Delaware County Fair Housing News

November 2000

Fair Housing News is a publication of the Fair Housing Council of Suburban Philadelphia. Funding for this project was made possible by a grant from Delaware County's Office of Housing & Community Development. For questions or comments regarding the information contained in this newsletter contact the Council at (610) 604-4411 or at fhcsp@craftech.com.

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Real Estate Sales & Racial Steering

Racial steering occurs when white and black clients are guided to neighborhoods that differ with respect to social and economic characteristics, especially racial composition.

One of the questions we often ask ourselves here at the Fair Housing Council is why some neighborhoods in the Philadelphia suburbs are predominantly black while others are predominantly white. Obviously, some neighborhoods are segregated because of historically overt racial societal behaviors and policies that were common practice before the passing of the Civil Rights Act of 1968. However, some of our neighborhoods today are still strictly segregated or appear to be changing from one race to another. If this is strictly a matter of housing choice by home seekers, then there is nothing overtly discriminatory about the segregation. On the other hand, it is the Council's primary mission to eliminate any practices by Realtors, whether performed innocently or not so innocently, that may be exacerbating the situation and limiting home seekers housing choices to segregated communities.

> A study carried out in Cleveland during the early 1970's found that 70% of companies engaged in some form of racial steering; and an examination of Realtors in metropolitan Detroit during the mid- 1970's revealed that, compared to whites, blacks were shown homes in less-expensive areas that were located closer to black population centers. Another study of six real estate firms located in Cincinnati and Memphis and found that racial steering occurred in roughly 50% of the transactions sampled during the mid- 1980's. As in the Detroit study, homes shown to blacks tended to be in racially mixed areas and were more likely to be adjacent to neighborhoods with a high percentage of black residents. White testers were rarely shown homes in integrated neighborhoods unless they specifically requested them, and even after the request was honored, they continued to be guided primarily to homes in white areas. Sales agents also made numerous positive comments about white neighborhoods to white clients but said little to black homebuyers. In a broader review of thirty-six different audit studies, the researcher discovered that such selective commentary by agents is probably more common than overt steering.[1]

[1]Massey, Douglas A. & Nancy A. Denton. *American Apartheid: Segregation and the Making of the Underclass*. The President & Fellows of Harvard College, 1993.

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With all this in mind, we wanted to give some practical advice about how Realtors can avoid exacerbating segregation in the housing market today and avoid innocently crossing fair housing laws.

- Never presume that your client is interested in purchasing a home in neighborhoods of any particular racial or ethnic composition. Such an assumption stereotypes your client, and could form the basis of a steering charge against you.
- When representing a buyer, never ask or bring up the topic of racial or ethnic neighborhood preferences. Leave that to the buyer, if he or she is so inclined.
- If a buyer does express an interest in finding a home in a primarily segregated neighborhood, it would be a violation of fair housing laws to assist them in choosing that community. You should immediately explain that you cannot assist them in this aspect of their search and explain the fair housing laws. You can then either proceed to show the customer houses which meet the buyer's other known requirements regardless of the racial composition of the community, or send them back out with the assignment of finding some communities on their own that might fit their profiles and return when they have narrowed their search to specific neighborhoods. To assist them in their research, you could send them to the Delaware Valley Regional Planning Commission, which usually has statistical racial breakdowns of neighborhoods based on census data. If they want to live in a racially segregated community, they must do the footwork on their own.
- When assisting a seller in determining the selling price of their home, don't assume that a racial change in the neighborhood composition will depress the selling price of the home. Additionally, don't assume that the racial makeup of the school district will have an impact on the selling price of the home. Make sure that the variables you are using to determine the price have no bearing, even remotely, on the racial makeup of the neighborhood.
- If a seller you represent indicates any unwillingness to sell their dwelling to members of a protected class, you should inform them that you cannot assist them in this matter and explain fair housing laws. If they persist in their unwillingness, immediately cease any further contact with that seller. You should inform your managing agent or broker immediately and they should terminate the listing, sending a written explanation for the reason.
- If a seller seeks to change the terms of a sale after learning of the protected characteristics of an interested purchaser, the agent representing the seller should immediately terminate the listing. The buyer's agent should object to any change in terms, making sure to point out to both the seller and the seller's agent that they are in violation of fair housing laws. Any party that has been damaged by such discriminatory behavior, including the seller's agent that has lost a commission, has standing to file a complaint of housing discrimination.

"The very absence of visible signs of discrimination creates an atmosphere of racial neutrality and encourages whites to believe that racism is a thing of the past."

Derrick Bell, 1992

Anderson & FHCSP v. HANNA Realty

In March 1999 the Council received a complaint from a family with two children. The Andersons had called HANNA Realty in reference to an advertisement for a "spacious 2 bedroom apartment." However, when the Realtor discovered that they had children, he informed them that he could not rent them the apartment because the owner would not allow children. Testing by FHCSP duplicated the Andersons experience. A complaint was filed at the U.S. Department of Housing & Urban Development (HUD) charging familial status discrimination. After negotiation, a Fair Housing Enforcement Agreement was entered into where HANNA Realty agreed to change it's business practices and offer housing in a non-discriminatory way, receive training in fair housing law, publish fair housing notices and include the fair housing logo on all advertising, and pay damages to the Andersons in the amount of $3,000 and to the Council in the amount of $2,000.

Exemptions to the Fair Housing Act

An interesting situation came up in the Council's case against HANNA Realty. The agent claimed that he was only obeying the property owner's wishes in limiting the apartment to families without children. The agent further claimed that since the property owner lived on the property and was only renting out 1 apartment, that she was therefore exempt from the Fair Housing Act and could discriminate against families with children. There were two major misconceptions in this case that opened the Realtor and the property owner to a fair housing violation claim.

Before we address the misconceptions, however, lets look specifically at the law. The Fair Housing Act lists several exemptions to the law including qualified senior housing and certain housing for religious clubs and organizations to name two. We want to focus here on what is commonly referred to as the "Mrs. Murphy's" exemption. The hypothetical Mrs. Murphy is an elderly widow who has converted her home into two apartments in order to increase her limited income. Mrs. Murphy lives in one apartment and rents out the second. Technically, Mrs. Murphy is exempt from fair housing laws. The law specifically states that a property of 4 or less units that is owner occupied is exempt.

However, reading further in the law, you find that if Mrs. Murphy has used the services of a Realtor, she is no longer exempt from fair housing laws. This was the first major misconception in this case. There is never any exemption in the law for Realtors. Therefore, if a property owner approaches a Realtor and expresses a wish to limit occupancy, the Realtor should explain the law to the property owner and inform them that they cannot assist them if they persist in wanting to limit occupancy.

The second major misconception is regarding the advertising portion of the Fair Housing Act. The law states that it is a violation of the act to "make, print or publish…" a discriminatory advertisement. Note the word "make" in this sentence. The law does say that regardless of whether you are exempt from the law or not, it is still illegal to make a discriminatory statement. This seems technical, but congress' intention on this language was that it would send the wrong message to the public if exempted owners were allowed to advertise, "No children allowed." Congress felt that all people would then assume that it was perfectly legal to discriminate against families with children.

So exactly how can Mrs. Murphy legally discriminate? Very, very carefully. Without using the services of a Realtor, and without showing any preference or stating a discriminatory statement, Mrs. Murphy should take applications and let the prospective renters know when a decision is made.

One final note: there is never any exemption that states that you can discriminate on the basis of race. Regardless of whether you rent 1 unit or 1,000, race is covered by the 1866 Civil Rights Act, which states that it is always illegal to discriminate on the basis of race. There are **NO** exemptions from this law.

"...It shall be unlawful...to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

The Fair Housing Act Sec. 804 (c)

> **"We need to appreciate the importance of legislation, judicial decisions, and executive orders...Without them it is not possible for individuals or groups of individuals, however dedicated, to make a good-faith and successful effort to eliminate the color line."**
>
> **John Hope Franklin, 1993**

Predatory Lending May Be Considered a Fair Housing Violation

On October 4, The Fair Housing Council of Greater Washington announced a U.S. District Court ruling that permits a lawsuit to proceed against the D.C. based Capital City Mortgage Corporation for engaging in allegedly predatory and racially discriminatory lending.

Attorney John Relman, who represents the D.C. fair housing center and six borrowers, said Judge Joyce Hens Green's ruling to deny summary judgment to the firm is "the first decision in the country squarely holding that targeting minority communities for predatory lending--or reverse redlining--can be a violation of the Fair Housing Act."

According to Relman, "What this says is, if you peddle illegal predatory loans in a community, if you in essence peddle poison to that community because of the racial makeup of the community, then a jury can decide if that violates the Fair Housing Act." Under that law, a jury could award unlimited punitive damages.

The suit filed two years ago alleges that the firm and its president, Thomas K. Nash, targeted African American borrowers for high-cost loans it knew they could not repay.

A series of Washington Post articles in 1996 found that Capital City and its president foreclosed on one of every five mortgages issued from 1984 to 1995. Most properties were in predominantly black D.C. neighborhoods. The loans frequently carried interest rates of 24% or higher.

What is Predatory Lending?

Learn more about how to recognize predatory lending practices and protect your community

Wednesday
December 6, 2000
8:15 a.m. to 4:00 p.m.
Federal Reserve Bank of Philadelphia
7th Street between Arch & Race Streets
Philadelphia
Register on-line at www.phil.frb.org/cgi/predatory.htm
or call (215) 574-6458

Statewide Task Force on Predatory Lending Convenes

The Pennsylvania Low Income Housing Coalition (PALIHC) organized a statewide meeting of housing agencies from across the state on October 19, 2000 to discuss things that can be done to fight predatory lending in Pennsylvania

Along with evidence presented by Ira Goldstein of the Reinvestment Fund and Irv Ackelsberg of Community Legal Services, testimony from PALIHC members revealed that predatory lending is occurring in boroughs and cities throughout Pennsylvania. Housing counselors at the meeting pointed to the types of problems surfacing in the Pennsylvania Housing Finance Agency's (PHFA) Homeowner's Emergency Mortgage Assistance Program (HEMAP) applications and other participants stated that they are seeing property flipping, contractor scams, bill collector referrals and other predatory lending practices in their communities.

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.

Some objectives were reached at the meeting regarding combating predatory lending in Pennsylvania. The first objective regarding any state legislation should be to clearly define, prohibit and punish predatory lending practices. A second objective should be to increase regulatory oversight of the subprime lending industry in order to catch predatory practices before they proliferate. A third objective should be to improve the lending market in lower income communities through consumer education, housing counseling and price incentives.

PALIHC plans on working with ACORN, The Pittsburgh Community Reinvestment Group, The Reinvestment Fund and others to carry out an effective campaign to rid the state of this disease which is driving owners from their homes and sabotaging struggling neighborhoods. Anyone who is interested in participating or in learning more should contact PALIHC at (215) 576-7044.

Looking for more information about FHCSP cases?
Would you like to read back issues of Delaware County Fair Housing News?

Then visit the
THE FAIR HOUSING COUNCIL OF SUBURBAN PHILADELPHIA'S
FAIR HOUSING WEB SITE

http://fhcsp.fairhousing.com

"Predatory Lending is the reverse of affordable housing...it's the housing equivalent of AIDS"

Irv Ackelsberg
Community Legal Services
Philadelphia

FHCSP Settles Lawsuit Against Newtown Square Landlord

In June, the Council settled a federal lawsuit against Woodbrook House Apartments in Newtown Square. In 1993 the Council began receiving complaints against this 78 unit apartment complex from families with children who claimed they were being denied housing. The Council sent testers to the site and discovered that the complex did indeed have a policy of not renting to families with children. The Council filed a complaint at the Pennsylvania Human Relations Commission at that time and eventually reached a settlement where the owners promised that they would follow fair housing laws in the future and offer their apartments to everyone on an equal basis.

In 1996 the Council again began receiving complaints against Woodbrook House Apartments. Now, however, the Council found upon investigation that the complex had a policy of charging a fee if there were more than two tenants in a unit. That fee was $362 a month per person for each extra person over 2 in a unit. This had the effect of keeping families with children from renting in the complex.

According to census data, about 27% of all apartments in Delaware County are leased to families with children. The Council discovered that only 3 out of 78 of the units at Woodbrook House were rented to families with children – only 4%.

Under the terms of the settlement agreement, Woodbrook House owners must display fair housing posters prominently, send an employee a year for three years to fair housing training, and pay the Council $68,500 in damages and fees.

"[The owners] have spent a lot of money dealing with this problem, and that will help these and other landlords realize that discrimination is very expensive," said Council attorney Clifford Boardman. "Families need a place to live, and just because they can't afford [to buy] a home doesn't mean they shouldn't live in Newtown Square. Sometimes you have to make that message clear to landlords."

"Families need a place to live, and just because they can't afford [to buy] a home doesn't mean they shouldn't live in Newtown Square. Sometimes you have to make that message clear to landlords."

Clifford Boardman, Esq.

Apartment Rentals & Per Capita Charges

The article about the Newtown Square landlord charging $362 per person over 2 people in a household raises an interesting question. Is it ever legal to charge a per capita fee in rental housing or housing associations?

The Fair Housing Act requires an examination of the totality of the circumstances to determine whether a facially neutral or other standard results in discrimination or has a discriminatory impact against a protected class. Per capita charges more readily affect families with children since, in the typical case, differences in the number of individuals in a household will be related to the number of children in the family. Thus, in most cases a per capita charge will have a disparate impact on families with children and therefore violate the Fair Housing Act.

However, if a housing provider can offer a legitimate non-discriminatory justification for the policy then the policy may be permissible. This typically means the presentation of

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actual cost data showing that the additional persons in the household will increase the costs to the housing provider. For instance, if utilities are included in the rent, then it might be legitimate to say that the costs would be higher for a family of 4 than for a family of 2. If a housing provider is to use this argument, then actual historical cost data must be presented in defense. It may be difficult to argue this however, because this is one of the reasons for the differences in rent between a 1BR and a 2BR apartment. Additionally, the additional cost per person in rent must be directly related to the per capita charges of the housing provider. The Council's presumption in filing the Woodbrook House complaint was that there could be no legitimate way that evidence could be presented to justify an additional cost of $362 a person for a 3rd person in the apartment or $724 for the 3rd & 4th person. This indeed became the fact as the case progressed.

So when might there be a legitimate business reason? The Pennsylvania Office of Attorney General published a report in 1993 from the Task Force on Manufactured Housing (i.e. mobile home parks). This report discussed various legitimate costs including water, sewer and trash pickup. This is assuming that the housing provider is paying water and sewer on a gallons used basis and not on a fixed monthly amount and that trash pickup is billed by volume or weight. If the per capita charge is based on these items then copies of the bills must be presented including an analysis of the number of occupants and the average monthly charges to determine if the per capita fee is legitimate. It is believed that any fee greater than $10-$20 probably cannot be justified.

The bottom line advice is that if you are going to charge a per capita fee, regardless of the amount, anyone could challenge that the policy has a disparate impact on families with children and therefore is a violation of the Fair Housing Act. If it were to be challenged, then you must have sufficient actual cost documentation to justify the fee.

"The Ideals that bind us together are as old as our nation, but so are the forces that pull us apart."

President Bill Clinton
June 14, 1997

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Approval of Plans for Multi-Family Dwellings

Most people assume that the American's with Disabilities Act (ADA) is the law that covers new construction. However, the ADA only covers public accommodations such as government buildings, movie theaters, and restaurants. The only public accommodations in newly constructed multifamily dwellings would be the rental office or a clubhouse that can be rented to the general public for events.

Although the ADA does not cover private housing units, the Fair Housing Act does. The Act states that any multifamily dwelling of four or more units built for first occupancy after March 13, 1991 must meet certain guidelines to be accessible for persons with disabilities. For example, covered buildings should have accessible routes to and through the units and reinforcements in the bathroom walls for the future installation of grab bars just to name two.

Townships should keep these guidelines in mind when approving plans for building new multifamily dwellings. The best reference available is the *Fair Housing Act Design Manual: A Manual to Assist Designers and Builders in Meeting the Accessibility Requirements of the Fair Housing Act*. A copy of this manual can be obtained by contacting the U.S. Department of Housing & Urban Development's distribution center at (800) 767-7468. Request the manual by name with a HUD publication number of 1733-FHEO, this is the revised edition published in April 1998.