

Addressing Systemic Housing Challenges: Racism in the Homebuying Process

Thank you for participating. The event will begin shortly...

Technical Tips

- To access Closed Captioning, click the Live Transcript button, and then click "Show Subtitles" to view closed captioning.
- You can choose for your audio to come through your computer speakers or your phone.
- This event is being recorded. Materials will be posted on
www.HUDExchange.info/NFHTA
- For technical difficulties:
 - Sign out, then sign back in
 - Request help in the Q&A box
 - Email NFHTA@cloudburstgroup.com for further assistance

Learning Objectives

- Identify the common types of housing discrimination in the home buying process.
- Gain knowledge of the economic impacts of discrimination in the home buying process, including the continued disparities in wealth accumulation and the perpetuation of segregation.
- Explore the phenomenon of steering and its role in creating and reinforcing segregation.
- Discuss fair housing laws, regulation, and theories of liability used to combat steering and other forms of discrimination in the home buying process.
- Explore methods for conducting systemic and complaint-based investigations of unlawful steering practices and identifying responsible parties.

Reminders

- This event is being recorded.
- Materials, including the slide deck and resources, are posted on www.HUDExchange.info/NFHTA.
- Event recording will be available about two weeks after the event.
- Submit questions in the Q&A box at any time during today's event.

Paired Testing

What to watch for from agents and the real estate industry

Keith Herbert



“Basically, you didn’t do it right.”

- Typical reaction of an agent who has been tested
- This gets amplified as a defense when industry lawyers get involved
- Both testers didn’t ask for the same thing
- One was clearly a “motivated buyer”
- You tested the agent on a “bad day”





The industry will do all it can to knock out a test. For example, time between tests can be an issue.

- Newsday conducted over 100 tests in 18 months. Testers came and went, so scheduling tests became difficult.
- We had problems with too much time between tests. Sometimes it was weeks. We tried to keep tests within a week to 10 days.
- Tests need to be close in time, but testers want to avoid detection with similar stories close together.
- Prevents agents' claims that too much time passed between tests and the market changed.
- Monitor this closely so it's not a problem later.



**“I’m a minority.
How could I
steer?”**

**We found problems with
disparate treatment of would-be
buyers involving multiple
agents of color.**

**Everyone needs to meet Fair
Housing standards.**



“This is the way I work with everyone.”
- Agent

Exclusive agreements: testers pressured to sign. Does agent treat both testers the same?

Preapproval letters from a bank: again, does agent treat both testers the same?



“I was talking about school-performance data, not about race.”
- Agent

This was often the defense in cases where agents discussed with testers the quality of a school system in connection with a neighborhood.

But it's clearly understood that agents shouldn't be discussing quality of school districts because they're not education experts.

The Industry

- A few companies realized their agents' errors and acknowledged fair housing standards weren't met.
- Industry trade groups quickly realized what Newsday uncovered was not good for the industry as a whole and rapidly endorsed additional training and reforms.
- LIBOR (LI Board of Realtors) created a website that covers steering in residential sales, for example.



Newsday sparked change

At the end of August, three Long Island real estate brokerages agreed to settle claims their agents engage in illegal housing discrimination based on evidence documented by Newsday, the state's Attorney General and governor announced.

The firms agreed to pay \$115,000 for testing, fair housing support and agent training.





In November 2021, Gov. Kathy Hochul signed into law a wide-ranging package of anti-discrimination laws spurred by testing results revealed by Newsday's investigation. Changes included increased fines, more training and increased broker fees to pay for more undercover testing.

Realty Connect USA agent Reza Amiryavari in September 2020, under subpoena, testified, saying, “I don’t believe I violated any fair housing law. However, as a result of the Newsday investigation, I now realize that even the best of intentions can be misconstrued or interpreted as something . . . improper.” Amiryavari said he has since taken six classes on fair housing, and he noted that as an immigrant from the Middle East, “I have made it a personal and professional practice to look past an individual’s race or any protected class.”

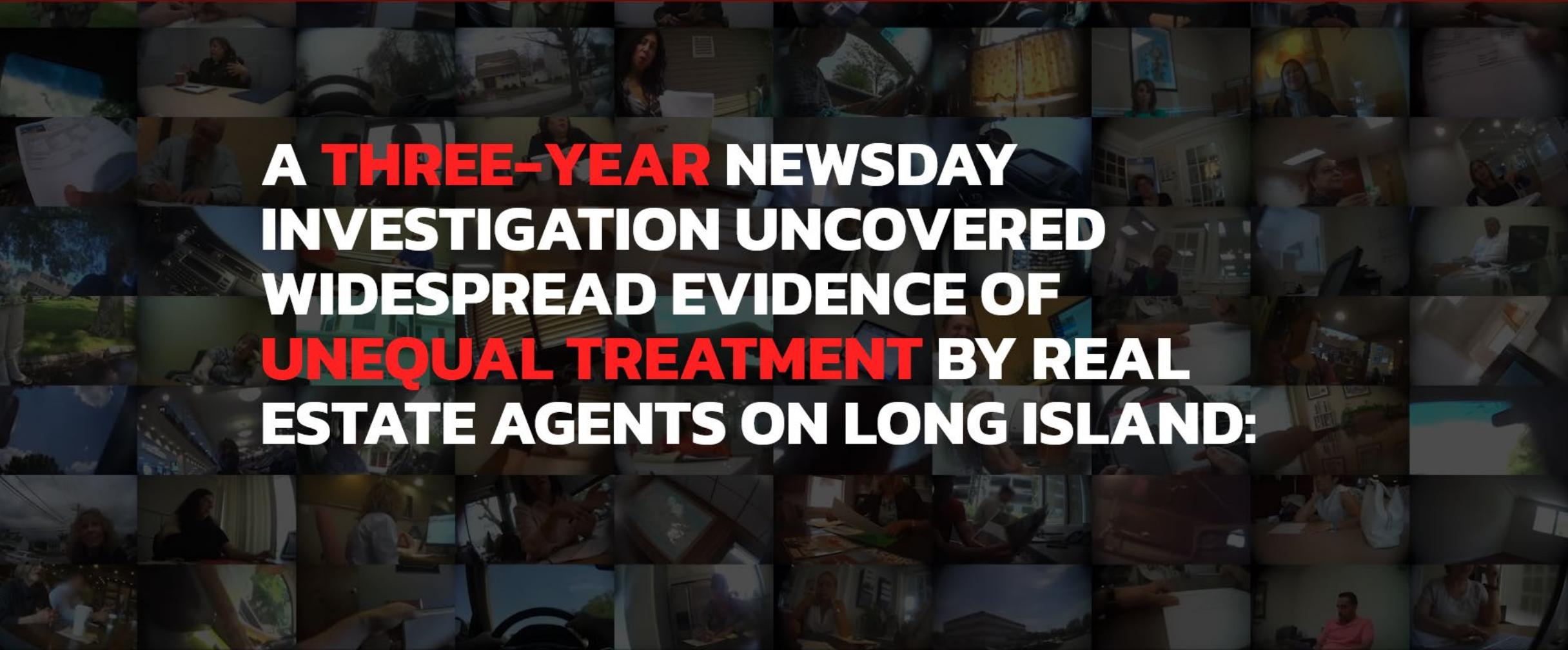


In the Newsday investigation, Amiryavari told a white tester, “I don’t think you should be in Elmont,” suggesting Franklin Square instead. The communities are 65% and 85% white, respectively, census figures show.

Racism in the Homebuying Process

Bryan Greene
Vice President, Policy Advocacy
National Association of Realtors®





A THREE-YEAR NEWSDAY INVESTIGATION UNCOVERED WIDESPREAD EVIDENCE OF **UNEQUAL TREATMENT** BY REAL ESTATE AGENTS ON LONG ISLAND:

FAIR HOUSING FOR ALL

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- ACCOUNTABILITY
- CULTURE CHANGE
- TRAINING

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NAR'S FAIR HOUSING LICENSING REPORTER



NATIONAL
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Real Estate Licensing Reporter: Fair Housing Education and Enforcement

Tutorial

Help

Fair Housing Education and Enforcement

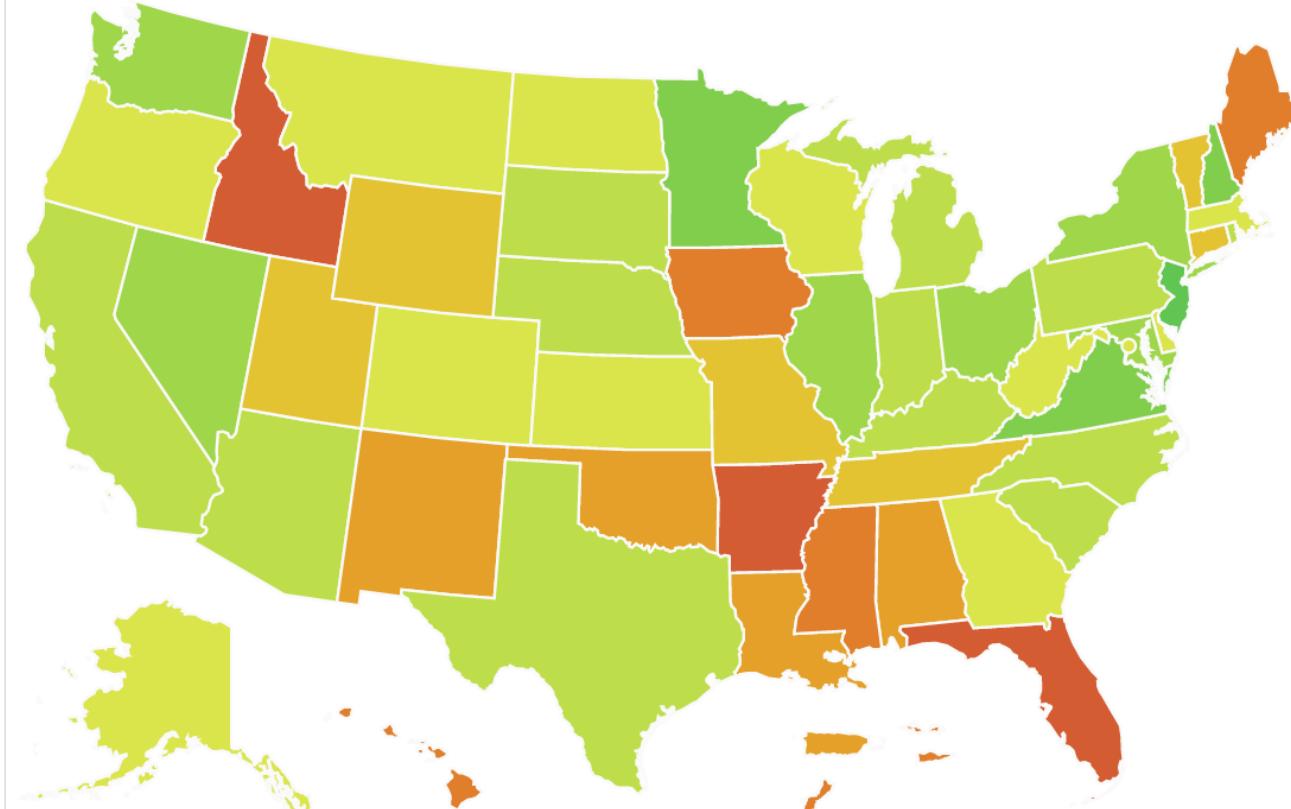
- ▼ Education
 - ▶ Pre-Licensing
 - ▶ Continuing Education
- ▼ Enforcement
 - Violations
 - Investigations and Reporting

Overview (Click to view)

Noteworthy Findings (Click to view)

Note: Some states may have pending legislation. This Reporter is updated on a quarterly basis and was last reviewed for updates on January 15, 2022.

More Consistent <- Best Practices --> Less Consistent No Applicable Law



National
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TRAINING ACADEMY



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ACT! TRAINING

PRE-LICENSE EDUCATION



No more than 50% of US jurisdictions mandate training hours specifically dedicated to fair housing for brokers or salespersons (one to four hours)



CONTINUING EDUCATION

No more than 31% of US jurisdictions mandate fair-housing continuing-education hours for brokers or salespersons

ACT! TRAINING: BEST PRACTICES



Dedicated training hours specifically for fair housing for both pre-licensing and continuing education



Stated minimum number of required hours
(preferably stand-alone courses)

ACT! CULTURE CHANGE

- Partnership with New York Fair Housing Center:
 - Video Profiles of Fair Housing Champions
- Schools and Fair Housing
- NAR's Apology

NAR'S 1924 CODE OF ETHICS

ARTICLE 34.

A Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood.

ARTICLE 35.

No instructions nor inducements from any client or customer relieve the Realtor from his responsibility strictly to observe this Code of Ethics.

ACT! ACCOUNTABILITY

- **Self-testing for Brokerages**
- **Federal Advocacy for Fair Housing Enforcement**
- **Real Estate Licensure Law Reform**

NOTEWORTHY FINDINGS: VIOLATIONS



75% of jurisdictions specifically prohibit fair housing violations (as opposed to a general prohibition on unethical conduct)



48% provide specific examples of violations to fair housing law

NOTEWORTHY FINDINGS: ENFORCEMENT



57% empower licensing body to investigate and discipline fair housing violations, without requiring another body to find liability first.



37% empower the licensing agency to conduct investigations without a triggering complaint.

DISCIPLINE FOR FAIR HOUSING VIOLATIONS: BEST PRACTICES UNDER CONSIDERATION



Expressly prohibit fair housing violations.



Provide specific examples of violations.



Empower licensing agencies to investigate and discipline fair housing violations without requiring another body to find liability first.



Empower Commission to investigate absent a triggering complaint.

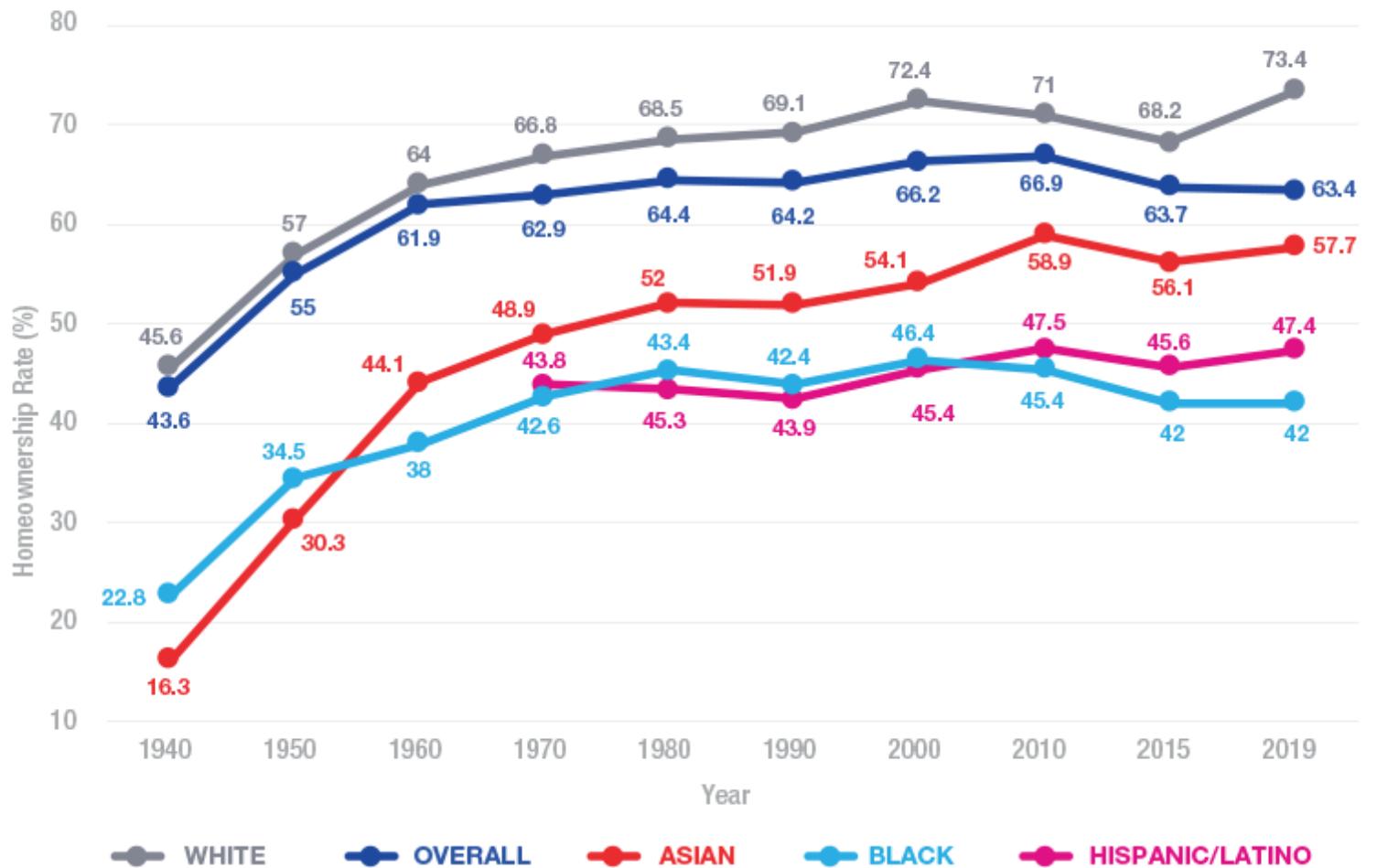


Promote coordination with state human rights agencies.



Encourage public transparency regarding disciplinary actions.

Homeownership Rates by Race Since 1940



BLACK HOMEOWNERSHIP COLLABORATIVE



MORTGAGE BANKERS ASSOCIATION



National
Urban League





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NAR Finds Black Home Buyers More Than Twice as Likely to Have Student Loan Debt, Be Rejected for Mortgage Loans Than White Home Buyers

NAR officials say data reinforces need for implementation of key housing policy initiatives to close persistent minority homeownership gaps

February 17, 2021

Media Contact: Troy Green 202-383-1042

Sources of Downpayment by Race/Ethnicity

	Racial and Ethnic Distribution			
	Black/African-American	Asian/Pacific Islander	Hispanic/Latino	White/Caucasian
Savings	50%	75%	60%	50%
Proceeds from sale of primary residence	17	18	21	37
401k/pension fund including a loan	15	5	10	5
Gift from relative or friend	9	15	9	9
Loan from relative or friend	2	5	2	2
Sale of stocks or bonds	4	14	5	6

Source: 2020 Profile of Home Buyers and Sellers

INCREASING ACCESS TO CREDIT

- **Tell** GSEs to eliminate loan-level pricing adjustments and risk-based pricing
- **Require** FHA to re-assess student loan debt calculations; deliver other student loan relief
- **Dispel** misinformation about VA loans
- **Utilize** alternative credit scoring
- **Provide** down payment assistance

3.4 Million Mortgage-Ready Black Americans

	Overall Population		Non Hispanic Whites		Black Americans		Hispanics		Asians	
	Freq(M)	Percent(%)	Freq(M)	Percent(%)	Freq(M)	Percent(%)	Freq(M)	Percent(%)	Freq(M)	Percent(%)
"Not Currently Mortgage Ready"	35.8	31%	17.0	26%	8.4	54%	8.9	37%	0.9	11%
"Near Mortgage Ready"	13.3	12%	6.8	10%	2.0	13%	3.5	15%	0.7	8%
"Mortgage Ready"	41.1	36%	23.4	36%	3.4	22%	8.3	34%	5.0	61%
"Mortgage Owner"	25.0	22%	17.7	27%	1.7	11%	3.5	14%	1.7	20%

Source: Freddie Mac calculations using anonymized credit bureau data with individuals aged 45 and younger for Jan 2021.

Non-Mortgage Owner (Age ≤ 45)

	Mortgage Ready (meet all of the following)	Near Mortgage Ready (meet all of the following)	Not Currently Mortgage Ready (meet any of the following)
Credit Score	≥ 661	≥ 600 and < 661	< 600
DTI	≤ 25	≤ 25	> 25
Foreclosure in 84 months	No	No	Yes
Bankruptcies in 84 months	No	No	Yes
Severe Delinquencies in 12 months	No	No	Yes

*Note: Mortgage readiness – Based on research criteria *not* actual underwriting.

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Once-In-A-Generation Response Needed to Address Housing Supply Crisis

June 16, 2021

Media Contact: Wesley Shaw 202-383-1193

Transportation and Infrastructure, Fair Ho

WASHINGTON (JUNE 16, 2021) – Decades of underinvestment and underbuilding have created a [shortage of housing](#) in America that is more dire than previously expected and will require a concerted, long-term nationwide commitment to overcome, according to a new report released today by the National Association of Realtors® and authored by the Rosen Consulting Group. [Housing is Critical Infrastructure: Social and Economic Benefits of Building More Housing](#) outlines causes and offers numerous potential solutions for both federal and local-level policymakers to consider, but warns that immediate action must be taken across all levels of government, no matter the approach.





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Record-High Prices and Record-Low Inventory Make It Increasingly Difficult to Achieve Homeownership, Particularly for Black Americans

NAR and Realtor.com® identify most affordable housing markets for Black households

February 7, 2022

Media Contact: Troy Green 202-383-1042

Key Highlights

- More than 400,000 fewer affordable homes are available for sale for households earning \$75,000 to \$100,000 when compared to the start of the pandemic (245,300 in December 2021 vs. 656,200 in December 2019).

HOUSING SUPPLY POLICY PROPOSALS

- **Zero out** capital gains tax for investors who sell to a first-time homebuyer
- **Offer** tax credits for converting commercial to residential
- **Provide** tax incentives to defray cost of training/hiring new residential construction workers
- **Incentivize** local governments to loosen zoning restrictions

THANK YOU.



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THAT'S WHO WE R



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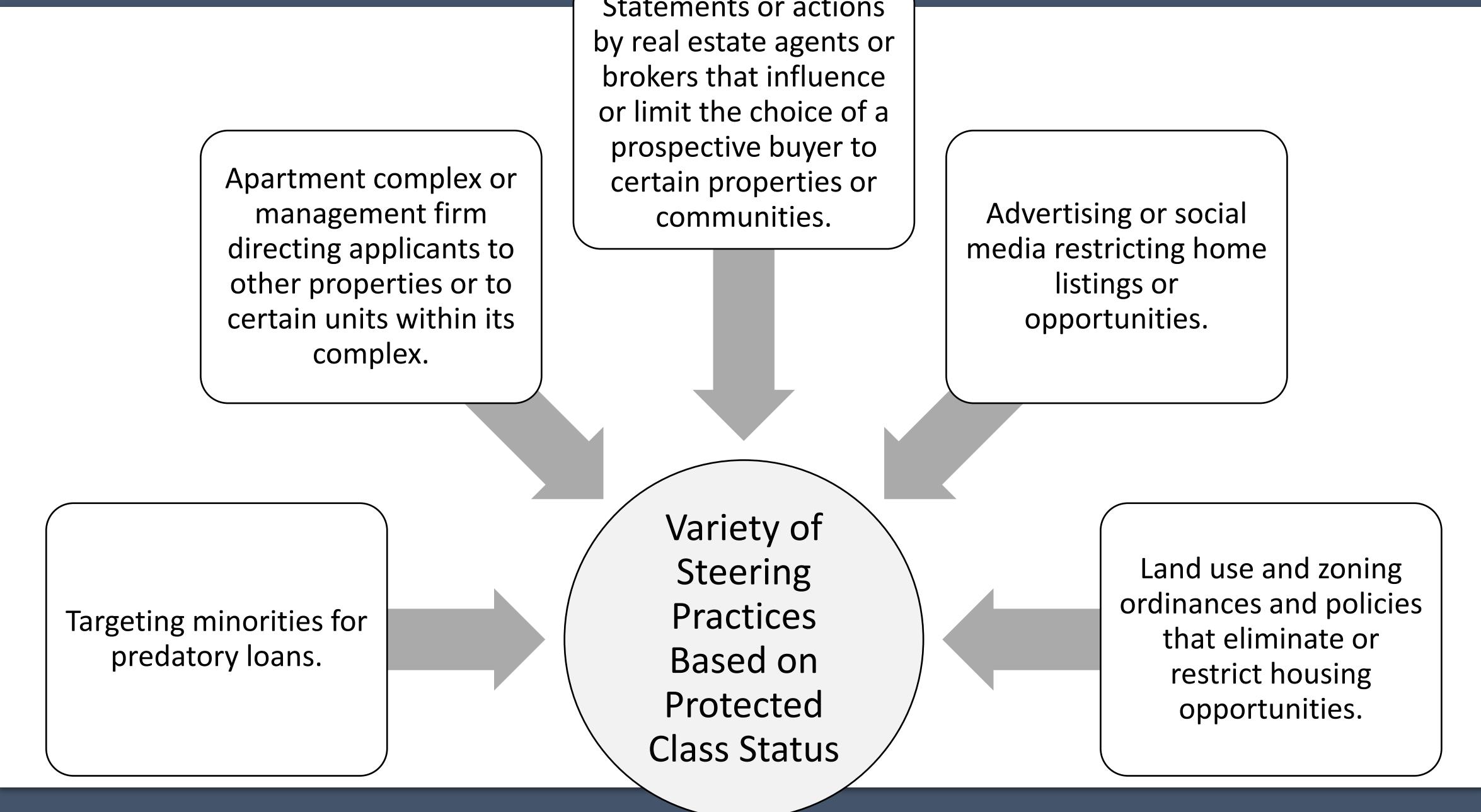


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Combatting Steering in the Homebuying Process – Regulations, Caselaw, and Theories of Liability

Steve Tomkowiak
Executive Director
Fair Housing Center of Metropolitan Detroit





Background: National Audit (Testing) Studies of Racial/Ethnic Steering

The most comprehensive national audits of racial steering, sponsored by HUD and conducted by the Urban Institute, occurred in 1979, 1989, and 2000.

These studies used “matched paired testing”. White and minority matched pair testers, posing as home seekers, were matched on all relevant qualifications (e.g., income, employment occupation, housing preference) and visited real estate offices.

Housing Discrimination Study: Analyzing Racial and Ethnic Steering (1991)

<https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Discrimination-Study-1991.pdf>

“[B]oth minority and majority homebuyers are limited in their neighborhood choices in two ways. First, black and Hispanic homebuyers who are shown and recommended addresses are likely to be steered to neighborhoods that are lower percent white and less affluent than those shown and recommended to comparable white Anglo homebuyers. And second, all homebuyers who start their search by inquiring about the availability of units advertised in major metropolitan newspapers are likely to be shown and recommended houses in predominantly white Anglo neighborhoods, rather than in integrated or minority neighborhoods.

Even after controlling for the size and value of a neighborhood's owner-occupied stock, minority and integrated neighborhoods are significantly less likely to be advertised, shown, or recommended than comparable white Anglo neighborhoods.” (p. iv)(emphasis added)

Housing
Discrimination
Study (1991)

Difficult for Home Seekers to Detect Unlawful Steering

"Steering is often difficult for individual homeseekers to detect, since minorities may be shown houses that meet their specifications and have few opportunities to find out about the houses they are not shown."(p. 2).

Mapping

"Mapping is a critical component of the analysis as a whole because racial steering is a spatial phenomenon; if steering occurs, the probability that a house will be made available to minorities or to whites is determined by the location of that unit relative to the location of minority neighborhoods in the city." *Id.*

Discrimination in Metropolitan Housing Markets: National Results from Phase I of HDS2000

https://www.huduser.gov/Publications/pdf/Phase1_Report.pdf

“Metropolitan Sales Markets. African American homebuyers—like renters—continue to face discrimination in metropolitan housing markets nationwide. White homebuyers were consistently favored over blacks in 17.0 percent of tests. Specifically, white homebuyers were more likely to be able to inspect available homes and to be shown homes in more predominantly white neighborhoods than comparable blacks. Whites also received more information and assistance with financing as well as more encouragement than comparable black homebuyers. . . . The overall incidence of consistent white-favored treatment dropped by 12.0 percentage points, from 29.0 percent in 1989 to 17.0 percent in 2000. *However, geographic steering rose, suggesting that whites and blacks are increasingly likely to be recommended and shown homes in different neighborhoods.*

“Hispanic homebuyers also face significant levels of discrimination. Non-Hispanic whites were consistently favored in 19.7 percent of tests. In particular, non-Hispanic whites were more likely to receive information and assistance with financing, and to be shown homes in nonHispanic neighborhoods than comparable Hispanic homebuyers. . . .” (emphasis added)

Racial Steering by Real Estate Agents

<http://sociology iresearchnet.com/sociology-of-race/racial-real-estate-steering/>

"[S]teering most commonly occurred through informal, unsolicited comments directed to white homesekeers about the racial composition of selected neighborhoods. Among these comments were the following:

"I would not recommend (area), it's totally black. And I don't like (area), it's pretty mixed."

"There are lots of Latinos living there ... I'm not supposed to be telling you that, but you have a daughter and I like you."

"(Area) is very mixed. You probably wouldn't like it because of the income you and your husband make. But I don't want to sound pre-judiced."

"(Area) is different from here; it's multi-cultural ... I'm not allowed to steer you, but there are some areas that you wouldn't want to live in."

Citing G. Galster & E. Godfrey (2003) By *Words and Deeds: Racial Steering by Real Estate Agents in the US in 2000*. Paper presented at the Urban Affairs Association Annual Meeting, Cleveland, OH (March).

Newsday: Long Island Divided, New York City

<https://www.businessinsider.com/long-island-real-estate-agents-treated-minorities-unfairly-newsday-investigation-2019-11#:~:text=%22The%20three-year%20probe%20strongly%20indicates%20that%20house%20hunting,the%20project%2C%20which%20was%20edited%20by%20Arthur%20Browne>

Methodology

- 3-Year Investigation (2016-2019)
- 25 Undercover Testers Trained
- 93 Real Estate Agents Tested
- 240 Hours of Meetings Secretly Recorded
- 5,763 Housing Listings Analyzed

Findings

Unequal Treatment

- 19% of the Time Against Asians
- 39% of the Time Against Hispanics
- 49% of the Time Against Blacks

Segregated Suburbs

- “The three-year probe strongly indicates that house hunting in one of the nation’s most segregated suburbs poses substantial risks of discrimination, with black buyers chancing disadvantages almost half the time they enlist brokers.
- “Additionally, the investigation reveals that Long Island’s dominant residential brokering firms help solidify racial separations. They frequently directed white customers toward areas with the highest white representations and minority buyers to more integrated neighborhoods.
- “They also avoided business in communities with overwhelmingly minority populations.”
- “This is something that didn’t happen in the deep South,’ said Greg Squires, professor of public policy at George Washington University in Washington, D.C., who offered advice about structuring the testing program. ‘It happened in one of the most educated, most liberal regions of the country. These are significant numbers.’”

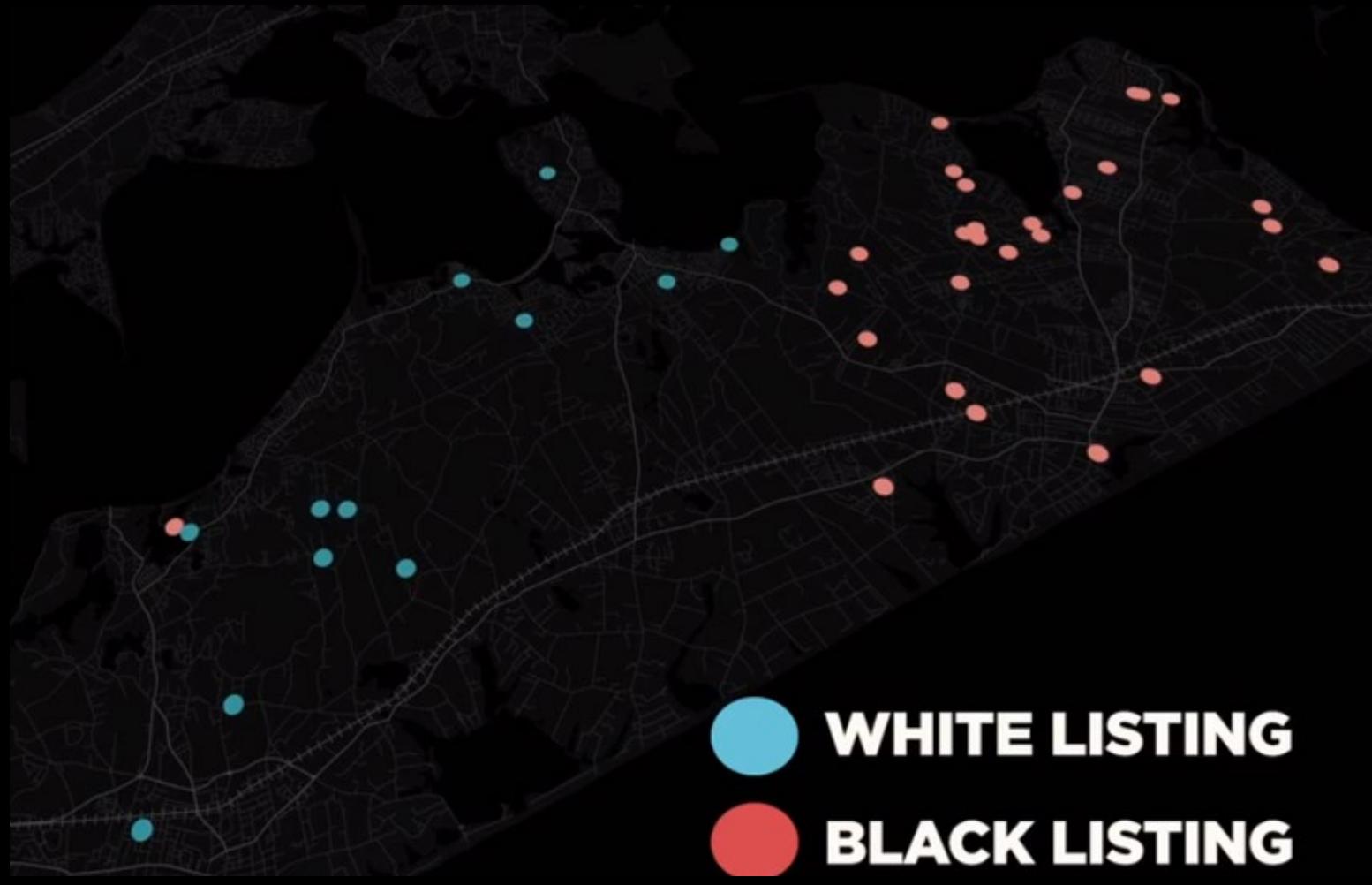
Mapping

<https://www.youtube.com/watch?v=wqN-D3f49fE>



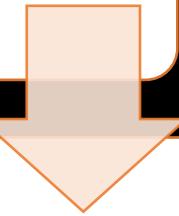
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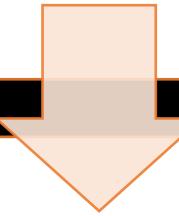
“Steering” not specifically mentioned in--

- Fair Housing Act, 42 U.S.C. §§ 3604 & 3605 (“FHA”)
- Civil Rights Acts of 1866 & 1870, 42 U.S.C. § 1981 & 1982 (“Sections 1981 & 1982”)
- Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. § 1691(a) (“ECOA”)



Two Supreme Court cases involved claims of unlawful steering, specifically addressing standing to bring claim under the FHA:

- *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979)
- *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)



As to the FHA, all lower federal courts recognize that unlawful steering may violate Sections 804(a), (b), (c), or (d) of the FHA, 42 U.S.C. § 3604(a), (b), (c), or (d).

- E.g., *Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1523-34 (7th Cir. 1990)(steering violates 804(a) and (b) and possibly (d)); *McDonald v. Verble*, 622 F.2d 1227, 1233 (6th Cir. 1980)(804(a), (b) & (d)).



HUD regulations implementing the FHA specifically address unlawful steering practices, defining unlawful steering to be a violation of 804(a).

- See 24 C.F.R. § 100.70 (Other prohibited sale and rental conduct).

Defining Unlawful “Steering” in Real Estate Sales Practices

Underlying Policy – Freedom of Choice for Every Home Seeker

- “[D]irecting prospective home buyers interested in equivalent properties to different areas according to their race.” *Gladstone, Realtors*, 441 U.S. at 94.
- “[A] practice by which real estate brokers and agents preserve and encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial or ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups.” *Havens Realty Corp.*, 455 U.S. at 366 n.1.

- “Unlawful steering or channeling of a prospective buyer is the use of a word or phrase or action by a real estate broker or salesperson which is intended to influence the choice of a prospective property buyer on a racial basis. Where choice influencing factors such as race are not eliminated, freedom of choice in the purchase of real estate becomes a fantasy. It is the freedom of choice for the purchaser which the Fair Housing Act protects. Hence, race need not be the sole reason for the defendant's conduct if it is an element of that conduct.” *Zuch v. Hussey*, 594 F. Supp. 1028, 1048 (E.D. Mich. 1975)(Keith, J.), *aff'd and remanded*, 547 F.2d 1168 (6th Cir. 1977).

**24 C.F.R. § 100.70(a)
& (b) – General
prohibition against
steering (restricting
choices of person
seeking housing)**

- (a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.
- (b) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

(1) Discouraging any person from inspecting, purchasing or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, or because of the [protected class] of persons in a community, neighborhood or development.

(2) Discouraging the purchase or rental of a dwelling because of [protected class], by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

24 C.F.R. § 100.70(c) – “Prohibited actions under paragraph (a) of this section, which are generally referred to as unlawful steering practices, include, but are not limited to:”

(3) Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of [protected class].

(4) Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of [protected class].

24 C.F.R. § 100.70(d) – “Prohibited actions relating to dwellings under paragraph (b) of this section include, but are not limited to:”

- (1) Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.
- (2) *Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of [protected class], or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular [protected class].*
- (3) Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of [protected class].
- (4) Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of [protected class].
- (5) Enacting or implementing land-use rules, ordinances, procedures, building codes, permitting rules, policies, or requirements that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of [protected class].
- (5) Enacting or implementing land-use rules, ordinances, procedures, building codes, permitting rules, policies, or requirements that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of [protected class]. (emphasis added)

Standing to challenge unlawful steering practices

- *Home Seekers – McDonald v. Verble*, 622 F.2d 1227 (6th Cir. 1980).
- *Residents – Gladstone, Realtors*, 441 U.S. at 111-15; *Havens*, 455 U.S. at 375-77.
- *Municipalities – Gladstone, Realtors*, 441 U.S. at 109-111; *City of Chicago v. Matchmaker Real Estate Sales Ctr., Inc.*, 982 F.2d 1086, 1095 (7th Cir. 1992).
- *Fair Housing Organizations - Havens*, 455 U.S. at 378-79.
- *Testers - Havens*, 455 U.S. at 373-74.

Responsible Parties/Liability

Direct liability & vicarious liability. 24 C.F.R. § 100.7; *Meyer v. Holley*, 537 U.S. 280 (2003).

- *Cf. Sanders v. Dorris*, 873 F.2d 938, 944 (6th Cir. 1989) (owner of real estate agency cannot escape liability merely by asserting that it instructed its agents not to discriminate against Blacks).

Independent Contractor Status

Contractual language showing real estate agent as an "independent contractor" relationship does not preclude finding of agency against broker.

- *City of Chicago v. Matchmaker Real Estate Sales Ctr., Inc.*, 982 F.2d 1086, 1097-98 (7th Cir. 1992); *Heights Community Congress v. Hilltop Realty Inc.*, 774 F.2d 135, 141 (6th Cir. 1985); *Northside Realty Assocs., Inc. v. United States*, 605 F.2d 1348, 1353-54 (5th Cir. 1979).

Proving Liability – Intent Requirement

Attempt Sufficient to Establish Liability

- Unlawful steering requires proof of intent, which can be established through direct or indirect, circumstantial evidence.
 - *Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1523-34 (7th Cir. 1990); *Heights Community Congress v. Hilltop Realty, Inc.*, 774 F.2d 135, 140 (6th Cir. 1985); *Montana Fair Hous., Inc. v. City of Bozeman*, 854 F. Supp. 2d 832, 840 (D. Mont. 2012).

- No requirement that a defendant succeed in steering the plaintiff away from one community or toward another; proof of the attempt to do so is sufficient to establish a violation. *Zuch*, 394 U.S. at 1048.
 - An absolute refusal or denial to show a customer a dwelling is not required to establish steering; “any effort to discourage will do.” *Village of Bellwood v Dwivedi*, 895 F.2d 1521, 1529 (7th Cir. 1990).
 - “[A]ny action by a real estate agent which in any way impedes, delays, or discourages on a racial basis a prospective home buyer from purchasing housing is unlawful.” *Leadership Council v. Rossi Realty*, No. 98-7852 (N.D. Ill. Mar. 14, 2001)(quoting *Zuch*, 394 F. Supp. at 1047).

Single Incident of Steering Sufficient

“[A] single incident of “steering” constitutes an actionable violation of the FHA, just as the construction of each complex constitutes an actionable violation of the FHA. That more than one incident of steering occurred only demonstrates a pattern of such violations, not that each incident, standing on its own, is not a violation of the FHA.”

National Fair Housing Alliance v. A.G. Spanos Constr., Inc., 542 F. Supp. 2d 1054, 1061-62 (N.D.Cal.2008); *Ramirez v. Greenpoint Mortgage Funding, Inc.*, 633 F. Supp. 2d 922, 930 (N.D. Cal. 2008). Cf. *Daniels v. Brooklyn Estates & Properties Realty*, 413 Fed. App’x 399, 402 (2d Cir. 2011)(claim of Black plaintiff based on single incident of steering failed because of failure to provide admissible evidence that the defendants offered him fewer housing opportunities than provided to a similarly-situated White person).

Proving Steering Via Direct Evidence

PART 1

THEY CALL IT STEERING

Newsday's investigation revealed evidence that some agents sorted house hunters by race, ethnicity.

"Follow the school bus, see the moms that are hanging out on the corners."

Rosemarie Marando
Coldwell Banker Residential Brokerage

"Some of them are not as nice. Elmont, most of Hempstead, Roosevelt, Baldwin, Freeport. You know, maybe not as nice in terms of statistics."

Chris Hubbard
RE/MAX Central Properties

"In East Hampton ... the Hispanic community came in - and they really took over Springs."

Kevin Geddie
formerly of Douglas Elliman Real Estate

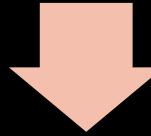


National
Fair Housing
TRAINING ACADEMY

Proving Steering Via Indirect, Circumstantial Evidence

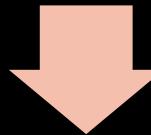
According to the court in *Leadership Council for Metro Open Communities, Inc. v. Rossi Realty, Inc.*, No. 98 C 7852, Slip Op. at 7 n.2 (N.D. Ill. Mar. 14, 2001):

- “Generally, the elements of case under the FHA require that the plaintiff show: (1) plaintiff is member of a minority; (2) that she applied for and was qualified to buy the property; (3) that she was rejected; and (4) that the property remained on the market. We acknowledge that this framework does not lend itself to racial steering cases, where plaintiff basis its theory on the defendants’ ‘directing prospective home buyers interested in equivalent properties to different areas according to their race.’ *Gladstone, Realtors*[, 441 U.S. at 94].” (citations omitted) (emphasis added).



Various formulations of the *prima facie* case elements in steering cases.

- HUD Memorandum, Elements of Proof (Sept. 4, 2018)
- Caselaw



This is not intended to be a high threshold:

“As long as a plaintiff can prove that a defendant afforded an African-American person fewer housing opportunities than a similarly-situated White person on account of race, the plaintiff has made out a [prima facie] case under Title VIII.”

Cabrera v. Jakabovitz, 24 F.3d 372, 390 (2nd Cir. 1994)(citations omitted).

Steering: Segregated Neighborhood

HUD Memorandum,
Elements of Proof
(Sept. 4, 2018)

Note: These *prima facie* case elements apply when a “respondent steered the complainant to housing concentrated by his or her protected class.”

- “1. The complainant is a member of a protected class.
- “2. The complainant sought to buy or rent housing from the respondent.
- “3. The respondent offered the complainant housing in a protected-class concentrated building or area.
- “4. The respondent had another dwelling available in a building or area not concentrated by the complainant's protected class.
- “5. The respondent did not offer the complainant the dwelling in the building or area not concentrated by persons of the complainant's protected class.” (p. 8)

Steering: Less Desirable Housing

HUD Memorandum,
Elements of Proof
(Sept. 4, 2018)

Note: These *prima facie* case elements apply when “the respondent steered the complainant away from the complainant's desired housing.”

- “1. The complainant is a member of a protected class.
- “2. The complainant sought to buy or rent housing from the respondent.
- “3. The respondent discouraged the complainant from pursuing the housing.
- “4. The respondent encouraged someone not of the complainant's protected class to pursue such housing.” (p. 8)

***HUD v.
Housing Auth.
of Las Vegas,
HUDALJ 09-94-
1016-1, Slip
Op. at 30 (Nov.
6, 1995)***

- “1. Complainants are members of a protected class;
- “2. Respondent offered Complainants housing at a concentrated development, *i.e.*, a project populated predominantly by members of their class;
- “3. [Pursuant to a Title VI voluntary compliance agreement], Complainants were entitled to be given the opportunity to wait for the next available unit of appropriate size in a nonconcentrated development; and
- “4. Respondent did not offer Complainants any such option.”

Citing *Cabrera*, 24 F.3d at 390; *HUD v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990); *Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1038 (2d Cir. 1979).

**Recommended
prima facie case
elements - *Village
of Bellwood v.
Dwivedi*, 895 F.2d
1521, 1531 (7th
Cir. 1990):**

According to the court, “[p]laintiffs in Plaintiffs in [FHA] cases can use a method of proof similar to that which the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), created for disparate treatment cases brought under Title VII.”

- “[B]lacks were shown primarily houses in black areas and whites primarily houses in white areas to place on the defendants the burden of giving a noninvidious reason for the difference in treatment.”

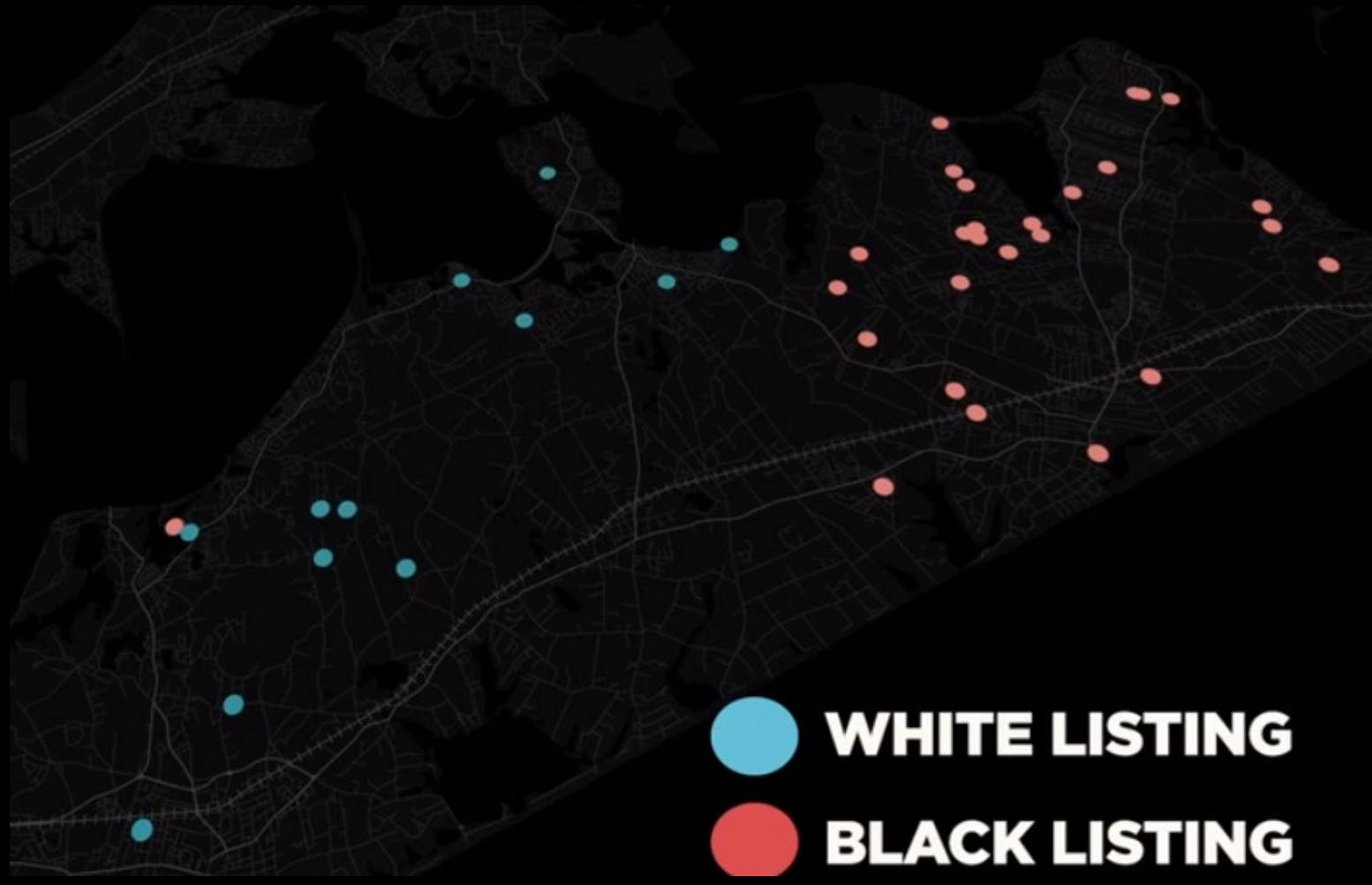
Suggested jury instruction -

*Village of
Bellwood, 895
F.2d at 1534:*

“If you find that the defendants treated their black and white customers differently on account of the customers' race, or in other words if you find that the defendants were influenced by a customer's race in deciding whether to show the customer properties in one area or another, then you should conclude that the defendants engaged in racial steering in violation of section 3604. *Even if you decide that there is no or insufficient direct evidence of a racially motivated difference in treatment, if you find that the defendants showed their black customers primarily homes in predominantly black areas, and their white customers primarily homes in predominantly white areas, and if, in addition, you do not believe the defendants' explanation of this pattern, then you may infer that the defendants were steering their customers racially, in violation of the statute.* If you do not find that the defendants treated their white and black customers differently on account of their race, then your verdict should be for the defendants. For purposes of this instruction, the tester couples were customers of the defendants even though they were not really interested in buying homes but were merely investigating the defendants' practices.” (emphasis added)

Mapping

<https://www.youtube.com/watch?v=wqN-D3f49fE>



Potential Defense Based on Truthful Answers to Customer Questions

Is it unlawful steering if . . .

- ✓ the customer first raises the question about race or ethnicity?
- ✓ the real estate agent provides truthful answers to questions asked by a buyer or seller?

Professor Schwemm, in Housing Discrimination Law & Litigation § 13:7, differentiates three situations:

1. Salesperson-initiated discussions intended to influence a buyer's choice.
 - Certainly, viewed as unlawful steering.
2. Customer-initiated discussions - The salesperson responds by actively trying to influence the customer's choice on racial or ethnic grounds.
 - This, too, would certainly be viewed as unlawful steering.
3. Customer-initiated questions - The salesperson gives brief, objective, nonjudgmental, and factually accurate answers.
 - Likely not viewed as unlawful steering, though the question has not been definitively answered by courts.

According to Judge Keith in *Zuch*, 594 F. Supp. at 1047-48:

"It is the opinion of this Court that when a real estate agent actively undertakes an effort to influence the choice of a prospective homebuyer on a racial basis, whether on his own initiative or in response to the buyer's initiative, the agent either directly or indirectly discourages the prospective homebuyer from purchasing a home in a particular area. Where available housing has been traditionally denied to blacks because of their race, this conduct tends to perpetuate racially segregated communities. The Court, therefore, concludes as a matter of law that steering is a violation of Section 3604(a) of the Fair Housing Law." (emphasis added).

Helpful or “Paternalistic” Steering

- *Community Services, Inc. v. Wind Gap Mun. Auth.*, 421 F.3d 170, 177 (3d Cir. 2005)(“[t]he discriminatory purpose need not be malicious or invidious” and “it is a violation . . . to discriminate even if the motive was benign or paternalistic”)(quoting *Horizon House Developmental Services, Inc. v. Township of Upper Southampton*, 804 F. Supp. 683, 696 (E.D.Pa.1992), aff’d, 995 F.2d 217 (3d Cir. 1993))
- *Johnson v. Macy*, 145 F. Supp. 3d 907, 915 (C.D. Cal. 2015)(“Discrimination based on an intentional consideration of any protected category under the FHA is illegal, even if defendant was not motivated by personal prejudice or animus.”).

Economic Motivation

“[I]t is not exculpatory to show:

1. that the intent was not malevolent;
2. that the intent was based on economic motivation;
3. that the intent was based on a perception of risk; or even
4. that the perception of the risk was accurate, when based on an overt racial standard.”

W. Dennis & G. Field, *Racial Credit Steering as Discriminatory Credit Practice Under the Equal Credit Opportunity Act*, 13 AKRON L.R. 483, 496 (2015).

See also *U.S. v. Pelzer Realty Co.*, 484 F.2d 438, 443-44 (5th Cir. 1973)(after noting that “[w]e do not doubt that his primary goal was to make money, not to violate the Fair Housing Act”, court found that “race was one significant factor” and that “[n]o white person was ever forced to go through all these dealings with [the defendants”]), cert. denied, 416 U.S. 936 (1973).

Illustrative Case Studies

- *McDonald v. Verble*, 622 F.2d 1227 (6th Cir. 1980)
- *Heights Community Congress v. Hilltop Realty Inc.*, 774 F.2d 135 (6th Cir. 1985)
- *Sanders v. Dorris*, 873 F.2d 938 (6th Cir. 1989)

Case study: *McDonald v. Verble*, 622 F.2d 1227 (6th Cir. 1980)

Withholding Information on Available Listings

- “On July 24, 1975, DeWitt McDonald went to the offices of Real Estate One to inquire about the status of the McArthur Park property. He met with Defendant Holderness. Mr. McDonald told Mr. Holderness that he was interested in purchasing some investment property. According to the testimony of Mr. McDonald, Mr. Holderness informed Mr. McDonald of a number of properties which were suitable for purchase for investment reasons, but he did not mention the McArthur Park property. Plaintiff McDonald inquired a number of times whether there was any property for sale in McArthur Park. Defendant Holderness initially insisted that there was not.” 622 F.2d at 1230.
- “After persistent inquiries by the plaintiff, Defendant Holderness informed him that there was a piece of property for sale in the McArthur Park area, but the property was located on Forest Drive.” *Id.*
- “Mr. McDonald then specifically asked Defendant Holderness if there was any property for sale on the Parkview Drive part of McArthur Park. After Defendant Holderness had several times denied that such property was for sale, he finally indicated that the McArthur Park property was for sale, but that he was interested in purchasing the property for himself. Mr. Holderness testified at trial that he had considered purchasing the McArthur Park property, but upon inquiry learned that financing was not available.” *Id.*

McDonald v. Verble, 622 F.2d 1227 (6th Cir. 1980)(cont.)

Race Discrimination Not Cured by Subsequent Purchase

- “As to defendant Dewitt, Verble[‘s] initial indication, that ‘he preferred not to sell the property to blacks’ was effectively implemented when the Verbles rejected the McDonalds' offer of \$27,500 on August 15, 1975 although the Verbles had previously wanted to sell to a white buyer at the same figure.” 622 F.2d at 1233.
- “The fact that subsequent to the filing of a lawsuit, the sale of the property was consummated with the McDonalds, does not alter the prior discriminatory conduct. Nor does that fact wipe out the need for consideration of damages. Much less does it serve to justify the award of costs to the offending parties on this record and against the McDonalds who were the offended parties.” Id.
- “As to defendant Holderness, we observe that at his entrance into this series of negotiations, he accurately informed defendant Verble of the requirements of federal law banning racial discrimination in the sale of housing. Yet later he failed to tell the McDonalds of the listing of the Verbles' property until forced to do so and still later he clearly made available information to a white prospect which he had not made available to a willing black buyer.” Id.

Case study: *Heights Community Congress v. Hilltop Realty Inc.*, 774 F.2d 135 (6th Cir. 1985)

“Truthful” Information

- “[Defendants] argue that truthful informational statements with racial content, failure to show homes in a particular location absent a specific request, and lack of service, do not violate the [FHA].” Id. at 140.
- “The District Court was correct in holding that to violate [42 U.S.C. § 3604(a) of the FHA], one looks to whether the statement or conduct would have an untoward effect on a reasonable person under the circumstances who is seeking housing, and behind the statement or conduct to the intent of the agent. If a statement or act would have a discriminatory effect and is made with the intent to steer, it violates Sec. 3604(a).” Id.

Actions of Agents

- “Defendants also object that the District Court erred in finding that Hilltop had ‘the power to control the acts’ of its agents, and hence was liable for the violations committed by those agents. “It argues that its agents were independent contractors, over whom under common law it has no control.” Id. at 141.
- “This argument has consistently been rejected in Fair Housing Act cases. . . . Nor does Hilltop dispute the District Court’s findings respecting knowledge of Hilltop managerial personnel of fair housing violations by its agents and failure to take corrective action, despite its asserted policy of instructing its agents in fair housing law and urging that they act accordingly. The court did not err in holding Hilltop liable for the violations of its agents” (citations omitted). Id.

Case study: *Sanders v. Dorris*, 873 F.2d 938 (6th Cir. 1989)

Statistical Evidence

- “[I]n her ten years as a real estate agent in the Nashville area, Dorris never sold a house in Greenbrier to a black person and had only once shown a house in Greenbrier to a potential black purchaser.”
- “In addition, although Century 21 has sold homes to blacks in Springfield — a racially mixed community — none of the agents could recall ever showing or selling a house in Greenbrier to blacks.”
- “[H]ousing prices in Greenbrier are indistinguishable from housing prices in Springfield.”
- “[D]uring the period that the Sanders were attempting to purchase . . . there were more houses for sale in Greenbrier than in Springfield.”
- Sixth Circuit--
 - “[D]istrict court erred in finding that there was no evidence that the defendants engaged in a pattern of steering black prospective home buyers away from Greenbrier.”
 - “[i]rrelevant whether Century 21 agents had represented black clients, since the statistical evidence indicates that they steered black clients away from the predominately white community of Greenbrier and steered them to the racially mixed community of Springfield.”



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**National
Fair Housing
TRAINING ACADEMY**

DISCRIMINATION IN THE HOME BUYING PROCESS



**SHINA MAJEED
CHIEF
HOUSING AND CIVIL ENFORCEMENT SECTION
CIVIL RIGHTS DIVISION**

ENFORCEMENT STATUTES

- Fair Housing Act (FHA) – prohibits discrimination in home sales and purchases
- Equal Credit Opportunity Act (ECOA) – prohibits discrimination in all types of lending, including mortgages

OVERVIEW

■ Common Types of Discrimination in Home Purchases

- Redlining
- Discriminatory Mortgage Pricing
- Discriminatory Denials or Underwriting in Mortgages
- Appraisal Bias
- Reverse Redlining
- Steering
- Discriminatory Policing
- Sex Discrimination & Harassment

■ Sources of Cases – Spotlight on Testing and Partners

REDLINING

Redlining is when lenders avoid providing access to credit to individuals living in communities of color because of the race or national origin of the people who live in those communities.

Categories of Evidence:

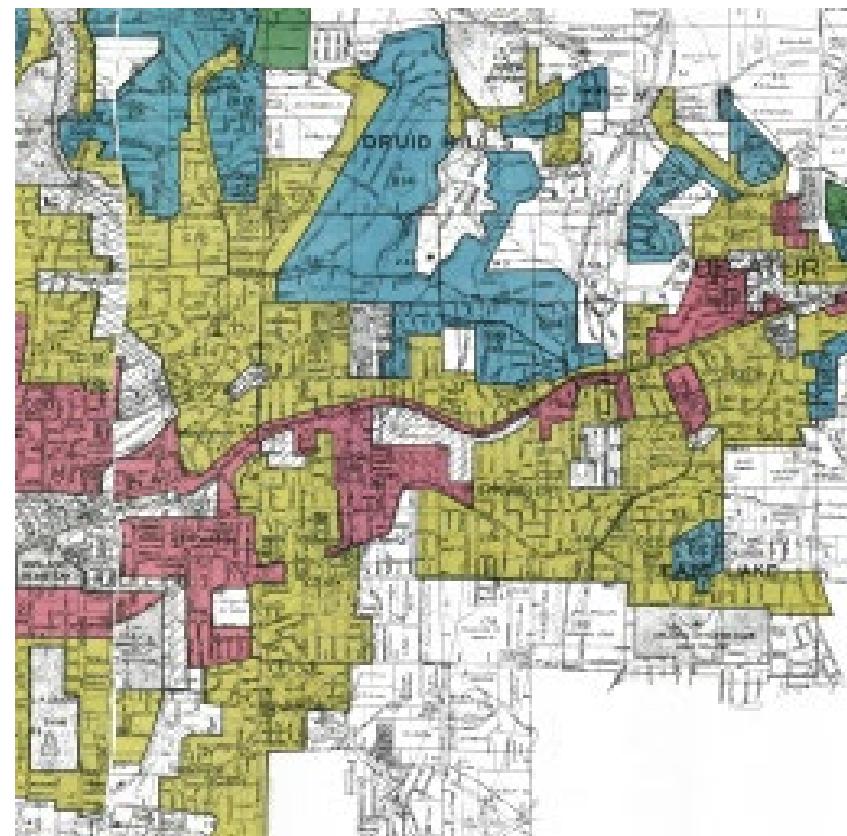
- Lending Service Area (Assessment Areas and REMAs)
- Branch Analysis
- Advertising, Marketing, and Outreach
- Statistical Analyses
- Mapping
- Other Categories of Evidence

COMBATTING REDLINING INITIATIVE

On October 22, 2021, Attorney General Merrick Garland and Assistant Attorney General for Civil Rights Kristen Clarke announced the **Combatting Redlining Initiative**.

Department's most aggressive and coordinated effort to address redlining by:

- Strengthening DOJ's partnerships with federal agency partners
- Partnering with U.S. Attorneys' Offices
- Increasing coordination with State Attorneys General



The 1938 Home Owners' Loan Corporation map of Atlanta.Credit...National Archives and Records Administration, Mapping Inequality

RECENT REDLINING CASES

U.S. & CFPB v. Trident Mortgage Company (E.D. Pa.) - Complaint filed on July 27, 2022

- Under the proposed Consent Order: invest over \$20 million to increase credit opportunities in neighborhoods of color in the Philadelphia metropolitan area; hire mortgage loan officers dedicated to serving neighborhoods of color in and around the redlined communities; maintain at least four office locations in those neighborhoods; and employ a full-time manager of community lending.

U.S. & CFPB v. Trustmark National Bank (W.D. Tenn.) - Complaint filed on October 22, 2021

- Under the Consent Order, bank will: invest \$3.85 million in a loan subsidy fund for residents of predominantly Black and Hispanic neighborhoods in the Memphis area; dedicate at least four mortgage loan officers or community lending specialists to those neighborhoods; and open a loan production office in a majority-Black and Hispanic neighborhood in Memphis. Bank will also devote \$400,000 to developing community partnerships and spend at least \$200,000 per year for five years on advertising, outreach, consumer financial education and credit repair initiatives in and around Memphis.

U.S. v. Cadence Bank, N.A. (N.D. Ga.) - Complaint filed on August 31, 2021

- Under the Consent Order, bank will: invest \$4.17 million in a loan subsidy fund for residents of predominantly Black and Hispanic neighborhoods in the Houston area; invest \$750,000 into community partnerships and at least \$625,000 for advertising, outreach, consumer financial education, and credit repair initiatives. Bank will also dedicate at least four mortgage loan officers to majority-Black and Hispanic neighborhoods in Houston and open a new branch in one of those neighborhoods.

DISCRIMINATORY MORTGAGE PRICING

- Charging higher interest rates or higher discretionary fees based on a prohibited basis (e.g., race or national origin) and not solely on credit characteristics
- Disparities are often the result of discretionary policies that allow loan officers to offer preferential treatment to some borrowers and charge extra fees to other borrowers
- Statistical models use HMDA data and other loan data provided by the bank to compare borrowers with similar credit characteristics (e.g., credit score, debt-to-income ratio)

DISCRIMINATORY DENIALS OR UNDERWRITING

- Applying different underwriting standards or denying loans based on a prohibited basis (e.g., race or national origin) and not solely on credit characteristics
- Differences in denial rates may be a result of unfavorable treatment or unequal quality of assistance provided to borrowers



BANCORPSOUTH

- In ***United States & CFPB v. BancorpSouth*** (2016), fair lending claims included redlining in the Memphis area, discrimination in mortgage pricing and discrimination in underwriting of certain mortgage loans
- **Discriminatory Pricing:**
 - Loan officers had broad discretion and set interest rate and fees without any formula or rate sheet
 - As a result of the broad discretion, Black borrowers paid 30 basis points (bps) more than white borrowers for first-lien mortgages, and 64 bps more for second-lien mortgages
- **Discriminatory Underwriting:**
 - Bank denied Black borrowers at a statistically significant higher rate than white borrowers, after controlling for credit characteristics
 - Bank instructed underwriters to deny loans to customers of color more quickly than loans to white borrowers

APPRAISAL BIAS



- DOJ is working with PAVE partners to:
 - issue guidance on the application of the FHA and ECOA to appraisals,
 - improve federal collaboration, and
 - access and analyze federal appraisal data
- Statement of interest in *Tate-Austin v. Miller* (N.D. Cal.) highlights FHA as a tool to challenge discriminatory appraisals

REVERSE REDLINING

- Reverse Redlining – where lenders target applicants with credit offers that include predatory terms because of the applicants' race, national origin or other protected characteristic.
- Recent DOJ Case Examples:
 - *United States v. The Home Loan Auditors* (N.D. Cal.) and *United States v. Advocate Law Groups of Florida, P.A.* (M.D. Fla.): both cases involve fraudulent mortgage modification schemes targeting Latino homeowners
 - *Fair Housing Center of Central Indiana, et al. v. Rainbow Realty Group* (S.D. Ind.): DOJ recently filed a statement of interest in a case challenging a “rent-to-buy” program in Indianapolis targeting Black and Hispanic neighborhoods

STEERING

- Steering is a practice of directing home buyers to or away from neighborhoods based on race, national origin, or another protected characteristic
- Steering can perpetuate segregation by limiting housing choice

DISCRIMINATORY POLICING

- Discriminatory policing contributes to perpetuation of housing segregation, including by deterring, discouraging and driving out potential buyers and renters
- Recent DOJ Case Examples alleging police involvement in enforcement schemes to drive Black and/or Latino residents out of their homes and out of the cities where they live:
 - *Antelope Valley cases (C.D. Cal.)*
 - *United States v. City of Hesperia (C.D. Cal.)*

SEX DISCRIMINATION & HARASSMENT

- Discrimination based on sex can be barrier to homeownership, for example if creditors apply different criteria to men and women when considering mortgage applications
- Sexual Harassment in Housing Initiative
 - Since 2017, DOJ has filed 25 fair housing lawsuits alleging sexual harassment and recovered over \$9.6 million in compensation

SOURCES OF CASES

- Referrals from **agency partners** (HUD, CFPB, prudential regulators, FTC)
- Referrals based on **testing**
 - Mortgage lending (race)
 - Independent auto dealers/auto lending (race)
 - Maternity leave/mortgage lending (gender)
- **Independent investigations** under DOJ's pattern or practice authority
 - HCE economists conduct annual analyses of public data to identify lenders whose performance is very different from the performance of peer banks or the market
 - Under the Home Mortgage Disclosure Act (HMDA), most banks and other mortgage lenders must collect and report detailed loan-level information about mortgages
- Investigations based on **complaints from citizens/organizations**



SPOTLIGHT ON TESTING

DOJ's Fair Housing Testing Program

- Since 1992, we have resolved 110 pattern and practice testing cases with FHTP evidence, leading to the recovery of more than \$14.3 million

United States v. SSM Properties, LLC (S.D. Miss.)

- Complaint filed in 2020 alleging that owners and managers of three apartment complexes in Pearl, Mississippi, discriminated on the basis of race by steering Black testers toward one complex and falsely representing that the other two complexes did not have vacancies
- On August 3, 2022, the court granted the United States' motion for summary judgment on liability, finding, as a matter of law, that the defendants violated the Fair Housing Act

SPOTLIGHT ON PARTNERS

- HUD, including FHIPs and FHAPs, are invaluable partners in DOJ's work to address discrimination in housing and lending
- Refer complaints of discrimination to:
 - HUD – individual FHA complaints
 - DOJ – pattern-or-practice FHA claims
 - DOJ/CFPB – pattern-or-practice ECOA claims

“We have a duty to act now. Persisting racial inequality and widening wealth gaps makes clear that simply staying the course is not enough.”

- AAG for Civil Rights
Kristen Clarke, Oct. 2021

QUESTION & ANSWER

Enter questions into the Q&A box

CLOSING

- Slide presentation and recording of this event will be available on HUD Exchange
- Visit the NFHTA website for upcoming events and trainings: www.hudexchange.info/nfhta
- Evaluation and Feedback: Please complete the training survey

www.hudexchange.info/nfhta

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