

Intermountain Fair Housing Council's Best Practices to Avoid

Religious Discrimination (2013)

(Resources: *Fair Housing Coach*, HUD/DOJ Websites, Robert Schwemm's *Housing Discrimination Law and Litigation*)

- A. Religion and the non-practice of a religion are both protected status under the FHA.**
- B. Here are some best practices:**
 - 1. Leave religion out of your advertisement, marketing materials, website, FaceBook, YouTube, Twitter, Instagram, etc. for housing.**

Watch the use of religious language or symbols in your advertising and marketing materials unless the symbol is part of a registered trademark or logo. Watch the use of religious language in description of housing. While HUD maintains that the use "apartment complex with chapel" or "kosher meals available" are ok as they don't directly state a preference, it doesn't mean you should state a preference in advertising such as near a particular church which may violate the FHA.

For example, United States Department of Justice settled a case filed under the Fair Housing Act against an insurance company that allegedly discriminated because of religion by advertising special benefits and discounts available only to "churchgoers" and "persons of faith." The Company allegedly offered the preference in at least 19 states and used an application form that included a space for applicants to indicate their "denomination." The settlement called for the company and two agents to pay a total of \$29,500 to three victims of discrimination and an additional \$45,000 to the government as a civil penalty, and to stop the alleged discriminatory practices. *U.S. v. GuideOne Mutual Insurance Co., Kentucky*, (September 2009).

- 2. Don't limit marketing of your complex in religious publications and outlets.**

HUD regulations prohibit advertising or statements which deny certain segments of the housing market information about housing opportunities based on religion. Advertise in a broad range of media markets and locations.

- 3. Do not include religion in your application process.**

Do not ask questions that refer to an applicant's religion, are religious, whether s/he belongs to a church, or a religious organization. Be careful how you respond if you are asked about your religion. Do not comment on religious clothing an applicant is wearing such as a hijab. However, be careful in that regard to your own employees. They may be allowed to express

their religious preference at work as long as it does not impose undue hardship on the employer.

4. Have rules that treat tenants/residents fairly regardless of religion or lack thereof.

Savanna Club Worship Service, Inc. v. Savanna Club Homeowners' Association, 456 F. Supp. 2d 1223 (S.D. Fla. 2005). Owners of a religious club sued HOA and board members because the HOA prohibited religious services in common areas. **Note:** The Court dismissed the Plaintiff's claims because the HOA applied its restrictions in a neutral manner. The Court recognized, however, that HOA's are governed by the FHA since they control and regulate certain property rights, such as use of common areas and facilities.

5. When celebrating holidays (if you dare do so), include all holidays and celebrations.

Don't refer to particular holidays or religions; celebrate the festivity of the season in general. Don't appear to give a preference. Use terms such as Seasons Greetings instead of Merry Christmas. Use neutral messages, colors, and themes in decorating. Invite all residents to parties regardless of religion but do not require attendance. Make sure greeting cards, emails, newsletters are neutral as well so as to avoid preference of one religion over another. Make sure you allow equal access to community rooms for all groups of faith or none at all.

6. Address Complaints about Religious Harassment.

When the San Francisco Housing authority allowed public housing authority residents of Iraqi descent and Muslim faith to be harassed without taking steps to stop the harassment, the Department of Justice brought suit. The SFHA settled the case for \$200,000 to the victims and modification of its policies to address the complaints. *U.S. v. San Francisco Housing Authority* (January 2004).

7. Exemption from the Rule

In *Intermountain Fair Housing Council v. Boise Rescue Mission* (2011), the Court said Congress exempted religious organizations may limit access to their charitable services to persons practicing their same religion but they can't discriminate on another basis.

"Although § 3604(a) and (b) of the FHA prohibit religious discrimination generally, in 42 U.S.C. § 3607(a) Congress provided an exemption for religious organizations that want to limit access to their charitable services to people who practice the same religion. Specifically, § 3607(a) provides in relevant part:

(a) Nothing in [the FHA] shall prohibit 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 from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.

We recognize that we must construe § 3607(a) narrowly. See *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731–32, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995) (construing the FHA's "absolute exemption," contained in 42 U.S.C. § 3607(b)(1), narrowly to effectuate the FHA's broad policy of providing fair housing throughout the United States). We nevertheless conclude that § 3607(a) exempts the practices challenged here.

No one disputes that Defendant is a bona fide Christian organization that does not restrict its membership on account of race, color, or national origin. And no one disputes that Defendant operates its homeless shelters and drug treatment program for "other than a commercial purpose." Because Defendant satisfies those threshold requirements, this case presents us with the opportunity to apply § 3607(a) cleanly to the religious practices at issue.

Those practices amount to "giving preference" to people of Defendant's religion. Accordingly, §3607(a) exempts the BRM from violating the FHA."

8. Get Legal Advice.

Stop and get legal advice before you do something based on your religion or lack thereof as a housing transactor. Remember that the LGBT or unmarried couples may be protected by another civil rights law.



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