

**LAW AND PUBLIC SAFETY**

**DIVISION ON CIVIL RIGHTS**

**Advertisement Relating to Real Property**

**Proposed Readoption with Amendments: N.J.A.C. 13:9**

Authorized By: Chinh Q. Le., Director, Division on Civil Rights.

Authority: N.J.S.A. 10:5-8 and 10:5-12.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-279.

Submit comments by January 14, 2011 to:

Gary LoCassio, Deputy Director

Division on Civil Rights

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The agency proposal follows:

**Summary**

The New Jersey Division on Civil Rights (Division), in the Department of Law and Public Safety, enforces the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1et seq. Pursuant to N.J.S.A. 52:14B-5.1c, the Division's rules governing advertising regarding real property, N.J.A.C. 13:9, expire on April 2, 2011. The Division has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Accordingly, the Division proposes to readopt N.J.A.C. 13:9 with certain amendments.

The LAD provides, with certain limited exceptions, that it is unlawful for any person, including any housing provider or real estate salesperson, to “print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment or sublease of any real property or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property, or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, sex, gender identity, or expression, affectional or sexual orientation, familial status, disability, nationality, or source of lawful income used for rental or mortgage payments, or any intent to make any such limitation, specification or discrimination ...” N.J.S.A. 10:5-12g(3) and h(3). The Division first promulgated rules on real estate advertisement in 1969 in connection with the LAD’s prohibitions. The rules have been modified in the decades since to reflect amendments to the LAD.

When last readopted in 2005, the rules were streamlined and amended to clarify that the LAD’s prohibition on discriminatory advertising applies not only to newspaper advertisements, but to advertisements in any form of media. The rules were also amended to clarify that the prohibition on discriminatory advertising applied to the advertisement of real property even when the underlying property may be otherwise exempt from the LAD’s prohibitions against discriminatory housing practices. This latter amendment, which is consistent with the proscriptions of the LAD, was required by the Federal Department of Housing and Urban Development (HUD) in order for the Division’s rules to be “substantially equivalent” to those of

HUD. See 42 U.S.C. §3603(b). This substantial equivalence determination allowed the Division to enter into a work-sharing agreement with HUD, whereby the Division receives Federal funding for case processing and other outreach activities. The Division proposes to readopt these rules to maintain substantial equivalent status in order to maintain its contract with HUD.

Since the rule was last readopted, the LAD has been amended to prohibit discrimination in housing on the basis of gender identity or expression (P.L. 2006, c. 100) and on the basis of civil union status (P.L. 2006, c. 103). Upon readoption, the Division proposes to amend N.J.A.C. 13:9-1.1 to add these protected characteristics to reflect the amendments to the LAD. The clause “familial status” is being relocated within the subsection to remain consistent with the LAD. Finally, consistent with the 2005 amendment to the rule to clarify that advertisements in all forms of media were covered by the rule, upon readoption the Division proposes to further clarify that the rule governs advertisements in both print and electronic form.

The following is a summary of N.J.A.C. 13:9-1.1. N.J.A.C. 13:9-1.1(a) provides that the LAD’s prohibitions on discriminatory advertising apply to any type of posting, advertisement or listing related to real property in any form of media and applies to “any person,” including, but not limited to, newspapers and other media outlets. The proposed amendments to N.J.A.C. 13:9-1.1 would clarify that both print and electronic advertisements are governed by the rule, and would add gender identity or expression, civil union status and familial status to the list of protected characteristics to ensure that the rule conforms to the LAD. N.J.A.C. 13:9-1.1(b) clarifies that the prohibited discriminatory advertising activities delineated in this chapter include those relating to the rental of 1) a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence at the time of such rental; and

2) a room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence. While the rental practices in connection with these two types of property are exempt from the LAD (the so-called “Mrs. Murphy” exemption), this section makes clear that landlords and their agents may not use discriminatory advertising in connection with the rental of property covered by the “Mrs. Murphy” exemption.

As the Division has provided a 60-day comment period on the notice for this proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The rule proposed for readoption with amendments will have a beneficial social impact on the residents of New Jersey by clarifying that discriminatory advertising in all forms, and for all real property, is prohibited. The proposed amendments will also ensure that the rule is consistent with amendments to the LAD.

### **Economic Impact**

The rule proposed for readoption with amendments should not have any significant economic impact on the real estate industry or others conducting real estate transactions since all legal obligations arising under the rules are already mandated by Federal law and the State’s Law Against Discrimination, at N.J.S.A. 10:5-12g(3) and h(3). The rule proposed for readoption will have a positive economic impact on the State as it will permit the Division to maintain its work-sharing agreement with HUD, allowing the Division to continue to receive Federal funding for case processing and other outreach initiatives.

### **Federal Standards Statement**

A Federal standards analysis is not required because the substance of the rule proposed for readoption with amendments does not exceed Federal standards. The Federal Fair Housing Act (FHA) prohibits discriminatory advertising based on race, color, religion, sex, disability, familial status or national origin related to sale or rental of real property. See 42 U.S.C. §3604(c). The proposed amendments are consistent with the FHA's prohibitions against discriminatory advertising and, in some cases, were required by HUD in order for the Division to achieve certification as a substantially equivalent agency. To the extent that the prohibitions against discrimination based on marital status, civil union status, sexual orientation, gender identity or expression, and source of lawful income used for rent or mortgage payments exceed applicable provisions in the FHA, such provisions are mandated by the LAD.

#### **Jobs Impact**

The Division believes that the rule proposed for readoption with amendments will have no impact on the number of jobs in the State.

#### **Agriculture Industry Impact**

The Division believes that the rule proposed for readoption with amendments will have no impact on the agriculture industry.

#### **Regulatory Flexibility Analysis**

The rule proposed for readoption with amendments may affect small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to the extent that such small businesses are involved in placing or publishing advertisements related to real estate transactions. However, neither the rule proposed for readoption nor the proposed amendments will impose any reporting or recordkeeping requirements. While the rule proposed for readoption with amendments may impose compliance requirements on small businesses, the

rules do not impose any new legal obligations that are not already required by Federal law and the Law Against Discrimination, at N.J.S.A. 10:5-12g(3) and h(3). The rules are consistent with the coverage of the LAD, which prohibits discriminatory statements in real estate advertising by all persons and entities, regardless of size. To the extent that the rules proposed for re-adoption will clarify the advertising restrictions of the LAD, the Division believes that professional services should not be required for compliance.

### **Smart Growth Impact**

The Division does not anticipate that the rule proposed for re-adoption will have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

### **Housing Affordability Impact**

The rule proposed for re-adoption will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rule would evoke a change in the average costs associated with housing because the rule concerns only the advertisement of real property.

### **Smart Growth Development Impact**

The rule proposed for re-adoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rule would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rule concerns only the advertisement of real property.

**Full text** of the rule proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:9.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:9-1.1 Discriminatory advertising regarding realty

(a) It shall be a violation of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., for any person, including any newspaper or publication published or circulated within this State, to make, print, publish, circulate, issue, display, post, utter or disseminate or to cause to be made, printed, published, circulated, issued, displayed, posted, uttered or disseminated any **print or electronic** notice, listing, statement, sign or advertisement regarding the sale, lease, sub-lease, rental[,] or assignment of any real property, which expresses, overtly or subtly, directly or indirectly, any preference, limitation, specification[,] or discrimination as to race, creed, color, national origin, ancestry, marital status, **civil union status**, domestic partnership status, sex, **gender identity or expression, familial status**, nationality, disability, affectional or sexual orientation, source of lawful income used for rental or mortgage payments [or familial status], as such terms may be defined in the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

(b) (No change.)