



Ending Racism in Residential Real Estate

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About the Fair Housing Justice Center

The Fair Housing Justice Center (FHJC), a regional civil rights organization based in New York City, is dedicated to eliminating housing discrimination, promoting open, accessible, and inclusive communities, and strengthening enforcement of fair housing laws.

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In November 2019, *Newsday* released a series of gripping reports detailing the results of the largest journalistic investigation into real estate sales practices in the nation. The story, entitled “Long Island Divided,” chronicled sending matched teams of testers of different races to real estate offices on Long Island to meet with agents and inquire about purchasing a home.¹ *Newsday* reported finding numerous incidents of alleged racial steering and differential treatment based on race and national origin. Asian homebuyers likely encountered discrimination 19% of the time, Latinx homebuyers 39% of the time and African American homebuyers nearly half (49%) of the time. To those of us who work in this field, the results were disappointing, but not surprising. Pervasive and persistent racial discrimination in the real estate market is not a new or unfamiliar phenomenon.

Since its founding at the beginning of the last century, the organized real estate industry in the United States was a driving force in creating residential racial segregation in our nation’s metropolitan areas. The white supremacist attitudes of the men who were at the vanguard of the early real estate industry are baked into its original DNA. Men, like the “father of real estate” Richard T. Ely, attributed the poverty of African Americans to the “economic inertia and shiftlessness of the Negroes themselves.”² The General Counsel of the National Association of Real Estate Boards (NAREB), Nathan MacChesney, wrote the Code of Ethics in 1924 that remained in effect until 1950. Article 34 of the NAREB Code made it the ethical duty of all NAREB members to discriminate based on race and maintain racial segregation or face sanctions and exclusion from local Real Estate Boards.³ MacChesney also authored a model race restrictive covenant that was distributed for use by Realtors in 1927. NAREB Executive Secretary Herbert Nelson encouraged local realty boards to adopt plans and develop “black belts” to restrict the movement of African American people.⁴ Stanley McMichael, a prominent real estate agent and appraiser, wrote the appraisal book that became the standard for the industry and was endorsed by NAREB. In his book, McMichael listed “social or racial changes” as signs of “invasion by incompatible uses” under the causes of “blighted” areas and advised appraisers to observe whether there were “undesirable racial elements in the neighborhood.”⁵

1 *Newsday*, “Long Island Divided,” (November 17, 2019).

2 Richard T. Ely, *Outlines of Economics* (1893).

3 Article 34 of NAREB Code of Ethics: “A Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality or individuals whose presence will clearly be detrimental to property values in that neighborhood.”

4 Rose Helper, *Racial Policies and Practices of Real Estate Brokers*, Pages 227-228 (1969).

5 Stanley L. McMichael, *Appraising Manual* (1931).

The early real estate industry adhered to a core ideological principle that maintaining residential racial segregation was necessary to preserve, protect, and advance the privileges, advantages, and economic interests of white people. The industry used all available tools and spared no expense to effectuate racial segregation in housing. By 1928, half of all homes owned and occupied by white people in the United States had deeds with race restrictive covenants enforceable in state courts.⁶ Of note, all of this occurred before the federal government incorporated some of the same racist policies into federal housing programs in the 1930s. In the decades that followed, the real estate industry worked in concert with local, state, and federal governments to promote racial segregation in housing.

Long after the Supreme Court had ruled racial zoning illegal and race restrictive covenants unenforceable, the real estate industry, lending institutions, insurance companies, and others associated with the housing industry worked tirelessly to segregate our neighborhoods by race through practices like blockbusting, racial steering, redlining, and other discriminatory practices, while fiercely opposing fair housing laws. The passage of the federal Fair Housing Act in 1968 put the industry on notice that fair housing was the law of the land. But this landmark legislation did not alter the reality on the ground. Many in the real estate industry simply chose to flagrantly ignore the new law and others found less overt ways to discriminate based on race.

The harm caused by this shameful legacy of discrimination by the housing industry and government is staggering. The African American population was systematically isolated from opportunities, deprived of the wealth-creation that comes from homeownership, and too often relegated to communities that were disinvested or treated as substantially inferior by our government, the housing industry, and other institutions. The long-term effects of this wholesale mistreatment are still evident today in wealth disparities, lower rates of homeownership, and in how many Black and Brown communities continue to be deprived of their fair share of resources, services, and investment.

The current 30-point gap between Black and white homeownership is greater than it was in 1968, prior to the passage of the Fair Housing Act. In the first quarter of 2020, only 44 percent of Black families owned their home, compared with 73.7 percent of white families, according to the U.S. Census Bureau.⁷ In fact, the homeownership rate for Black college graduates (56.4%) is lower than for white

6 David M.P. Freund, *Colored Property: State Policy and White Racial Politics in Suburban American*, Page 94 (2007).

7 *Washington Post*, “One Home, A Lifetime of Impact,” July 23, 2020

high school drop-outs (60.5%).⁸ These disparities in homeownership correspond with the current racial wealth gap and the fact that African American households have not had the opportunity to accumulate intergenerational wealth in the same way that white households have over the years. White, non-Hispanic households have a median net worth more than ten times higher than African American households.⁹

The real estate industry and government have never repaired the harm inflicted on African American people caused by a century of intentional housing discrimination and segregation. The *Newsday* investigation reminds us that very little has been done to stop discriminatory practices that continue to harm people and, in some cases, entire communities.

Too often, the response from the real estate industry is simply “provide more fair housing training” with the naïve hope that such training will change the behavior of agents who are intent on discriminating. Real estate companies rarely examine their own policies to see if there are subtle or not so subtle ways that homebuyers, sellers, and communities are being treated differently based on race. While better supervision and training of agents is part of the solution, changing systems, policies, and structures can transform the culture within real estate offices.

Racial steering and differential treatment of individual homebuyers based on race are not the only indication that a dual and discriminatory housing market still exists on Long Island. *Newsday* pointed to another disturbing pattern. Agents largely avoided providing listings in eight overwhelmingly Black and Latinx communities to any testers. During the testing investigation, 211 homes in Freeport, Elmont, Hempstead, Brentwood, Central Islip, Uniondale, Roosevelt and Wyandanch fell within the home search parameters provided by the testers and yet, agents only recommended 15 homes in these areas, more often to minority testers. Also, the twelve real estate companies tested by *Newsday* have 218 branch offices in Nassau and Suffolk counties, but there are no offices in any of these eight communities.

Are real estate companies providing the same service and financial benefits to buyers and sellers without regard to the racial composition of neighborhoods? Is there a willingness to list properties for sale in all areas? Are listed properties advertised and marketed in the same manner in all areas? Are open houses held

8 Urban Institute, *Urban Wire*, “These Five Facts Reveal the Current Crisis in Black Homeownership,” July 31, 2019.

9 Pew Research Center, *FactTank*, “How wealth inequality has changed in the U.S. since the Great Recession, by race, ethnicity and income,” November 1, 2017.

in all areas? We should remember that redlining occurs when an institution fails to provide service or provides less favorable service to people in an area based on the racial make-up of the area. Historically, this term has been used more often to describe discrimination in the financing or insuring of housing, but it could apply to a real estate company that fails to serve an area because of its racial composition. Also, it is vitally important to remember that a facially neutral policy driven by economic data or algorithms that are void of any intent to discriminate can still have a racially disparate impact and violate fair housing laws.

Whether the failure of real estate companies to provide service in Black and Brown communities is based on willful avoidance or abject neglect, it does not matter. And for real estate agents and brokers who argue that some communities of color are less desirable places to live because they may have some poorly resourced schools, less economic and commercial investment, and/or higher poverty rates, we would point to the fact that these communities have been battered by a century of residential segregation, systemic racism, and disinvestment. In 1966, Dr. Martin Luther King, Jr. stated that “it is a torturous logic to use the tragic results of segregation as an argument for the continuation of it.”

If homebuyers or sellers observe or experience real estate companies shirking their responsibility by failing to provide equal service; if people working within the real estate industry observe agents or brokers engaged in discriminatory practices that may be harming consumers or communities; or if your community is not being served by real estate companies in an equitable manner because of its racial make-up; it is time to call out these discriminatory policies and practices and report them. We all have a responsibility to eliminate racially discriminatory policies and practices in the residential real estate market.

It is illegal, morally amiss, and antithetical to a free and open housing market for real estate brokers and agents to treat prospective buyers differently based on race or to provide unequal service to neighborhoods based on their racial make-up. Real estate companies have a responsibility and a unique opportunity to repair the harm caused over the last century by transforming the ethos of the real estate industry from one that previously safeguarded white privilege at all costs to an anti-racist one that places a premium value on racial equity, fairness, and inclusion.

About the Authors

FRED FREIBERG serves as the Executive Director for the Fair Housing Justice Center (FHJC), a regional civil rights organization based in New York City that he co-founded in 2004. Prior to 2004, Mr. Freiberg worked for the Civil Rights Division of the United States Department of Justice where he directed a national testing program that he helped to establish in the Division's Housing and Civil Enforcement Section in 1992. Mr. Freiberg was a founder and the first Executive Director of the Metropolitan Milwaukee Fair Housing Council from 1977-1981. For seven years, Mr. Freiberg worked as a private consultant providing technical assistance and training to public and private fair housing enforcement agencies across the United States. From 1999 to 2002, Mr. Freiberg was retained by the Urban Institute to manage the testing in two national research projects. He supervised the testing in a national research study of mortgage lending practices and directed the field implementation for the third and largest national study of housing discrimination conducted in the United States.

Mr. Freiberg is considered one of the nation's leading experts on the use of testing as an investigative tool for enforcing civil rights laws. He has supervised and/or participated in thousands of testing investigations involving rental housing, real estate sales, new construction, nursing homes, mobile homes, places of public accommodation, and mortgage lending institutions. Mr. Freiberg's professional activities for fair housing span over four decades during which time he has testified in dozens of fair housing cases, published articles on fair housing, and received numerous awards for his accomplishments in the fair housing field. Mr. Freiberg is also the Executive Producer of an award-winning fair housing documentary entitled *A Matter of Place* released in 2013. In 2016, he appeared in "A House Divided," an episode from the EPIX Original docu-series called *America Divided*. From 2016-2019, he consulted with *Newsday* on the largest investigation into real estate practices conducted by any media outlet in the nation. He is featured in the resulting *Newsday* story "Long Island Divided" and appeared in the related video documentary *Testing the Divide*.

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