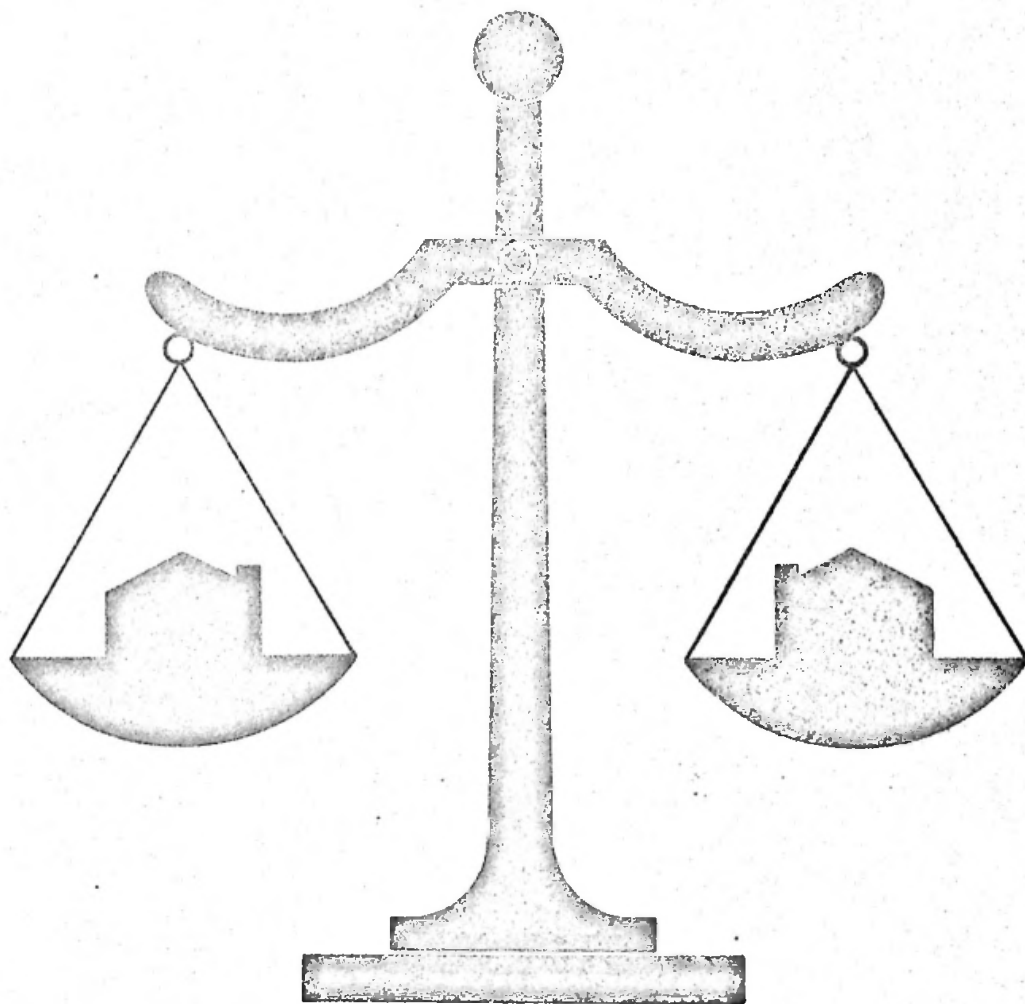


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Department of Housing and Urban Development
Housing and Equal Opportunity



New Initiatives in Fair Housing



NEW INITIATIVES IN FAIR HOUSING

A CASE STUDY

ON

A CLASS ACTION SUIT

Prepared for

U. S. Department of Housing and Urban Development
Office of the Assistant Secretary for Fair Housing
and Equal Opportunity
Washington, D. C. 20410

DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

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May 4, 1979

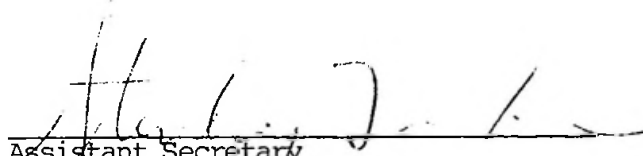
This report was prepared pursuant to a Contract with the United States Department of Housing and Urban Development (HUD), Office of Assistant Secretary for Fair Housing and Equal Opportunity. The statements and conclusions contained herein are those of the Contractor and do not necessarily reflect the views of the United States Government in general or HUD in particular. Neither the United States Government nor HUD makes any warranty, expressed or implied, or assumes responsibility for the accuracy or completeness of the information herein.

FOREWORD

Racial steering by brokers and salespersons in the real estate industry leads to the formation of separate housing markets for each group, e.g., one market for black persons and another for white persons. Steering actions are a violation of Title VIII (Fair Housing) of the Civil Rights Act of 1968, as amended. However, it is difficult for an individual seeking a house to determine if he or she has been steered into a special neighborhood by the real estate person. Even experienced black auditors often do not recognize that they have been steered until they compare the services rendered to them by the real estate person with those rendered to white auditors by the same real estate persons.

The broad coverage of Title VIII provides not only for the enforcement of fair housing by the Department of Housing and Urban Development through complaints filed with the Department, but it also provides for enforcement by private persons. This report presents unique methods and techniques used by one private fair housing organization to help enforce fair housing through a racial steering class action suit.

Hopefully, the experience presented herein will be beneficial to other private fair housing organizations in expanding their knowledge of enforcement through class action suits.


Assistant Secretary
for Fair Housing and Equal Opportunity

PREFACE

In the following report, the authors, a private fair housing organization (PFHO), will describe methods of gathering and evaluating evidence preparatory to the filing of a law suit alleging racial steering on the part of defendant brokers and multiple listing services, and will analyze the merits of class action litigation at the request of individuals and organizations aggrieved by these practices.

It is believed that the methods described herein are especially timely in light of the recent decision in Gladstone Realtors, et al. v. Village of Bellwood, et al. (U.S. Supreme Ct. No. 77-1493, decided 4-17-79, appearing at par. 15,284 in Prentice-Hall's Equal Opportunity in Housing Reporter, which was decided as this report went to press. In Bellwood, the Court ruled that a municipality and individuals residing therein had standing under §812, 42 U.S.C. §3612, to challenge alleged steering practices of realty firms even though the plaintiffs, themselves, were not steered. Furthermore, it was held that indirect victims of bias have standing to sue under §812 as well as under §810 of the Fair Housing Act of 1968.

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PART I.
BACKGROUND

CHAPTER I
PRIVATE FAIR HOUSING ORGANIZATION (PFHO)

A. Environment

Situated in the northeast corner of New Jersey adjoining the nation's largest metropolis, Bergen County, with almost one million people, is larger than a dozen of our 50 states. A typically suburban area, its proximity to New York City makes it the natural residence of thousands of the city's workers as well as its own, accentuated by the rapid expansion of industrial moves to the suburbs. By 1980, the Port Authority of New York and New Jersey projects that the County will have 80,000 new jobs and a population gain of from 30-50,000 people. (The Next Twenty Years: People and Jobs.) Economically, Bergen County's median income of \$13,597 is above the national median, and although there are a wide variety of rental units, a majority of its residents own their homes. Of these residents, the mix of people, according to 1970 U.S. Census data, reflect a region 95% white, with 24,915 Blacks, 22,145 Hispanics, and 8,538 other non-whites. Politically, the County is divided into 70 small communities, each with its own strong local government and autonomy.

B. History

Two decades ago, a group of citizens dedicated to opening up housing opportunities for minorities in Bergen County began working out of their kitchens and basements, helping clients and lobbying for stronger fair housing laws with better enforcement. On April 16, 1967, the Fair Housing Council of Bergen County opened a store front office in Hackensack, the County seat, manned entirely by volunteers. In 1970, the first full-time director was hired, and in 1974, the office moved to its present larger quarters at 191 Main Street, Hackensack.

As a private fair housing organization, the Council is directed by a Board of Trustees and Officers drawn from a membership-at-large throughout the County of almost 4,000 members and is self-supporting. It is affiliated with the National Committee Against Discrimination in Housing and works closely with similar housing groups in the New York metropolitan area and the nation.

C. Services

Currently staffed by an Executive Director who is a former client, a full-time attorney, a Housing Director and 10 part-time and full-time employees, the Council office is open Monday through Friday, with housing counselors on call for help to clients on a 24-hour basis. Supplementing the work of the paid staff are the numerous hours of volunteer time contributed by the Officers and Board of Trustees, the advisory committees, and the many individuals who assist clients. There is no fee charged for services.

The services offered by the Fair Housing Council are varied. To clients, it offers the range of housing and financial counseling, escorting during the housing search, identifying and documenting suspected discrimination, legal assistance necessary to obtain the disputed housing and follow-up support after a completed housing move. On a broader perspective, the Council seeks to improve the housing situation for minorities by lobbying for stronger and more innovative fair housing legislation, by promoting an increase in the housing stock of the County, particularly for low- and moderate-income people, and by educating landlords and brokers to the need for increased integration in the buildings they own and manage. To industry, the Council offers tailor-made programs to assist companies with the housing needs of their minority employees. To the County's 70 communities, the Council offers educational programs and social interracial activities which help eliminate the myths and fears which surround the prospect of integrated neighborhoods. Finally, the Council provides services to Government. As a private citizens group, it monitors the effectiveness of the State and Federal Agencies designated to enforce the laws against housing discrimination, collects and supplies data on housing discrimination, and participates in research projects for State and Federal Housing Agencies.

CHAPTER II THE DUAL HOUSING MARKET

The County's strategic location near areas of heavy minority concentration, the expanding employment opportunities with large companies pledged to equal employment commitments, and the increasing numbers of minorities able to afford a move from the inner-city to the suburbs, would seem to make Bergen County a logical housing choice for minority families. In fact, the County remains predominantly white and the black

population that it has is concentrated largely (82.1%) in three contiguous communities. Moreover, a comparison of the 1960 and 1970 census figures indicates that the increase in black population that did occur in those years was confined for the most part to those communities.

This pattern is not a natural phenomenon. The experience of the Fair Housing Council has shown that minority families, given the opportunity, will move widely throughout the County. However, in Bergen County, black families are not accorded these opportunities, because of the apparent discriminatory practice of racial steering by real estate brokers, their trade associations and their sales personnel. Through this sinister and pervasive technique, prospective white homebuyers are guided by brokers into predominantly white communities, while blacks are funneled into predominantly black or interracial neighborhoods.

Racial steering in housing leads to the formation of two distinct housing markets; one for whites and one for blacks. Having long been aware of racial steering practices within its borders through its work with clients, the Council felt it necessary to identify this dual market and its racial steering mechanisms in order to determine what effective action could be taken to combat its effects. As may be observed, the advantages accorded this PFHO in such an investigation and analysis were many; the size of its operation and support and long history of dealing with housing complaints were important tools. It is important to stress that this need not preclude less experienced, even all-volunteer groups intent on investigating this practice, as its pervasiveness and blatant nature facilitate the documentation of evidence. A variety of investigative approaches will be described, from among which the most appropriate and applicable can be chosen, depending on the PFHO resources.



PART II.
DOCUMENTATION OF EVIDENCE

CHAPTER III AUDITING PROGRAM

In order to determine whether there is a strong and persistent pattern of steering throughout the region, a systematic auditing program of real estate brokers by teams of black and white testers is strongly advised and was undertaken by this PFHO. Brokers were selected from lists obtained from the state's Real Estate Commission, local Board of Realtors and Multiple Listing Services to represent a wide mix: 1) Geographically, throughout the region, 2) Economically, through a wide variety of price ranges, 3) Multiple Listing Service brokers as well as a sampling of independent brokers, 4) Size, multiple office brokers as well as one-man offices.

Based upon client complaints and staff experience, auditing checklist and evaluation forms and a testers' training sheet were developed to perform such a program. The white and black testers recruited and trained included current clients, ex-clients, and Fair Housing Council members. It is important to choose testers who have an attitude of responsibility and of impartiality toward the experience and the ability to report accurately. It is also advisable to inform testers that the auditing technique has been approved by the U.S. Department of Justice and the Courts as a legitimate investigative tool of housing discrimination.

Training by the auditing coordinator included instructions on appearance and attitude, how to conduct the interview in the broker's office, what signs of differential treatment or steering to look for, the need to keep the requested housing choice as broad as possible as to neighborhood, style of house, etc., and how to observe and later accurately record the full details of the experience. Testers are told not to identify themselves by heritage or religious affiliation nor to make any comments regarding race, religion, or ethnic background.

After the training, housing ads of specific brokers are picked from local newspapers. Depending on the ad chosen, testers were then carefully matched and given specific instructions as to down payment, family income, size of family, marital status, age, and type of employment, with the white tester's income qualifications slightly lower than the black tester's. At the completion of the test, the tester was asked to make notes of his/her experience and to call the auditing coordinator with the test results. We found that these oral discussions added a wider dimension and increased ability to detect subtle steering techniques. Physical evidence, such as the tester's notes, business cards, copies of listings, etc. are given to the coordinator for inclusion as evidence. Once analysis by the auditing coordinator was complete, documentation in a written narrative form was made. In the case of a positive determination of steering, a PFHO may wish to preserve such evidence by obtaining an affidavit from the tester.

Steering techniques regularly encountered by the PFHO's auditing program and which should be looked for by auditing coordinators include: direct steering of blacks to homes in integrated neighborhoods; blatant neighborhood racial, religious and ethnic comments; blacks shown fewer homes; blacks asked for more complete credit information; blacks not given visual access to brokers listing books; blacks less frequently offered mortgage, legal, multiple listing and other personal services; different terms or house prices; lack of broker call-backs; discrimination on the telephone against a tester with a black or ethnic accent; and the full range of avoidance, discourtesy, and lack of follow-up. Of particular significance was the finding that even trained black testers did not feel that they were experiencing discrimination; realtors were polite and helpful. It was only when their treatment was compared with the white testers' that discrimination became apparent. This finding was borne out by conversations with PFHO clients and recent move-ins.

The testing report form used by this PFHO in its auditing program is included on page 51.

CHAPTER IV INVESTIGATION OF REAL ESTATE INDUSTRY

A. Brokers

1. Marketing Strategies

Newspaper Advertising

Broker advertisements in the classified advertising sections of newspapers serving the New York metropolitan area were reviewed regularly to reveal both specific and more hidden forms of racial steering. The five types of newspapers studied included: 1) Black newspapers, published and read primarily by blacks; 2) New York City daily newspapers, widely available with a mixed readership; 3) the County-wide newspaper, not readily available to black families outside the County; 4) Local shoppers; and 5) White, ethnic newspapers, both available predominantly to whites. Newspapers with primarily

minority readership were compared with those serving primarily whites to determine in which medium brokers chose to advertise their properties, and which communities, white or integrated, they featured in each type of publication. The size of the ad, wording, and frequency of advertising were all noted and compared, as were those ads soliciting home listings. For example, does ABC broker choose to advertise houses in integrated neighborhoods in newspapers with a primarily white readership or does he feature them exclusively in black-oriented newspapers, and vice-versa. Ads were checked for wording which might indicate a racial, religious or ethnic type of neighborhood, such as a school or neighborhood name, "prestige" neighborhood. In one case, a broker listed a different telephone number in a minority-oriented newspaper ad than the one used in the white-oriented newspaper so that he could determine the race of a new customer. Advertisement photos using human models should be checked for a multi-racial mix as well as the presence or absence of equal opportunity logos. It is also important to measure the access or lack thereof to newspapers frequently used by brokers and read by minorities who do not live in the immediate area.

Radio and Television

Although infrequently used by local real estate firms and multiple listing services, radio and television advertising, usually by national franchise real estate firms, is growing in use and should be analyzed for wording which might indicate a racial appeal. In one case, a national realty firm used exclusively white models as both brokers and customers in its television advertisements.

Literature

Printed brochures and promotional advertising booklets distributed by brokers were checked for their wording and communities featured. It is also important to note whether these pieces are distributed selectively to interest black home buyers in integrated neighborhoods and white home buyers in white neighborhoods.

Solicitation of House Listings

In addition to checking house solicitation advertisements, information from PFHO members and clients as to which brokers are soliciting house listings, either through a personal visit, telephone call or direct mailing piece, was gathered. Special attention was paid to areas bordering well integrated neighborhoods or streets onto which a minority family had recently moved. Housing counselors, in their routine check of home buyers who had completed their purchase and moved in, ask them if they have noticed any increased broker activity or blockbusting in their neighborhood. Uninvited solicitations of this kind are often a strong indication of racial steering in a neighborhood which brokers have decided is "changing". Additional questions to be asked: Does a broker list more than he/she sells so that he is apt to go after listings in changing neighborhoods? Does the commission split favor the listing

broker, thereby encouraging these blockbusting techniques?

2. Sales Employees Recruiting Methods

Typically, real estate offices which cover primarily white neighborhoods are staffed almost entirely by white salespersonnel. For the purposes of investigation of racial steering, it can be assumed that such an office is more likely to steer minority clients away from properties it handles. A convincing argument can be made in court that a minority sales employee in offices covering non-integrated communities would: 1) attract as customers friends and referrals who are also a minority; 2) provide instant assurance to the minority home buyer who "happens" into the office that he will be treated fairly, and 3) be more likely to show all eligible properties on an equal basis. Certainly more minority salespersonnel would be a desirable part of a litigation victory or settlement.

It is therefore worth inquiries of Fair Housing members, friendly brokers and a review of newspaper classified ads by real estate brokers to determine the recruiting methods used by them to obtain new personnel.

3. Multi-Office Brokers

Differing advertising policy to attract minorities to integrated offices only has been previously cited. In one case, the offices owned by a broker in white communities belonged to a different multiple listing service than his office in an integrated community, so that he would not have to share the same listing across racial boundaries. Another case was documented of a minority customer who was driven ten miles from the "white" office of such a broker to be introduced and shown homes by a salesperson in his "black" office.

Additional information to be sought: Are minority salespersonnel employed only in those offices in or near integrated communities? How are commissions split between offices?

B. Multiple Listing Services

The use of a region-wide Multiple Listing Service (MLS) to increase opportunities for brokers to rent and sell properties over a wide geographical area is a national phenomenon. A person wishing to sell or rent a house will list it with a

broker, who refers the listing to the Multiple Listing Service to which he belongs. The dissemination of this listing by the MLS to all of its member brokers theoretically increases the exposure of the property and the likelihood of its sale.

The first determination to be made in the gathering of racial steering evidence of Multiple Listing Services is their importance as a force for sales and real estate activity within the region being investigated. In the case of this PFHO, it turned out to be significant, both in gross sales and in membership.

Statistically, the gross sales are measured as the ratio of MLS sales to the total number of home sales. The County Tax Office can provide the total property sales per annum for the County; the figure for the total MLS sales may or may not be available publicly. In the PFHO area, the local MLS's publicly advertised this figure in the local newspaper as part of a public relations campaign. The ratio of MLS membership by area brokers should be obtained from the MLS headquarters; this PFHO found that in one MLS area, 66 of the area's 70 brokers belonged to the Service. Minority membership should also be measured, and inquiries made as to efforts in the past by minority brokers to gain membership.

Additional information to be sought: Does the Service's geographical territory exclude areas of minority concentration? This PFHO found, for example, that a large MLS broke into two smaller ones when the percentage of minority families in the community began to rise, with the result of containing those communities into one MLS. What is the policy on collective advertising, recruitment of members, fair housing enforcement, and supervision of members?

Except for intelligence from Fair Housing members and friendly brokers, answers to some of these questions may be difficult to determine. It becomes particularly worthwhile, however, to spend some time compiling a list of MLS data desired, should the decision to file a lawsuit be made and a formal discovery process ensue.

ILLUSTRATION # 1
DISCRIMINATORY ADVERTISING

ABC BROKER Advertisement # 1

```
*****
*
* Prestige Neighborhood *
*
*                               *
*                               *
*           WILL SELL       *
*           FAST!           *
*                               *
*                               *
* ABC BROKER   345-6789 *
*   Main Street   *
*   White Town, N.J. *
*****
```

Placed in White Majority Press

*

ABC BROKER Advertisement # 2

```
*****
*
*           GOOD BUY!       *
*
*                               *
*                               *
*   FHA Financing   *
*   Available       *
*                               *
*                               *
* ABC BROKER   987-6543 *
*   12th Street   *
* Integrated Town, N.J. *
*****
```

Placed in Black Minority Press

CHAPTER V. PUBLIC RECORDS

A. United States Census Data

A chart and map of the County were developed by the PFHO comparing the census data by race in 1960 versus 1970 within the census tracts and towns to determine in which neighborhoods the percentage and absolute number of minority residents had increased dramatically. (See Census chart and maps, pages 55, 57, & 59). Such an increase, compared with little or no change in minority population growth in communities similar in 1) Size; 2) Average house price or apartment rental; 3) Commuting distance and availability of transportation to job centers; 4) School systems and other services offered residents; 5) Employment opportunities for minorities, and 6) Proximity to existing minority residential area, can provide strong statistical proof of steering.

B. State Agencies

Records of complaints of discrimination registered against brokers with the State agencies empowered to enforce the State and Federal housing discrimination laws should be analyzed to judge whether racial steering has been involved. Since many State Real Estate Commissions are directed by brokers, cooperation in the supply of these records may vary. The U.S. Department of Housing and Urban Development booklet, entitled: An Equal Opportunity Review of the Real Estate Industry¹, indicates those Real Estate Commissions that have explicit authority under their State real estate licensing laws to investigate racial discrimination in housing by brokers. Many PFHO's already have active working relationships with their State Civil Rights or Human Rights Divisions, and thus should have little trouble obtaining the desired information. In addition, laws requiring the availability of public agency records to the general public, generally known as the "Sunshine Laws," should help make this data available to PFHO's.

C. County School Superintendent

One factor important to people in choosing a community for their family is the schools. A racial breakdown of the area's school systems, obtainable from the County or local Superintendent of School's office, indicates those communities or areas within communities in which minority families are well represented.

1. HUD-PDR-151, Washington, D.C., June 1976, p. 13.

A comparison of these school districts with those with predominantly white school populations can provide additional statistical evidence of racial steering. Communities under a court order or voluntary school busing plan strongly suggest that minority families are being contained geographically in certain residential areas, and brokers serving these areas should be closely checked for discriminatory practices. General population and school figures broken down by race are also useful to compare with the figures often quoted by real estate brokers to PFHO auditors about the number of minorities in a given community or school system. In their efforts to direct families toward or away from integrated communities, brokers will frequently exaggerate the number of minorities who live in that community or go to school there.

D. Research Studies

Although the study of the phenomenon of racial steering is fairly recent, local governmental, academic and private research organizations should be contacted to determine the existence of any social science studies or reports which may shed light on the degree of residential racial isolation within the PFHO area. Contacting local University Social Research centers or graduate schools as well as county, state and regional planning associations may bear fruit. This PFHO, for example, found in several academic studies of residential living patterns that blacks with the same income level as whites were not living in the same residential areas, a claim, which though general, buttresses the probability of racial steering. No previous study of racial steering in the PFHO target area was found.

CHAPTER VI. PFHO RESOURCES

A. Clients

1. Complaints

Through the normal follow-up of minority families who have registered with the Fair Housing Council and begun their housing search, and through client-initiated calls from home buyers who suspect that they are not being shown everything appropriate to their needs on the housing market by brokers, the

Council's housing department registers complaints of discrimination. The housing counselor taking the complaint will identify all discriminatory techniques encountered, including steering. Since many steering techniques are extremely subtle and frequently camouflaged behind a pleasant manner, they are often not suspected by the minority homebuyer. It is essential that the housing counselor be trained to ask those questions that will unearth that type of technique. The counselors must also be well acquainted with the racial composition of the County so that it can be determined whether clients are being shown homes in white, black or integrated areas.

In cases where steering is merely suspected or where evidence is inconclusive, the housing counselor may decide that the testimony of the complainant needs to be supplemented with a test to clarify whether the hypothesis of steering is warranted, and will refer the complaint to the auditing coordinator. (See Auditing Program, p.9).

An individual file is opened for each complainant by the counselor, with the account of the discrimination in chronological "story" form. From accounts displaying strong steering evidence, affidavits may be prepared by the counselor, after consultation with the steering investigators or PFHO attorney. These affidavits are then checked with the complainant and tester, if used, signed by them and notarized.

2. Interviews

In addition to documenting specific complaints, PFHO housing counselors servicing clients should make note of those clients who have made a broker contact or completed a housing rental or purchase through a broker. Trained PFHO investigators can then call these clients, many of whom are grateful for the PFHO's past assistance, and collect evidence of racial steering from their experiences.

B. Real Estate Industry Contacts

Contacts with brokers and sales personnel in the real estate industry, whether it be because of personal friendship, moral belief, fear of being "caught in the act" of discrimination, or economic gain, should be cultivated regularly to obtain information regarding that industry's recruitment of buyers, and house listings as well as their servicing of customers. Specific examples of racial steering by individual brokers should be documented. Suspected discrimination can be verified by the running of a test by the auditing coordinator.

C. Membership Intelligence

With a large membership spread widely over the target area, this PFHO was able to elicit valuable intelligence as to racial steering practices and changing racial neighborhood patterns from PFHO members and friends. Announcements in the quarterly newsletter and at regular membership meetings as well as word-of-mouth requests kept the PFHO up to date on the changing ethnic composition of each town and which brokers seemed to be involved in that change. All efforts should be made to make local supporters aware of the need to notify the PFHO of neighborhood changes and anyone's house move "story". As well as providing actual evidence, this information helps the steering investigators and auditing coordinator focus their efforts more effectively.

CHAPTER VII RECENT MOVE-INS

In addition to the interviews conducted with PFHO clients who have recently completed a housing move, interviews were made by the steering investigators of non-client families who had moved into the target area's integrated communities. Through the use of town-maintained public lists of new residents, investigators telephoned a selection of these residents, determining their motivation for moving to that community, their treatment by real estate brokers, whether they had been shown a variety of homes and communities and their race. Promising telephone interviews, which elicited a great deal more cooperation and information than expected, were followed up by personal visits. The skill of the interviewer(s), is crucial to the success of the effort. The telephone and personal interview techniques developed (See page 61) were buttressed by role-playing. Sensitivity on the part of the interviewer is important; new homeowners, who have committed their families and a good deal of money in a house and community are understandably anxious to justify their choice. In spite of this, many of the black families interviewed (unaware prior to the questioning of the interviewer that they had been steered) were indignant that they had not been shown more listings in non-integrated communities and given a wider housing choice. Should town-maintained lists not include new residents' telephone numbers, reverse telephone directories, purchasable from the National Telephone Director Corporation, Union, New Jersey, contain listings indexed by street address.

CHAPTER VIII RECORD KEEPING

A. Master Broker Files

To facilitate the gathering of evidence against individual real estate brokers, a master file was opened for each broker against which housing discrimination evidence has been gathered. Into these files are placed all individual client complaints and affidavits; the results of the auditing program; client and non-client interviews; intelligence from PFHO members, clients and friendly real estate brokers; any legal or voluntary settlement agreements negotiated by PFHO with individual brokers; and copies of any State or Federal consent orders or agreements involving a PFHO realtor. These master files are reviewed on a regular basis to determine which real estate agencies recurringly appear to be discriminating. A judgment must be made as to which discriminatory practices show a pattern of racial steering.

B. Apartment Complex Files

A master apartment complex file can also be useful in the investigation of racial steering, particularly as many PFHO's who regularly service apartment clients may already maintain one. In this card file, information on the racial percentage of the tenants and the name of the broker who normally rents the complex is kept for each individual complex, if available. A number of states maintain records of this kind which are available to the public through the Sunshine Laws described earlier. Should they not be, similar data can be gathered through visual checking by housing scouts and intelligence from friendly brokers and local PFHO supporters. If an apartment complex has been earmarked by brokers as one to which to direct their minority clients, it soon becomes common knowledge. A regular review of this file will reveal those complexes whose minority percentage is rapidly rising, an early indication of steering. The questioning of tenants in such complexes as to their treatment by the broker who rented them their apartment can reveal racial steering experiences.

C. Real Estate Industry Files

Racial steering data collected as a result of the analysis of the real estate industry - the marketing strategies of real estate brokers and the structure and practices of the Multiple Listing Services, are maintained in the Real Estate Industry and Multiple Listing Service files, and, when involving individual brokers, are

cross referenced with the master broker files.

D. Public Records Files

Statistical data indicating racial steering gathered from public records and research studies is put, whenever possible, into chart, map or graph form, in order to enhance its visual effect as evidence. All other evidence from public records is kept in the Public Records file.

CHAPTER IX INTERDEPENDENCY OF INVESTIGATIVE TECHNIQUES

Each of the investigative techniques described in this report yielded valuable evidence of racial steering practices by real estate brokers in varying degrees. The value of each technique will vary according to the PFHO resources and local circumstances; it must be stressed, however, that this PFHO found that all techniques were strongly interdependent. Not only did one form of evidence buttress the validity of another, but each new effort tended to indicate a promising direction for further investigation. For example, an interview with a recent white move-in yielded the information that the house next door had been sold to a black family after a year on the housing market and only after it had been listed with a black broker. A test of the listing broker (white) for the house found that he was indeed not showing homes to blacks in white areas. In the investigation of a client complaint of racial steering by another broker, it was found that he had already signed a consent decree with the State Division on Civil Rights, of which he was in violation. It is important, then, to conduct the investigative techniques simultaneously, and for each of the persons working on the investigation to coordinate and share his/her results regularly. The Auditing Coordinator, particularly, must be ready to follow up on promising leads.

CHAPTER X EVALUATION OF INVESTIGATIVE TECHNIQUES

A. Auditing Program

Without question, the auditing program yielded the strongest proof of racial steering and proved to be the most reliable technique used in this PFHO investigation. Not only did it reveal numerous and blatant examples of discrimination by specific brokers; taken together, it showed a compelling pattern of racial steering throughout the PFHO area. Its greatest drawback is the time, and therefore, cost, needed to conduct the program, to train, instruct and debrief testers, and to get the results in written form. Testers may have to be paid, and occasionally, a tester will die, move away, or be unwilling to appear as a witness. In the opinion of this PFHO, it still remains the best weapon available in such an investigation. The audit data collected can also be used extensively by PFHO's for purposes beyond the preparation of a class action suit: to monitor future behavior of brokers; in the education of and negotiation with local Boards of Realtors and Multiple Listing Services; in the preparation of an affirmative action program for real estate salespeople; in discussions with individual brokers about the practices of their agency personnel; as supporting evidence in the filing of future complaints and lawsuits; as documentation of the need for better state and enforcement policies and for stronger fair housing legislation; and in improved counseling by the PFHO housing staff.

B. Investigation of Real Estate Industry

Because an investigation of an entire industry is so open-ended, this technique proved almost as time-consuming as the auditing program and PFHO's must set definite limits and priorities depending on their resources. A good deal of attention was paid to classified newspaper advertising, for example, while for the radio and television advertising, PFHO staff and members were asked to do this monitoring during their normal listening and viewing hours. Although some specific examples of steering came to light, this technique's greatest value is in the intimate view of how the real estate industry is run and how its practices perpetuate the dual housing market. This knowledge is invaluable in the development of remedies for racial steering, whether they be for a successfully concluded lawsuit, a settlement agreement, or a voluntary agreement between a PFHO and its area real estate brokers. It can also contribute to improved PFHO counseling to minorities as they begin their housing search.

The lack of structure and standardized supervision within the real estate industry found by this PFHO made it difficult to investigate. The documentation, however, of the subtle, and

often unconscious ways in which the entire real estate system, from the individual salesperson to the Multiple Listing Services, differentiates its services to blacks and whites, is dramatic.

C. Public Records

The availability of public records for the investigation of racial steering will vary from state to state, and if the experience of this PFHO is typical, state agencies responsible for the enforcement of fair housing laws will not have a great deal of material. Generally, those states with strong record keeping practices and a willingness to cooperate with PFHO's will yield more valuable data.

As a technique, the value of evidence developed from public records lies in its impersonality as statistical proof of racial isolation within the PFHO area separate from PFHO initiated efforts. It is not a time-consuming activity, and strongly buttresses the specific examples of steering gathered through other techniques. One drawback may be that specific data available for the PFHO area, particularly in the research studies, is usually limited. It should also be kept in mind that updated census data is difficult to find, and racial steering evidence gathered close to the date of the U.S. Census will be stronger.

D. PFHO Resources

Since many PFHO's regularly perform services to clients, this technique need not require much extra effort or cost. In addition, it provides testimony of unequal treatment from real people actually involved in a housing search or move, as compared to testers, a fact that has proved important in court cases. And since the PFHO has usually provided valuable assistance to its clients, they are more often willing to follow through with written statements and as witnesses than non-clients. The "inside" information obtained from members and real estate friends can uncover evidence no other technique can; on the other hand, its reliability has to be checked and a good deal of follow-through may be required.

E. Recent Move-Ins

Some difficulty may be experienced by PFHO's in obtaining the names of recent move-ins, and the interviews conducted may prove to be the most time-consuming activity employed. The strength of this technique lies in the actual, on-the-spot

information about why people move to integrated neighborhoods, what they expect to find there, and how they were treated by their broker. The reliability of the data may be in question; as stated earlier, new residents are usually anxious to justify their housing choice, and it is difficult to substantiate their experience. Finally, non-PFHO clients are less likely to "join the cause" with a signed affidavit or testimony in court.

PART III
LEGAL ANALYSIS

CHAPTER XI STRENGTH OF EVIDENCE

A. Auditing Program

A systematically conducted auditing program in substantial numbers, covering a wide geographical area, a diversity of brokers, and the experiences of white as well as black home-seekers, can provide overwhelming evidence to prove racial steering. The auditing program is the cornerstone to successful litigation of a class action lawsuit. The experience of the program conducted by this PFHO showed wide-ranging racial steering, regardless of the diversity of the brokers, type of territory they covered, or differing qualifications of the auditing teams. Blacks were usually treated courteously, but were shown very few houses; those homes shown to them were often the least desirable or inappropriate for their needs. Whites were told untrue statements about integrated neighborhoods. Again and again, it was apparent that each auditor was "typed" by the broker on initial contact and every act of the broker thereafter was based on this personal classification. This was true despite the fact that auditors were forbidden to identify themselves ethnically or religiously or to express any sociological preferences when outlining their housing needs. A comparison of the houses shown and services provided black versus white auditors displayed strong differential treatment.

B. Investigation of Real Estate Industry

The analysis of brokers' marketing techniques, particularly the systematic review of the realty classified ads in general circulation newspapers, local shoppers and ethnic newspapers turned up much valuable information about the general practices of the industry and the assumption of brokers in white neighborhoods, e.g., that a minority market for white properties does not exist. The best evidence came from brokers who serviced both white and integrated areas. The investigation of the Multiple Listing Services, aided greatly by court-ordered discovery, showed substantially the autonomy and strength of these Services as a real estate force within the target area. Specific examples were found of the degree to which these Services bypass the fair housing laws in their efforts to manipulate the housing moves of white and minority customers.

C. Public Records

Evidence from public records is supportive of actual discrimination found through an auditing and real estate industry investigation. The value of such evidence is enhanced by the fact that the Court knows that this type of material is impartially prepared under the supervision of government officials who did not anticipate its subsequent use in a PFHO racial steering suit. The fact that statistical evidence is not subject to the calamities of some live witnesses increases its reliability. Such evidence isn't plagued by subsequent forgetfulness, mortality or a change of heart or mind.

The U.S. Census data, particularly if it can be displayed in visual "map" form, provides a very graphic and convincing way to illustrate the demographical results of racial steering. The vivid pattern of racial isolation in the PFHO area, in which 82% of the black population reside in 3 communities while the remaining 67 communities have less than 5% minority representation, is forcefully apparent. The fact that this pattern was reinforced and more strongly entrenched over the ten-year Census period between 1960 and 1970 further strengthens its value as evidence.

D. PFHO Resources

Not surprisingly, evidence gathered from Fair Housing clients, members and friends about their individual house hunting experiences and indications of neighborhood manipulation by real estate brokers was generally more compelling than that gathered from public records and agencies. Even the smallest bit of intelligence should be studied, as it can direct the efforts of the auditing coordinator and steering investigator into fruitful channels. A standard office procedure must be followed by the housing counselors doing the intake from such clients. In consultation with the PFHO attorney, clients are then assessed regarding their participation as a witness. Determination must include:

1. The client's initiative in combating discrimination and desire to be a plaintiff;
2. If the applicable statute of limitations is still in effect;
3. If the client's recall of the realty salesperson's behavior is vivid.

His/her value as a reliable witness to unlawful events can be enhanced in a number of ways - for example, if (s)he has

documented the events immediately after the occurrence, if (s)he has retained the salesperson's business card and other records of involvement with the realty agency, or if (s)he has timely reported the events to a PFHO which has then verified them substantially. The test of the reliability of evidence must be whether a reasonable person believes that the client was steered due to his race rather than merely assisted in obtaining his housing preferences. The ultimate fact finder does not have to be persuaded beyond a reasonable doubt, but at the conclusion of the evidence, he must decide that steering took place, or in the alternative, find the defendants innocent.

E. Recent Move-Ins

Personally conducted interviews with both clients and non-clients in the target area, although limited in number, contributed additional personal experiences of racial steering to a surprising degree. The individual's willingness to put his experience into legal affidavit form and to consider appearing as a witness met with some reluctance; regardless, valuable information regarding individual brokers' behavior was added to their files.

CHAPTER XII LEGAL STRATEGY

A. Introduction

As identified and documented by this PFHO, the dual housing system leads to the perpetuation of two distinct house marketing systems. The sale of a significant portion of the available housing stock in many communities is orchestrated by real estate brokers, their sales agents and their trade organizations, such as multiple listing services. Our investigation found that some brokers and agents are absolute virtuosos in the range of techniques and stratagems they utilize in steering black families to integrated or black neighborhoods while simultaneously steering similarly qualified white families to white neighborhoods. This behavior generally violates the fair housing laws, which provide that

It shall be unlawful.

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin. (42 USC §3604 a)
- (b) to discriminate against any person because of race, color, religion, sex, or national origin in the provision of services incident to the sale or rental of a dwelling (42 USC §3604 b)
- (c) ...
- (d) to represent to any person because of race, color, religion, sex or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available (42 USC §3604 d)

The Civil Rights Act of 1866 provides that:

All citizens of the United States shall have the same right in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property (42 USC §1982)

As a consequence of these prohibitions as well as many courts' willingness to infer discrimination from the frequently documented disparities in real estate services provided to black customers as compared with white customers, it is of critical importance that realty customers remember every detail of their transaction with the realty sales agency, no matter how seemingly innocent, for discrimination is often apparent only upon reflection or after white and black customers of the same real estate agency compare the services that they were provided. Courts have held that differential treatment by brokers and agents is violative of the above prohibitions if it fosters steering.

In a typical community plagued by racial steering there will likely be many individuals in the real estate industry who, as brokers and sales people, are each contributing to the perpetuation of the problem. Taken together, their recurring behavior erodes both community stability and the prospect of integrated residential patterns. In response, some communities will organize to restrain brokers' artificial manipulation of their neighborhoods. The racial steering class action suit is one tool which should be considered by such

a group or resident PFHO. The legal analysis required preparatory to the filing of such a suit can be done by the PFHO lawyer, by volunteer lawyers, or in many cases, by the pro-bono legal firms in the area.

B. Class Action Prerequisites

In assessing the propriety of a class action, the PFHO's lawyer must, of course, determine in consultation with the PFHO whether a fair assessment of the evidence will support the application for class action status. Class action status is predicated on the satisfaction of a number of requirements which can be simply stated. Although these requirements are often easily satisfied in civil rights matters, early consultation with a lawyer is advisable, because class action status is likely to be granted where the proposed defendant real estate brokers and salespersonnel "assist" many housing prospects and distinguish among them primarily on racial grounds in the provision of services related to renting and selling homes or apartments. If defendants utilize race as a critical touchstone in marketing housing, they can be said to be acting on grounds generally applicable to a proposed plaintiff class consisting of black as well as white victims of racial steering who allege that they are deprived of the social and economic benefits of interracial association. It would follow that plaintiffs' claims will be typical of the claims of the plaintiff class in that all receive realty services conditioned on their race. These claims seemingly will present common questions of law as to the appropriateness of defendants' behavior. When the foregoing description describes the situation of the community which the PFHO has assessed, it would appear that a petition for class action certification would be appropriate in light of the fact that the plaintiffs can satisfy the bedrock criteria for the invocation of class action status.

C. Class Action Advantages

1. Range of Beneficiaries

The advantages of the class action suit distinguish it from the more "classic" money damage action in the housing discrimination field: In a class action, the tasks of gathering evidence, testifying at trial, monitoring the defendants' compliance with the terms of a judgment and bearing the legal fees and court costs can be spread amongst a wider group of ultimate beneficiaries than is the case in a typical damage action. If a favorable judgment is entered restraining defendant brokers from racial steering practices, the many members of the plaintiff class, rather than only the named plaintiff in a damage action,

benefit from the terms of the judgment. And each one can petition the court to enforce the terms of the judgment or Consent Decree for his/her benefit if the defendant continues to backslide. Thus, the fruits of successful litigation can be meaningfully enforced and implemented.

Contrast this with a damage action. Where a solitary plaintiff alleges that (s)he was denied the right to purchase a home through the acts of a single broker, 42 USC §3612 is the basis for initiating a law suit by filing a complaint, naming the erring broker as defendant. Many similar law suits have been filed during the decade since the enactment of the Fair Housing Act. In most such cases, the victim sues for money damages to compensate him/her for the mental humiliation and other damage suffered as a consequence of being denied the right to purchase or rent housing. Often, these cases are "settled" prior to trial, the defendant having paid plaintiff to compensate him/her for the inconvenience of the experience. In the alternative, a trial having been had, the plaintiff will be awarded damages if (s)he prevails. In those instances where the recovery of a healthy money judgment from the broker is well publicized, similar wrong doing on the part of other brokers may be discouraged and the public will be reminded that fair housing rights can be vindicated in court. But the purely legal consequences of such a damage action are not promising if the regulation of the local real estate fraternity is at issue, for the judgment binds no one other than the named broker-defendant nor can its terms be enforced by any one other than the named plaintiff. The benefit exists for the plaintiff alone. If (s)he loses interest in the matters in controversy or dies or departs, each new victim of discrimination must commence a new proceeding, whereas in a class context, the court typically retains jurisdiction to enforce its judgment for the benefit of the entire class. The court can also order a comprehensive remedy benefitting a broad class of plaintiffs. So supporting a class can be a more productive focus of collective PFHO activity and organization than can a damage suit benefitting only a named plaintiff.

2. Sanction of the Court

Class action rules require the court's approval of any settlement. This increases the likelihood that every plaintiff's interest will be protected and discourages any attempt by defendants to sweeten the settlement for individual plaintiffs while shortchanging the absent members of the plaintiff class. More substantive and thoroughgoing structural changes in realty practices are likely to be ordered by the Court and accomplished in the wake of a racial steering class action than in a damage action:

"The value of the class suit may derive from the clarity with which the class action reveals that, even where a right is individual, the appropriate remedy may not be. For example, a single individual has

standing to challenge racially discriminatory practices burdening a group of which the individual is a member. Relief from the racial discrimination, however, may require court orders restructuring the way the discriminator deals with the group as a whole. Influenced by traditional doctrines limiting the scope of relief to the scope of the right, a court hearing only the claim of a single individual may be reluctant to award such far-reaching relief. The class action, by aggregating the claims of discrimination victims, reestablishes the symmetry of right and remedy. It assists the court in seeing not only the differences in situation of individual class members which may affect the details of structural relief, but also the generality of the challenged discriminatory practice that makes structural relief appropriate in the first place..Class suits, by increasing access to courts and by positioning judges to see better the significance of claims before the courts, increase the likelihood that the rights of individuals which would be affected in any event are accorded the weight to which they are entitled by statute or constitution."

"Developments in the Law - Class Actions", 89 Harvard Law Review 1319, 1368, 1371 (May 1976).

3. Accountability

The class action judgment establishes a clear standard of prospective accountability on defendants' part. The legal obligations of the parties are fixed, whereas individual damage actions may result in differing standards of conduct imposed on brokers by each different trial court. Conflicting trial court interpretations may occur when one court will consider certain realty practices illegal while another court will find them unobjectionable, thus eroding a PFHO's confidence in its ability to counsel clients and predict the lawfulness of realty practices.

4. Recovery of Legal Fees

In class action suits, the court's potentially generous award of prevailing plaintiffs' attorneys' fees from the defendants may increase the pool of available legal talent to litigate meaningful class actions whereas the likely legal fee recovery in an individual damage action is slighter and may not serve as an attractive stimulus.

5. Relief and Implementation

The object of a class action lawsuit is to obtain structural relief from racial steering. If racial steering, which so deeply permeates the on-going activities of the real estate industry is to be overcome, it is the typical, routine and recurrent real estate practices which must be altered. The entailed industry-wide modifications cannot generally be ordered within the context of a classic individual damage action initiated by a victim of housing discrimination. Rather, proposing comprehensive reforms and then monitoring their implementation is both within the competence of many voluntary PFHO's, and is contemplated by the Federal class action procedural rules as well as their nearly-identical state counterparts. It is, after all, the common class characteristics of victims of steering which triggers brokers' discriminatory practices: They shunt the whites in one direction and the blacks in another, while remaining oblivious to the homeseekers' expressed wishes and to their tendency to consider actively any reasonable residential opportunity. Having been disserved on the basis of being a member of a class, class action is clearly appropriate. This is borne out by the fact that recent class action rules were modified a decade ago to better accommodate racial minorities' claims for redress from discrimination grounded on race. It is these PFHO's in tandem with victims of direct discrimination and interested government officials who should form the issues in the context of a class action seeking injunctive, declaratory and structural relief. Too often, these laudatory goals will be sacrificed if they are urged as relief within the classic damage action. In the settlement process which occurs in so many cases, these structural reforms may understandably be bartered away by the plaintiff in exchange for the more tangible monetary compensation which the defendant can provide.

Even if structural reforms are ordered in the context of an individual damage action, its impact upon the real estate industry may prove to be slight. Often, the defendant is only one among many brokers. The other brokers would not be bound by the terms of a judgment. In fact, these "exempt" brokers might even improve their business as a consequence of the suit: If there are people who do not want to cooperate with a broker who has just been compelled to follow the fair housing law, they will turn for service to brokers who they are assured were not named as defendants nor in any other way investigated or compelled to follow the law. In contrast, a class action context provides that the representative plaintiffs cannot compromise the interests of the larger class whom they represent. Unlike individual damage actions as a prerequisite to settlement of the controversy, the court must satisfy itself that the plaintiff class interest is reasonably protected by the proposed settlement. Additionally, the court may periodically require the named plaintiffs to notify the broader class regarding critical developments in the suit. This notification affords the community the opportunity to influence the proceedings by either communicating their views to the plaintiffs' counsel or by moving to intervene in the suit through their respective

attorneys. These mechanisms encourage the recognition of a broader spectrum of interests and perspectives and increase the likelihood that the trial fact finder, whether it be a judge or jury, will be presented with the whole social tapestry, rather than a few of its strands.

D. Legal Questions

The Fair Housing laws and the cases which construe these laws answer many of the questions which must concern a fair housing organization which considers legal redress from racial steering.

1) Does the Fair Housing Law prohibit racial steering by realty brokers and salespeople?

Discriminatory behavior by brokers and sales agents is not exempt from the Federal Home Administration's prohibitions of the Fair Housing Act of 1968. But one should be aware that occasional property transactions are exempt from the prohibitions of these laws. Generally speaking, these exemptions cover the sale of certain single family homes if real estate brokers or agents are not utilized by the families who own them. But since it is the ongoing acts and behavior of brokers and salespersons which play the predominant role in home marketing within most communities, it is to altering their systematic practices that a fair housing group must turn its energies. It is of less consequence, therefore, that in some circumstances, the clearly discriminatory behavior of individual homesellers may be exempt from the prohibitions of the Fair Housing Act of 1968. Furthermore, in most such exempt instances, black persons who are victimized by 'private' discrimination can still sue under §1982, (Civil Rights Act of 1866), which admits to no such exemptions for black plaintiffs who allege direct injury.

2) What practices are included in the concept of racial steering by realty personnel?

If a broker or salesperson utilizes a technique or practice to influence a prospective homebuyer's (or renter's) housing choice on a racial basis, this is racial steering. Many of the more frequently employed practices were enumerated within this report. Remember that racial steering techniques can range from the self-evident to exceedingly subtle forms of impermissible persuasion. The courts have not yet had the opportunity to pass judgment on the permissibility of each and every conceivable nuance of steering. But in answering this question, a number of judges have insisted that real estate practices should be very carefully scrutinized to ensure the practical fulfillment of Congress' clear intention that the Fair Housing Act of 1968 should achieve broad objectives of

eliminating racial discrimination in residential transactions. This may explain one court's willingness to adopt the plaintiffs' position that any word or action by a real estate salesman or broker which is used to influence the choice of a prospective homebuyer on a racial basis constitutes racial steering. Zuch v. Hussey 366 F. Supp. 553, 559 (E.D. Mich. 1973), 394 F. Supp. 1028 (E.D. Mich., 1975). In this view, racial steering exists even if the prospective homebuyer or tester does not personally rely on or is not persuaded by the salesperson's words or action. Courts are likely to find steering when the trial record documents that blacks and whites with similar incomes and preferences received different realty advice and "guidance". The practice of discouraging home-seeking whites from inspecting integrated areas has generally been held to constitute steering. Some judges, though, may question whether impermissible steering exists where the salesperson recommends that whites avoid integrated areas, but does not steadfastly refuse to show them such areas. Of course, we would disagree with this narrow construction of the statute and trust that it is an untenable interpretation of Congressional intent. A number of courts have championed a broad construction of the prohibitions against racial steering, finding it impermissible even if it cannot be demonstrated that the given broker or salesperson intended that steering would be the consequence of their acts. Illustrative of this position is the opinion in Zuch v. Hussey:

This section (42 USC §3604 (a) contains both specific and general prohibitions. The specific prohibitions make it unlawful, on the basis of race, (1) to refuse to sell or rent after the making of a bonafide offer, and (2) to refuse to negotiate for a sale or rental. These two prohibitions are applicable in unmistakable circumstances. Under the general provision, the section makes it unlawful to "otherwise make unavailable" housing or to deny housing because of race. The foregoing phraseology appears to be as broad as Congress could have made it, and all practices which have the effect of making dwellings unavailable on the basis of race are therefore unlawful. In the application of Section 3604 (a) with this broad prohibition, it has been held that the failure to provide a black applicant with necessary and correct information concerning what he must do to become a tenant discourages and impedes his application and results in his exclusion from apartments because of race. United States v. West Peachtree Tenth Corp., 437 F. 2d 221 (5th Cir. 1971); see also United States v. Reddock, No. 6541-71-P., S.D. Ala., January 27, 1972). It has also been held that the imposition of more burdensome applications procedures, of delaying tactics, and of various forms of discouragement by resident managers and rental agents constitutes a violation not only by those who impose these

procedural roadblocks, but also by top management and owners who fail to set forth objective and reviewable procedures for apartment applicant and rental. United States v. Youritan Construction Company (No. C-71-165 ACW, N.D. Calif. February 12, 1973).

The same principles which were developed in the above case with respect to the prohibitions under Section 3604 (a) are applicable to circumstances involving prospective homebuyers. Accordingly, any action by a real estate agent which in any way impedes, delays or discourages a prospective homebuyer from purchasing housing on a racial basis is unlawful. This is in accord with the position taken in Mayers v. Ridley, 465 F. 2d 630, 652-3 (D.C. Cir. 1972) where the Court of Appeals for the District of Columbia stated that the Fair Housing Act was intended to have 'the broadest objectives and scope' and to prohibit not only open, direct discrimination but also all practices which have a racially discouraging effect.

It is the opinion of this Court that when a real estate agent actively undertakes an effort to influence the choice of a prospective homebuyer on a racial basis, the agent either directly or indirectly discourages the prospective homebuyer from purchasing a home in a particular area and fosters the perpetuation of racially segregated communities where available housing has been traditionally denied to blacks because of their race. The Court, therefore, concludes as a matter of law that steering is a violation of Section 3604 (a) of the Fair Housing Law. (emphasis added). (366 F. Supp. 553, 556-57).

3) Who may be a plaintiff in a racial steering suit?

In order to invoke the Federal court's jurisdiction in lawsuits calculated to restrain brokers from the practice of racial steering, violations of the Fair Housing Act of 1968 and Civil Rights Act of 1866 (commonly known as Section 1982) should be alleged by persons claiming to have been injured by these practices. Fair Housing organizations and other associations are included within the definition of persons provided by the Fair Housing Act. A most distinctive opinion indicates that persons may be regarded as sufficiently aggrieved to file suit for discriminatory realty practices even if they are not the most direct and immediate victims of the discriminatory practice. In Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205,

34 L. Ed., 2d 415, 93 S. Ct. 364 (1972), both black and white residents of a large apartment complex sued its ownership on the grounds that their rental policy, which discriminated against blacks, had the consequence of depriving the apartment occupants, who were almost entirely white, of the social, business and professional benefits of an integrated community. Note that plaintiffs did not allege that the owner had personally deprived them of occupancy. Even so, for a unanimous Supreme Court, Justice William O. Douglas found that:

While members of minority groups were damaged the most from discrimination in housing practices, the proponents of the legislation emphasized that those who were not the direct objects of discrimination had an interest in ensuring fair housing as they too suffered. (409 U.S. 210)

Trafficante has established that the courts are likely to define standing broadly with respect to suits brought under the Fair Housing Act, whose main generating force must be private suits in which the complainants act not only on their own behalf but also as private attorneys general in vindicating a Congressional policy which the then Senator Mondale characterized as a commitment to replace the ghettos "by truly integrated and balanced living patterns," 114 Cong. Rec. 3422. Note, though, that fair housing groups cannot generally secure standing to sue in their own names for claims arising under the Civil Rights Acts of 1866 and 1870 in that these groups cannot meet the citizenship requirement of that statute. Village of Park Forrest v. Fairfax Realty, C.A. No. 74 C2862 (N.D. Ill. 1975), reported at P.H.E.O.H. Rptr. Par. 13,699).

As will be recalled from Trafficante, "those who were not the objects of discrimination had an interest in ensuring fair housing, as they too suffered." (P. 210). In Trafficante, the plaintiffs were both residents of an apartment building. Prior to filing suit, they had filed complaints of discrimination with HUD pursuant to the procedure contemplated by §810 of the Fair Housing Act. On those facts, the Supreme Court determined that tenants of a housing unit that is charged with discrimination are aggrieved thereby and have standing.

Although the matter has not been directly addressed by the Supreme Court since Trafficante, the Federal judges who have reviewed steering allegations made by fair housing groups have not adopted a uniform analysis. In Topic v. Circle Realty, 532 F. 2d 1273, (9th Cir. 1976), Cert. den. 429 U.S. 859, the court held that Sec. 812 of the FHA (72 USC 3612), which allows persons to file court complaints without prior recourse to HUD's administrative procedure, does not authorize lawsuits to vindicate the rights of third parties. As a consequence, the court determined that a community organization lacked standing to sue brokers whom they accused of racial steering. More recently, a Federal district judge, in Fair Housing Council v. Eastern Bergen County Multiple Listing Service, 422 F. Supp. 1071 (D. N.J. 1976) disagreed with TOPIC, in deciding that indirect

injuries such as were suffered by the Trafficante plaintiffs do give rise to a cause of action under §812, as well as §810. In expanding standing beyond the confines of an apartment complex to incorporate residents who allege injury as a consequence of county-wide racial steering, the court stated in Fair Housing Council:

"The fact that alleged injury affects a large number of people in a large geographic area does not serve to attenuate it. On the contrary, it makes the harm more severe. Residents of an all white housing complex may need only look to the next residential facility for the interracial associations they desire. If the allegations here are true, the residents of the County may have to go to an entirely different neighborhood or community. Similarly a completely white neighborhood or community. That the cordon sanitaire has been drawn around an entire community rather than a single apartment complex does not render it lawful. This Court therefore holds that the residents of predominantly white neighborhoods have alleged injury in fact sufficient to confer standing to sue for violation of the Fair Housing Act, and respectfully declines to follow the contrary result in TOPIC on appeal. The foregoing analysis applies equally with respect to residents of predominantly black neighborhoods or communities. These plaintiffs also have alleged the requisite injury in fact. (422 F. Supp. 1071, 1081)

Other courts have recently acknowledged that community groups and residents, as a consequence of steering, may suffer cognizable injury and have standing to sue thereby. Heights Community Congress v. Rosenblatt Realty, Inc., 73 FRD 1 (N.D. Ohio, 1975); Village of Park Forrest Realty v. Fairfax Realty; Wheatley Heights v. Jenna Resales Co., et al., 429 F. Supp. 486 (E.D. N.Y. 1977); Village of Bellwood, et al v. Gladstone Realtors, et al., (CA 7) Nos. 76-2193 and 77-1019, 1-25-78, reported at par. 15,240 in Prentice-Hall's Equal Opportunity in Housing Reporter. At the least, though, it is clear that the most immediate victims of steering, both black and white homeseekers who are deprived of access to communities due to brokers' preferences have standing even within the parameters established under the more restrictive TOPIC test.

The standing issue was just addressed in a recently reported United States Supreme Court case, Gladstone Realtors, et al v. Village of Bellwood, et al. (U.S. Sup. Ct. No. 77-1493, decided 4-17-79, appearing at par. 15,284 in Prentice-Hall's Equal Opportunity in Housing Reporter, just prior to the publication of this manual. In Bellwood, the Court ruled that a municipality and individuals residing therein had standing under §812, 42 U.S.C. §3612, to challenge alleged steering practices of realty firms even though the plaintiffs, themselves, were not steered. Furthermore, it was held that indirect

victims of bias have standing to sue under §812 as well as under §810 of the Fair Housing Act of 1968.

4) Is blockbusting related to racial steering?

It may be. Rather than showing black homebuyers a fair cross sampling of the available housing, brokers may try to funnel blacks into existing integrated areas. In order to have houses to sell in these integrated areas, brokers may stimulate whites to list their homes for sale. Playing on their racial anxiety by alluding to a change in the racial make-up of the community is, unfortunately, the stock in trade of some brokers. This artificial impetus may take the form of blockbusting which is also known as panic peddling. There is a specific provision in the Fair Housing Act which prohibits blockbusting:

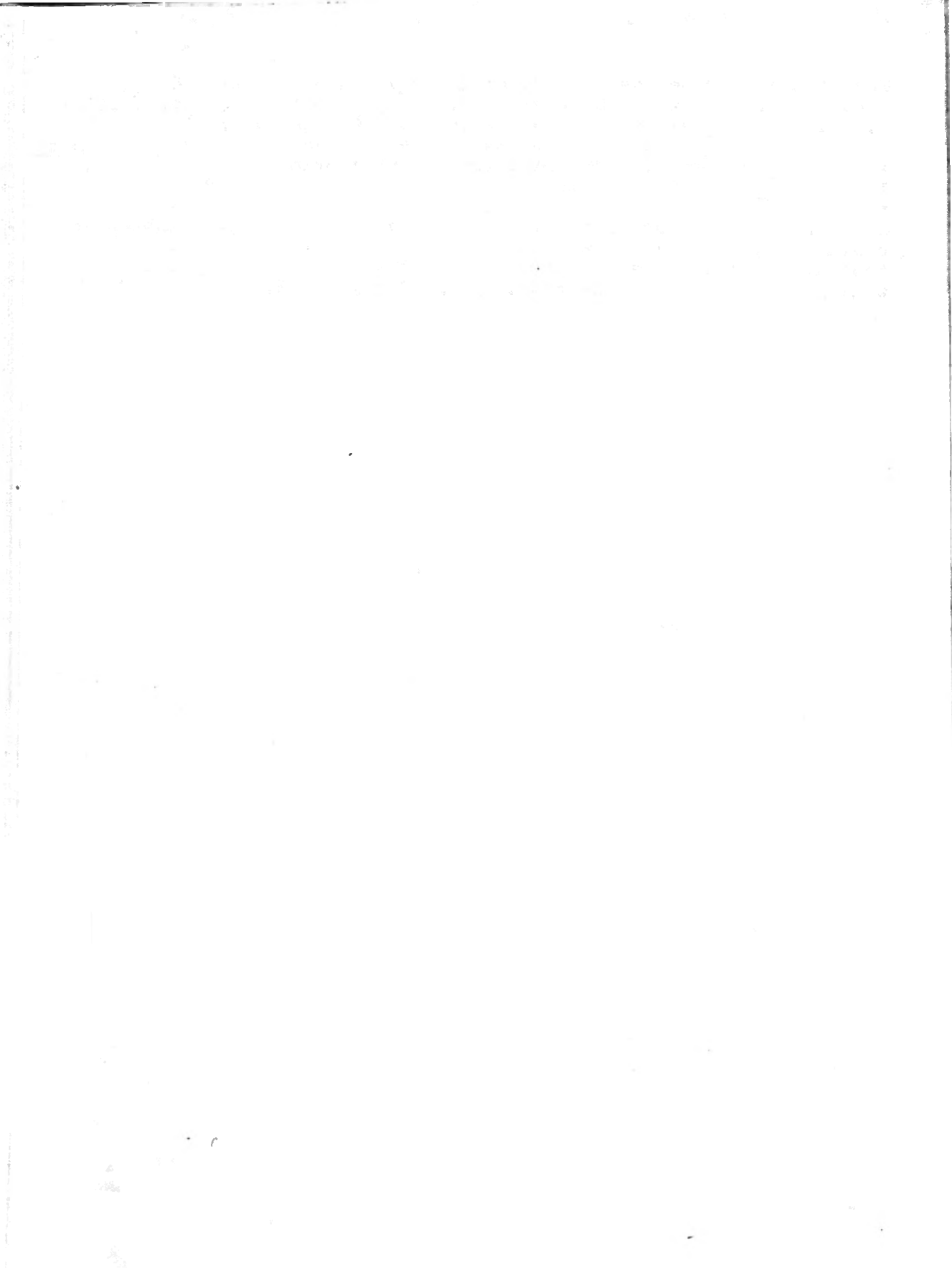
"It shall be unlawful...For profit,
to induce or attempt to induce any person
to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, or national origin (§3604 e).

Some courts have realized that blockbusting may be achieved by sophisticated real estate sales personnel. Rather than resorting to the crude techniques which clearly offend the statute's prohibitions, they can play on white homeowners' racial anxieties without even explicitly mentioning race and consequently achieve their goal of convincing whites to flee. In light of that sorry fact, these courts have prohibited uninvited solicitations or real estate listings in racially transitional areas even when no racial statements are utilized. Illustrative of this position is United States v. Mitchell, 327 F. Supp. 476 (N.D. Ga. 1971) wherein the following test was utilized to determine if salesmen's conduct offend the anti-blockbusting provision

A §3604 (e) representation..would be any acts or words that would be likely to convey to a reasonable man, under the circumstances, the idea that members of a particular race, color, religion or national origin are or may be entering his neighborhood. Of course, to fall within §3604 (e) the representation must also be made to induce the sale of the person's property (at p. 479).

Accord, Zuch v. Hussey. Since the particular effect upon a neighborhood is at issue, this objective test as to the consequence of the salesman's acts is most appropriate. It does not concern itself with the salesman's intent. No matter how seemingly innocent his motives, it provides that the law has been abridged if the reasonable homeowners, under the totality of the circumstances, are lead to believe that there is or will be change in the community's racial admixture.

The standing issue was just dispositively addressed in a recently reported United States Supreme Court case, Gladstone Realtors, et al v. Village of Bellwood, et al. (U.S. Sup. Ct. No. 77-1493, decided 4-17-79, appearing at par. 15,234 in Prentice-Hall's Equal Opportunity in Housing Reporter, just prior to the publication of this manual. In Bellwood, the Court ruled that a municipality and individuals residing therein had standing under §812, 42 U.S.C. §3612, to challenge alleged steering practices of realty firms even though the plaintiffs, themselves, were not steered. Furthermore, it was held that indirect victims of bias have standing to sue under §812 as well as under §810 of the Fair Housing Act of 1968.



EXHIBITS

EXHIBIT I
PREPARING A CLASS ACTION LAWSUIT
WORK FLOW CHART

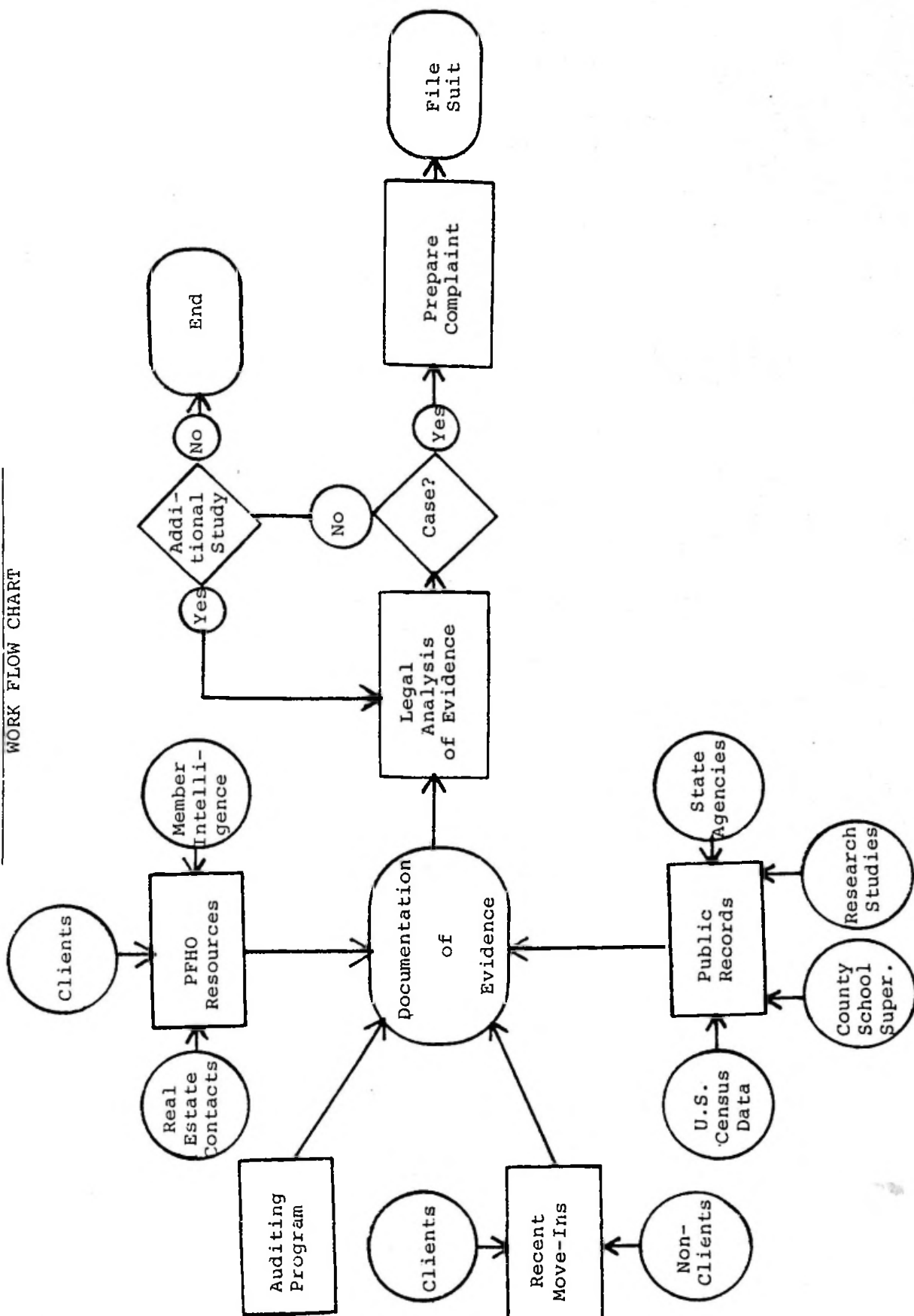


EXHIBIT 2

WORK ORGANIZATION

The following personnel responsibilities are suggestions and may be beyond the means of PFHO's dependent on volunteers. Task assignments are interchangeable and will depend on the local PFHO's resources.

Function

Responsibility

Project Supervision

Overall planning, organization & supervision of activities; review of master broker files and steering evidence gathered by investigators; recommendations to lawyer.

Auditing Coordination

Identify brokers to be audited; run audits; intake audit results; evaluate and draw up affidavits of positive evidence.

Steering Investigation

Telephone and personal interviews of home buyers; gather intelligence from Fair Housing members and friends; newspaper advertising and marketing analysis; MLS and multi-broker analysis.

Housing Counseling

Record intake data in individual client files; notify steering investigator(s) of steering evidence.

Research

Gathering and analysis of statistical steering evidence in U.S. Census figures and school records; data from other public records.

Legal Analysis

Review of evidence; analysis of litigation approach, if desirable.

EXHIBIT 3

RECORD KEEPING

Individual Client Files

Complaints and affidavits

Master Broker Files

Audits; client complaints; interviews of clients and new move-ins; intelligence from members, clients and brokers; settlement agreements and consent orders; and cross referenced copies of applicable material in files below

Apartment Complex File

Information on individual apartment complexes, including renting broker and population of tenants by race

Real Estate Industry File

Evidence from investigation of brokers' marketing strategies, salespersonnel recruitment methods and house solicitations

Multiple Listing Service File

Membership lists; evidence of steering

Public Records File

State agency evidence; research studies

Audio-Visual Aids

Charts, graphs, maps

APPENDICES

APPENDIX A

TESTING REPORT FORM

I. Tester Qualifications

Name _____ Test Partner _____

Address _____ Telephone No. _____

II. Advertisement Used

Name of Paper _____ Date of Ad _____

Town _____ Price _____

Specifications: _____

III. Broker Tested

Name of Agency _____

Address _____

IV. Initial Phone Contact

Date of First Contact _____ Time of Day _____

Spoke to _____

What did broker say about house in ad? _____

Did broker recommend other homes? _____

Did you ask him/her to set up other homes for you to see? _____

Was appointment set? _____ Time _____ Place _____

Were directions given? _____

V. Interview

Were you on time? _____ Was broker on time? _____

Were you kept waiting?_____ If so, where?_____

Was a HUD sign present?_____

Were you asked any qualifying questions, such as:

a. Down payment_____

b. Earning capacity_____

c. Number in family_____

d. Place of employment_____

Was this information written down on a card or in a book?_____

Describe the card or book (size, color, etc.)_____

Were you given access to listing book?_____

Were you asked preferences?

a. Neighborhood_____

b. Price Range_____

c. Type of House_____

Did you give any unsolicited preferences?

Were homes selected for you in advance?

Were phone calls to owners made?

Was there a change in broker's plans once you arrived? (If so, describe:)_____

VI. Houses Seen: (Include exact address, price and brief description. Include vacant homes, lots nearby, neighborhood type, such as nearby railroad, industry, pleasant, residential. How was the house described to you by broker? Was he eager to sell it to you? Did he tell you it was a good buy? Was the price flexible? What were you told about taxes? Who was home? What else did the broker tell you about the house?)

1. _____ Price _____

2. _____ Price _____

3. _____ Price _____

4. _____ Price _____

Did you stop to get a key anywhere? _____ Where? _____

Did the broker seem to know the area and homes you were shown?

Did you ask if there was anything else in your price range? _____

Response: _____

Were you told about any homes that you did not see? (If so, give town and price _____

Did you drive past any homes broker pointed out? _____

Where? _____

Were you given any Multiple Listing information, handouts, business card, or copies of listing cards? (If so, describe) _____

Were you given any mortgage or legal information or offers of assistance? _____

Unsolicited Community, Neighborhood, School, Religious or Racial Reference: _____

What arrangement was made at the end of the interview? _____

Did you ask broker to call you back if anything came in? (If so give broker's response): _____

Total time spent with broker: _____

Do you feel you were treated courteously and/or in a friendly
manner: _____

Do you feel the broker was interested in selling you a home and
that the services rendered were satisfactory? Explain. _____

VII. Follow-up

Follow-up phone calls or contacts:

_____ Date _____

_____ Date _____

ADDITIONAL COMMENTS:

APPENDIX B

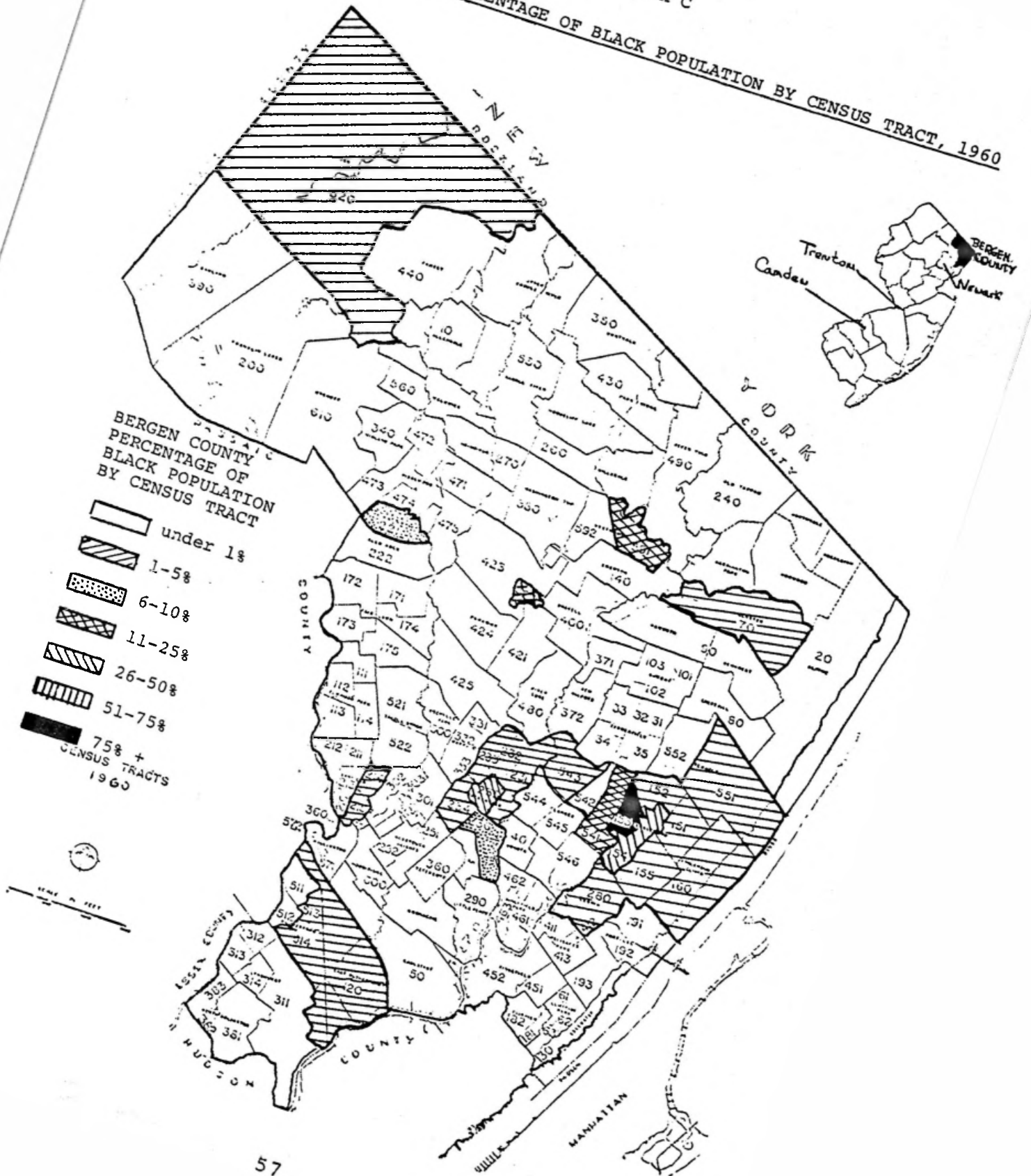
Bergen County: Population Breakdown by Race, 1960-1970

Municipality	Total Popula- tion		Black Popula- tion		Percentage of Blacks	
	1960	1970	1960	1970	1960	1970
Alpine	921	1,344	3	10	.3	.7
Bergenfield	27,203	33,131	26	152	.09	.5
Bogota	7,965	8,125	2	16	.03	.2
Cliffside Park	17,642	14,387	2	10	.01	.07
Closter	7,767	8,604	94	85	1.2	1.0*
Cresskill	7,290	7,164	54	26	.7	.4
Demarest	4,231	6,262	3	19	.07	.3
Dumont	18,882	17,534	14	30	.07	.2
Edgewater	4,113	4,849	4	26	.1	.5
Elmwood Park	19,344	22,749	20	19	.1	.08*
Emerson	6,849	8,428	16	17	2.6	.2*
Englewood	26,057	24,985	7,008	8,208	26.9	32.9
Englewood Clfs	2,913	5,938	36	75	1.2	1.3
Fair Lawn	36,421	37,975	58	64	.2	.2
Fairview	9,399	10,698	3	6	.03	.06
Fort Lee	21,815	30,631	12	202	.01	.07
Garfield	29,253	30,722	321	363	1.1	1.2
Hackensack	30,521	35,911	4,105	6,008	13.4	16.7
Harrington Pk.	3,581	4,841	4	6	.2	.1*
Hasbrouck Hts.	13,046	13,651	6	6	.04	.04
Haworth	3,215	3,760	31	56	1.0	1.5
Hillsdale	8,734	11,768	27	19	.3	.2*
Leonia	8,384	8,84-	162	203	1.9	2.3
Little Ferry	6,175	9,042	5	15	.08	.2
Lodi	23,502	25,213	145	118	.6	.5*
Maywood	11,460	11,087	2	14	.02	.1
Montvale	3,699	7,327	9	7	.2	.09*
Moonachie	3,052	2,973	6	3	.2	.1
New Milford	18,810	20,201	6	35	.03	.2
Northvale	2,892	5,177	0	4	.0	.08*
Norwood	2,852	4,398	5	6	.2	.1*
Old Tappan	2,330	3,913	2	3	.09	.07*
Oradell	7,487	8,903	15	13	.2	.1*
Palisade Park	11,943	13,351	1	13	.008	.09
Paramus	23,238	29,495	128	142	.6	.5*
Park Ridge	6,389	8,709	31	32	.5	.4*
Ridgefield	10,788	11,308	1	11	.009	.09
Ridgefield Pk	12,701	14,453	0	8	.0	.05
River Edge	13,264	12,850	10	18	.08	.1
River Vale	5,616	8,883	6	11	.1	.1*
Rochelle Park	6,119	6,380	1	1	.02	.02
Rockleigh	430	308	6	12	1.4	3.9
Saddle Brook	13,834	15,098	9	10	.07	.07*
So. Hackensack	1,841	2,459	31	79	1.7	3.2
Teaneck	42,085	42,355	1,664	6,232	4.0	14.7
Tenafly	14,264	14,827	109	73	.8	.5*
Teterboro	22	14	0	0	.0	.0
Washington Twp.	6,654	10,577	6	30	.09	.3
Westwood	9,046	11,105	451	591	5.0	5.3
Woodcliff Lake	2,742	4,506	13	20	.5	.4*

*Bureau of the Census, U.S. Department of Commerce

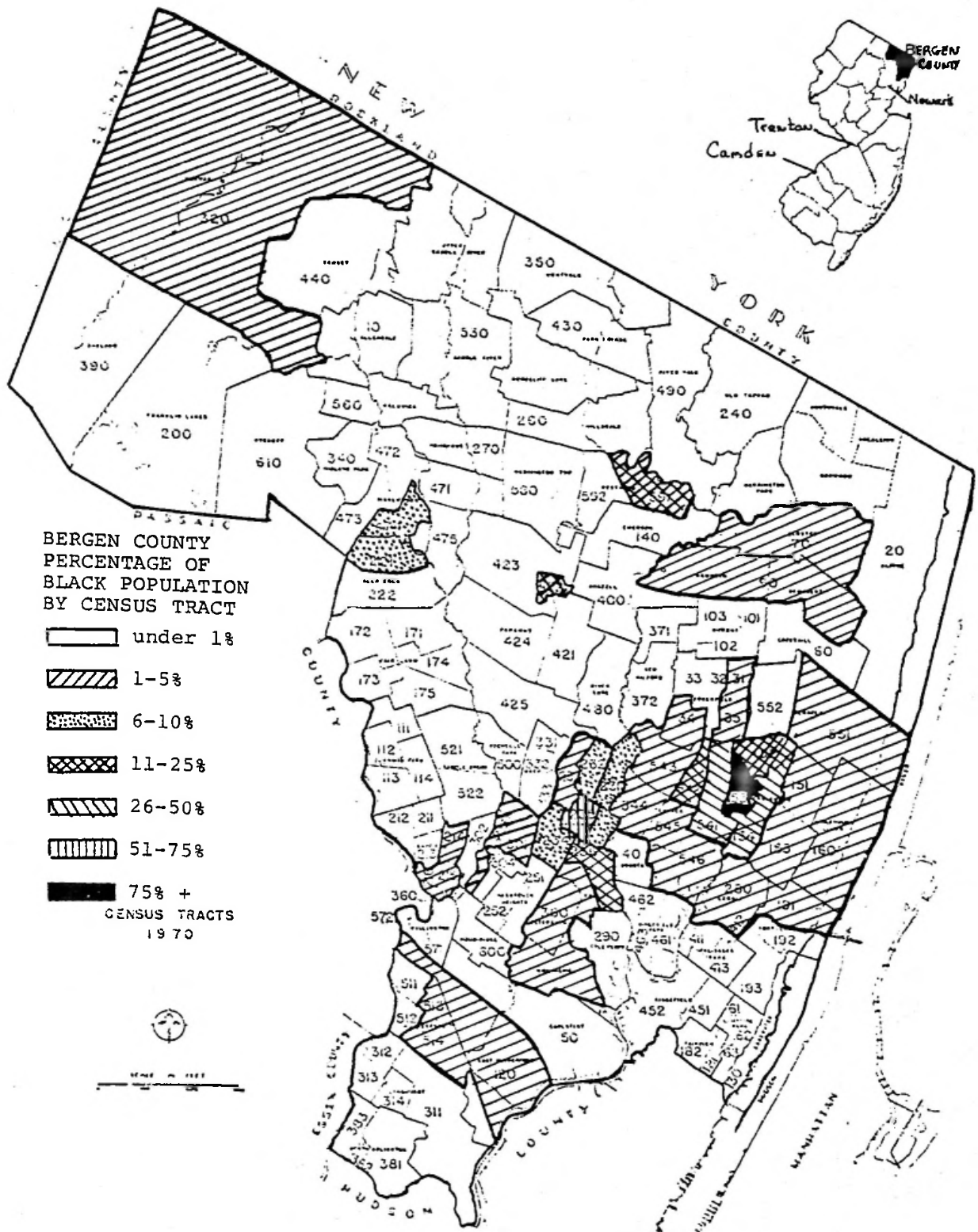
BERGEN COUNTY: PERCENTAGE OF BLACK POPULATION BY CENSUS TRACT, 1960

APPENDIX C



APPENDIX D

BERGEN COUNTY: PERCENTAGE OF BLACK POPULATION BY CENSUS TRACT, 1970



APPENDIX E

TELEPHONE INTERVIEW TECHNIQUE

(This is a sample only. As you get used to this procedure, you will develop your own style, and personalize the interview. Be warm, friendly, upbeat. Tact will be necessary to elicit information which may not be easily given or to discover if steering practices exist of which the homeowner is unaware. Do not indicate to the homeowner your feelings about the possibility of steering practices being used with them. Make sure that you record information on all responses, even those who say they have nothing to report.)

"Good (morning). My name is _____ and I am a volunteer working with (PFHO). We're a private, non-profit organization presently checking into real estate practices in (area). We'd like to welcome you to (town), and as you recently bought a home here, I wonder if you could take a few minutes to tell me about your experiences with any real estate brokers when you were house hunting? Why did you choose (town)?"

(Get into specific questions after they make a few general remarks. Ask if they are black or white if they do not give that response.)

ASK THE FOLLOWING QUESTIONS OF BLACK RESPONDEES:

1. Brokers used: Who sold your house? Where did you learn of the broker?
2. Area of homes: Any specific qualifications requested? Any price range requested? What were you told about other neighborhoods?
3. How many calls did it take for you to make an appointment? Did you receive call backs from the realtors? How many? On what homes?
4. What houses were you shown? How many? In what areas?
5. What were the prices of houses shown as compared to what you asked for?
6. Were you urged or directed to choose (Name integrated communities)? Any specific neighborhoods in those communities?

7. Where did you live before?
8. Did you have access to the realtor's listing books or did you only see individual cards?
9. What was the price of your home? Was it in the price range you were looking at?
10. Did you get any unsolicited racial references, negative neighborhood remarks, or negative sales remarks?
11. Were you offered transportation?
12. Did you receive business cards from the realtors?
13. What questions did you ask the broker regarding churches, schools, access to city, transportation, etc.?

NOTE: If they indicate that (and this will happen frequently) everything was handled as they requested and they did not experience any negative practices and that houses in their price range were shown to them in black communities, say:

"I'm glad to hear that. Did you ask about any other towns? What did the broker say about those towns? Were you given tax information on those towns? Did the broker mention any other towns in your price range to you other than the town you mentioned to him? Were you shown any other homes in your price range in any other towns? Would you have been willing to look at houses in other communities?"

ASK THE FOLLOWING QUESTIONS OF WHITE RESPONDEES:

1. What broker did you use?
2. Details of contact with broker: houses seen, listing book, etc.
3. Why did you purchase in (town)?
4. What price did you pay?
5. Any negative community or neighborhood references?
6. What questions did you ask the broker regarding churches, schools, access to city, transportation, etc.?

ASK ALL RESPONDEES OUTSIDE OF INTEGRATED COMMUNITIES:

"Do you know of anyone else recently who bought a home and had a good or bad experience with a broker? Which broker? Would you give us their name or ask them to call us?"

TIPS

Depending on how much the callers are willing to talk, and how promising they seem, ask for personal interview and set up an appointment. Telephone calls from 5:30 P.M. to 7:30 P.M. are probably most fruitful in finding people home. If your credentials are questioned, or if they seem reluctant to reply, ask if they'd like to call the Fair Housing office and check your identity. If they do not wish to talk, be very courteous, say that if they reconsider and want to call back you'd appreciate hearing from them. Or perhaps they'll give you the name and number of a friend who may have had some experience that would prove valuable to you.

Rules and Regulations

Title 24—Housing and Urban Development

CHAPTER I—OFFICE OF ASSISTANT SECRETARY FOR FAIR HOUSING AND EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-75-328]

EQUAL HOUSING OPPORTUNITY

Miscellaneous Amendments

The Housing and Community Development Act of 1974, (Pub. L. 93-383) which became effective on August 22, 1974, amended the provisions of §§ 804, 805 and 806 of Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284 (42 USC 3604, 3605 and 3606) by adding the word "sex" after the word "religion" in each place it appeared in the sections.

The Department of Housing and Urban Development is amending its regulations with respect to Equal Housing Opportunity to reflect the extended coverage of Title VIII of the Civil Rights Act of 1968, as amended, by the Housing and Community Development Act of 1974.

The Department has determined that comment and public procedure are impracticable and unnecessary since these amendments are merely editorial modifications to reflect the congressional mandate expressed in Title VIII as now amended.

Accordingly, these changes are being made effective as of the date of enactment, August 22, 1974.

CARLA A. HILLS,
Secretary of Housing and
Urban Development.

[FR Doc. 75-12118 Filed 5-7-75; 8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Equal Opportunity*

[Docket No. R-72-108]

ADVERTISING GUIDELINES FOR FAIR HOUSING

Notice of Statement of Policy

In order to facilitate and promote compliance with the requirements of Title VIII of the Civil Rights Act of 1968, and particularly section 804(c) thereof (42 U.S.C. 3601, 3604(c)) regarding notices, statements or advertisements, the Department of Housing and Urban Development has prepared guidelines to indicate graphic and written references that are appropriate for the preparation, publication, and general use of advertising matter with respect to the sale or rental of a dwelling as defined by the Act.

Notice of a proposed statement of policy was published in the FEDERAL REGISTER on May 21, 1971 (36 F.R. 9266). Comments were received from 26 interested persons and organizations and consideration has been given to each comment.

Several comments observed that the proposed policy statement was at times unnecessarily limited to the field of newspaper advertising. In response to the comments, the policy statement has been revised in several places to clarify that the guidelines apply to advertisements in all media, including, e.g., television and radio, as well as to advertising agencies and other persons who use advertising.

Several organizations suggested additional catchwords connoting a discriminatory effect for inclusion in section A-3. That section has been expanded to include several additional terms which may have a discriminatory effect when used in a discriminatory context.

In response to other comments, section A-6 has been revised to clarify how directional references could be employed in a discriminatory context with an ethnically, as well as a racially, discriminatory effect. Also, section A-7 has been added relating specifically to designation of religious, ethnic or racial facilities to identify an area or neighborhood.

A number of comments indicated that human models or Equal Opportunity advertisements can and have been used selectively to promote the development of racially exclusive communities. A new section C-4 has been added in order to meet this specific problem. The previous human models section has been clarified by revision and reorganization in the new section C, in light of comments which indicated confusion or uncertainty surrounding the use of human models.

In response to publishers' comments, Table I has been simplified and references to minimum type sizes limited to a recommendation that the type should be bold display face and no smaller than eight points.

A number of organizations suggested the inclusion of a publisher's notice to appear with real estate advertising. A suggested notice has been included as Table III, in lieu of the provision in the proposed guidelines for direct notification to all firms or persons using the advertising services of a publisher. This provision was removed in light of objections that such notification would be unworkable or would impose great hardship since a large volume of real estate advertising is placed by a great number of persons on a nonrecurring basis.

Finally, a number of minor editorial or organizational changes have been made in order to clarify or simplify the advertising guidelines.

Several organizations suggested that the guidelines make specific reference to the roles of other enforcement agencies including the Department of Justice and local agencies. These comments suggest that the guidelines specify that they not alter or affect conciliation agreements or court orders obtained by the agencies, as well as by the Department. Such a disclaimer appears to be unnecessary, since there is nothing in the guidelines to indicate an intent to alter or affect agreements or orders obtained by the Department and other agencies.

This document is issued pursuant to section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

The statement of Policy reads as follows:

PUBLICATION GUIDELINES FOR COMPLIANCE WITH TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968

POLICY STATEMENT

Section 804(c) of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3604(c), makes it 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 (any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant lot which is offered for sale or lease for the construction or location thereof of any such building, structure, or portion thereof) that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin or an intention to make any such preference, limitation, or discrimination.

These advertising guidelines are being issued for the purpose of assisting all advertising media advertising agencies, and all other persons who use advertising to make, print, or publish or cause to be made, printed, or published any classification or display advertisement with respect to the sale or rental of a dwelling by the owner or his agent, in compliance with the requirements of Title VIII.

Conformance with these guidelines will be considered in evaluating compliance with Title VIII in connection with investigations by the Assistant Secretary of advertising practices and policies under the Title.

A. The use of words, phrases, sentences and visual aids which have a discriminatory effect. The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory intent. Their use should therefore be avoided in order to eliminate their discriminatory effect. In considering a complaint under Title VIII, the Assistant Secretary will normally consider the use of these and comparable words, phrases, symbols, and forms to indicate possible violation of the Title and to establish a need for seeking resolution of the complaint. If it is apparent from the context of the usage that discrimination within the meaning of the Title is likely to result.

1. Words descriptive of dwelling, landlord, and tenant. White private home, Colored home, Jewish home.

2. Words indicative of race, color, religion, sex,

*The title of this office has been changed to the Office of Assistant Secretary for Fair Housing and Equal Opportunity.

or national origin. Negro, Hispano, Mexican, Indian, Oriental, Black, White, WASP, Hebrew, Irish, Italian, European, etc.

3. *Catch words.* Restricted, ghetto, disadvantaged. Also, words such as private, integrated, traditional, "board approval" or "membership approved" if used in a discriminatory context.

4. *Symbols or logotypes.* Symbols or logotypes which imply or suggest race, color, religion, sex, or national origin.

5. *Colloquialisms.* Locally accepted words or phrases which imply or suggest race, color, religion, sex, or national origin.

6. *Directions to the real estate for sale or rent (use of maps or written instructions).* References to real estate location made in terms of racially or ethnically significant landmarks such as an existing Black development (signal to Black) or an existing development known for its exclusion of minorities (signal to Whites). Specific directions given from a racially or ethnically significant area.

7. *Area (location) description.* Use of religious, ethnic, or racial facilities to describe an area, neighborhood, or location.

8. *Selective use of advertising media or content with discriminatory effect.* The selective use of advertising in various media and with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of Title VIII.

1. *Selective geographic impact.* Such selective use may involve the strategic placement of billboards, brochure advertisements distributed within a limited geographic area by hand or in the mail, or advertising in particular geographic coverage editions of major metropolitan newspapers, or in local newspapers which are mainly advertising vehicles for reaching a particular segment of the community, or in displays or announcements only in selected sales offices.

2. *Selective use of equal opportunity slogan or logo.* Such selective use may involve using the equal opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

3. *Selective use of human models.* Such selective advertising may also involve the use of human models primarily in media that cater to one racial or ethnic segment of the population that is not balanced by a complementary advertising campaign that is directed at other groups, or the use by a developer of racially mixed models to advertise one of the developments and not others.

C. *Policy and practices guidelines.* The following guidelines are offered as suggested methods of assuring equal opportunity in real estate advertising:

1. *Guidelines for use of logotype, statement, or slogan.* All advertising of residential real estate for sale or rent can contain an Equal Housing Opportunity logotype, statement or slogan as a means of educating the homeseeking public that

the property is available to all persons regardless of race, color, religion, sex, or national origin. Table I (see appendix) indicates suggested sizes for the use of the logotype. In all space advertising which is less than 4 column inches of a page in size, the Equal Housing Opportunity slogan should be used. The advertisement may be grouped with other advertisements under a caption which states that the housing is available to all without regard to race, color, religion, sex, or national origin. Alternatively, 3-5 percent of the advertisement copy may be devoted to a statement of the equal housing opportunity policy of the owner or agent. Table II (see appendix) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

2. *Guidelines for use of human models.* Human models in photographs, drawings, or other graphic techniques may be used to indicate racial inclusiveness. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing both majority and minority groups in the metropolitan area. Models, if used, should indicate to the general public that the housing is open to all without regard to race, color, religion, sex, or national origin, and is not for the exclusive use of one such group.

3. *Guidelines for notification of Fair Housing Policy.* (a) *Employees.* All publishers of advertisements, advertising agencies, and firms engaged in the sale or rental of real estate should provide a printed copy of their nondiscriminatory policy to each employee and officer.

(b) *Clients.* All publishers of advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous place wherever persons come to place advertising and should have copies available for all firms and persons using their advertising services.

(c) *Publisher's notice.* All publishers are encouraged to publish at the beginning of the real estate advertising section a notice such as that appearing in Table III (see appendix).

Effective date. This statement of policy shall be effective May 1, 1972.

SAMUEL J. SIMMONS,
Assistant Secretary
for Equal Opportunity.

APPENDIX

The following three tables may serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for display advertising:

TABLE I

A simple formula can guide the real estate advertiser in using the Equal Housing Opportunity logotype, statement, or slogan. If other logotypes are used in the advertisement, then the Equal Housing Opportunity logotype should

be of a size equal to the largest of the other logotypes; if no other logotypes are used, then the following guidelines can be used. In all instances, the type should be bold display face and no smaller than 8 points.

Approximate size of advertisement	Size of Logotype in inches
1/2 page or larger	2 x 2
1/8 page up to 1/2 page	1 x 1
4 column inches to 1/8 page	1/2 x 1/2
Less than 4 column inches	(¹).

¹ Do not use.

TABLE II.—ILLUSTRATIONS OF LOGOTYPE, STATEMENT, AND SLOGAN

Equal Housing Opportunity logotype:



Equal Housing Opportunity statement:

We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, or national origin.

Equal Housing Opportunity slogan:
"Equal Housing Opportunity."

TABLE III.—ILLUSTRATION OF PUBLISHER'S NOTICE

Publisher's notice:

All real estate advertised in this newspaper is subject to the Federal Fair Housing Act of 1968 which makes it illegal to advertise "any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or intention to make any such preference, limitation, or discrimination."

This newspaper will not knowingly accept any advertising for real estate which is in violation of the law. Our readers are hereby informed that all dwellings advertised in this newspaper are available on an equal opportunity basis.

[FR Doc. 72-4983 Filed 3-31-72; 8:45 am]

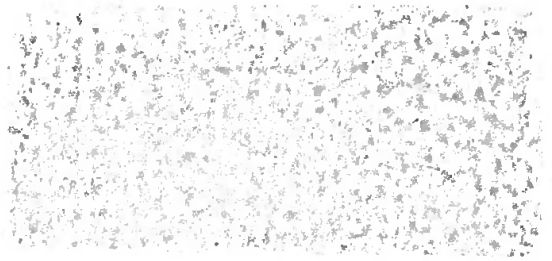
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_____ Move-Ins, Recent	
_____ Multiple Listing Service	Preface
_____	Private Fair Housing Organization
_____	Public Records
_____ Real Estate Industry	Record Keeping
_____ Research Studies	School Superintendent, County
_____	State Agencies



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