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Sharon Bradford Franklin
Attorneys for Plaintiff
United States Department of Justice
Civil Rights Division
P.O. Box 65998
Washington DC 20035
(202) 514-4741
HG4825
SF2246

APR 8 1998

AT 8:30 10:10 AM
WILLIAM T. WALSH
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
)
 v.)
)
)
 LEXINGTON VILLAGE ASSOCIATES;)
 DAVID CELLER; ROSE CELLER;)
 LANCE GLECO; LEE LENCH; EDITH)
 RIEDER; EDITH J. RIEDER; ELIZABETH)
 RIEDER; HARRY RIEDER; SOLOMON)
 RIEDER; IVY PARK MANAGEMENT)
 COMPANY; MICHAEL RIEDER; PAMELA)
 HALPERT; KAREN KATZ; and ESTATE)
 OF AL RIEDER,)
)
 Defendants.)

Civil Action No. ✓
97-5923 (AJL)

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
)
 v.)
)
)
 HILLCREST ASSOCIATES; DAVID)
 CELLER; SOLOMON RIEDER; SANDOR)
 TALAS; RICLEN ASSOCIATES; EDITH)
 RIEDER; ROSE CELLER; LEE LENCH;)
 TRUST UNDER WILL OF SIMON LENCH;)
 JOEL OPATUT FAMILY TRUST; MARY)
 OPATUT; and MORRIS OPATUT)
 IRREVOCABLE TRUST,)
)
 Defendants.)

Civil Action No.
97-5937 (AJL)

ENTERED
on
THE DOCKET
on 4/9/98
WILLIAM T. WALSH, CLERK
By
(Deputy Clerk)

JOINT CONSENT ORDER

The United States initiated these actions on December 8, 1997, pursuant to Section 814 of the Fair Housing Act, 42 U.S.C. 3614, alleging that the defendants engaged in a pattern or practice of discrimination on the basis of race in the rental of dwellings at Hillcrest Village Apartments and Lexington Village Apartments in violation of the Fair Housing Act, as amended, 42 U.S.C. 3601, et seq. They were consolidated by order of the court on December 12, 1997. On February 11, 1998, the parties consented to waive their rights to proceed before a judge of the United States District Court and to have a United States Magistrate conduct all further proceedings in the case.

Simultaneously with this Consent Decree, the United States is filing Amended Complaints that properly name the defendants in these actions.

Hillcrest Village Apartments is located in Clark, New Jersey, and is owned and/or operated by defendants Hillcrest Associates, Riclen Associates, David Celler, Trust Under Will of Simon Lench, Joel Opatut Family Trust, Morris Opatut Irrevocable Trust, Edith Rieder, Rose Celler, Lee Lench, Mary Opatut, and Solomon Rieder. Defendant Sandor Talas is employed as the maintenance superintendent and his responsibilities include renting apartments at Hillcrest Village.

Lexington Village Apartments is also located in Clark, New

Jersey, and is owned and/or operated by defendants Lexington Village Associates, Ivy Park Management Company, David Celler, Rose Celler, Lee Lench, Estate of Al Rieder, Edith Rieder, Edith J. Rieder, Elizabeth Rieder, Harry Rieder, Michael Rieder, Pamela Halpert, Karen Katz, and Solomon Rieder. Defendant Lance Gleco is employed as the maintenance superintendent and his responsibilities include renting apartments at Lexington Village.

Between March 1995, and July 1996, the United States conducted a series of fair housing tests at Hillcrest Village Apartments and Lexington Village Apartments that led to the allegations of racial discrimination in the Complaints. The defendants have filed an answer denying that they have engaged in the discriminatory conduct alleged in the Complaint. The parties agree that were this case to proceed to trial the United States would present evidence from these tests that black persons were discouraged from renting units at the two rental properties while white persons were encouraged to rent units, that black persons were not provided information about apartment amenities and availabilities that was as full and complete as the information provided to white testers; and that black persons were falsely told that apartments were unavailable while white persons were told about and shown available apartments. This evidence could support a finding by the Court that defendants have engaged in a pattern or practice of discrimination on the basis of race and color, in violation of the Fair Housing Act, 42 U.S.C. § 3604.

Nevertheless, the parties wish to avoid costly and protracted litigation and have hereby agreed to resolve the claims without an evidentiary hearing or a determination of liability. This consent order shall not be construed as an admission of liability by the defendants. Having reviewed the terms of this order, the Court concludes that the entry of this order comports with the Fair Housing Act and federal law and is appropriate under the circumstances.

Therefore, it is ORDERED, ADJUDGED and DECREED:

I. Injunctive Relief

The defendants, their agents, employees, successors, and all persons in active concert or participation with any of them are, with respect to the rental of dwelling units at Hillcrest Village Apartments and Lexington Village Apartments (collectively referred to hereinafter as "the subject properties"), enjoined from:

- A. Refusing to rent after the making of a bona fide offer, or refusing to negotiate for the rental of, or otherwise making unavailable or denying a dwelling to any person because of race or color;
- B. Discriminating against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race or color;

C. Making, printing, publishing, or causing to be made, printed, or published any notice, statement or advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race or color;

D. Representing to any person because of race or color that any dwelling is not available for inspection or rental when such dwelling is in fact so available; and

E. Engaging in any other discriminatory housing practice prohibited by 42 U.S.C. 3601, et seq.

II. Scope and Duration of Consent Order

A. The provisions of this order shall apply to the defendants, their employees, agents, anyone acting under their direction, and all those acting in concert or participation with any of them (hereinafter, collectively, "defendants").

B. This order is effective immediately upon its entry by the Court and shall remain in effect for four years after the date of its entry or until 90 days after the date on which the last report under section VI is received, whichever is later.

C. This case is dismissed with prejudice, except that the Court, through Magistrate Judge Dennis M. Cavanaugh, shall retain jurisdiction for the duration of the Consent Order to

enforce the terms of this Consent Order.

D. The United States may move the Court to extend the period in which this order is in effect if the United States believes that the defendants have violated one or more terms of the order or if the interests of justice otherwise require an extension of its terms.

E. The parties to this order shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this order prior to bringing such matters to the Court for resolution. However, in the event that the defendants either fail to perform in a timely manner any act required by this order or act in violation of any provision of this order, the United States may move the Court to impose any remedy authorized by law or equity, including, but not limited to, the performance or non-performance of certain acts and an award of any damages, costs, and attorneys' fees that may have been occasioned by the defendants' non-actions or actions.

III. Notice to Public of Nondiscriminatory Policies

No later than 10 days after the entry of this order, the defendants shall

A. Prominently post in the rental offices at the subject properties, and in any office or apartment where there is rental activity or personal contact with prospective

applicants for dwellings at these properties, a fair housing sign no smaller than 10 inches by 13 inches indicating that all apartments are available for rent on a nondiscriminatory basis. The sign shall conform with regulations promulgated by the U.S. Department of Housing and Urban Development, 24 C.F.R. Part 109 (1995).

B. Whenever dwellings are available at the subject properties, prominently post an easily readable "For Rent" or "Vacancy" sign or notice (1) attached to the sign identifying the complex which is closest to its entrance, and (2) in front of the rental office. The sign or notice shall prominently incorporate the slogan "Equal Housing Opportunity" and the fair housing logo.

C. Include the words "Equal Housing Opportunity" or the fair housing logo in all advertising for the subject properties in newspapers, telephone directories, and other written materials; on radio, television or other media broadcasts; and on all billboards, signs, pamphlets, brochures, and other promotional literature. The words or logo shall be prominently placed and easily readable. In addition, all newspaper and radio advertising regarding the subject properties subsequent to the date of entry of this order shall conform to the provisions of the applicable advertising guidelines of the U.S. Department of Housing and Urban Development, 24 C.F.R. Part 109 (1995), copy attached

as Attachment E.

D. Include the following phrase in the standard rental applications and leases used for the subject properties, using letters of equal size as those of the text of the rest of the document:

We are an equal housing opportunity provider. We do not discriminate on the basis of race, color, sex, national origin, religion, handicap, or familial status (having children under age 18).

E. No later than 10 days after the entry of this order, and on an annual basis thereafter so long as this order is in effect, provide written notification to the designated organizations listed in Attachment B that the defendants rent apartments at the subject properties and that their policy is to rent apartments subject to uniform, nondiscriminatory standards to all qualified persons without regard to race, color, religion, national origin, sex, handicap, or familial status.

IV. Mandatory Education and Training

A. No later than 90 days after the date of entry of this order, all the defendants and their agents or employees with any responsibility for showing or renting apartments at, or evaluating applicants or selecting tenants for, the subject properties shall complete an educational program, to be conducted at the defendants' expense by The Fair Housing Council of Northern New Jersey, Hackensack, New Jersey, or

other organization approved by the United States, and which shall include the following elements:

1. Instruction of persons in their duties and obligations under this order as well as under the federal Fair Housing Act and applicable state laws;
2. Provision of a copy of the federal Fair Housing Act to each agent or employee whose duties include showing, renting or managing dwelling units, and each agent or employee who supervises these activities;
3. Instruction on procedures to insure that race or color does not affect the provision of rental information to inquiring persons or the making of decisions on rental applications;
4. A question and answer session to review each of the foregoing areas;
5. Acquisition from each person attending of a signed statement conforming to the example in Attachment A indicating that he or she has received, read, and understood this order and the defendants' policy of nondiscrimination and further understood that violation of this order may result in sanctions against him or her by the defendants or the Court; and
6. Certification, by the organization conducting the educational program, of each attendee's completion of the program.

B. While this order is in effect, each new employee or agent of the defendants with any responsibility for showing or renting apartments at, or evaluating applicants or selecting tenants for, the subject properties shall, no later than 90 days after engagement, complete the educational program described above and sign a statement conforming to that in Attachment A.

V. Standards for Accepting and Processing Applications

No later than 10 days after the entry of this order, the defendants shall, for the subject properties:

A. Keep a list of the dwellings known or expected soon to be available for rental, including for each the address or apartment number, number of bedrooms, monthly rent, and availability date;

B. Keep, in chronological order by date and time of inquiry, a waiting list of persons who inquire about renting dwellings and who wish to be placed on such a list. The list shall include the person's name, current address, daytime and evening telephone numbers, a description of the dwelling desired (e.g., number of bedrooms), and, based on the defendants' good-faith belief and observation of the interested person, the person's race (Black/Non-Hispanic, White/Non-Hispanic, Hispanic, Asian, Native American, or unknown). When a dwelling becomes available for rent the

defendants shall contact the persons on the waiting list in chronological order and give them an opportunity to apply for the dwelling before making it available to anyone else. The defendants shall note on the list the date and time of each attempt to reach persons on the list.

C. Inform everyone who inquires about dwellings of all available units meeting their requirements, and, if none are available, give them an opportunity to have their names placed on the waiting list; and,

D. Give everyone who inquires about dwellings an opportunity to complete a written rental application and have their names placed on the waiting list.

VI. Record Keeping and Monitoring

A. Defendants shall keep the following records for the subject properties:

1. A list of expected and actual dwelling vacancies updated as information becomes available to indicate each dwelling known to be, or expected within 30 days to become, available for rent, indicating the number of bedrooms, monthly rent (including any rent special and/or other discounts), the date the defendants learned it would be available for rent, and the date on which it is expected to be available for occupancy by a new tenant. Updates shall be made without loss of

previously recorded information.

2. A daily inquiry register of all persons who inquire about renting a dwelling. The register shall contain space for each person to record the date of inquiry and their name, address, telephone number, race and signature. The top portion of the register shall contain the following statement: "The following information is requested to allow us to comply with the federal Fair Housing Act and will be kept confidential. Providing your race is voluntary and is not required in order to rent an apartment."

3. A daily rental application log setting forth the name and race (based on the defendants' observation) of each person who submitted an application, the building and unit number to be occupied for all approved applicants, and a detailed justification for all rejected applicants.

B. No later than 90 days after the date of entry of this order, the defendants shall deliver to counsel for the United States¹ the following documents:

1. Copies of all written verifications of training

¹ All documents or other communications required by this order to be sent to counsel for the United States shall be addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, P.O. Box 65998, Washington, D.C. 20035-5998.

required under section IV of this order;

2. A report detailing the occupancy of each dwelling unit at the subject properties, by race of occupant(s) as of the date of entry of this order; and

3. A photograph of each office or apartment in which rental or sales activity is conducted showing the fair housing signs required by section III of this order.

C. No later than six months after entry of this order, and every six months thereafter while it is in effect, the defendants shall deliver to counsel for the United States a detailed report covering the preceding six months containing information about the defendants' compliance efforts, including but not limited to:

1. Copies of mandatory education acknowledgments signed by the defendants' new agents and employees pursuant to section IV;

2. Copies of certifications of attendance pursuant to section IV;

3. Copies of availability lists, inquiry registers, rental application logs, and waiting lists maintained pursuant to section VI (A);

4. A list setting forth the occupancy of each dwelling unit at the subject properties by race of occupant(s) as of the close of the reporting period; and

5. A list setting forth the move-ins and move-outs at the subject properties by unit number and race as of the close of the reporting period.

D. While this order is in effect, the defendants shall preserve all records that are the source of, contain, or relate to any of the information pertinent to their obligations under this order, including all rental applications, leases, and occupancy lists for dwellings at the subject properties. Upon reasonable notice to counsel for the defendants, representatives of the United States shall be permitted to inspect and copy these records at any reasonable time.

E. If, while this order is in effect, any person or organization complains that they have denied equal housing opportunity at either of the subject properties or that any defendant has committed housing discrimination, the defendants shall so notify counsel for the United States in writing no later than 15 days after they learn of the complaint. If the complaint is written, the defendants shall provide a copy of it with the notification; if the complaint is oral, the defendants shall include a written summary of it with the notification. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number. The defendants shall also promptly provide the United States all

information it may request concerning any such complaint and its actual or attempted resolution.

VII. Compensation of Aggrieved Persons

A. No later than 90 business days after entry of this order the defendants shall deposit in an interest-bearing account held in trust by counsel for the defendants the sum of \$250,000 for the purpose of compensating any aggrieved persons who may have been the victims of the discriminatory housing practices at the subject properties, for any injury they may have suffered (including personal injury, whether emotional or physical), identified through the procedures set forth in this section.

B. At least every week during the 90-day period following the entry of this order, including on at least five Sundays, the defendants shall publish a notice to potential victims of housing discrimination that conforms to the notice at Attachment D. Each notice shall appear in the news sections of the *Newark Star-Ledger* and either the *The Connection* (Teaneck) or the *City News* (Plainfield). The notices in the *Star-Ledger* shall each cover least one-eighth of a page, and the notices in *The Connection* or the *City News* shall each cover at least one-quarter of a page. Defendants may apply interest accrued on the amount deposited pursuant to Section VII.A. to defray the costs of advertising. The defendants

shall provide a copy of the newspaper containing each notice to counsel for the United States no later than five days after its publication. The defendants shall also make written notification to counsel for the United States of the date on which the last notices were published in each newspaper, no later than five days after such publication.

C. The defendants shall produce or permit representatives of the United States to review any records that the United States believes may help it identify persons who may be entitled to relief under this order. Upon reasonable notice the defendants shall provide such records or permit representatives of the United States to make an inspection on any business day, and as soon as the day after the entry of this order.

D. Allegedly aggrieved persons shall have 90 days from the date of the last published notice in which to contact the United States to assert any claims in connection with this order.

E. No later than 180 days after publication of the last notice, the United States shall determine which persons who have timely contacted the United States are likely to have been victims of the discriminatory housing practices at the subject properties and shall, in its sole discretion, determine the amount of damages to be awarded to each person, provided that:

1. No person shall be paid until he or she has executed a written release (conforming to that at Attachment C) of all claims, legal or equitable, that he or she might have against the defendants relating to the claims asserted in this lawsuit; and

2. The total amount to be paid by the defendants pursuant to this subsection shall not exceed \$250,000.

F. The United States shall notify the defendants in writing of its determinations. No later than 30 days after receiving this notification, the defendants shall deliver to counsel for the United States checks for the identified, aggrieved persons made payable as directed in the written notification. Counsel for the United States shall not give an aggrieved person his or her check until he or she has given the United States his or her executed release of claims.

G. If the United States distributes less than the total amount of compensation for aggrieved persons specified above, the remainder shall be paid to the Fair Housing Council of Northern New Jersey in Hackensack to further their fair-housing activities.

1. This money is intended to supplement, not supplant, the Fair Housing Council's current and projected budgets and, as such, is designed to allow it to pursue enforcement and/or educational activities

that its budgets would not otherwise allow it to undertake. The Council is encouraged to devise innovative methods to accomplish its mission of addressing housing discrimination in its geographic area.

2. Within six months after the Fair Housing Council has completed any activities funded by this money, it shall provide counsel for the United States with a brief summary and evaluation of such activities.

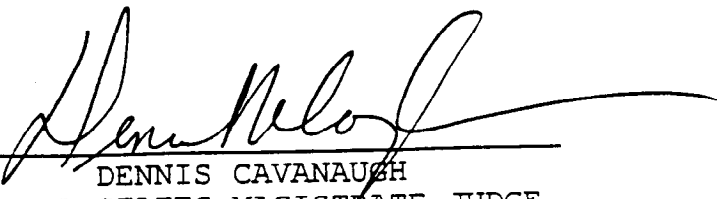
VIII. Payment to the United States

No later than 30 days after the entry of this order, the defendants, jointly and severally, shall pay the sum of \$50,000 to the United States pursuant to 42 U.S.C. 3614(d)(1)(C). This payment shall be delivered to counsel for the United States in the form of a cashier's check payable to the "United States Department of Justice."

IX. Subsequent Violation

In the event that any of the defendants engage in any future violation(s) of the Fair Housing Act, such violation(s) shall constitute a "subsequent violation" pursuant to 42 U.S.C. 3614(d).

ORDERED this 8 day of APRIL, 1998.



DENNIS CAVANAUGH
UNITED STATES MAGISTRATE JUDGE


The undersigned agree to and request the entry of this
order:

For the United States:


Faith S. Hochberg
United States Attorney

Susan Cassell
Assistant United States
Attorney
970 Broad Street
Suite 700
Newark, N.J. 07102
(201) 645-2700

Bill Lann Lee
Acting Assistant Attorney
General for Civil Rights


Robert S. Berman
Howard Griffin
Sharon Bradford Franklin
Trial Attorneys
Housing and Civil Enforcement
Section
P.O. Box 65998
Washington, D.C. 20035-5998
(202) 514-4741

For the defendants:


Everett C. Johnson, Jr.
Minh N. Vu
of LATHAM & WATKINS
1001 Pennsylvania Ave. NW
Suite 1300
Washington, D.C. 20004-2505

ATTACHMENT A

On _____, 1998, I was instructed by _____
_____ with respect to my responsibilities
under the order entered by the federal district court in *United States of America v. Hillcrest Associates, et al.*, No.97-5937 (D.N.J.), and *United States of America v. Lexington Village Associates, et al.*, No.97-5923 (D.N.J.), the federal Fair Housing Act, and applicable state laws. I also was instructed as to the Hillcrest Village and Lexington Village rental policies and procedures. I have received copies of and have read the order and the federal Fair Housing Act. I understand my legal responsibilities and will comply with those responsibilities. I further understand that the Court may impose sanctions on me if I violate a provision of this order and that my employer may also discipline me if I violate a provision of that order. I have been informed by my employer that I will not be reprimanded by my employer for providing information to any law enforcement agency (including the United States Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, P.O. Box 65998, Washington, D.C. 20035-5998, telephone 202-514-4713) or official regarding my employer's compliance with the Fair Housing Act and/or the order.

Signature

Name Printed

_____/_____/_____
Date Signed

ATTACHMENT B

Fair Housing Council of Northern New Jersey
121 Main Street
Hackensack, N.J. 07601
(201) 489-3552

Housing Coalition of Central Jersey
Patricia Shump, Executive Director
78 New Street, 3rd Fl.
New Brunswick, N.J. 08901
(732) 249-9700

NAACP — Elizabeth
P.O. Box 866
55 West Grand Street
Elizabeth, N.J. 07207
Attn: Royston Lewars
(908) 965-1009

NAACP — Plainfield
P.O. Box 169
Plainfield, N.J. 07060
Attn: George Gore
(908) 753-7644

NAACP — Rahway
P.O. Box 424
Rahway, N.J. 07065
Attn: Lori Caushman
(732) 340-9477

Newark Community Development Network
Sandonna Bryant, Coordinator
31 Mulberry Street, 5th Fl.
Newark, N.J. 07102
(973) 430-9975

Urban League of Essex County
508 Central Avenue
Newark, N.J. 07107
(973) 624-9535

Urban League of Union County
272 North Broad Street
P.O. Box 730
Elizabeth, N.J. 07207
(908) 351-7200

ATTACHMENT C

RELEASE

In consideration for the parties' agreement to the terms of the order entered in *United States of America v. Hillcrest Associates, et al.*, No.97-5937 (D.N.J.), and *United States of America v. Lexington Village Associates, et al.*, No.97-5923 (D.N.J.), and the defendants' payment to me [and my spouse jointly] of

\$_____, I hereby release and forever discharge all claims related to the facts at issue in the litigation referenced above, or in any way related to that litigation, and any other claims arising from alleged housing discrimination up to and including the date of execution of this release, that I may have against any of the defendants, their heirs, executors, administrators, successors, or assigns.

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Name Printed

____/____/
Date Signed

ATTACHMENT D

NOTICE TO POTENTIAL VICTIMS OF DISCRIMINATION AT
HILLCREST VILLAGE APARTMENTS AND LEXINGTON VILLAGE APARTMENTS

On _____, 1998, the United States District Court for the District of New Jersey entered an order resolving a lawsuit brought by the United States Department of Justice against the owners, managers and rental agents of Hillcrest Village Apartments and Lexington Village Apartments in Clark, New Jersey. The lawsuit alleged that the defendants had discriminated against black persons who sought rental housing there. Under this order, you may be entitled to receive monetary relief if you asked about or applied for renting, or rented, an apartment at Hillcrest Village Apartments or Lexington Village Apartments and:

1. You were denied an opportunity to live there because of your race or color or the race or color of someone who would be living with you; or
2. You were falsely told that no apartments were available because of your race or color or the race or color of someone who would be living with you; or
3. You were otherwise discriminated against on the basis of race or color in connection with your occupancy at Hillcrest Village Apartments or Lexington Village Apartments or your attempt to rent a unit there.

If you believe you were discriminated against because of race or color at Hillcrest Village Apartments or Lexington Village Apartments, or if you have any information about persons who may have been discriminated against there on the basis of race or color, please contact the United States Department of Justice at 1-800-896-7743. You may also write to:

United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
P.O. Box 65998
Washington, D.C. 20035-5998.

NOTE: You must call or write no later than ninety (90) days from [insert date of publication of last required advertisement].

of the United States Housing Act of 1937, as amended, 42 U.S.C. 1437.

(c) *Nature of compliance reviews.* The purpose of a compliance review is to determine whether the applicant is in compliance with the Department's AFHM requirements and the applicant's approved AFHM plan. Where allegations under this part may also constitute a violation of the provisions of Executive Order 11063 or title VIII, the review will also determine compliance with the requirements thereof. The applicant shall be given at least five (5) days notice of the time set for any compliance review and the place or places for such review. The compliance review will cover the following areas:

(1) Applicant's sales and rental practices, including practices in soliciting buyers and tenants, determining eligibility, selecting and rejecting buyers and renters, and in concluding sales and rental transactions.

(2) Programs to attract minority and majority buyers and renters regardless of sex, including:

(i) Use of advertising media, brochures, and pamphlets;

(ii) Conformance with both the Department's Fair Housing Poster Regulation (24 CFR part 110) and the Advertising Guidelines for Fair Housing (37 FR 5700) and any revisions thereto.

(3) Data relating to:

(i) The size and location of units;

(ii) Services provided;

(iii) Sales and/or rental price ranges;

(iv) The race and sex of buyers and/or renters;

(v) Race and sex of staff engaged in sale or rental of dwellings.

(4) Other matters relating to the marketing or sales of dwellings under HUD affirmative marketing requirements, the AFHM Plan and this part.

§ 108.45 Compliance report.

Following a compliance review, a report shall be prepared promptly and the Assistant Secretary for FH&EO shall make a finding of compliance or noncompliance. If it is found that the applicant is in compliance, all parties concerned shall be notified of the findings. Whenever a finding of noncompliance is made pursuant to this part, the report shall list specifically the violations found. The applicant shall be sent

a copy of the report by certified mail, return receipt requested, together with a notice that, if the matter cannot be resolved within ten days of receipt of the Notice, the matter will be referred to the Assistant Secretary for FH&EO to make a determination as to whether actions will be initiated for the imposition of sanctions. The Director of the Office of Regional Housing and the Area Director of the Housing Division shall also receive a copy of the report and the notice of intention to refer the matter to the Assistant Secretary for FH&EO for a determination as to whether actions will be initiated to impose sanctions.

§ 108.50 Sanctions.

Applicants failing to comply with the requirements of these regulations, the AFHM regulations, or an AFHM plan will make themselves liable to sanctions authorized by law, regulations, agreements, rules, or policies governing the program pursuant to which the application was made, including, but not limited to, denial of further participation in Departmental programs and referral to the Department of Justice for suit by the United States for injunctive or other appropriate relief.

PART 109—FAIR HOUSING ADVERTISING

Sec.

109.5 Policy.

109.10 Purpose.

109.15 Definitions.

109.16 Scope.

109.20 Use of words, phrases, symbols, and visual aids.

109.25 Selective use of advertising media or content.

109.30 Fair housing policy and practices.

APPENDIX I TO PART 109—FAIR HOUSING ADVERTISING

AUTHORITY: Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3600-3603; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

SOURCE: 54 FR 3308, Jan. 23, 1989, unless otherwise noted.

§ 109.5 Policy.

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The provisions of the Fair Housing Act (42 U.S.C. 3600, et

seq.) make it unlawful to discriminate in the sale, rental, financing, advertising, and age and appearance, color, sex, marital status, section 804(c) of U.S.C. 3604(c) unlawful to make cause to be made any notice, agreement, with respect of a dwelling, preference, limitation, because of a handicap, fair origin, or an such preferential discrimination of the act may not apply with older persons 807(b) of the a

§ 109.10 Purpose.

The purpose of all advertising, agencies and advertising to or cause to be published, advertising the sale, rentals which are requirements. These regulations matters this evaluating of Housing Act violations of discriminatory advertising

§ 109.15 Definitions.

As used in: (a) Assistant Secretary for Equal Opportunity (b) General Counsel for Housing and (c) Dwelling structure, or occupied as, occupancy a more family, which is offered construction such building thereof.

report by certified mail, requested, together with the matter cannot be ten days of receipt of matter will be referred Secretary for FH&EO mination as to whether initiated for the imposi- The Director of the nal Housing and the of the Housing Division e a copy of the report f intention to refer the Assistant Secretary for determination as to will be initiated to im-

ns.

ing to comply with the these regulations, the ns, or an AFHM plan selves liable to sanc- l by law, regulations, es, or policies govern- pursuant to which the made, including, but denial of further par- departmental programs he Department of Jus- the United States for er appropriate relief.

-FAIR HOUSING /ERTISING

is, phrases, symbols, and e of advertising media or y policy and practices.

17 109—FAIR HOUSING AD-

VIII, Civil Rights Act of 3620; section 7(d), Depart- 2 U.S.C. 3535(d); 308, Jan. 23, 1989, unless

y of the United States in constitutional limi- housing throughout es. The provisions of Act (42 U.S.C. 3600, et

sed.) make it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage and appraisal services, because of race, color, religion, sex, handicap, familial status, or national origin. Section 804(c) of the Fair Housing Act, 42 U.S.C. 3604(c), as amended, makes it unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. However, the prohibitions of the act regarding familial status do not apply with respect to *housing for older persons*, as defined in section 807(b) of the act.

§ 109.10 Purpose.

The purpose of this part is to assist all advertising media, advertising agencies and all other persons who use advertising to make, print, or publish, or cause to be made, printed, or published, advertisements with respect to the sale, rental, or financing of dwellings which are in compliance with the requirements of the Fair Housing Act. These regulations also describe the matters this Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

§ 109.15 Definitions.

As used in this part:

(a) *Assistant Secretary* means the Assistant Secretary for Fair Housing and Equal Opportunity.

(b) *General Counsel* means the General Counsel of the Department of Housing and Urban Development.

(c) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(d) *Family* includes a single individual.

(e) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 U.S.C., receivers, and fiduciaries.

(f) *To rent* includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(g) *Discriminatory housing practice* means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

(h) *Handicap* means, with respect to a person—

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities.

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment.

This term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite.

(i) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

§ 109.16 Scope.

(a) *General*. This part describes the matters the Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involv-

ing advertising. Use of these criteria will be considered by the General Counsel in making determinations as to whether there is reasonable cause, and by the Assistant Secretary in making determinations that there is no reasonable cause, to believe that a discriminatory housing practice has occurred or is about to occur.

(1) *Advertising media.* This part provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of these criteria will be considered by the General Counsel in making determinations as to whether there is reasonable cause, and by the Assistant Secretary in making determinations that there is no reasonable cause, to believe that a discriminatory housing practice has occurred or is about to occur.

(2) *Persons placing advertisements.* A failure by persons placing advertisements to use the criteria contained in this part, when found in connection with the investigation of a complaint alleging the making or use of discriminatory advertisements, will be considered by the General Counsel in making a determination of reasonable cause, and by the Assistant Secretary in making determinations that there is no reasonable cause, to believe that a discriminatory housing practice has occurred or is about to occur.

(b) *Affirmative advertising efforts.* Nothing in this part shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

[54 FR 3306, Jan. 23, 1989, as amended at 55 FR 53294, Dec. 28, 1990]

§ 109.20 Use of words, phrases, symbols, and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the Fair Housing Act, the Department will

normally consider the use of these and comparable words, phrases, symbols, and forms to indicate a possible violation of the act and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the act is likely to result.

(a) *Words descriptive of dwelling, landlord, and tenants.* White private home, Colored home, Jewish home, Hispanic residence, adult building.

(b) *Words indicative of race, color, religion, sex, handicap, familial status, or national origin.*—(1) *Race*—Negro, Black, Caucasian, Oriental, American Indian.

(2) *Color*—White, Black, Colored.

(3) *Religion*—Protestant, Christian, Catholic, Jew.

(4) *National origin*—Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

(5) *Sex*—the exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this part restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

(6) *Handicap*—crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. Nothing in this part restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

(7) *Familial status*—adults, children, singles, mature persons. Nothing in this part restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute *housing for older persons* as defined in part 100 of this title.

(8) *Catch words*—Words and phrases used in a discriminatory context should be avoided, e.g., *restricted, exclusive, private, integrated, traditional, board approval or membership approval.*

(c) *Symbols or logotypes.* Symbols or logotypes which imply or suggest race,

color, religion, status, or na

(d) *Colloquialisms.* Used regions or suggest handicap, to origin.

(e) *Directions.* (Use of)

Directions of preference.

For example, location ma-

national origin such as an

(signal to be opment kno-

riorities (sig- rections wh-

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to a synagogue may also

ference.

(f) *Areas.* of facilities

racial, nation group, such

school design- ties which a-

sex may indi-

§ 109.25 *Selective media or*

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advertisement- tory impact.

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ne act is likely

dwelling, land-
private home,
home, Hispanic

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gious status, or
—Negro, Black,
American Indian,
K. Colored,
ant, Christian,

Mexican Amer-
ican, Philippine, Polish,
an, Chicano, Af-
rican, Japanese, Indian,

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housing for older
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types. Symbols or
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color, religion, sex, handicap, familial
status, or national origin.

(d) *Colloquialisms.* Words or phrases
used regionally or locally which imply
or suggest race, color, religion, sex,
handicap, familial status, or national
origin.

(e) *Directions to real estate for sale or
rent (use of maps or written instructions).*
Directions can imply a discriminatory
preference, limitation, or exclusion.
For example, references to real estate
location made in terms of racial or na-
tional origin significant landmarks,
such as an existing black development
(signal to blacks) or an existing devel-
opment known for its exclusion of mi-
norities (signal to whites). Specific di-
rections which make reference to a ra-
cial or national origin significant area
may indicate a preference. References
to a synagogue, congregation or parish
may also indicate a religious prefer-
ence.

(f) *Area (location) description.* Names
of facilities which cater to a particular
racial, national origin or religious
group, such as country club or private
school designations, or names of facili-
ties which are used exclusively by one
sex may indicate a preference.

§ 109.25 Selective use of advertising media or content.

The selective use of advertising
media or content when particular com-
binations thereof are used exclusively
with respect to various housing devel-
opments or sites can lead to discrimi-
natory results and may indicate a vio-
lation of the Fair Housing Act. For ex-
ample, the use of English language
media alone or the exclusive use of
media catering to the majority popu-
lation in an area, when, in such area,
there are also available non-English
language or other minority media, may
have discriminatory impact. Similarly,
the selective use of human models in
advertisements may have discrimina-
tory impact. The following are exam-
ples of the selective use of advertise-
ments which may be discriminatory:

(a) *Selective geographic advertisements.*
Such selective use may involve the
strategic placement of billboards; bro-
chure advertisements distributed with-
in a limited geographic area by hand or
in the mail; advertising in particular

geographic coverage editions of major
metropolitan newspapers or in news-
papers of limited circulation which are
mainly advertising vehicles for reach-
ing a particular segment of the com-
munity; or displays or announcements
available only in selected sales offices.

(b) *Selective use of equal opportunity
slogan or logo.* When placing advertise-
ments, such selective use may involve
placing the equal housing opportunity
slogan or logo in advertising reaching
some geographic areas, but not others,
or with respect to some properties but
not others.

(c) *Selective use of human models when
conducting an advertising campaign.* Se-
lective advertising may involve an ad-
vertising campaign using human mod-
els primarily in media that cater to
one racial or national origin segment
of the population without a com-
plementary advertising campaign that
is directed at other groups. Another ex-
ample may involve use of racially
mixed models by a developer to adver-
tise one development and not others.
Similar care must be exercised in ad-
vertising in publications or other
media directed at one particular sex, or
at persons without children. Such se-
lective advertising may involve the use
of human models of members of only
one sex, or of adults only, in displays,
photographs or drawings to indicate
preferences for one sex or the other, or
for adults to the exclusion of children.

§ 109.30 Fair housing policy and prac- tices.

In the investigation of complaints,
the Assistant Secretary will consider
the implementation of fair housing
policies and practices provided in this
section as evidence of compliance with
the prohibitions against discrimination
in advertising under the Fair Housing
Act.

(a) *Use of Equal Housing Opportunity
logotype, statement, or slogan.* All adver-
tising of residential real estate for sale,
rent, or financing should contain an
equal housing opportunity logotype,
statement, or slogan as a means of edu-
cating the homeseeking public that the
property is available to all persons re-
gardless of race, color, religion, sex,
handicap, familial status, or national
origin. The choice of logotype, state-

ment or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Table I (see appendix D) indicates suggested use of the logotype, statement, or slogan and size of logotype. Table II (see appendix D) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

(b) *Use of human models.* Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex, handicap, familial status, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group.

(c) *Coverage of local laws.* Where the Equal Housing Opportunity statement is used, the advertisement may also include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

(d) *Notification of fair housing policy—*
 (1) *Employees.* All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental or financing of real estate should provide a printed copy of their nondiscrimination policy to each employee and officer.

(2) *Clients.* All publishers or advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and should have copies available for all firms and persons using their advertising services.

(3) *Publishers' notice.* All publishers should publish at the beginning of the real estate advertising section a notice such as that appearing in Table III (see

appendix D). The notice may include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

APPENDIX I TO PART 109—FAIR HOUSING ADVERTISING

The following three tables may serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising:

Table I

A simple formula can guide the real estate advertiser in using the Equal Housing Opportunity logotype, statement, or slogan.

In all space advertising (advertising in regularly printed media such as newspapers or magazines) the following standards should be used:

Size of advertisement	Size of logotype in inches
1/2 page or larger	2x2
1/4 page up to 1/2 page	1x1
4 column inches to 1/2 page	1/2x1/2
Less than 4 column inches	(1)

(1) Do not use.

In any other advertisements, if other logotypes are used in the advertisement, then the Equal Housing Opportunity logo should be of a size at least equal to the largest of the other logotypes; if no other logotypes are used, then the type should be bold display face which is clearly visible. Alternatively, when no other logotypes are used, 3 to 5 percent of an advertisement may be devoted to a statement of the equal housing opportunity policy.

In space advertising which is less than 4 column inches (one column 4 inches long or two columns 2 inches long) of a page in size, the Equal Housing Opportunity slogan should be used. Such advertisements may be grouped with other advertisements under a caption which states that the housing is available to all without regard to race, color, religion, sex, handicap, familial status, or national origin.

Table II

Illustrations of Logotype, Statement, and Slogan, Equal Housing Opportunity Logotype:



Equal Housing are pledged to policy for the opportunity to courage and selling and marketing are no barriers of race, color, status, or Equal Housing Housing Opport

Illustration notice: All fee subject to the which makes preference, firm cause of race, familial status tion to make tion, or discrim We will not s ing for real es the law. All that all dwellin an equal opport

PART 110—

Subpart A—

Sec.
 110.1 Purpose.
 110.5 Definition

Subpart B—

110.10 Persons
 110.15 Locatio
 110.20 Availab
 110.25 Descrip

Subp

110.30 Effect o

AUTHORITY: 7
 1968 (42 U.S.C.

The notice may include a regarding the coverage of air housing or human rights prohibiting discrimination e. rental or financing of

TO PART 109—FAIR HOUSING ADVERTISING

ng three tables may serve as a use of the Equal Housing Opportunity statement, slogan, and notice for advertising:

Table I

Formula can guide the real estate using the Equal Housing Opportunity statement or slogan.

advertising (advertising in reg- media such as newspapers or ce following standards should be

of advertisement	Size of approved notices
page	2x2
1/2 page	1x1
inches	1/2x1/2
	(1)

r advertisements, if other logo- ed in the advertisement, then using Opportunity logo should at least equal to the largest of types; if no other logotypes are e type should be bold display e clearly visible. Alternatively, r logotypes are used, 3 to 5 per- vortisement may be devoted to of the equal housing oppor-

vertising which is less than 4 s (one column 4 inches long or 2 inches long) of a page in size. Housing Opportunity slogan d. Such advertisements may be other advertisements under a n states that the housing is d without regard to race, color, handicap, familial status, or n.

Table II

s of Logotype, Statement, and d Housing Opportunity Logo



EQUAL HOUSING OPPORTUNITY

Equal Housing Opportunity Statement: We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.

Equal Housing Opportunity Slogan: "Equal Housing Opportunity."

Table III

Illustration of Media Notice—Publisher's notice: All real estate advertised herein is subject to the Federal Fair Housing Act, which makes it illegal to advertise "any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or intention to make any such preference, limitation, or discrimination."

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis.

PART 110—FAIR HOUSING POSTER

Subpart A—Purpose and Definitions

Sec.

110.1 Purpose.

110.5 Definitions.

Subpart B—Requirements for Display of Posters

110.10 Persons subject.

110.15 Location of posters.

110.20 Availability of posters.

110.25 Description of posters.

Subpart C—Enforcement

110.30 Effect of failure to display poster.

AUTHORITY: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600-3620); sec. 7(d), Depart-

ment of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Source: 37 FR 3429, Feb. 16, 1972.

Subpart A—Purpose and Definitions

§ 110.1 Purpose.

The regulations set forth in this part contain the procedures established by the Secretary of Housing and Urban Development with respect to the display of a fair housing poster by persons subject to sections 804 through 806 of the Fair Housing Act, 42 U.S.C. 3604-3606.

(54 FR 3310, Jan. 23, 1989)

§ 110.5 Definitions.

(a) *Department* means the Department of Housing and Urban Development.

(b) *Discriminatory housing practice* means an act that is unlawful under section 804, 805, 806, or 818 of the Act.

(c) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(d) *Family* includes a single individual.

(e) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 U.S.C., receivers and fiduciaries.

(f) *Secretary* means the Secretary of Housing and Urban Development.

(g) *Fair housing poster* means the poster prescribed by the Secretary for display by persons subject to sections 804-806 of the Act.

(h) *The Act* means the Fair Housing Act (The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988), 42 U.S.C. 3600, et seq.

(i) *Person in the business of selling or renting dwellings* means a person as defined in section 803(c) of the Act.

(37 FR 3429, Feb. 16, 1972, as amended at 54 FR 3311, Jan. 23, 1989)