

Testing Craigslist Undercover with Portland's Housing Discrimination Police

by [Sean Breslin](#)



MOST NEWCOMERS to the City of Roses spend similar days poring through Craigslist, looking for a cheap room in a decent neighborhood—but they may also come across discrimination.

Among the listings for vegan-friendly housemates and pleas for drama-free tenants, a recent scan of Craigslist brought up some trickier postings. People were specifying family status, gender, and even religious preferences in their would-be roomies. Isn't there a law against specifying stuff like that?

Sure enough, there is: the Fair Housing Act. The national law prohibits stating a discriminatory preference in relation to race, color, religion, gender, familial status, national origin, and disability. Oregon state law takes this even further, protecting against discrimination based on sexual orientation, marital status, and source of income.

The law is pretty non-negotiable for real estate agents or building owners who rent out apartments. However, for those renting out rooms in their own homes, there's a bit of



ILLUSTRATION BY DAVE NEESON

legal wiggle room. In-home landlords can be picky, deciding that they'll only consider male or female roommates, or that they don't want to live with anyone who has kids or is of a different sexual orientation—but they can't advertise that fact in any way. Not over the phone, not in the newspaper, not on Craigslist, and not in person.

Although the online ad site may feel a lot like the classifieds in a newspaper, Craigslist operates under an entirely different set of rules. Newspapers must screen their ads to make sure no illegal content is appearing in their pages. If a newspaper carries a discriminatory ad, it can be found liable for the material. Not so for Craigslist. In 2008, the US Seventh Circuit of Appeals in Chicago found that Craigslist was not a publisher, but instead similar to an internet service provider. The difference: Publishers are liable for material written by others, while internet service providers are not. That's created a hunt-and-peck strategy for tracking down discriminatory ads, says Moloy Good, executive director of the Fair Housing Council of Oregon.

Craigslist dutifully links an explanation of the Fair Housing Act on all of its housing listings. And Craigslist CEO Jim Buckmaster says that while the Seventh Circuit Court ruling does give Craigslist some immunity from liability, that doesn't mean the company takes a hands-off approach to the content users post on its site.

"Craigslist employs a variety of blocking and screening technologies, among other measures, to help prevent the posting of ads that may not be in compliance with its terms of use—including ads inconsistent with fair housing laws," Buckmaster told the *Mercury* via email, adding that users can also flag inappropriate ads for removal.

But that doesn't mean a lot of ads aren't slipping through those screening systems, says Good.

"We get a lot of people emailing us ads and saying, 'Hey, just thought you should see this,'" Good says.

There's recourse beyond simply emailing Craigslist and hoping the ad gets removed. The Fair Housing Council employs "testers," people that pretend to be renters or homebuyers and visit places suspected of discrimination. It's just like being a secret shopper, says one tester who asked not to be named. The testers don't just look for obvious signs of discrimination, but also offhand comments.

"If someone says, 'Oh, I'm glad you don't have kids,' then that's discrimination," the tester says.

A lot of discriminatory practices can be "tested" over the phone. To that end, the council may give its testers specific statements to say, such as "My five-year-old will love it here." But they never tell the tester specifically what kind of discrimination they're looking for.

"We're looking for reactions to those statements," the tester says.

Luke Griffin, an enforcement coordinator with the Fair Housing Council, says most cases of discrimination are settled out of court, with the parties coming to an agreement of how to remedy the situation. But if discrimination cases go to trial, it can get costly if the housing provider is found guilty. Civil penalties alone cost \$55,000 for a first violation and \$110,000 for a second violation. Tack on punitive damages, compensatory damages, and lawyers' fees, and the total cost of a discrimination charge can top \$1 million, says Griffin.

The tester says she likes her work because—unlike other civil rights work she's done in the past—this gives her the opportunity to stand in someone else's shoes and feel what discrimination does to a person. It helps her empathize, she says.

"I know that when I'm doing a test, I'm helping somebody else out."

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