

STATEMENTS POLICY

Title 16—COMMUNITY AFFAIRS

HUMAN RELATIONS COMMISSION

[16 PA. CODE CH. 45]

Housing Accommodations/Commercial Property

The Human Relations Commission (Commission) has adopted the following guidelines and statement of policy, relating to advertising, to read as set forth in Annex A. In compliance with and under the authority of Act 34 of 1997, the guidelines and statement of policy, are not be subject to review under section 205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P. S. § 1205) and shall be effective for a period not to exceed 2 years from the effective date of Act 34, which is August 24, 1997, and shall serve as proposed rulemaking. On or before the expiration of the 2-year period, all the guidelines and statement of policy shall expire and shall be replaced by regulations which shall have been promulgated, adopted and published as provided by law.

The purpose of these guidelines and statement of policy is to advise the public of words, phrases, symbols and the like which are impermissible under the Pennsylvania Human Relations Act (act) (43 P. S. §§ 951—963) when used in housing advertisements. In addition, they are a guide to advertisers and publishers in their efforts to insure that housing advertisements published or caused to be published by them do not violate the act. These guidelines and statement of policy also contain examples of types of conduct which constitute reasonable efforts to comply with the advertising provisions of the act so that a finding of knowing and willful violation of the those portions of the act is precluded.

Fiscal Impact

The Commission believes that the guidelines and statement of policy will result in no additional cost to the Commission or to the general public. Any additional costs which arise were created by the act and not the guidelines and statement of policy.

Paperwork Requirements

No additional, routine paperwork will be required by the new guidelines and statement of policy.

Effective Date

The guidelines and statement of policy shall take effect upon publication in the *Pennsylvania Bulletin*.

Contact Person

Persons wishing to submit comments regarding the guidelines and statement of policy may submit them in writing to Nancy L. Gippert, Assistant Chief Counsel, Human Relations Commission, 101 South Second Street, Suite 300, P.O. Box 3145, Harrisburg, PA 17101.

HOMER C. FLOYD,
Executive Director

(Editor's Note: The regulations of the Human Relations Commission, 16 Pa. Code Chapter 45, are amended by adding a statement of policy in §§ 45.101—45.103,

45.121—45.126, 45.141, 45.142 and 45.151—45.154 to read as set forth in Annex A.)

Fiscal Note: 52-5. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 16. COMMUNITY AFFAIRS

PART II. GOVERNOR'S OFFICE

Subpart A. HUMAN RELATIONS COMMISSION

CHAPTER 45. HOUSING ACCOMMODATIONS/COMMERCIAL PROPERTY

Subchapter B. HOUSING ADVERTISEMENTS—GUIDELINES AND STATEMENT OF POLICY

GENERAL

§ 45.101. Purpose.

(a) The purpose of this subchapter is to advise the public of words, phrases, symbols and the like which are impermissible under the act when used in advertisements for housing accommodations or commercial property.

(b) This subchapter also contains examples of types of conduct which constitute reasonable efforts to comply with the advertising provisions of the act so that a finding of knowing and willful violation of those portions of the act by the advertiser is precluded.

(c) The act states that it is an unlawful discriminatory practice to:

Print, publish or circulate any statement or advertisement

(i) relating to the sale, lease or acquisition of any housing accommodation or commercial property or the loan of money whether or not secured by mortgage, or otherwise for the acquisition, construction, rehabilitation, repair or maintenance or any housing accommodation or commercial property which indicates any preference limitation, specification or discrimination based upon race, color, familial status, age, religious creed, ancestry, sex, national origin, handicap or disability or because of the handicap or disability of an individual with whom the person is known to have a relationship or association, or

(ii) relating to the sale, lease or acquisition of any housing accommodation or commercial property which indicates any preference, limitation, specification or discrimination based on the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals. 43 P. S. § 955(h)(5)

§ 45.102. 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):

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.

§ 45.103. General rules.

(a) This subchapter does not contain every possible word and phrase that may violate the act. The purpose of this subchapter is to provide as complete a list as possible and to provide guidance on how to recognize the type of language that may be violative of the act. There are many commonly understood and offensive words and phrases that are used to describe groups of people. While the Commission has no intention of attempting to list all of these words and phrases, they are not to be used in housing advertisements.

(b) The general rule, which will help ensure that classified advertisements meet the requirements of the act and all fair housing laws is: “Always describe property; never describe people.”

GUIDELINES AND STATEMENT OF POLICY BY PROTECTED CLASS

§ 45.121. Protected class.

Sections 45.122—45.126 are broken down by words and phrases which may indicate a preference, limitation, specification or discrimination for a particular protected class when used in connection with an ad involving a real estate transaction.

§ 45.122. Race/color/national origin.

(a) Real estate advertisements should state no discriminatory preference or limitation on account of race, color or national origin. Use of words describing the current or potential residents or the neighbors or neighborhood in racial or ethnic terms will create liability under the act.

(b) White, black, brown, yellow, red or any color used to describe a person or group of people shall be avoided in order not to indicate a preference or discrimination. The use of a color for any other reason, for example to describe property, is permitted.

(c) For the same reason, the use of a nationality or race in referring to an individual in relation to any real estate transaction, for example, Caucasian, Negroid, Chinese, Asian immigrant, French, Hawaiian, Arab, Oriental, African-American, Irish, and the like, is prohibited. The use of these words to describe property, for example, french doors or oriental rugs, is permitted.

(d) So that a preference is not shown for a particular nationality or race, the use of landmarks or organizational locations which are indicative of a particular nationality or race should be avoided, unless all of these landmarks in the area are noted. For example, if proximity to a specific place of worship commonly 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.

(e) Code words, in certain contexts, have historically been used to signal whites that a neighborhood is restricted to whites. Phrases such as “restricted,” “exclusive” or “traditional” are terms that depending upon the common understanding in the geographical area of that area may be intended to be discriminatory and should be avoided in classified advertisements.

(f) Some words or phrases can be “code words,” which, based upon past practices, connote neighborhoods of a certain race or ethnic group or in which certain races or ethnic groups are not welcome. For example, an ad stating that a property was right next to a specifically

named country club that has historically barred minorities from membership would signal both minorities and nonminorities of a segregated neighborhood. Because well known segregated sites tend to be local—a comprehensive list is impossible. Local advertisers are aware of the localities and should avoid their use in describing locations in classified advertisements.

§ 45.123. Familial status/age.

(a) The most common area in which problems occur in classified advertising is that of familial status. Unless the property is “housing for older persons,” as defined by section 4(w) of the act (43 P.S. § 953(w)), it is unlawful to discriminate against families with children in the household or based upon age (40 years of age or older). Thus, phrases which note a preference for adults, couples or singles or families without children, or use colloquialisms to imply the same thing, for example, “empty nesters” or “honeymooners” are unlawful.

(b) The number of children allowed should not be listed, although the number or size, or both, of rooms or bedrooms, or both, is permissible. (Describe the property, not the people). While the act allows the landlord to establish reasonable occupancy standards, the standards shall be applied in a nondiscriminatory manner and may not violate the Federal Fair Housing Act (42 U.S.C.A. §§ 3601—3619 and 3631).

(c) A classified ad may indicate that a housing complex meets the requirements for “housing for older persons.” A publisher may reasonably rely on the advertiser’s representations. However, if the complex does not, in fact, meet the requirements, the complex and the person or organization who placed the advertisement will be liable. If a publisher reasonably relied on those representations, the publisher would not be liable.

§ 45.124. Disability.

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.

§ 45.125. Religion.

Advertisements should not contain either an explicit or implicit preference, limitation or discrimination on account of religion, for example, “Christian home,” “no Jews.” In general, the use of religious landmarks may indicate a preference and should be avoided. For example, “near parochial school” or near “a temple,” may signal a preference in the real estate transaction for a person of that specific faith.

§ 45.126. Sex.

Advertisements should not contain an explicit preference, limitation or discrimination on account of sex. However, Act 34 of 1997, which amended the act, an advertisement for the rental or leasing of housing accommodations in a single-sex dormitory or rooms in one’s personal residence in which common living are shared may indicate a preference, limitation or discrimination on account of sex.

LIST OF WORDS OR PHRASES TO AVOID

§ 45.141. List.

The list of words in § 45.142 (relating to words to be avoided) does not contain every possible word and phrase that may violate the act. The purpose of the list is to provide as complete a list as possible. 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 real estate advertisements. The list will provide guidance on how to recognize the type of language that may be violative of the act. When the context of the word or phrase is key to its possible unlawful meaning that will be noted.

§ 45.142. Words to be avoided.

(a) The following words should be avoided:

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. However, the term “adult” is not appropriate as this word implies a restriction different than 55 years of age or older or 62 years of age or older, which are the two types of housing for older persons allowed as “housing for older persons.” Any other restrictions based upon age or which have a disparate impact upon families with children will violate the age or familial status provisions of the act. See the definitions of housing for older persons in section 4(w) of the act.

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 a person.

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 (a type of person)

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,” 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”)—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, Luther an Street, Churchville, Black Ridge or Indian Hills, and the like, are permissible.

ADVERTISEMENTS

§ 45.151. Examples of unlawful advertisements.

Following are some examples of phrases in classified housing advertisements for which complaints have been filed and are considered in violation of the act.

(1) *Familial status.* For example, "adult atmosphere," "mature adults preferred," "great for retired couple or couple just starting out," "no kids, pets okay," "perfect for empty nesters," "couples only," "separate building for adults," "1 or 2 adults," "adult/family sections," "ideal for singles," "adult community," "responsible young adults in a quiet senior citizen community," "suitable for one or two adults."

(2) *Sex.* For example, "males only need apply," "professional male preferred," "perfect for single female."

(3) *Religion.* For example, "Surround yourself with Christians."

§ 45.152. Exemptions which do not apply to advertising.

There are situations which are exempt from coverage under the act. For example, the act has no jurisdiction over cases involving the rental of an owner occupied duplex. However, under both the act and the Federal Fair Housing Act (42 U.S.C.A. §§ 3601—3619 and 3631), it is unlawful to advertise any discrimination. Therefore, it is unlawful to advertise no blacks, no children, or any of the other words or phrases described in § 45.151 (relating to examples of unlawful advertisements), even for an exempt property.

§ 45.153. What constitutes good faith efforts on the part of advertisers?

Under section 9.1 of the act (43 P. S. § 959.1):

(c) An advertiser who knowingly and wilfully violates this act may be penalized under section [95] 9(f)(2) and (f.1). It shall be an affirmative defense precluding a finding that an advertiser has knowingly and wilfully violated this act if an advertiser has either:

(1) attempted, in good faith, to comply with the list and specific examples of impermissible housing advertisements described in subsection (b); or

(2) complied with an interpretation of the Commission or its personnel concerning what constitutes appropriate housing advertisements.

It shall also be an affirmative defense precluding a finding that an advertiser has knowingly and wilfully violated this act if an advertiser has made reasonable efforts in good faith to comply with this act.

(1) As to an advertisement for "housing for older persons," a person shall have acted in good faith if the housing provider has provided the advertiser a signed written statement 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 such exemption.

(2) If the word or phrase complained of is in compliance with the list in § 45.151 (relating to examples of unlawful advertisements) and is not, on its face, discriminatory within the context of the advertisement, the advertiser shall be deemed to have acted in good faith.

(3) If the advertiser is told by a Commission staff person that the language complained of is legal, within the same context in which the advertiser requested the opinion from the staff person, the advertiser will be deemed to have acted in good faith. This advice will be reduced to writing by the staff person and provided to the advertiser and maintained on file in the Commission office.

§ 45.154. Questions regarding advertisements.

Questions regarding advertisements shall be directed to the Housing Director (717) 783-8274 or Assistant Chief Counsel of the Housing Division (717) 783-8132 in Room 300, Executive House, 101 South Second Street, Harrisburg, Pennsylvania 17105-2125 (e-mail "Raymond W. Cartwright" (phrc@paonline.com)). Text Telephone (717) 787-4087, Fax (717) 772-4340.

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