

REALTOR® Mag

Do Your Facebook Ads Discriminate?

Some practitioners might not realize they're violating fair housing laws. Here's how to make sure your marketing is legal and ethical.

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Time to face it: Facebook has likely become an inextricable part of how you promote your listings and market your business. It's also the app many of your clients and prospects turn to the minute they wake up. But now the social media behemoth is dealing with fallout from apparent data breaches and questionable ad targeting practices.

This erosion of public trust is the central reason CEO Mark Zuckerberg testified in the U.S. Senate for 10 hours last month to address the outrage over data abuse by Cambridge Analytica, a political consulting firm that collected private information without permission on as many as 87 million Facebook users. Revelations about the mind-boggling degree of access that brands of all kinds have to the activities of 2 billion users

mean real estate pros need to be aware of how their own marketing could be affected.

Allegations that [Facebook enables housing discrimination](#) by allowing real estate advertisers, including brokers and agents, to exclude certain audiences were the focus of a federal lawsuit filed in late March by the National Fair Housing Alliance and three affiliated groups. According to the complaint, "Facebook continues to enable landlords and real estate brokers to bar families with children, women, and others from receiving rental and sales ads for housing."

His assertion did little to assuage critics. The fact that advertisers are still able to exclude people, within other categories protected under federal and state fair housing laws—such as gender and familial status—suggests that the problem is far from resolved. "Many targeting categories will implicate these protections—think about 'brides,' or 'parents of 5- to 8-year-olds,' or 'consumers of halal food,'" says Rachel Goodman, staff attorney with the American Civil Liberties Union's Racial Justice Program. "Facebook has been aware of this issue since the spring of 2016. They have repeatedly expressed a commitment in the past to fixing this problem, but they have not yet brought their systems into compliance with the A



The National Association of REALTORS® is commemorating the 50th anniversary of the Fair Housing Act in 2018. Visit [FairHousing.realtor](#) to learn about the commemoration and find resources you can use in your business.

Fair housing advocates took no comfort in the U.S. Department of Housing and Urban Development decision last year to close its investigation related to Facebook's ad platform after determining there was no finding for cause, according to HUD spokesman Brian Sullivan. In a phone interview, Sullivan said he could not comment about the ongoing potential for fair housing violations on Facebook. "We do guide people to not market a property in such a way as to limit housing opportunities for certain protected classes," Sullivan said.

Goodman says increased scrutiny of platforms like Facebook is the only way to ensure they are complying with civil rights law. NFHA General Counsel Morgan Williams concurs on the need for vigilance: "We're supportive of any changes that would end these problematic filtering mechanisms."

How Misuse Can Occur

The problems stemming from the ad platform can emerge innocently enough, often by users with no intent to violate the Fair Housing Act, in part because of the ease of the technology. Let's say a listing agent markets a "starter home" by using Facebook's ad filters to target that listing to buyers ages 25 to 35. Or a female property manager who connects well with female renters decides to focus her Facebook advertising toward women. In both cases they're likely breaking either a state or federal fair housing law and violating the REALTOR® Code of Ethics.

The federal Fair Housing Act includes seven protected classes today: race, color, religion, national origin, sex, disability, and familial status. Many states, counties, and municipalities include additional protected classes, such as age and sexual orientation. The potential for illegal discrimination online goes well beyond Facebook—it can arise whenever you target a specific audience. "Real estate professionals have an obligation under the Fair Housing Act to not discriminate against any individuals within a protected class," says Lesley Muchow, deputy general counsel at the National Association of REALTORS®.

While broadly marketing your listings, through print or digital platforms, is a helpful way to grow your business, targeted marketing that singles out a particular group is best avoided. "It's unlawful to create a notice or statement that's exclusive," says Fred Underwood, director of diversity and community outreach programs at NAR.

Sidebar: 6 Tips for Keeping Your Marketing Legal

Teaching Appropriate Ad Targeting

Brokers like Carrie Little, managing broker of CarMarc Realty Group in Chicago, are mindful of the need to market to a broad consumer audience and reiterate this message in agent training classes. "If you're ever called on for a fair housing violation, you must prove you are marketing to all demographics," Little says. If your marketing includes people photos, she says, include a broad spectrum of people.

When it comes to Facebook, Little will include all ages within a specific city radius and use filters sparingly, only targeting people based on very specific interests such as horse lovers or boat owners.

Nathan Dadosky, a digital marketing expert in Greenville, N.C., has helped real estate pros generate leads using Facebook and Instagram advertising. When agents try to target an ad using discriminatory filters, he redirects them.

Selecting an age filter, for example, may not only be problematic in terms of the law, it also negatively impacts the advertising campaign because the agent is giving Facebook too many restrictions up front, he says. It's best to cast a wide net for prospects that will narrow organically based on the interested audiences, he says. Facebook's algorithm will find out who's interacting with ads, because it knows users' behavior and purchase history.

The Future of Facebook Ads

The scrutiny surrounding Facebook's ads will likely result in more changes to the ad platform, Dadosky says. That might mean the removal of targeting criteria based on data collected from a third-party partner such as Acxiom Data Cloud. If that occurs, advertisers will no longer have access to targeting criteria such as "likely to move" or "recent mortgage borrower," Dadosky says. But he insists that it "wouldn't necessarily be the end of the world" for those who advertise through the platform.

He encourages agents to focus on building an organic, hyperlocal audience by consistently publishing quality content on both Facebook and Instagram that directs users to a high-quality website that's fast and mobile-optimized. An example of quality content would be a "home of the day," posted on Instagram, Dadosky suggests. It could include a collage with high-quality photos and hashtags naming the town and neighborhood. "You'll attract the attention of people looking to buy and sell," he adds. "It's a strategy that takes time, but it's arguably more sustainable."

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