Lawful Target Marketing

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It’s a well-established marketing principle that narrowing the segment of prospective customers you want to attract lets you create a more effective targeted message and ultimately yields you a better bottom line.

But the Fair Housing Act says it’s unlawful to discriminate against members of certain protected classes in providing real estate services, even if these groups don’t fit in with your targeting strategy. More specifically, you can’t “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 based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.”

With these limitations looming over you, how can you create an effective marketing plan that focuses on one or more parts of the population without running afoul of the Fair Housing Act? That’s a difficult question—a question for which we don’t yet have all the answers.

To date, neither the courts nor the U.S. Department of Housing and Urban Development have provided specific guidance on some of the more gritty, real-life questions related to this issue: “Is it okay to describe myself as African American on my website so prospective clients who prefer an African American salesperson can easily find me?”

Unfortunately, until more guidance is available, the only safe course of action is to focus your target marketing activities on what’s clearly permissible under the Fair Housing Act and scrupulously avoid what isn’t—even if it occasionally seems to put a crimp in your marketing strategy.

What to Avoid
Perhaps the most critical mistake you can make is to base your marketing decisions on prospective clients’ membership—or nonmembership—in any of the classes protected by the federal Fair Housing Act or by your state’s fair housing laws. This means you can’t focus your business plan or advertising tactics only on Hispanics or Arab Americans and exclude African Americans, Asians, or Caucasians, for example. Likewise, you can’t market your services only in Christian-oriented publications or on television, even if you’d prefer to target only those who want a Christian salesperson. (Note that advertising restrictions under the Fair Housing Act apply to all forms of print and electronic media.)

Practitioners who want to specialize in senior housing and issues such as retirement and reverse mortgages face a similar challenge. Even though you may legally make customers aware you have special expertise that can benefit seniors, you must be sure to make your services available to seniors who have children in their households. And unless a community is qualified as senior housing under HUD regulations, you must never refuse or forget to show families with children properties just because many seniors live there. The rule not to market on the basis of membership in a protected class applies

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even if the protected class is one that you belong to. Also note that the Fair Housing Act makes it illegal for anyone in a brokerage office to be designated as the associate who automatically services all clients who are of the same ethnic or racial background as the associate.

**Focus on Your Skills, Property**

Does that mean then that you can’t let buyers know that you’re fluent in the language they speak? Not at all. Under the Fair Housing Act, there’s nothing wrong with marketing yourself as having certain language skills. So long as you pitch your services to the population at large, not just to those ethnic groups who speak your language, it’s fine to indicate in your promotions that you speak Arabic, Spanish, or whatever.

Then prospects can decide to choose you because you share a similar language, religion, or background, and you’re not choosing them based on some similarity they have with you.

**Strategies**

There are other strategies you legally can use under the Fair Housing Act. First, you’re usually on safe ground if you focus on a property-related niche instead of a client-related one. A niche marketing plan that’s based on any of the following property types is perfectly lawful and can be quite effective:

- Fixer-uppers
- Condominiums
- Single-family homes
- Resort housing
- Properties in foreclosure
- Environment-friendly buildings
- Golf course communities
- Homes on the historic register

Second, you can focus on individuals’ specific needs that are not covered by fair housing: relocation, interest in living near particular hobby or sports offerings, and level of understanding about the buying and selling process. It’s perfectly lawful, for example, to market to first-time buyers so long as you don’t make assumptions about the likelihood of any group—such as recent Hispanic or Asian immigrants—being first-timers.

So, you see, it’s possible to follow the advice of the marketing gurus and target a niche without violating the Fair Housing Act. But be inclusive in your marketing, allowing prospective clients to choose whether they want you to represent them. As for the questions not yet answered by HUD or the courts, play it safe and abide by clear-cut rules. The NATIONAL ASSOCIATION OF REALTORS® Legal Affairs department will keep you posted on new information as it becomes available. Go to www.realtor.org/law_and_policy.