as being "For Sale or for Rent." Lease-Purchases should be advertised as Lease-Purchases.
 - d) The use of any code, term, or phrase to indicate the racial composition of the neighborhood.
- 5) While brokers are encouraged to advertise in media oriented to persons in the protected classes, the properties advertised therein should not be substantially different from those advertised in the general media with respect to the racial, ethnic, religious, etc. composition of the neighborhoods in which the advertised properties are located. Property advertised in media oriented to persons in the protected classes should also be advertised in media or newspapers of general circulation.
- 6) Any selective use of advertising media or content should be subjected by the broker to an "effects tests," i.e. are the differences, whether or not intentional, likely to have discriminatory results by attracting, discouraging, or excluding any particular racial, ethnic, religious, etc. segment of the community?
- 7) Negative marketing efforts which discourage or attempt to discourage the purchase or lease of property by representing that it is located in a neighborhood, community or adjacent area to any other area in which a protected class resides, or may in the future reside in increased or decreased numbers are not only illegal but against the interests of the owners or sellers represented by brokers and salespeople. For the same reasons, salespeople should never misrepresent, invent, distort or exaggerate conditions, circumstances or incidents which even implicitly relate to the presence of one or another protected class in a neighborhood in order to encourage a listing or discourage a possible sale or rental.
- 8) No "blind ads" of any type should be used in advertising sales or rentals. Any such advertisement should always contain the legitimate business name and address or telephone number of the broker handling the property. Under the Real Estate Licensing and Registration Act, any attempt to hide the identity of the broker or firm representing the property is illegal.
- 9) Where an "open house" is used as a marketing technique, uniform information, assistance and positive salespersonship should be given to all guests.

- 10) Use of the "Equal Housing Opportunity" slogan or logotype is encouraged in any advertisements used by brokers where space or budget considerations permit.

APPENDIX A

PROFESSIONAL ADVICE FOR CLIENTS WHO WISH TO OFFER A LISTING ON A DISCRIMINATORY BASIS

When a seller/landlord makes known to a salesperson that he/she expects the salesperson to engage in one or another course of discriminatory conduct, it is imperative that the salesperson clearly declare his/her unwillingness to do so even if it appears that the listing may be lost. This should be done tactfully and professionally by affording the potential client the benefit of the salesperson's professional knowledge and advice about the dangers faced by the seller/landlord if he/she pursues any attempt to discriminate either through another broker or on his/her own.

You, as the salesperson, should make the following points:

- 1) Whether or not the seller/landlord decides to list with your firm, you think the seller/landlord should at least hear your best professional advice and know the risks he/she will face by attempting to sell/rent discriminatorily either through another broker or on his/her own. Moreover, you believe the seller/landlord will see the advantages of listing with a firm whose commitment to the highest standards of professional service, skill and integrity guarantees its clients the **FULLEST POSSIBLE PROTECTION** and the **BEST POSSIBLE SALES AGREEMENT**.
- 2) Discrimination in the sale/rental of real property is illegal under a variety of state and federal laws. Anyone found guilty of such discrimination, or who interferes with the rights of others to sell, broker, buy or otherwise benefit from the sale/rental of housing in a nondiscriminatory manner, is subject to extensive liability.
- 3) Discrimination exposes the seller/landlord to a number of serious potential liabilities. Sellers/landlords operating on their own may be sued by buyers/tenants. Sellers/landlords represented by brokers who are in collusion with the seller/landlord may be sued by both buyers/tenants and any other broker who lost a split commission. Even if the broker discriminates without the knowledge or consent of the seller/landlord, the seller/landlord will most likely be sued — and establishing one's innocence in such circumstance is difficult. It is also possible for a seller/landlord to be sued by testers, neighbors or others who believe the seller's/landlord's actions harmed them.
- 4) The seller/landlord should know the risks and liabilities to salespersons and brokers who discriminate. The seller/landlord must seriously question the ethics, integrity, and even the intelligence of any salesperson or broker who would risk his/her:

- a) **License** to pursue his/her career,
 - b) **Reputation** among the general, law-abiding public and his/her professional colleagues, or
 - c) **Financial position** to liabilities which could be substantial in an award of damages, attorney fees and court costs in order to get a commission.
- 5) The seller/landlord must also seriously question why such a person would risk so much for so little. Anyone so desperate for commissions must have serious business problems which could be related to their lack of ability and/or reputation for honest, professional dealings. Moreover, if someone is willing to assume such risks by breaking the law on behalf of the interests of another, what risks will he/she take by breaking laws on behalf of his/her own interest? And once the seller/landlord enters a conspiracy with such a person and the illegal act has been accomplished, does that not leave the seller/landlord at the mercy of the co-conspirator?
- 6) Your best professional advice for the seller/landlord is to list the property without restrictions and gain the advantages of:
- a) A best qualified buyer/tenant offering the best transaction.
 - b) No exposure to needless liability.
 - c) No concerns about the consequences of using a less than reputable broker.
 - d) The peace of mind that your most valuable asset is being handled by a firm which would regretfully walk away from your listing rather than jeopardize its integrity and commitment to uphold the law and the REALTOR® Code of Ethics.

(1) A religious or denominational institution or organization, or a charitable or educational organization which is operated, supervised or controlled by or in conjunction with a religious organization, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose, to persons of the same religion or denomination, or from giving preference to these persons, unless membership in the religion is restricted because of race, color or national origin.

(2) A private club or fraternal organization, not in fact open to the public, which, incident to its primary purpose, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.

(b) Nothing in section 5(h) of the housing provisions of the act, regarding age or familial status, applies with respect to housing for older persons.

(c) With the exception of the exemption for dwellings which constitute housing for older persons as defined by § 45.4(f) (relating to definitions), the exemptions to the act are not applicable to real estate firms, brokers, agents, sales people or an individual employee by any of them, when acting on behalf of them.

(d) The exemption for housing for older persons in which the housing is solely occupied by persons 62 years of age or older shall be met if all of the occupants are 62 years of age or older.

(e) In determining whether the exemption for housing for older persons in which the housing is provided under a Federal or State program is met, the Commission will adopt the finding of the Secretary of the Department of Housing and Urban Development as to whether the housing is designed or operated to assist elderly persons.

APPENDIX B

HUMAN RELATIONS COMMISSION

CHAPTER 45. HOUSING ACCOMMODATIONS/ COMMERCIAL PROPERTY

REGULATIONS

§§ 45.8. Advertisements.

(a) It is unlawful for a person to indicate in advertising that the housing that the person is offering for sale or lease is exempt from the act or to offer a preference, limitation or discrimination in the advertising of that exempt property.

(b) This section does not restrict the inclusion of applicable age and familial status requirements in advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute housing for older persons as defined by § 45.4 (relating to definitions).

§§ 45.13. Exemptions.

(a) Section 5(h) of the act (43 P. S. § 955(h)) does not prohibit the following:

GENERAL

§§ 45.161. Purpose.

(a) The list of words in § 45.181 (relating to words to be avoided) does not contain every possible word and phrase that may violate the act. The purpose of this section is to provide as complete a list as possible.

(1) For example, while many nationalities, types of disabilities and races are mentioned, the list is not inclusive. Any word indicating ancestry, race, color, religion or disability is equally prohibited in the context of the real estate advertisements.

(2) The list will provide guidance on how to recognize the type of language that may be violative of the act.

(3) When the context of the word or phrase is key to its possible unlawful meaning that will be noted.

(b) The purpose of this subchapter is to insure that advertisements for housing and commercial property do not include words, phrases, symbols, and the like, which violate the advertising provisions of the act.

(c) Section § 45.192 (relating to affirmative defenses) contains affirmative defenses which will preclude a finding of a willful and knowing violation of the advertising provisions of the act.

(d) This subchapter implements the statutory mandate of section 9.1(b) of the act (43 P.S. § 959.1(b)).

§ 45.162. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, which are identical to those found in section 4 of the act (43 P.S. § 954):

Act—The Pennsylvania Human Relations Act (43 P.S. §§ 951-963).

Advertisement or advertising—See 43 P.S. § 954(3).

Advertiser—See 43 P.S. § 954(aa).

Housing accommodation—See 43 P.S. § 954(i).

Housing for older persons—See 43 P.S. § 954(w).

Person—See 43 P.S. § 954(a).

Personal residence—See 43 P.S. § 954(k). This term applies to any person as defined in this section.

§ 45.163. General rules.

The prohibited words and phrases in § 45.181 (relating to words to be avoided) are unlawful when used in housing advertisements. In addition to those words and phrases, a word or phrase that is commonly understood to be offensive to a group of people in a protected class also violates the act.

PROHIBITED USAGES

§ 45.171. Race/color/national origin.

It is unlawful to advertise a limitation, preference or discrimination on account of race, color or national origin. Examples include the use of:

(1) Any color to describe a group of people for example, white, brown, red, black or yellow.

(2) Any nationality or race to describe a group of people for example, Caucasian, Negroid, Chinese, Asian Immigrant, French, Hawaiian, Arab, Oriental, African-American, Irish, and the like.

(3) Landmarks or organizational locations which are indicative of a particular nationality or race, unless all of the landmarks in the area are noted for example, if proximity to a specific place associated with a particular ethnic group is noted as a directional landmark, reference should be made to all other nearby comparable facilities of interest to other groups.

(4) Code words which are recognizable in a particular neighborhood as connoting neighborhoods that restrict certain races or ethnic groups. Code words are facially neutral words and phrases which are used in a particular circumstance which are understood to mean an illegal preference.

(5) Neighborhood and geographical landmarks such as "chintown" and "little Italy" are acceptable terms if the description is used in connection with the property being sold or rented and not for exclusionary purposes.

(6) Phrases such as "oriental garden" and "kosher restaurant" are acceptable when used as a description of the property being sold or rented, not as a landmark for other property.

§ 45.172. Familial status/age.

(a) It is unlawful to advertise a preference, limitation or discrimination against families with children in the household or against persons 40 years of age or older. Examples include the following:

(1) The use of any phrase which notes a preference, limitation or discrimination for adults, couples or singles or families without children—for example, "adult atmosphere," "mature adults preferred," "great for retired couple or couple just starting out," "adult/family sections," "no kids/pets okay," "couples only,"

"ideal for singles," "adult community," or "suitable for one or two adults."

(2) The use of any colloquialisms which imply the same as those in subsection (a)(1)—for example, "empty nesters," "honeymooners," or "swinging singles."

(3) The listing of the number of children allowed.

(b) Notwithstanding the prohibitions in subsection (a), it is not unlawful to:

(1) List the size and number of rooms or bedrooms.

(2) Indicate that the housing meets the requirements for "housing for older persons" as defined in section 4 of the act (43 P.S. § 954). A publisher may rely on the advertisers' written representations of such, unless the publisher has reason to believe otherwise.

(3) Advertise a preference against children and advertise age restrictions when the housing accommodation qualifies as "housing for older persons" as defined in section 4 of the act.

§ 45.173. Disability.

(a) It is unlawful to advertise a preference, limitation or discrimination against persons with disabilities or to advertise that the property is not accessible.

(b) It is not unlawful to describe housing as accessible to persons with disabilities.

§ 45.174. Religion.

(a) It is unlawful to advertise a preference, limitation or discrimination on the basis of religion. Examples include:

(1) The use of any religious denomination—for example, Christian, Jew, Muslim or Buddhist.

(2) Phrases such as "surround yourself with Christians."

(3) The use of a particular landmark or location which is indicative of a particular religion.

(b) Notwithstanding the prohibitions in subsection (a), it is not unlawful for any religious or denominational institution or organization or any charitable or educational organization which is operated, supervised or controlled by or in connection with a religious organization or any bona fide private or fraternal organization to advertise:

(1) A preference to persons of the same religion or denomination or to members of the private or fraternal organization.

(2) That the making of the selection is calculated by the organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained.

§ 45.175. Sex.

(a) It is unlawful to advertise any preference, limitation or discrimination on the basis of sex. Examples include "males only need apply," "professional male preferred" or "perfect for single female."

(b) Notwithstanding the prohibitions in subsection (a), it is not unlawful to advertise a preference based on sex in the rental or leasing of housing accommodations as follows:

(1) In single-sex dormitory.

(2) For rooms in one's personal residence in which common living areas are shared.

LIST OF WORDS OR PHRASES TO AVOID

§ 45.181. Words to be avoided.

(a) It is unlawful to use the following words or phrases in housing advertisements unless used in a clearly non-discriminatory context such as “white cabinets” or “french doors.” The list is neither intended nor reasonably able to be all inclusive. It is also unlawful to use words or phrases not appearing on the list, but which are used in a context which may be reasonably interpreted as indicating an unlawful discriminatory intent.

Able-bodied

Adult—If the housing is “housing for older persons” as defined by the Federal Fair Housing Act (42 U.S.C.A. §§ 3601-3619 and 3631) and the act, it is appropriate to say so.

(i) A newspaper/publisher may publish an advertisement for housing, and be held harmless for liability for an advertisement which uses the terms “senior housing,” “senior community,” “retirement community,” if the advertiser provides a statement formally, in writing, to the newspaper/publisher that the property being advertised meets the requirements for housing for older persons as defined in the act.

(ii) Equivalent phrases referring to persons 55 and 62 and older such as “adult community, 55 and over,” “adult community, 62 and over,” “adult 55+,” “adult 62+” to describe housing for older persons, will also be acceptable.

(iii) The term “adult” alone or with terms that do not meet housing for older persons requirements will remain unlawful terms as a description of housing for older persons.

African American
Asian
American
Ancestry (any)

Black
Blind
Buddhist

Catholic
Caucasian
Chicano/Chicana
Child/children—Restrictions, unless “housing for older persons.”
Chinese
Christian
Church, near
Color (any when used to describe persons)
Colored
Couple
Crippled

Deaf
Disability (any)—It is acceptable to describe housing as accessible to persons with disabilities. It is not acceptable to attempt to limit the housing to certain persons by stating that it is not accessible.
Disabled

Empty nester
Ethnic neighborhood
Ethnic group (any)

Foreigners

Handicapped
Hindi
Hispanic

Ideal for . . . (a type of person)
Immigrants
Independently, capable of living
Indian
Integrated
Interracial
Irish

Jew/Jewish

Latino/Latina

Mentally handicapped, ill, retarded
Mexican-American
Middle Eastern(er)
Minority
Mixed community
Mormon
Moslem
Mosque, near
Muslim

Nationality (any)
Newlyweds

Parish, near
Perfect for . . . (a type of person)
Polish
Prefer
Protestant
Puerto Rican

Race (any, when used to describe a person)
Religion (any, when used to describe persons)
Retarded
Retired persons, retirees—If it is “housing for older persons,” as defined by the Federal Fair Housing Act and the act, use that phrase, as many people who are retired may not qualify for housing for older persons while many people still working may in fact be eligible for housing for older persons.

Segregated
Senior Use—“housing for older persons,” as defined by the Federal Fair Housing Act and the act. See note under adult and retired persons. Many people who do not consider themselves senior may be eligible for housing for older persons.
Suitable for
Synagogue, near

Temple, near

White

Young
Youthful

(b) Any of the words in subsection (a) may be used if they are part of an address. For example, Poplar Church Road, Lutheran Street, Churchville, Black Ridge or Indian Hills, and the like, are permissible.

ADDITIONAL REQUIREMENTS

§ 45.191. Advertisements.

(a) Advertisements published within this Commonwealth are covered by this chapter regardless of the locality of the property or financial institution.

(b) Except to the extent allowed by §§ 45.172(b), 45.174(b) and 45.175(b) (relating to familial status/age; religion; and sex), it is unlawful to advertise any discriminatory preference or limitation, even if the property is otherwise exempt from coverage under the act.

(c) When an advertising campaign includes pictures of individuals or families, the advertiser has the responsibility to alternate the picture from time to time to include a variety of protected classes in the advertisement.

§ 45.192. Affirmative defenses.

It shall be an affirmative defense precluding a finding that an advertiser has knowingly and willfully violated the act and this subchapter if the advertiser has complied with one of the following:

(1) Attempted, in good faith, to comply with the list and specific examples of impermissible housing advertisements described in this subchapter.

(2) A written advisory of the Commission concerning what constitutes appropriate housing advertisements. The

Commission will maintain the written advisory on file and provide a copy of the advisory to the advertiser. To obtain an advisory, the advertiser shall telephone the Commission Housing Division at (717) 787-4055 or write to the Commission, 101 S. Second Street, Suite 300, P.O. Box 3145, Harrisburg, Pennsylvania 17105-3145, Attn: Housing Division, and indicate the language of the advertisement in question. Appropriate Commission housing staff will inform the advertiser of its decision on the ad and follow-up with a written advisory within 10 working days.

(3) Made reasonable efforts in good faith to comply with the act.

§ 45.193. Good faith efforts.

An advertiser will be deemed to have acted in good faith if the advertiser complies with one or more of the following:

(1) As to an advertisement for "housing for older persons," as defined by the Federal Fair Housing Act (42 U.S.C.A. §§ 3601-3619) and the act, if the advertiser produces a signed written statement by a housing provider which states that the facility or community complies with the requirements of the housing for older persons exemption and the advertiser has no actual knowledge that the facility or community is not actually eligible for the exemption.

(2) If the word or phrase complained of is in compliance with the list in § 45.181 (relating to words to be avoided) and is not, on its face, discriminatory within the context of the advertisement.

(3) If the advertiser produces a written Commission advisory obtained by use of the procedure in § 45.192(2) (relating to affirmative defenses), that the language complained of is legal, within the same context in which the advertiser requested the opinion from the Commission.

§ 45.194. Federal regulations.

Federal regulations published by the Department of Housing and Urban Development, regarding housing advertisements in areas of concurrent jurisdiction, shall preempt anything to the contrary in this subchapter.