



# No License to Discriminate

**Real Estate Advertising, Source of Income  
Discrimination, and Homelessness in New York City**

**APARTMENT FOR RENT**

2 Bedroom Apartment Available, New Kitchen Appliances,  
Remodeled Bathroom, Convenient to Subway, 1 Year Lease,  
Rent - \$1200, One Month Rent as Security, 15% Broker Fee  
**No Fixed Incomes, No Programs, and No Section 8 Vouchers!**  
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The views expressed in this report are those of the authors and the Fair Housing Justice Center, Inc.

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*“We Americans have a chance to become someday a nation in which all racial stocks and classes can exist in their own selfhoods, but meet on a basis of respect and equality and live together, socially, economically, and politically.”*

- New York Congresswoman Shirley Chisholm

## **INTRODUCTION**

The Fair Housing Justice Center (FHJC) is a non-profit civil rights organization based in New York City. The FHJC is dedicated to challenging systemic forms of housing discrimination, advocating for policies and programs that foster open and inclusive communities, and strengthening fair housing law enforcement. The FHJC program opened in 2005 and began assisting individuals and organizations with housing discrimination complaints, conducting systemic testing investigations, and contracting with public and private fair housing enforcement agencies to provide training and technical assistance.

Consider the following scenarios:

*Ms. A is an immigrant and the mother of two children. She is living in overcrowded housing with other family members in the Washington Heights neighborhood. Ms. A works at a minimum wage job and was recently approved to receive a Housing Choice Voucher (Section 8) from the City of New York. Now, she is looking for a two bedroom apartment for herself and her children.*

*Mr. B worked in the skilled trades until he went into kidney failure. He now receives Social Security Disability. His wife now retired and receiving Social Security has a small pension from her former employer. After selling their home in Queens to pay for mounting medical bills, they are searching for an affordable apartment to rent.*

*Mr. C was homeless and living on the streets of Manhattan. He now resides in a transitional housing shelter. Mr. C has AIDS and has been approved to receive rental housing assistance through HASA, a New York City program for persons who are HIV positive or are living with AIDS. With this rental subsidy, he is seeking permanent housing while he continues to receive care for and learns to live with his disability.*

*Ms. D is a single parent with a two-year-old daughter residing in a domestic violence shelter. Ms. D has part-time employment and a rental subsidy from the Human Resources Administration (HRA) to help her secure a safe living environment for her and her daughter. The rental subsidy will enable her to pay for her own apartment.*

*Mr. E was born and raised in Brooklyn. He is a disabled veteran who returned last year from multiple tours in Iraq. He currently receives Veterans Administration (VA) benefits along with a monthly disability payment from the VA. Once discharged from the VA hospital, he hopes to return to college and obtain an apartment on his own.*

*Ms. F sought help from one of New York City's HomeBase homeless prevention centers in the Bronx after she was laid off from her job of 20 years. She has a 15-year-old son with developmental disabilities. Ms. F currently receives unemployment compensation, food stamps, and Social Security for her son. She can no longer make her current rent payments and needs to find a more affordable apartment.*

All of these fictional households have personal characteristics shared by many real New Yorkers. The life circumstances described in these scenarios mirror those of actual individuals and families who struggle every day to obtain affordable shelter in New York City. Also, all of these households have at least three things in common. First, they are looking for rental housing in the New York City. Second, none of them plan to pay for the rental housing with income derived exclusively from employment. Finally, as this report will detail, all of these households are at considerable risk of being discriminated against in the private rental market because of their sources of income.

The inadequate supply of decent, affordable rental housing in New York City continues to be an issue of immense public importance. In response to mounting evidence that many New Yorkers are unable to obtain decent, affordable rental housing primarily due to their source of income, the City Council enacted a law in March 2008.<sup>1</sup> The new law added "lawful source of income," including housing subsidies, to the protected characteristics included in the City of New York Human Rights Law.

This report examines the activities of real estate licensees who are required by law to advertise and make rental housing available in a non-discriminatory manner without regard to lawful source of income in New York City. This report also describes some of the specific issues and challenges that must still be addressed in order to eliminate source of income discrimination in the New York City rental market.

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<sup>1</sup> Local Law 10/2008 amended Title 8 of the Administrative Code of the City of New York, The New York City Human Rights Law, to add lawful source of income as a protected class.

## **SOURCE OF INCOME DISCRIMINATION MADE ILLEGAL**

On March 26, 2008, the New York City Human Rights Law was amended to prohibit discrimination in housing based on lawful source of income, including rental subsidies. The City Council amended the law to address the problem that many rental housing providers in New York were refusing to rent to tenants with rental subsidies or with incomes from sources other than employment. The term “lawful source of income” includes income derived from Social Security, or any form of federal, state, or local public assistance or housing assistance, including Section 8 vouchers. The New York City Commission on Human Rights is charged with enforcing the Human Rights Law.

The new law prohibits all real estate brokers and agents as well as most people who have the right to sell or rent real estate from discriminating against tenants because of their sources of income. As with race, national origin, disability and other protected characteristics in the City Human Rights Law, all real estate brokers and salespersons are prohibited from engaging in illegal housing discrimination. While there is a narrow exemption for owners of buildings with five or fewer rental units, there are two exceptions to this exemption. First, tenants who are subject to rent control laws and who lived in a structure with five or fewer units when the law was enacted are protected. Second, the new law covers all housing units rented by an owner if that owner also has at least one building with six or more units in New York City.

The newly amended City Human Rights Law makes it unlawful to refuse to rent an apartment to a tenant because of any lawful source of income, including a rental subsidy. The same law also makes it illegal to “declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication” that expresses, directly or indirectly, “any limitation, specification or discrimination” based on any lawful source of income. The role of real estate licensees in advertising rental housing in a discriminatory manner, based on lawful source of income, is the central focus of this report.

## **ROLE OF REAL ESTATE BROKERS IN NEW YORK CITY RENTAL MARKET**

In New York City, renters frequently use the services of real estate professionals to locate suitable rental housing. Real estate brokers and their agents control access to a significant portion of the New York City rental market. These gatekeepers are licensed by the State of New York. As licensees, real estate brokers and salespeople are entrusted to provide their services in an ethical, trustworthy, and lawful manner. For example, real estate licensees must provide their services on a non-discriminatory basis and comply with all local, state, and federal fair housing laws. For this reason, the FHJC sought to investigate whether real estate licensees were complying with the amended New York City Human Rights Law prohibiting discrimination in housing based on source of income.

The FHJC examined one popular online service that is used by many housing providers to advertise rental housing. The service, the website [www.craigslist.org](http://www.craigslist.org), is similarly used by many tenants to locate rental housing. By examining rental advertisements posted on the website, it is possible to ascertain whether landlords and real estate licensees are stating illegal limitations based on source of income.

If a prospective renter logged on to [www.craigslist.org](http://www.craigslist.org) to look for rental housing in New York City, what would that tenant find? On Monday, July 29, 2008, for example, that renter would find no fewer than 1,543 advertisements for rental units indicating a limitation or discrimination based on source of income. Of the 1543 discriminatory postings, no less than 765 (50%) were placed under the category of “brokers.”<sup>2</sup> A subset of these advertisements was also reviewed to look only at advertisements that were newly posted as of July 28, 2008. This review revealed 208 rental advertisements indicating a limitation or discrimination based on source of income and 35 (17%) of these ads were posted under the category of “brokers.”

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<sup>2</sup> The online service, [www.craigslist.org](http://www.craigslist.org), allows rental advertisements to be posted and searched by “owner” advertisements, “broker fee” advertisements, and “broker-no fee” advertisements. The FHJC combined “broker fee” and “broker-no fee” rental advertisements to capture all of the advertisements posted by real estate brokers and their agents.

NEW YORK CITY RENTAL ADVERTISEMENTS INDICATING A LIMITATION OR DISCRIMINATION BASED ON SOURCE OF INCOME			
<a href="http://WWW.CRAIGSLIST.ORG">WWW.CRAIGSLIST.ORG</a> – JULY 29, 2008	OWNER POSTED	BROKER POSTED	TOTAL
All Discriminatory Advertisements	778	765	1543
Discriminatory Advertisements Posted on July 28, 2008	173	35	208

To make certain that this snapshot was not an aberration the FHJC logged on again to [www.craigslist.org](http://www.craigslist.org) on Sunday, August 3, 2008 and examined advertisements for rental housing in New York City. This time, no fewer than 1,641 rental advertisements indicated a limitation or discrimination based on source of income. Of the 1,641 discriminatory postings, no fewer than 759 (46%) of these advertisements were posted by brokers. Again, a subset of advertisements was reviewed to look only at advertisements that were newly posted as of Saturday, August 2, 2008. This review disclosed 147 rental advertisements indicating a limitation or discrimination based on source of income and 27 (18%) of these ads were posted by brokers.

NEW YORK CITY RENTAL ADVERTISEMENTS INDICATING A LIMITATION OR DISCRIMINATION BASED ON SOURCE OF INCOME			
<a href="http://WWW.CRAIGSLIST.ORG">WWW.CRAIGSLIST.ORG</a> – AUGUST 3, 2008	OWNER POSTED	BROKER POSTED	TOTAL
All Discriminatory Advertisements	882	759	1641
Discriminatory Advertisements Posted on August 2, 2008	120	27	147

These single day profiles or “snapshots” do not tell the whole story. The profiles counted rental advertisements and not advertised rental units. Multiple advertisements for the same property or “duplicates” were not eliminated. Also, some advertisements contain information about more than one rental property. The much higher percentage of “broker” posted advertisements overall compared to the percentage of new “broker” advertisements posted on a single day may be explained by the fact that owners are



more likely to remove old postings after their units are rented. Brokers, however, may choose to keep advertisements posted longer even after units have been rented in order to generate interest from prospective renters. The website, [www.craigslist.org](http://www.craigslist.org), allows posted rental advertisements to run for 30 days.

These “snapshots” or profiles help to illustrate that there is still considerable non-compliance with the new source of income provision in the City’s Human Rights Law, a disturbing and discouraging fact for tenants seeking housing who have rental subsidies or income from sources other than employment.

## **DISCRIMINATORY ADVERTISING OF RENTAL PROPERTIES BY REAL ESTATE BROKERS**

In an effort to learn more about discriminatory advertisements placed by real estate licensees, the FHJC systematically monitored rental advertisements posted on [www.craigslist.org](http://www.craigslist.org) every day for one month, July 1 through July 31, 2008. The goal was to identify how many affordable rental units in a given month were being made unavailable to renters based on source of income on [www.craigslist.org](http://www.craigslist.org). The methodology was simple.

- Phrases such as “no programs,” “no Section 8,” “no government programs,” and variations on these phrases were entered using the search capability that is provided on the [www.craigslist.org](http://www.craigslist.org) website. Searching for these words and phrases enabled the FHJC to identify advertisements that indicated a limitation or discrimination based on source of income.
- Only rental advertisements for rental units located in New York City were searched. Rental advertisements for all other areas were excluded.
- To the extent the language in the advertisements made it possible to identify duplicate advertisements for the same rental property, duplicates were eliminated.
- Only advertisements that were categorized as “broker” advertisements were included regardless of whether the advertisement was posted under the category of “broker fee” or “broker-no fee.”

All advertisements for rental units posted by “brokers” that indicated a limitation or discrimination based on source of income were counted and copied. Then, an effort was made to identify whether the advertisement was posted by a real estate salesperson or broker licensed by the State of New York.

The tally of discriminatory advertisements for available rental housing is very conservative for several reasons. First, resources and time did not permit a more exhaustive search using all possible combinations of words and phrases that a real estate broker might use to discriminate based on source of income. For instance, “must have a job” or “must be employed” may illegally exclude a person with sufficient income from other lawful sources. These phrases, along with many others, were not searched. Also, during the research, it became apparent that a considerable number of the so-called “owner” posted advertisements for rental properties were actually placed by brokers who had elected not to post their advertisements under one of the “broker” categories. Owner posted rental advertisements were not searched as part of this month long systemic monitoring of discriminatory advertisements. Searching owner advertisements would likely have yielded additional rental properties that were being advertised by brokers in a discriminatory manner. Finally, this report only examines rental advertisements posted on [www.craigslist.org](http://www.craigslist.org). There are many other online websites and offline resources that tenants use to search for available rental housing.

During the month of July 2008, no fewer than 363 discriminatory rental advertisements were posted on [www.craigslist.org](http://www.craigslist.org) by real estate brokers. All 363 rental advertisements stated a limitation or discrimination based on source of income. In some advertisements, more than one rental unit was listed. These 363 discriminatory advertisements made a total of 413 New York City rental units unavailable to tenants with rental subsidies or with incomes from sources other than employment. A breakdown of the location of the rental units by New York City Borough appears below.

RENTAL ADVERTISEMENTS POSTED ON <a href="http://WWW.CRAIGSLIST.ORG">WWW.CRAIGSLIST.ORG</a> BY BROKERS INDICATING A LIMITATION OR DISCRIMINATION BASED ON SOURCE OF INCOME						
LOCATION OF ADVERTISED RENTAL UNITS BY NEW YORK CITY BOROUGH						
BRONX	BROOKLYN	MANHATTAN	QUEENS	STATEN ISLAND	NOT SPECIFIED	TOTAL
93	228	31	53	8	0	413

It is noteworthy that nearly 78% of the rental units that were advertised in a discriminatory manner are located in Brooklyn or the Bronx, areas with some of the City's most affordable rental housing. The remaining 22% are located in Queens, Manhattan, and Staten Island.

With 413 rental properties advertised as unavailable to persons with rental subsidies or with incomes from sources other than employment, a further analysis was conducted to determine whether the advertised rental properties were priced within rent ranges that low- and moderate-income households could afford. The following chart reveals that 306 (76%) of the advertised rental units (where the rent was specified in the advertisement) were renting for \$1600 or less.

RENTAL ADVERTISEMENTS POSTED ON <a href="http://WWW.CRAIGSLIST.ORG">WWW.CRAIGSLIST.ORG</a> BY BROKERS INDICATING A LIMITATION OR DISCRIMINATION BASED ON SOURCE OF INCOME <u>BREAKDOWN OF ADVERTISED RENTAL UNITS BY # OF BEDROOMS AND ADVERTISED RENT</u>							
ADVERTISED RENT	NUMBER OF BEDROOMS IN ADVERTISED RENTAL UNITS						TOTALS
	0 Bedrooms	1 Bedroom	2 Bedrooms	3 Bedrooms	4+ Bedrooms	Not Specified	
\$0-1000	21	60	5	0	0	0	86
\$1001-1200	2	35	25	1	0	0	63
\$1201-1400	0	6	53	9	0	0	68
\$1401-1600	2	6	43	37	1	0	89
\$1601-1800	0	7	16	18	1	1	43
\$1801-2000	0	0	8	11	2	0	21
\$2001 or more	0	0	11	12	9	1	33
Not Specified	8	1	1	0	0	0	10
TOTALS	33	115	162	88	13	2	413

Earlier in 2008, [www.forbes.com](http://www.forbes.com) reported that New York City was the most expensive city in the nation for renters with the average rent reaching \$2,922 per month, nearly \$1000 more than the second most expensive city, San Francisco, where the average rent is up to \$1904 a month.<sup>3</sup> The skyrocketing rents in New York underscore the relative affordability of the advertised rental units that were reviewed for this report.

For those discriminatory advertisements posted on [www.craigslist.org](http://www.craigslist.org) in July 2008 where the rent was stated in the advertisement:

- 92% of the studio apartments were renting for \$1200 or less
- 89% of the 1 bedroom apartments were renting for \$1400 or less
- 78% of the 2 bedroom apartments were renting for \$1600 or less
- 74% of the 3 bedroom apartments were renting for \$1800 or less

Many, though not all, of these advertised rental units were within the fair market rents established for federal Housing Choice Vouchers. The New York City Department of Housing Preservation and Development (HPD) website indicates that current Housing Choice Voucher (Section 8) fair market rents are as follows:

Studio (0 Bedroom)	-	\$1,204
1 Bedroom	-	\$1,303
2 Bedrooms	-	\$1,449
3 Bedrooms	-	\$1,783

Furthermore, 263 (64%) of the 413 rental units that were marketed in a discriminatory manner contained two or more bedrooms which made this affordable rental housing especially suitable for families with children. Hence, the impact of this discriminatory conduct on low- and moderate-income families with children is significant.

The fact that real estate professionals licensed by the State of New York were responsible for posting discriminatory advertisements for hundreds of affordable rental units makes the discrimination all the more insidious and disturbing.

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<sup>3</sup> "Best And Worst Cities For Renters," by Matt Woolsey, [www.forbes.com](http://www.forbes.com), January 7, 2008

The FHJC identified 161 different real estate companies that were responsible for posting the 363 discriminatory rental advertisements on [www.craigslist.org](http://www.craigslist.org) in July 2008. The FHJC confirmed that the vast majority of these companies employ real estate brokers and salespersons who are licensed by the State of New York. The list includes companies of all sizes ranging from individual real estate practitioners to large real estate firms with multiple offices and hundreds of agents. The list includes well-established real estate companies as well as newer real estate offices. To confirm that the entities posting the advertisements were licensees, the FHJC used the New York Department of State Division of Licensing Services eAccessNY Occupational Licensing Management System, available online, and other publicly available sources. Licensing information could not be found for a small number of real estate entities that were involved in posting discriminatory advertisements.<sup>4</sup>

## **RECOMMENDATIONS AND CONCLUSIONS**

The proliferation of New York City rental advertisements posted by area real estate licensees on [www.craigslist.org](http://www.craigslist.org) that indicate a limitation or discrimination based on source of income underscores the need for additional action by policy-makers.

The City of New York, through its Department of Homeless Services (DHS) and a network of shelter providers and HomeBase centers, is spending millions of dollars to reduce and prevent homelessness by assisting individuals and families who are either coming out of homelessness or at substantial risk of homelessness to locate and maintain permanent housing. A recent report by the New York City Independent Budget Office indicated that the City was falling considerably short of its goals in locating permanent housing for families.<sup>5</sup> Many of these formerly homeless families have

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<sup>4</sup> The inability to verify whether real estate licensees were involved in placing a small number of discriminatory advertisements may indicate that these real estate entities are unlicensed and, thus, unlawfully practicing real estate. It could also be that the licensees are doing business under other names or that the Department of State's Division of Licensing Services database is not entirely current. In either case, the FHJC will be sharing this information with the Division of Licensing Services and appropriate law enforcement agencies.

<sup>5</sup> "Has the Rise in Homeless Prevention Spending Decreased the Shelter Population?," a report by the New York City Independent Budget Office, August 7, 2008.

income from sources other than employment and many have rental subsidies to aid them in paying their rent. To the extent that some providers of affordable rental housing opportunities in New York City are making housing unavailable to families on the basis of source of income, they are only contributing to the problem of homelessness. Action is needed to expand the supply of affordable housing by ensuring that all families have access to and the ability to compete for housing opportunities without regard to their sources of income or rental subsidies.

In order to aid New York City's current efforts to eliminate and prevent homelessness, the FHJC offers the following six recommendations.

### **Strengthen and Expand Fair Housing Enforcement Activity**

The FHJC offers three recommendations designed to strengthen and expand fair housing enforcement activity:

*Recommendation #1: The City of New York should financially support the development and implementation of systemic testing investigations to document and eliminate barriers to affordable rental housing based on source of income discrimination.*

This report provides incontrovertible evidence of unlawful discrimination based on source of income by real estate licensees and other rental housing providers. But the discriminatory advertising, while harmful and discouraging, is only one dimension of the problem. Many housing providers are engaged in illegal housing discrimination based on source of income, whether advertised or not. It is misguided or naïve to think that this discrimination will decline without more aggressive enforcement activity. New York City has a unique interest in more vigorous enforcement of fair housing laws. When a rental housing provider engages in discriminatory conduct that results in more families becoming homeless or places a population at greater risk of homelessness, it is the City of New York that ends up repairing the harm caused by this discriminatory conduct and bearing the costs associated with increased homelessness.

A purely complaint driven approach to fair housing law enforcement is wholly inadequate. Renters are frequently “screened out” based on their sources of income or their receipt of rental subsidies during initial telephone calls with rental housing providers. In many of these instances, the prospective tenant has no opportunity to even obtain an address for the available rental property. If renters have no way of knowing whether the advertised rental unit is covered by the law or exempt, they may be reluctant to complain. Placing the burden of enforcement entirely on low- and moderate-income renters (e.g., survivors of domestic violence, persons with disabilities, families coming out of homelessness, the elderly, new immigrants, etc.) is both impractical and ineffective.

Greater compliance with fair housing laws will only be achieved if public and private fair housing agencies and organizations adopt a more pro-active approach to enforcement. This requires identifying both overt and subtle forms of discrimination that are continuing to infect local housing markets, limit housing choice, impair mobility, and reinforce patterns of residential segregation.

Fair housing testing and enforcement of fair housing laws can increase housing opportunities and remove illegal barriers that are currently restricting housing choice for thousands of New Yorkers. Unfortunately, the New York City Commission on Human Rights does not appear to have dedicated the resources or developed the capacity to design and implement large-scale systemic testing investigations. Organizations with systemic testing programs, such as the FHJC, are prepared to assist the City of New York to meet this challenge.

*Recommendation #2: Fair housing enforcement agencies and organizations should notify the New York Department of State Division of Licensing Services when there is evidence that a real estate licensee is engaged in discrimination in violation of local, state, or federal fair housing laws.*

Real estate licensees should never participate in, aid, or abet illegal housing

discrimination. The State can take disciplinary action, including the suspension or revocation of a license, when a real estate licensee is found to be engaging in unlawful housing discrimination.<sup>6</sup> This is an underutilized enforcement option that needs to be considered by agencies and organizations involved in enforcing fair housing laws. The State of New York should suspend or revoke the licenses of real estate salespeople or brokers who refuse to comply with fair housing laws. It is in the interest of the State of New York to ensure that all real estate licensees are making their services and housing available on a non-discriminatory basis.

*Recommendation #3: Fair housing enforcement agencies should seek remedies that halt the illegal discrimination, repair the harm caused by the discriminatory conduct, and ensure future compliance with fair housing laws.*

Whether fair housing enforcement action is initiated in response to a housing discrimination complaint or as a result of a systemic testing investigation, enforcement agencies need to look more broadly at the harm caused by the discriminatory conduct. Enforcement agencies should fashion remedies that repair that harm and ensure future compliance with the law. A commendable example of this type of remedy can be found in a recent (2008) source of income discrimination matter involving an apartment complex in Buffalo, New York, which was settled by New York State Attorney General Andrew Cuomo.<sup>7</sup> In that case, the settlement included:

- Paying \$10,000 principally for outreach and education about anti-discrimination laws
- Initially reserving 20 future available units for recipients of Section 8 or other government rental subsidies

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<sup>6</sup> See *Department of State Division of Licensing Services v. Bosco et al.*, 54 DOS 95 (1995)

<sup>7</sup> “Attorney General Cuomo Stops Buffalo Apartment Complex Owner from Discriminating against People Receiving Financial Housing Assistance,” Press Release issued by the Office of the New York State Attorney General Andrew M. Cuomo, August 4, 2008.



- Establishing waiting lists for Section 8 recipients who wanted to live in the apartment complex and registering all available units with the local Section 8 administering agencies
- Renting an apartment to an individual whose application was originally rejected because he received Section 8
- Retaining an independent organization to conduct periodic tests to ensure future compliance with the law
- Ensuring that rental agents receive training about the requirements of federal, state, and local fair housing laws

Unfortunately, this type of outcome is not routinely obtained by the New York City Commission on Human Rights (NYCCHR). The NYCCHR practice of obtaining an informally mediated settlement prior to filing a formal housing discrimination complaint may help one family use its income or rental subsidy to rent an apartment. However, while benefiting that family, these informal agreements offer little or no assurance that the housing provider will not discriminate against the next family who makes the same inquiry. Even though the source of income law is relatively new in New York City, enforcement agencies should be obtaining enforceable settlements that include written assurances and specific actions to ensure the housing provider will comply with fair housing laws in the future.

### **Ensure Real Estate Licensees Receive Adequate and Ongoing Training on All Fair Housing Laws**

The FHJC offers two recommendations that will help to ensure all real estate licensees in the State of New York receive adequate and ongoing training on local, state and federal fair housing laws:

*Recommendation #4: The New York State Board of Real Estate in conjunction with the Department of State Division of Licensing Services should establish minimal standards for evaluating the content of any course that is intended to meet the new fair housing training requirements.*

The New York State Board of Real Estate is specifically authorized by law to

“prescribe the content of courses of study for the examination and education of real estate brokers and salespersons,” including continuing education courses. The Division of Licensing Services for the New York Department of State requires all real estate licensees to complete 22.5 hours of approved real estate continuing education every two years, within their license cycle, prior to renewal. Effective July 1, 2008, the 22.5 hours must include at least three hours of instruction pertaining to fair housing and/or discrimination in the sale or rental of real property.

Some of the courses that the Division of Licensing Services has approved for satisfying the fair housing training requirement are entitled “Real Estate Investment and Exchanging,” “Heating, Cooling and Plumbing,” “Townhouse Mania,” “Risk Management Solutions,” and “Home Inspection: What You Need to Know.” The titles of these courses raise questions about the content of the training and whether fair housing laws are covered in a substantive and comprehensive manner.

The website for the Division of Licensing Services lists no fewer than 68 organizations or “schools” that have been approved to provide courses to satisfy the 3 hours of required fair housing training. Some of the entities offering the “approved” training are based in the State of New York and others are provided by vendors in Texas, Washington, Virginia, North Dakota, Illinois, Florida, Oregon, Pennsylvania and even Toronto (Ontario), Canada. It is reasonable to question whether these vendors have incorporated key provisions of the New York State Human Rights Law and local fair housing laws into their curricula. For example, each course description should include reference to all of the protected characteristics not included in current federal law such as lawful source of income, sexual orientation, marital status, age, gender identity, citizenship status/alienage, domestic partnership status, military status, lawful occupation, and others.

The quality and content of the fair housing training provided to real estate licensees is every bit as important as the new training requirement. If misinformation or partial information is provided about fair housing laws, the fair housing continuing education requirement will prove to be a sham and will do little to achieve greater compliance with local, state, and federal fair housing laws.

The New York State Board of Real Estate and the Division of Licensing Services should consult with public and private fair housing enforcement entities in developing appropriate standards to evaluate fair housing training courses. It is in the interest of the New York State Board of Real Estate, fair housing enforcement agencies, and real estate industry trade associations to ensure that quality training programs are implemented. Such programs should provide comprehensive and reliable information about fair housing laws to all real estate licensees in the State of New York.

*Recommendation #5: The State of New York, the New York State Board of Real Estate, and the Division of Licensing Services should eliminate the current exemption from continuing education fair housing training requirements for salespersons and brokers who have been licensed and actively engaged in the real estate business for 15 consecutive years prior to their license renewal.*

The current Guide to Professional Conduct from the New York State Real Estate Board posted on the Department of State's Division of Licensing Services website states that real estate licensees must always "obey all applicable federal, state, and municipal laws." This includes all local, state, and federal fair housing laws.

There is no empirical evidence that newer real estate licensees are more likely to discriminate than real estate practitioners who have been active for many years. Quite the contrary, real estate licensees with decades of experience may be less familiar with recent changes in the law or more entrenched in discriminatory practices that were common prior to the passage of various fair housing laws. Continuing education training in fair housing should be required for all real estate licensees who are actively engaged in the practice of real estate.

### **Protect Everyone in New York from Source of Income Discrimination in Housing**

Finally, the FHJC offers one recommendation in the interest of protecting everyone in the State of New York from source of income discrimination in housing.

*Recommendation #6: The State of New York should amend the State Human Rights Law to add lawful source of income as a protected characteristic.*

Although twelve states have added source of income protection to their state fair housing laws, the State of New York is not one of them and only a small number of local communities in New York have added this protection to their fair housing laws. Source of income discrimination is currently prohibited in New York City, Buffalo, Nassau County, Hamburg, and West Seneca. To date, efforts to add source of income to the New York State Human Rights Law have failed. Source of income discrimination adversely impacts vast segments of our population including people with disabilities, the elderly, students, survivors of domestic violence, retirees on pensions, new immigrants, low- and moderate-income households with rental subsidies, and many others. The inclusion of source of income protection in the State of New York's Human Rights Law would provide more uniform protection across the state as well as additional enforcement tools.

Furthermore, the unique portability feature that accompanies a federal (Section 8) Housing Choice Voucher is rendered less effective when only a few jurisdictions in the State of New York make it unlawful to discriminate in housing based on source of income. If protection against such discrimination is only enacted and enforced in communities that already have significant concentrations of poverty, then the mobility of low- and moderate-income households will continue to be severely impaired. Limited mobility reinforces patterns of residential racial and economic segregation which is contrary to public policy in the State of New York.

The addition of source of income, including housing subsidies, as a protected class to the State Human Rights Law would increase housing choice and expand housing opportunities available to low- and moderate-income households throughout the State of New York. With such protection added to state law, the New York State Division of Human Rights, the Office of the New York State Attorney General, and fair

housing advocates would have the ability to challenge and eliminate source of income discrimination on a state-wide basis.

The FHJC offers these recommendations for consideration by state and local policymakers, fair housing advocates, and all others concerned with equal housing opportunity. As is always the case, the passage of laws to protect people from discrimination in housing is a vital first step. However, reducing the level of illegal discrimination and obtaining greater compliance with the new laws requires vigorous enforcement.

The FHJC is distributing this report and the underlying data for the report to the New York City Commission on Human Rights, the Civil Rights Bureau for the Office of the New York State Attorney General, and the Division of Licensing Services at the New York Department of State. The FHJC will continue to advocate for policies and programs that ensure fair and equal treatment for all individuals and families who struggle to find affordable rental housing in New York City and throughout the region. At minimum, the FHJC hopes that this report will clarify the fair housing responsibilities of all real estate professionals who work in the State of New York and make it abundantly clear that a license to practice real estate is not a license to discriminate.