

Delaware County Fair Housing News

March 2003

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Analysis of Impediments to Fair Housing Choice

Last year, the Delaware County Office of Housing & Community Development requested that the Fair Housing Council of Suburban Philadelphia (FHCSF) assist them in identifying the impediments to fair housing choice in Delaware County. This is a requirement mandated by the US Department of Housing and Urban Development (HUD) as part of the consolidated planning process for all Community Development Block Grant (CDBG) entitlement jurisdictions. When Congress first passed the Housing and Community Development Act in 1974, HUD instructed recipients of CDBG funds to "affirmatively further fair housing." The extent of the Affirmatively Furthering Fair Housing (AFFH) obligation has never been defined statutorily, however HUD defines it as requiring a grantee to:

- ◆ Conduct an analysis to identify impediments to fair housing choice within the jurisdiction
- ◆ Take appropriate actions to overcome the effects of any impediments identified through the analysis
- ◆ Maintain records reflecting the analysis and actions taken in this regard.

The scope of the Analysis of Impediments is broad. It covers the full array of public and private policies, practices, and procedures affecting housing choice. The Analysis of Impediments:

- ◆ Serves as the substantive, logical basis for fair housing planning
- ◆ Provides essential and detailed information to policy makers, administrative staff, housing providers, lenders, and fair housing advocates
- ◆ Assists in building public support for fair housing efforts both within a State or Entitlement jurisdiction's boundaries and beyond.

As a first step in developing this Analysis of Impediments, FHCSF reorganized and coordinated the Delaware County Fair Housing Task Force. The purpose of this Task Force was to gather information about impediments to fair housing choice in Delaware County; develop an Action Plan to address the impediments identified; and disseminate information that would help remove impediments to fair housing.

In addition to the Task Force, the National Community Reinvestment Coalition analyzed Home Mortgage Disclosure Act data for the County; The Reinvestment Fund through their Philadelphia Indicators Project (PIP) compiled year 2000 Census data. Maps of the jurisdiction were prepared by the Delaware County Planning Department and PIP. Other data and reports used for this analysis came from the Delaware County Office of Housing and Community Development, United States Department of Housing and Urban Development, the Pennsylvania

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Human Relations Commission, Delaware County Housing Authority, City of Chester Housing Authority and the National Fair Housing Alliance.

The following conclusions regarding freedom of housing in Delaware County were made from analyzing all of this data:

- ◆ If you are a minority in Delaware County, you are more likely (28.5%) to get a government insured loan than if you are white (13.3%).
- ◆ If you live in a low-income minority community in Delaware County, you are more likely to be denied a mortgage (22.6%) than if you live in a low-income white community (15.8%).
- ◆ Although there are no high income minority communities in Delaware County, a comparison of the highest income minority community with the lowest income white community shows a significantly higher likelihood that you will be denied a mortgage if you live in the minority vs. the white community.
- ◆ Segregation exists both Countywide and within municipal boundaries.
- ◆ In a recent audit, FHCSF found that African-Americans encountered housing discrimination at 50% of 16 rental units tested in Delaware County, the highest amount of discrimination found in the four suburban counties.
- ◆ There is no comprehensive housing counseling agency serving the residents of Delaware County.

In addition, the following conclusions found in the region can also be applied to the residents of Delaware County:

- ◆ Research done in the Philadelphia region indicates that Americans can infer race from speech patterns alone, thus offering rental agents an opportunity to discriminate over the telephone.
- ◆ A 1998 HUD report associated suburban Philadelphia with the highest percentage (57%) in the nation of very-low income renters living in worst-case scenarios (paying over half their incomes for rent, living in severely substandard housing, or both). A March 2000 study confirms the crisis is worsening: a decrease in the affordable housing supply has made poor suburban families more likely to face worst-case needs than their urban counterparts.
- ◆ On average, persons with disabilities in the Philadelphia region would have to pay 112% of their benefit to rent a modest one-bedroom apartment.

Finally, nationwide studies show the following conclusions that also include the residents of Delaware County:

- ◆ HUD estimates that only a little more than 1% of Americans experiencing housing discrimination file complaints.
- ◆ Subprime loans are three times more likely to occur in low-income neighborhoods than in high-income ones, and five times more likely to occur in black neighborhoods than in white neighborhoods. Regardless of income, minorities are more likely to receive sub-prime loans when refinancing their mortgages.
- ◆ There is widespread non-compliance with the Accessibility Requirements of the Fair Housing Act.
- ◆ Despite the fact that it has been illegal to discriminate against families with children for 14 years, it is not common knowledge among housing providers and consumers.

The Analysis of Impediments purpose is not just to identify impediments to fair housing choice, but to outline appropriate actions to overcome the impediments identified. The Fair Housing Action Plan lists objectives and action steps developed to overcome the impediments. These include:

1. Educate the public as to the intent, meaning and concrete applications of fair housing law.
2. Educate housing industry professionals and affiliates on their

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U.S. Supreme Court Limits Corporate Owner/Officer Vicarious Liability Under Fair Housing Act

(Reprinted with permission from Aspen Publishers: Fair Housing/Fair Lending February 1, 2003)

The United States Supreme Court held in January that under the Fair Housing Act, an owner or officer of a real estate corporation may not be held vicariously liable, without fault, for the discriminatory actions of an employee or agent of the corporation.

The issue arose in a Fair Housing Act lawsuit filed by Emma and David Holley against David Meyer, who was the president and sole shareholder of the Triad Real Estate Corporation. Pursuant to California law, Meyer was also Triad's designated officer/broker, and as such was responsible for the supervision and control of Triad's employees in the performance or acts for which a real estate license is required.

The Holleys alleged that when they had attempted to buy a house in Twenty-nine Palms, California listed by Triad, Triad salesman Grove Crank had prevented the sale because the Holleys were an interracial couple. The Holleys sued Triad, Crank, and Meyer, alleging that Crank had discriminated against them on the basis of race; and that Meyer, as president, sole shareholder, and designated broker of Triad, was liable for Crank's actions. The federal court dismissed the Fair Housing Act claims against Meyer, holding that Meyer could not be held vicariously liable for Crank's actions based on Meyer's position as president and officer/broker of Triad.

A Ninth Circuit panel reversed the trial court. The appeals court ruled that "[a]lthough officers and shareholders of a corporation generally enjoy immunity from liability for corporate acts, as a matter of furthering the compelling policy of the [Fair Housing Act] and because this involves a non-delegable duty, we concluded that a corporation and its

officers may be held liable for their failure to ensure the corporation's compliance with the FHA, whether or not the officers directed or authorized the particular discriminatory acts that occurred." The appeals court remanded the case to the district court for further proceedings.

In a unanimous decision written by Justice Stephen Breyer, the United States Supreme Court reversed the Ninth Circuit's ruling. The Court held that in accordance with traditional agency principles, the Fair Housing Act normally imposes vicarious liability upon a corporation but not upon its officers or owners.

The Court rejected the Ninth Circuit's view that the Fair Housing Act extended vicarious liability beyond traditional agency principles to include the officers and owners of a corporation. The Court found nothing in the statute or in its legislative history to indicate that Congress intended such liability. The Court also found that HUD has specified that "ordinary vicarious liability rules apply in this area," and that holdings in the cases cited by Ninth Circuit in its opinion did not "support the kind of nontraditional vicarious liability that the [appeals court] applied."

The Court also rejected the Holleys' argument that Meyer was liable under California common law principles because as the designated broker he had the right to control Crank. Nevertheless, the Court remanded the case to the Ninth Circuit. The Court stated that, on remand, the Ninth Circuit could consider (1) whether other aspects of the California broker relationship, in addition to the "right to control," would create the necessary relationship to give rise to vicarious liability and (2) whether liability could be established by piercing the corporate veil, if the appeals court determined that these issues had been properly raised.

[*Meyer v. Holley*, No. 01-1120(U.S. 1-22-03)]

HUD Issues Memo to Help Guide Tenant Selection in the Wake of the Events of 9/11

Since the events of September 11, 2001 many landlords and property managers have been concerned about what they can do to help prevent future terrorist attacks. People everywhere have been encouraged to watch for signs of possible terrorist activity and to report concerns to the proper authorities. Unfortunately, since the attacks persons who are, or are perceived to be, Muslim or of Middle Eastern or South Asian descent have reported increased discrimination and harassment, sometimes in connection with their housing. The following is a summary of HUD's recent guidance memo prepared to address these growing problems. This memo was prepared to assist landlords in making appropriate tenant and policy decisions while not violating fair housing laws. To read the memo in its entirety go to www.hud.gov:80/offices/ftheo/library/sept11.cfm.

It is unlawful to screen housing applicants on the basis of race, gender, religion, national origin, color, disability or if they have children in their families. The Fair Housing Act (FHA) does not prohibit discrimination based solely on a person's citizenship status. Accordingly, asking housing applicants to provide documentation of their citizenship or immigration status during the screening process would not violate the FHA. However, landlords who are considering implementing such policies must make sure they are carried out in a nondiscriminatory fashion, i.e. applied to every applicant equally. HUD regulations regarding such screening in federal housing programs can be found in 24 CFR 5.506-5.512.

A landlord must make sure that rules of tenancy are enforced in a nondiscriminatory manner. A landlord's response to a violation of the rules must not differ based on the person's race, religion, or national origin. A landlord may not impose more severe penalties because the person is Muslim, of Middle Eastern or South Asian descent. While landlords must be responsive to complaints from tenants, they should be careful to take action against residents only on the basis of legitimate property management concerns. Landlords should consider whether a complaint

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- responsibilities to further fair housing.
- 3. Determine the level of non-compliance by protected class and transaction type and support allegations of housing discrimination.
- 4. Educate the public regarding the availability of resources that facilitate increased housing opportunities.
- 5. Reduce barriers to the development and maintenance of affordable housing.
- 6. Reduce gap in mortgage acceptance rates between whites and members of the protected classes.
- 7. Reduce intensification and escalation of hate crimes and negative ethnic attitudes through the development of pro-active community responses to intimidation and harassment.
- 8. Increase access to housing opportunities for persons with disabilities.
- 9. Eliminate barriers to obtaining fairly priced and adequate homeowners insurance.
- 10. Reduce the level of predatory lending.

FHCSP will continue to organize the Delaware County Fair Housing Task Force as a process of meeting these objectives.

PALIHG Urges Rendell Administration to Stand by Campaign Promises

The Pennsylvania Low Income Housing Coalition (PALIHG) is a statewide membership organization formed in 1985 that advocates for safe, decent, affordable and accessible housing, with dignity, for all Pennsylvanians, especially those with low incomes. PALIHG was recently invited to join Governor Rendell's Housing Transition Committee, which is seeking to provide an analysis of the current housing system in the state and make both short and long-term recommendations for the new administration.

PALIHG has identified three major priorities to address the state's affordable housing needs: leadership, strategic thinking and investment. They are working with the new administration and the General Assembly to advance these goals through conducting and publishing expert research, outreach and education with elected and appointed officials and promoting investment in affordable housing.

PALIHG is urging the new administration to look beyond the existing housing framework and address the vast economic and community development opportunities presented by strategic investment in housing and give it the attention it deserves. Pennsylvania needs a comprehensive approach to affordable housing that includes the development of new housing, rental and homeownership, as well as the rehabilitation and preservation of existing units. Housing efforts should be linked to economic development, community revitalization, shorter commutes for workers, build on smart growth and promote strong, stable communities.

PALIHG believes Pennsylvania is missing out on the economic and social benefits that affordable housing generates, for example:

- ◆ Children with safe, stable housing suffer with fewer debilitating health

problems - poor nutrition, asthma, lead poisoning – and have better attendance at school.

- ◆ The construction of 1000 single-family homes generates 2,448 full time jobs, \$80 million in wages and \$42 million in tax revenue.

In addition, PALIHG believes there is a dire and neglected need to focus on housing for the lowest income Pennsylvanians who face an affordable housing crisis:

- ◆ A minimum wage worker earning \$5.15 per hour must work 100 hours a week to afford a two-bedroom apartment at the Fair Market Rent of \$671 a month.
- ◆ 73% of Pennsylvania's renters pay more than 50% of their incomes for rent.
- ◆ 50,000 people face homelessness statewide annually; 1 million live in slum conditions and/or pay more than 50% of their income for housing;
- ◆ Lack of affordable housing is a rural, urban and suburban problem.

*"As Governor, I will increase the Housing and Redevelopment Assistance (HRA) appropriation to a level of funding more commensurate with Pennsylvania's current housing needs. Grant funding will be increased more than three-fold, from current levels of approximately \$15 million to \$50 million. This additional funding will provide sorely needed "seed" or "gap" financing for housing rehabilitation as well as affordable single family and multi-family development. In combination with HOME and Community Development Block Grant funding, these state funds can be directed toward impact-designed redevelopment. Moreover, these funds will allow the Commonwealth to more effectively promote public/private partnerships—and to aggressively leverage state funding with the funds of other housing finance sources." -----
Ed Rendell ---*

Predatory Loans Cost Pennsylvania Homeowners \$ 155 Million in One Year

By: The Pennsylvania Association of Community Organizations for Reform Now

Predatory loans do tremendous damage both to individual borrowers and their families, as well as to entire communities. They rob borrowers of the equity in their homes and their peace of mind as they struggle to pay unaffordable mortgages or face the loss of their homes, and in the worst cases lead to forced sales or to foreclosure. They can turn the dream of homeownership into a nightmare. The threat is particularly serious if we consider the fact that for most Americans, the equity in their homes represents the majority of their lifetime's accumulated wealth.

There is a range of predatory lending practices – charging higher interest rates than warranted, packing loans with excessive fees and unnecessary insurance, imposing prepayment penalties which trap borrowers into high-cost loans or cost them thousands of dollars to get out of.

The Coalition for Responsible Lending in North Carolina has examined specific lending abuses and calculated that these predatory practices cost Americans a staggering \$9.1 billion a year in stripped equity and excess interest. We used the same calculations to calculate the cost of predatory lending practices in Pennsylvania.

Subprime Loans Originated in 2000	\$3,620,013,000
Annual Amount Lost to Prepayment Penalties	\$50,969,783
Annual Amount Lost to Inflated Interest Rates	\$65,160,234
Annual Amount Lost to Excess Up front Fees	\$39,320,625
Total Annual Drained Equity	\$155,450,642

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against a tenant may actually be motivated by race, religion, or national origin. Landlords must also give all tenants the same privileges. A landlord cannot limit the use of building amenities such as community rooms and gyms based on a person's race, religion, or national origin.

The FHA does not protect tenants who are unruly or who pose a danger to other residents. Landlords are allowed to take action against persons whose behavior is disruptive to the neighborhood, including evicting such persons from the property. Of course, landlords must have the same eviction procedures for all tenants. Any disciplinary action taken must be on the basis of a person's behavior or other violations of property management rules, and not on the basis of a protected class. Landlords also do not have to rent to persons who do not financially qualify for the housing and may evict tenants who are delinquent in their payments. As long as the landlord uses the same standards to determine if an applicant is financially suitable and takes the same action against all persons who fall behind in payments, the landlord's actions would not violate the Fair Housing Act.

Local Fair Housing Group Settles Case Against Ambler Apartment Complex

(Reprinted with permission from Aspen Publishers: Fair Housing/Fair Lending December 1, 2002)

The owners and management of the Barry Court Apartments in Ambler, Pennsylvania have agreed to settle a HUD administrative claim filed by the Fair Housing Council of Montgomery County Pennsylvania. The Council claimed that African-Americans were denied the opportunity to rent apartments because their voices were identified as African-American during telephone inquiries about vacancies at Barry Court. The complaint was based on evidence gathered over a three-year period which led the Fair Housing Council to conclude that the only explanation for disparate treatment of white and black persons who called to inquire about vacancies was discrimination based on the sound of the callers voices. In developing its claims, the Fair Housing Council relied upon the expertise of Stanford University Linguistics Professor John Baugh who has done extensive research into racial linguistics and who works closely with the National Fair Housing Alliance.

Under the terms of the settlement, the Barry Court management agreed to develop and implement non-discriminatory policies, fair housing training, and cultural proficiency training. It will also pay the Fair Housing Council \$10,000.

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and other predatory lending practices in their communities. Recently, Bank of America agreed to refund \$2.5 million to victims of its predatory lending practices, which experts believe has directly led to the foreclosures of 500 homes in Philadelphia since 1998.

The Delaware County Fair Housing Task Force has been strategizing ways to combat this equity stripping that has such a potential to devastate our communities. A new task force was recently spun off to continue this work. The Predatory Lending Educational Initiative (PLEI) is composed of approximately 20-30 Delaware County housing professionals and government officials. PLEI is strategizing in three areas. A legal committee is analyzing and researching enforcement options for victims utilizing current legislation and attempting to determine ways to promote new legislation that would curtail predatory lending. The educational committee is working on materials to be used in a consumer educational program, developing an educational program, and determining how best to get the information out to people before they become victims of predatory lending. In addition, this committee will work on creating an anti-predatory lending media campaign. A third committee is the research committee. This committee is researching the best ways to develop a warning list of lenders to beware of, a "best practices" list of sub-prime lenders to refer people to who will not qualify for prime loans, and work with local lending institutions to create alternative loan products.

PLEI would like to invite you to become a part of this working task force. The meetings are being held every other month at the Yeadon Borough Hall in Yeadon. If you would like to attend the next PLEI meeting, please contact Michael Washington at the Delaware County Office of Housing & Community Development at (610) 891-4312 (washingtonm@co.delaware.pa.us) or Jan Chadwick at the Fair Housing Council of Suburban Philadelphia at (610) 604-4411 (Chadwick@fhcsp.com).



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Predatory Lending Education Initiative

Predatory lending is a derivative of the subprime mortgage market. Subprime lending generally involves rates and fees with greater flexibility in underwriting for borrowers who do not qualify for or do not know about prime lending options. Subprime lending is considered to be predatory when a lender, broker or contractor engages in deceptive marketing – targeted to elderly homeowners or other vulnerable populations living in lower income neighborhoods – and fraudulent sales practices which produce loans with excessive or hidden fees and unaffordable payment terms.

Studies indicate that discrimination persists in the mortgage-lending arena, frustrating attempts by minorities to acquire home financing on fair and equal terms. Subprime lenders have received national attention for "steering" individuals toward unfairly high mortgage interest rates based on race, ethnicity or new immigrant status, ignoring credit history and other valid lending criteria. According to a HUD report published in 2000, subprime loans are three times more likely to occur in low-income neighborhoods than in high-income ones, and five times more likely to occur in black neighborhoods than in white neighborhoods. Regardless of income, a recent study also finds that minorities are more likely to receive sub-prime loans when refinancing their mortgages.

Surveys of members of the Pennsylvania Low Income Housing Coalition have shown that predatory lending is occurring in boroughs and cities throughout Pennsylvania. Housing counselors are seeing predatory practices in loan documents of clients facing foreclosure. Delaware County borough and township officials are complaining of a tremendous increase in foreclosures, property flipping, contractor scams

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