

A woman owned a four-unit apartment building and lived in one of the units. When one of her tenants vacated his apartment, the woman placed an advertisement in the local paper that read as follows: "Large two-bedroom apartment available for rent. White male preferred." The woman's preference was motivated by the fact that she liked to have a mix of tenants of both genders and from various racial and ethnic backgrounds in her building, and of the remaining rented units, one was rented to an African American man and the other to a Pacific Islander woman.

Based upon these facts, which of the following statements is true?

- A. The federal Fair Housing Act makes it illegal for the woman to refuse to rent her units to prospective tenants because of their race or gender.
- B. The woman's motive absolves her from any liability under the federal Fair Housing Act.
- C. There are no violations of any federal laws under these facts.
- D. Under the federal Fair Housing Act, the woman was not permitted to state a racial or gender preference in the advertisement.

Explanation:

Fair Housing Act

Applicability Prohibits discriminatory actions in sale/renting of dwelling based on race, color, religion, sex, handicap, national origin, or familial status—including:

- refusing bona fide offer
- discriminating in terms, conditions, privileges, or services of purchase/rental
- advertising preference for or discrimination against buyer/renter
- falsely representing dwelling's availability for inspection, sale, or rental
- inducing sale/renting with discriminatory representations about neighborhood
- denying reasonable modifications to accommodate handicap at occupant's expense

Exceptions Act does not apply to:

- religious organizations
- private clubs that incidentally provide lodging to members
- familial status for senior housing
- owner of ≤ 3 single-family dwellings*
- owner-occupied dwellings with ≤ 4 units*
- sale/rental of single-family home by private owner

*These exceptions do not apply to discriminatory advertisements or when owner is assisted by a real estate agent, broker, or salesman.

The federal **Fair Housing Act (FHA)** was enacted to **prohibit discrimination** in the **sale or rental** of a **dwelling** on the basis of race, color, religion, sex/gender, handicap, national origin, or familial status. Under this act, the following discriminatory actions are prohibited:

- refusing to sell or rent a dwelling after receipt of a bona fide offer
- discriminating in the terms, conditions, privileges, or services of sale or rental of a dwelling
- advertising preference or discrimination** with respect to buyers or renters
- falsely representing that a dwelling is unavailable for inspection, sale, or rental
- inducing, for profit, the sale or rental of a dwelling with discriminatory representations about the neighborhood
- refusing to permit, at the occupant's expense, reasonable modifications to accommodate a handicap

Although owner-occupied dwellings with up to four units (as seen here) are generally excepted from the FHA, this exception does *not* apply to advertisements stating a

preference for a protected class. The woman's advertised preference for a "white male" renter constitutes race-based and gender-based discrimination. Therefore, the advertisement is not permitted under the FHA **(Choice C)**.

(Choice A) The FHA makes it generally illegal to refuse to rent to a prospective tenant based on race, sex/gender, or other protected class. But since the woman is renting an owner-occupied dwelling with four units, she need not comply with this provision.

(Choice B) The FHA applies when a person's actions have a **discriminatory intent** or discriminatory effect. Therefore, the woman's positive motive does not absolve her of liability under the FHA because her actions have a discriminatory effect.

Educational objective:

The Fair Housing Act prohibits discrimination in the sale or renting of a dwelling on the basis of race, color, religion, sex, handicap, national origin, or familial status. This includes advertisements that indicate any preference or discrimination with respect to buyers or renters.

References

Fair Housing Act, 42 U.S.C. §§ 3601 et seq.

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.