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## GUIDE TO AFFIRMATIVE FAIR MARKETING AND RESIDENT SELECTION

## What Does it Mean to Affirmatively Further Fair Housing?

A municipality affirmatively furthers fair housing when it proactively promotes the value of fair housing in its approach to marketing, community outreach and resident selection. Such marketing and outreach efforts should encourage application by households who are least likely to apply because of characteristics protected by fair housing law. Using affirmative fair marketing techniques is one way to exhibit efforts at compliance with state and federal fair housing laws.

Our Guide to Affirmative Fair Marketing suggests some ways to effectively and affirmatively market low- and moderate-income housing units and provides templates and other resource documents for your use. *This guide is designed to be as comprehensive as possible; however, following these guidelines does not preclude nor guarantee immunity to legal actions.* Additionally, the requirements of the housing program's subsidy should be checked carefully to ensure that marketing and selection plans comply with any stipulations or conditions of the funding.

We have provided Fair Housing RI Resources in this guide that include contact information for local, state, federal and national organizations dedicated to the definition, practice, support and enforcement of fair housing ideas and laws. The organizations on this list can serve as resources for further guidance in the creation of your Affirmative Fair Marketing plan, as well as for the execution and administration of your selection process.

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## Guide to Affirmative Fair Marketing

### **STEP ONE: Determine a Selection Process for Buyers or Tenants**

There are two basic types of selection processes for buyers and renters - first-come-first-served/wait list and lottery. These options are covered in detail, in Step Seven (Selection Processes) of this guide. However, whatever selection process you choose, it is critical that it be:

- Fair and unbiased.
- Consistently applied to all applicants.
- Clearly defined.
- Clearly explained to potential tenants/buyers.

### **STEP TWO: Establish Eligibility Requirements**

Eligibility requirements control the universe of households who qualify for a housing program. The subsidy provider usually establishes the specific eligibility requirements. The developer, in conjunction with the Approved Monitoring Agent, is responsible for ensuring that all program participants meet the baseline qualifications for the particular development.

**Baseline qualifications for applicants are based on the housing subsidy program requirements and may include, but are not limited to, some or all of the following:**

- Maximum household gross income for various household sizes.
- Household size that is appropriate for the configuration of the unit.

- Requirements for down-payment and closing costs.
- Certificate of completion of a Homebuyer Education session.
- Mortgage prequalification letter.
- Ineligibility of individuals and their families who have a financial interest in the development.

*Reference materials provided in the Appendix that can be useful:* Income Limits Chart; Application Checklist; Fair Housing RI Resources.

**STEP THREE: Establish Selection Preferences**

The most equitable process for distributing affordable homes would have no preferences and be equally accessible to all applicants. However, municipalities sometimes choose to establish local selection preferences, to support the needs of their residents or achieve other goals.

*Examples of some typical preference categories are:*

- Current residents of the municipality, persons currently working in the municipality, and those hired but not yet started to work in the municipality.
- Families of children attending school in the area.
- Veterans.
- Persons with disabilities.
- Homeless persons or those displaced by fire or natural disaster.

Units are assigned using the selection preferences, and any remaining units would then be made available to other applicants. A developer may also apply a preference only to a portion of the total units, using separate lottery pools (a Preference Pool and an Open Pool) and making the designated number of selections from each pool.

In housing markets characterized by patterns of residential segregation or other barriers to housing opportunities for people protected by civil rights laws, local selection preferences can lead to a conflict with fair housing laws. A local preference that on its face does not appear to be directed towards a protected class may nonetheless disproportionately affect members of the group. Please refer to the information, “Overt Discrimination versus Indirect Discrimination,” on page 5 in the Federal and Rhode Island State Fair Housing Laws section of this guide.

Municipalities and developers that choose to impose a local preference should be acutely aware of their obligations. While local preferences are legal, they cannot come into conflict with fair housing laws. Any local preference should be based on an assessment of local housing needs and must make sense in the context of the geographic area in which the homes are located. Failure to examine the impact of local preferences on fair housing requirements adequately could leave the community and the developer open to legal challenge.

Census data can be a useful tool when determining the possible effects of the selection preferences you are considering and also in planning your marketing outreach efforts.

*Reference materials provided in the Appendix that can be useful:* Demographic Profile of Rhode Island Municipalities (based on 2000 U.S. Census); Fair Housing RI Resources.

## **STEP FOUR: Create an Affirmative Fair Marketing Plan**

In each development that contains low-to-moderate-income units, the developer should prepare a written plan for marketing the units and for tenant or buyer selection. This plan should be provided to the Approved Monitoring Agent early in the development process, before marketing of the units begins.

The marketing plan should address, but not be limited to the following topics:

- Sales prices or rents of the affordable units.
- Eligibility restrictions including maximum income of households applying for the affordable units.
- Description of affirmative marketing and outreach efforts planned.
- Description of the process to be used to distribute low-to-moderate-income units, including descriptions of any selection preferences.
- Use restrictions to be employed to ensure continued affordability of ownership units.
- Sample advertisements to be used.
- Identification of where ads will be placed.
- Tentative schedule for outreach efforts and application deadlines.

*Reference materials provided in the Appendix that can be useful:*

Marketing and Outreach Homeownership Project Plan Example; HUD Affirmative Fair Housing Marketing Plan; Homeownership Advertisement Example; Fair Housing RI Resources.

## **STEP FIVE: Undertake a Comprehensive Sales/Rental Outreach Strategy**

The goal of affirmative marketing is to target the specific audience to be served by the affordable-housing units. The marketing efforts should be planned to attract and encourage those who are under represented in the community and are therefore less likely to hear about or apply for the housing. A good marketing strategy will cast a wide net. Advertisements for the affordable housing units should:

- Be placed in local and regional media that serve general and targeted minority populations.
- Be produced in appropriate languages.
- Describe the property (not the tenant).
- Reflect the region's diversity in the people pictured in the ad.
- Provide the sales prices or rental fees of the low-to-moderate-income units.
- Clearly state the application period and deadlines.
- Include the HUD Fair Housing logo – using the logo announces that you are committed to the spirit and the laws of fair housing.

Notices about the availability of housing should be sent to:

- Rhode Island Commission for Human Rights.
- Area houses of worship.
- Local and regional housing agencies.
- Organizations serving minority populations.
- Local housing authorities.
- Civic groups.
- Social service agencies.
- Other non-profit agencies.
- Rhode Island Housing (information on low-to-moderate-income homes can be posted on our webpage).

A carefully planned, comprehensive, affirmative marketing plan, which has been successfully implemented, makes it easier to achieve a goal of equitable opportunity to compete for affordable homes.

*Reference materials provided in the Appendix that can be useful:* Demographic Profile of Rhode Island Municipalities (based on 2000 U.S. Census); Marketing and Outreach Homeownership Project Plan Example; HUD Affirmative Fair Housing Marketing Plan; Homeownership Advertisement Example; Fair Housing RI Resources.

## **STEP SIX: Execute the Application Process**

The application process, whether a wait-list method of selection or a lottery is chosen, should require:

- Application period to be at least 60 days.
- Applicants to submit all required materials by a specified deadline.
- Applicants to sign a statement authorizing the release of the information requested to the developer and Approved Monitoring Agent.

**PLEASE NOTE:** The level of documentation required from an applicant may depend on the source of subsidy.

The application process should be fully accessible to everyone. Reasonable accommodations should include, but not be limited to:

- Allowing other methods of obtaining and submitting applications for those who are unable to accomplish this in person (including use of USPS mail, FedEx, UPS etc.).
- Making applications available in other formats (large print, Braille etc.).
- Assisting the applicant in filling out the application.

## Screening

Once baseline requirements for the development have been established, the developer and/or the Approved Monitoring Agent may undertake screening and verification of information to ensure that the applicant satisfies the requirements. Applicants should not be asked for information that does not relate to the baseline requirements. Keep in mind the following rules:

- All applicants must be treated equally.
- Screening rules must be uniformly applied.
- Qualifying questions, if asked, must be asked of all prospective residents.
- Qualifying questions, if asked, must be stated in exactly the same wording each time.

### *Examples of some acceptable screening techniques are:*

- Verifying income.
- Running credit checks - must stipulate the cut-off credit score and apply to all applicants without exception.
- Requiring personal and credit references.
- Performing identification or criminal background checks.
- Verifying past tenancies.

### *Duties of the Approved Monitoring Agent are:*

- To ensure that all required income verification is received from interested buyers/renters.
- To determine whether applicants meet the basic income eligibility requirements.
- To issue Certificate of Income Eligibility to applicants based on the maximum income levels allowable for each unit size.

**PLEASE NOTE:** Certificate of Income Eligibility is valid for up to six months, at which point it must be renewed by the Approved Monitoring Agent. A new Certificate may be issued upon submission of most recent income information.

*Reference materials provided in the Appendix that can be useful:* Homeownership Application Example; Disclosure Form Example; Deed Rider Signature of Understanding Example; Rhode Island Income Limits; Long-term Affordability Restrictions Q&A; Fair Housing RI Resources.

**STEP SEVEN: Execute the Selection Process**

In selecting residents for admission, most developments employ either a first-come-first-served approach or a lottery system. Each approach has its benefits and drawbacks, and you should carefully evaluate the system that works best for your situation.

**First-Come-First-Served/Wait List System**

A first-come-first-served selection process with a wait list is self-explanatory. All selection applications must be date and time stamped upon receipt and the initial selection made in order by the stamp. Preferences may be applied when using a wait-list selection process. Housing units would be awarded first to those who meet one or more of the preference criteria until the percentage of units designated for preference distribution had been assigned. The remaining units would be distributed to those applicants that did not fall into any of the preference categories. The largest units should be distributed first, proceeding down the list and assigning them to appropriately sized households, which may be defined by the housing subsidy program.

Once all selections are made, the original wait list must be retained. If a unit subsequently becomes available for any reason, the same approach must be used in the selection of the applicant from the original wait list. The wait list must be employed in a first-on-first-off manner by the date and time stamps to achieve the selection for these subsequently available units. It is important to have a transparent process, clearly communicated to all applicants, and to employ a broad marketing approach and a comprehensive outreach plan as described in sections four and five.

The wait-list process works well for community-based, non-profit developers that have an on-going presence in the community and established relationships with the pool of potential buyers. However, this method may be less well suited for private developers who do not have a long-term relationship within the community. The private developer may want to consider partnering with a community-based or local non-profit or an Approved Monitoring Agent in an effort to reach the targeted pool of potential buyers.

Please refer to the Fair Housing RI Resources section that has been included for organizations with which such partnerships might be formed.

**Lottery System**

The lottery method of resident selection allows eligible applicants equal opportunity to obtain affordable housing by indiscriminately ranking them through random selection from a pool or pools of applicants. The lottery system is advantageous because it eliminates the possibility of resident selection made based on personal characteristics rather than on eligibility. Additionally, it eliminates the possibility of unfair advantage taken by those with prior inside knowledge of availability of affordable units.

A lottery process can be executed for both types of resident selection: selection in which local preferences will be applied, and selection with no local preference. Many of the steps undertaken in the lottery process are applicable to both selection options.

Implementing an effective lottery requires careful, strategic planning and entails the employment of targeted outreach efforts, as did the marketing phase of the project. A thorough and comprehensive outreach portion of the lottery system plan can ensure an applicant population sufficient to meet the ideal of equitable opportunity, even in cases where local preference is to be applied.

The phases of the lottery system are:

- Preparation, planning and decisions.
- Public outreach and informational meetings.
- Lottery pool creation and selection process.

The major tasks in each of these phases and all of the steps of the lottery system are provided in detail in the Guide to the Lottery Process, which begins on page 17.

### Accessible Units

The federal Fair Housing Act includes accessibility requirements for newly constructed covered multifamily dwellings. In this context “covered multifamily dwellings” are defined as:

- Buildings consisting of four or more units if such buildings have one or more elevators.
- Ground floor units in other buildings consisting of four or more units.

These accessibility requirements apply to all “covered multifamily dwellings” with or without government assistance or insurance.

When planning a covered multifamily development, it must be designed and constructed in such a manner that:

- The public and common-use areas of the building or development are equally accessible to and usable by persons with disabilities:
  - All doors in the covered dwellings are designed to allow passage into and within all premises and are sufficiently wide to allow passage by persons in wheelchairs;
  - All covered dwellings contain the following features of adaptive design:
    - An accessible route into and through the dwelling.
    - Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
    - Reinforcements in bathroom walls to allow later installation of grab bars.
    - Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Additionally, in developments with HUD assistance, 5 percent of the units must be set aside as handicapped accessible in accordance with the Uniform Federal Accessibility Standards (UFAS) and an additional 2 percent of the units must be designated as accessible to the visually and hearing impaired.

In general, when establishing selection preferences for persons with disabilities, it is important to keep in mind that no priority can be assigned to one disability over another. Those with mental, developmental and other disabilities must be considered eligible for this preference pool equally to those with physical and mobility disabilities.

However, in HUD-assisted housing, when selecting residents to occupy the units required to be designed specifically to be accessible, the units must go first to those who need the accessibility features. These units can only be made available

to applicants who do not need the accessibility features if no otherwise eligible applicants who need these features are found in either selection pool. Should an accessible-rental unit be awarded to a non-disabled applicant, provisions should be included in the lease to stipulate the following:

- If, at a later date, a potential resident needing an accessible unit applies, the non-disabled renter agrees to move to a comparable non-accessible unit as soon as one becomes available. This move will be made at the expense of the property owner/landlord.

*Reference materials provided in the Appendix that can be useful:* Demographic Profile of Rhode Island Municipalities (2000 U.S. Census); Guide to a Lottery Process; Fair Housing RI Resources.

**STEP EIGHT: Financing the Selected Applicants**

Once the lottery is completed, give the applicants selected to purchase units a reasonable, pre-specified period during which they must secure financing.

The way this often works is:

1. The applicant is pre-qualified by a mortgage provider.
2. The applicant contacts the developer after receipt of preliminary approval.
3. The developer and applicant enter into a Purchase and Sale Agreement.
4. The executed Purchase and Sale Agreement is submitted to the lender.
5. The lender issues a firm financing commitment.

**Predatory lending** is an issue that can have serious negative impact. It is in the best interest of all involved to ensure that buyers are able to afford the home for the long-term.

Some steps that can help to achieve that goal include:

- Directing all interested applicants to homebuyer-education classes that include information about purchasing affordability-restricted homes.
- Encouraging applicants to pre-qualify for financing.
- Directing all interested applicants to a loan application workshop where they have access to responsible lenders.
- Referring interested applicants to Rhode Island Housing’s Loan Center or another lender approved by the Don’t Borrow Trouble Rhode Island initiative.

Contact information for Rhode Island Housing and Don’t Borrow Trouble Rhode Island can be found in the Fair Housing RI Resources section of this document.

**STEP NINE: Closing the Sale**

After closing on the sale of a unit, the developer should provide the Approved Monitoring Agent with a copy of the executed deed and use restriction, the acknowledgement of understanding of deed restrictions statement signed by the purchaser, and evidence of recording.

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## GUIDE TO A LOTTERY PROCESS

### Preparation, Planning and Decisions

Census data for Rhode Island that provides important information regarding the percentage of minority population by location has been provided in the Appendix. This can be a useful tool in the planning of your affirmative marketing campaign and in determining the potential effect of any selection preferences you may be considering.

- Determine the racial/ethnic groups least likely to apply. Take into consideration the location of the development and use the census data provided in the Appendix. Compare the demographic breakdown of the municipality with the demographics of the Housing Market Area (usually defined as the Metropolitan Statistical Area or MSA). Racial/ethnic groups, as defined by HUD are:
  - White
  - Black/African-American
  - Asian
  - Hawaiian/Pacific Islander
  - American Indian/Native Alaskan
  - Hispanic/Latino
- Determine if any selection preferences will be applied.
- Consider whether any of the proposed selection preferences for the development will have an adverse impact on opportunity for any of the groups least likely to apply. An adverse impact can arise when the process discourages a particular racial or ethnic group or groups from applying for residency/ownership or limits the opportunity for selection. An example of such an adverse impact would be for a community with a population that was 95 percent White to establish a 100 percent preference for local residents. Such an action would not only discourage application by minorities, but would also result in an inequitable opportunity for selection for minorities. A selection system that results in such an adverse impact may be found to violate fair housing laws. If the preference will have such an adverse impact or will reduce the effectiveness of affirmative marketing by making it more difficult for members of the groups least likely to apply to obtain a unit, consideration should be given to not using a preference or to lowering the percentage of units designated for distribution to the preference group.
- Determine who the participants will be in the public outreach efforts. Some valuable parties might include, but not be limited to:
  - Municipal official
  - Lottery administrators
  - Project developers

Details on the roles of each of these participants are provided later in this section.

- Establish the schedule of the selection process:
  - Advertising and outreach.
  - Set the application deadline (this should be at least 60 days following the last public outreach informational meeting if planned, or the last advertisement if meetings will not be held).

- If informational meetings are planned, set the date(s) and time(s) for the public outreach informational meeting(s) to attract as many potential applicants as possible:

- \*Evenings

- \*Weekend days

- Conduct advertising and outreach, using appropriate publications and contacting appropriate organizations and community groups. Examples of these outlets are found below. It is important to include publications and community contacts targeting the groups least likely to apply. Where minority groups are the least likely to apply, include publications and organizations serving the minority populations within the Housing Marketing Area. If the development is located in a municipality with a low minority population, and there are no publications or organizations serving minorities within the Housing Marketing Area, it is important to include such publications and organizations in the nearest city with a substantial minority population.
- Set the dates for the distribution of notifications about the public outreach meeting(s).
- Determine the best outlets for the meeting notification distributions, geared toward reaching your target audience. As with your marketing campaign, some suggestions are:
  - Rhode Island Commission for Human Rights
  - Area houses of worship
  - Organizations serving minority populations
  - Local and regional housing agencies
  - Local housing authorities
  - Civic groups
  - Lending institutions
  - Social service agencies
  - Other non-profit agencies
  - Rhode Island Housing  
(information on low- and moderate-income homes can be posted on our web site)

Other suggestions are available in the Rhode Island Outreach Media Outlets section included in this Appendix.

- Determine the location of the public outreach meeting(s), if planned. Some suggested locations are:
  - Town buildings
  - Schools
  - Libraries
  - Public meeting rooms
  - Community centers

### Public Outreach Informational Meeting

Participants may include, but are not limited to:

- Municipal Officials (to welcome the audience and describe the municipality role in the affordable housing project).
- Developer and/or Property Managers (to describe the project, answer specific questions about the units, to clearly explain the information requested on the application and to answer questions about the lottery process).
- Approved Monitoring Agents (to explain affordability restrictions, income eligibility and income certification process).
- Lottery Administrators (to answer questions about the lottery process).

**PLEASE NOTE:** Developers may choose to administer a lottery themselves or contract with another entity, such as the Approved Monitoring Agent, to provide that service.

Potential applicants should be provided with the following materials:

- An outline of the income qualifications for each size unit.
- The sales prices or rental fees for the affordable units.
- Details of any selection preferences.
- Written description of the eligibility requirements.
- Written explanation of the process by which the units will be distributed (including the application deadline date).
- Written explanation, in clear and simple terms, of any affordability restrictions.

Sufficient personnel should be on hand after the information session to assist applicants who may want to begin/complete their application.

**PLEASE NOTE:** Attendance at a meeting/workshop should not be a pre-condition for the approval of a lottery application. All the materials shown above and the applications should also be available to the public through general outreach distribution.

### Lottery Pools and General Selection Information

In a lottery that does not involve local preferences, there will be only one lottery pool: the Open Pool, into which all the registration numbers will be placed for selection.

In a lottery where local preferences are involved there will be two lottery pools: the Preference Pool into which the registration numbers for those who meet one or more of the preference criteria are placed, and the Open Pool into which the registration numbers for all those parties who did fit into any of the preference criteria are placed. **All parties who fall in the Preference Pool must also be included in the Open Pool.**

Each applicant's registration should indicate the size of unit/number of bedrooms required.

### **Lottery Selection Process – No Local Preferences Applied**

- Each qualified applicant is assigned a ballot with a registration number.
- Ballots with the registration numbers for applicant households are placed in the Open Pool.
- The ballots are drawn randomly from the Open Pool and placed on a list in the order in which they were drawn.
- Distribution of the units should be made, largest to smallest, by proceeding down the list and assigning them to appropriately sized households.
- Once all the larger units have been assigned to appropriately sized households in this manner, the selection order returns to the top of the list for the next group of units.
- The list with all remaining unselected households must be maintained and employed in the same manner should alternate buyers/renters be needed.

**PLEASE NOTE:** The housing subsidy program may define the appropriate household size. Generally, the appropriate size of a household would be the number of bedrooms necessary to accommodate two persons per bedroom, with the proviso that a family may choose a smaller unit if they wish.

### **Lottery Selection Process – Local Preferences Applied**

- Each qualified applicant is assigned a ballot with a registration number.
- Ballots with the registration numbers for applicant households are placed into all pools for which they are qualified.

**PLEASE NOTE:** Those not qualified under the local preference will be placed in the Open Pool only. Those qualified under the local preference will be placed in both the Preference Pool and the Open Pool.

- Ballots should be drawn randomly from the Preference Pool and placed on the Preference list in the order in which they were drawn.
- Ballots should be drawn randomly from the Open Pool and placed on the Open list in the order in which they were drawn.
- In the final lottery (with preference), distribution will come from the two selection pools, the Preference Pool and the Open Pool. This distribution of the available units must be:
  - Awarded according to the appropriate household size for the unit available that was established for the lottery.
  - Awarded, largest to smallest.
  - Distributed first from the Preference Pool until the percentage of units set aside for local preference has been reached or the Preference Pool has been exhausted.
  - Distributed from the Open Pool until all affordable units have been awarded.

**NOTE:** Per the above process, the Preference Pool contains only those applicants who meet one or more of the preference criteria. The Open Pool will contain all members of the Preference Pool and all other applicants who did not meet any of the preference criteria.

- Once all the larger units have been assigned to appropriately sized households in this manner, the selection order returns to the top of the lists for the next group of units.
- **The lists for both pools with all remaining unselected households must be maintained and employed in the same manner should alternate buyers/renters be needed.**

Reference materials provided in the Appendix that can be useful: Demographic Profile of Rhode Island Municipalities (2000 U.S. Census); Fair Housing RI Resources (including Rhode Island Outreach Media Outlets).

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