

2015

Regional Analysis of Impediments to Fair Housing for Montgomery County and the Cities of Dayton and Kettering, OH

Section 2 — Fair Housing Laws, Research, and Case Law

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A. Fair Housing Laws and Rules

The end of the American Civil War sparked legislative action to implement protections against discrimination for African Americans.¹ For instance in 1886, the U.S. Supreme Court ruled for the first time that a facially neutral law applied in a racially discriminatory manner violated the Equal Protection Clause of the Fourteenth Amendment. However, there were many more instances where inequality not only persisted but was sanctioned and enforced by governmental action, such as through U.S. Supreme Court interpretation.² For example, in 1883 the U.S. Supreme Court ruled that the Civil Rights Act of 1875—which banned discrimination in hotels, trains, and other public spaces—was unconstitutional and not authorized by the Thirteenth or Fourteenth Amendments to the U.S. Constitution.³ Ohio responded in 1884 by enacting the Ohio Public Accommodations Law of 1884, which prohibited discrimination on the basis of race in all public buildings. Law enforcement officials, however, usually did not enforce the Act and some Ohioans continued to discriminate on the basis of race.⁴ This two-steps-forward-and-one-step-back approach to civil rights enforcement is the unending dance that continues to this day nationally and locally.

In housing, governmental action promoting the segregation and marginalization of African Americans in particular caused and still causes a detrimental and uneven landscape across American neighborhoods.⁵ The State of Ohio, Montgomery County, and its cities of Dayton and Kettering are no exception. The legacy of discrimination shapes the fair housing landscape and current active discrimination is alive and well. Both need to be combated through education, enforcement, progressive public policies and partnerships. Following is an overview of the major federal, state, and local civil rights laws, Department of Housing and Urban Development (HUD) rules, and cases impacting fair housing.

Federal Laws, Regulations, and Cases

The Civil Rights Act of 1866: Enacted April 9, 1866, this Act was the first federal law to provide legal protections to guard against discrimination based on race and color. It defined US citizenship and affirmed that all male persons, including African Americans, had the same rights enjoyed by White citizens “without distinction of race or color, or previous condition of slavery or involuntary servitude” and as such, were equally protected and had the right to make and enforce contracts, to sue, be parties, and give evidence, and to inherit, purchase, own, lease, sell and convey personal and real property.⁶

Fourteenth Amendment to the United States Constitution: Ratified on July 9, 1868, and granted citizenship to “all persons born or naturalized in the United States,” which included former slaves recently freed. In addition, it forbids states from denying any person “life, liberty or property, without due process of law” or to “deny to any person within its jurisdiction the equal protection of the laws.” By directly mentioning the role of the states, the 14th Amendment greatly expanded the protection of civil rights to all Americans and is cited in more litigation than any other amendment.⁷

Title VI of the Civil Rights Act of 1964 in conjunction with Civil Rights Restoration Act of 1987: Enacted July 2, 1964, Title VI outlaws discrimination based on race, color, or national origin in programs that receive federal financial assistance. The Restoration Act extended Title VI by also outlawing discrimination based on sex, age, and disability for programs receiving federal financial assistance.^{8 9 10}

Title VIII of the Fair Housing Act of 1968 (FHA) in conjunction with its 1988 amendments: The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, national origin, disability, or familial status. In connection with prohibitions on discrimination against individuals with disabilities, the Act contains design and construction accessibility provisions for certain new multifamily dwellings developed for first occupancy on or after March 13, 1991.¹¹

Architectural Barriers Act of 1968: This Act issued standards that apply to facilities designed, built, altered, or leased with certain federal funds. Passed in 1968, the ABA is one of the first laws to address access to the built environment. The law applies to federal buildings, including post offices, social security offices, federal courthouses and prisons, and national parks. It also covers non-federal facilities, such as public housing units and mass transit systems, built or altered with federal grants or loans. Coverage is limited to those funding programs that give the federal agency awarding grants or loans the authority to establish facility standards.¹²

Title IX of the Education Amendments Act of 1972 in conjunction with the Civil Rights Restoration Act of 1987: Title IX prohibits discrimination on the basis of sex in education programs or activities that receive federal financial assistance.^{8 9 10}

Section 504 of the Rehabilitation Act of 1973 in conjunction with the Civil Rights Restoration Act of 1987: It took effect in May 1977. Prohibits discrimination based on disability in programs that receive federal financial assistance.^{8 9 10}

Section 109 Title 1 Housing and Community Development Act of 1974: Section 109 provides that no person in the United States shall, on the grounds of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. This applies to any program or activity funded in whole or in part with funds under Title I of the Housing and Community Development Act of 1974, including Community Development Block Grants–Entitlement, State- and HUD-Administered Small Cities, and Section 108 Loan Guarantees; Urban Development Action Grants; Economic Development Initiative Grants; and Special Purpose Grants.¹³

Age Discrimination Act of 1975 in conjunction with Civil Rights Restoration Act of 1987: The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.^{8 9 10}

Civil Rights Act of 1981: This Act protects against racial discrimination in the public and private sector “to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by White citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”¹⁴

Civil Rights Act of 1982: This Act protects citizens against racial discrimination in property rights in the public and private sector. The Act provides: “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.”¹⁵

Civil Rights Act of 1983: This Act provides for civil actions against State actors for violating a person’s rights under the law. It provides that “every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”¹⁶

Civil Rights Act of 1985: Section three of this law prohibits two or more persons from conspiring to deprive any person or class of persons equal protection, privileges, or immunities of the laws and provides that the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.¹⁷

Americans with Disabilities Act (ADA) of 1990: The ADA prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities. The ADA also establishes requirements for telecommunications relay services.¹⁸

Equal Credit Opportunity Act (ECOA): 15 U.S.C. 1691 *et seq.*, enacted in 1996, ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act.¹⁹

1999 Olmsted Decision: On June 22, 1999, the U.S. Supreme Court held that unjustified institutional isolation of persons with disabilities is a form of discrimination under the ADA.²⁰

2012 HUD Rule expanding protections: On January 27, 2012, HUD implemented a policy to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status.²¹

2015 U.S. Supreme Court Fair Housing Act Decision: On June 25, 2015, the U.S. Supreme Court found that Title VIII allows for disparate impact claims in effectuation and enforcement of Title VIII's intent and purpose.²²

2015 U.S. Supreme Court Fourteenth Amendment Decision protecting Same-Sex Couples: On June 26, 2015, the U.S. Supreme Court found that the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution protect Same-Sex Couples against State action preventing their right to marry.²³

2015 HUD Affirmatively Furthering Fair Housing Rule: HUD explains the rule thusly:
HUD's final rule provides an effective planning approach to aid federal agencies and federal grantees in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are

free from discrimination. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.²⁴

State and Local Laws

Article 1, §1.01 of the Ohio Constitution protecting “Inalienable Rights,” along with §1.02 providing for “Equal Protection” and §1.19 declaring property to be “inviolate”: Ratified in 1851, almost twenty years before the U.S. Constitution's Fourteenth Amendment, Ohio's Constitution's Bill of Rights declares: “All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.”²⁵

Ohio also included in Article 1, Section 1.02 that government's purpose was to maintain equal protection for the people and to benefit the people.²⁵ Additionally, Ohio declared that private property was inviolate in Article 1, Section 1.19.²⁵ The Ohio Supreme Court has consistently interpreted the Ohio Constitution as providing more protections for individual rights than provided by the U.S. Constitution.²⁶ Kingsley A. Taft, Chief Justice of the Ohio Supreme Court, wrote in 1965 in a decision upholding fair housing laws, “To permit such discrimination would obviously, to use the words of Section 1, Article 1 of the Ohio Constitution, interfere with the ‘inalienable rights of acquiring property’ of the person discriminated against.”²⁷

Ohio Civil Rights Act of 1959 and its Amendments to include Housing Protections (Ohio Revised Code Chapter 4112): Three years before the passage of federal fair housing protections, Ohio amended the Ohio Civil Rights Act of 1959 in 1965 to include protections against discrimination in housing.²⁸ In 1976, the Act was again amended to include protections against discrimination in the issuance of credit.²⁸ Today, Ohio protects all persons from housing discrimination based on race, color, national origin, sex, religion, military status, ancestry, familial status, and disability.²⁹ Additionally, Ohio makes it unlawful for any educational institution to discriminate against any individual based on disability in its housing.³⁰ Unlike the federal law, Ohio law currently does not exempt small

landlords or some home sellers; however, Ohio Senate Bill 134 and Ohio House Bill 149, introduced in March 2015, would amend Ohio's law to include these exemptions.³¹

City of Dayton's Revised Code of General Ordinances (R.C.G.O) 32.02-32.21 and 32.99: Enacted in 1974, these ordinances provide protections from discrimination in the areas of employment, housing, public accommodations, and credit transactions on the basis of an individual's race, color, religion, sex, ancestry, national origin, place of birth, age, marital status, familial status, sexual orientation, gender identity, or disability.³²

City of Kettering Codified Ordinances, Chapter 628: This chapter provides that:

No person selling real property shall, solely because of religion, creed, color, race, sex, handicap, familial status, national origin, or ancestry of any person: 1) Refuse to sell, lease or rent any real property to a purchaser; 2) Evict or deny occupancy to a purchaser of any real property; 3) Make any distinction, discrimination or restriction against a purchaser in the sale, rental, price, terms, conditions or privileges relating to the sale, rental, lease, occupancy of real property, or in the furnishing of any facilities or services in connection therewith; 4) Refuse to show any real property or otherwise attempt to prevent the sale, rental or lease of any property to purchaser.³³

B. National and Local Fair Housing Studies

National Studies of Importance

Several major housing studies have been done over the last decade that indicate that discrimination is still impacting housing choice in Montgomery County and the cities of Dayton and Kettering.

2006 Fair Housing Trends Report National Fair Housing Alliance

Overview: National Fair Housing Alliance, Unequal Opportunity—Perpetuating Housing Segregation in America: 2006 Fair Housing Trends Report (April 5, 2006) and what it means for Dayton, Ohio.

The Study: Enforcement Project Testing in Real Estate Sales Markets across the Nation, including Dayton, Ohio

In 2003, the National Fair Housing Alliance (NFHA) began enforcement testing of twelve cities, including Dayton, Ohio, for housing discrimination in the real estate sales market.³⁴ The enforcement testing involved paired sales tests. All tests were structured on the basis of race or national origin.

Specifically, each paired test investigation involved one White team and either one African-American team or one Latino team of testers. In all cases, the teams were assigned similar information about housing needs, financial qualifications, and employment history. In every instance, the African-American or Latino teams were slightly more qualified than the White teams.³⁴

Blatant Discrimination Found

Three patterns of discrimination were found: 1) outright denial of services to African-American and Latinos; 2) offering significant incentives to Whites but not to African-Americans or Latinos; and 3) steering based on race or national origin. Within the discriminatory patterns, the tests revealed that real estate agents made illegal comments based on religion and race; and real estate agents used schools as a proxy for racial or ethnic composition of neighborhoods or communities.³⁴

Real Estate Agents' Perpetuation of Segregation Harms Quality of Education for All Communities

NFHA found that forced segregation through real estate agents' irrational assumptions about communities of color creates barriers to full enjoyment of public education benefits and economic growth. In particular, real estate agents' artificial manipulation of the real estate market suppresses the mobility of communities of color by causing significant economic and educational stagnation and even decline.³⁴

Additionally, NFHA found that real estate market discriminatory manipulation harms all communities. Discrimination eliminates diverse communities and learning environments, while reinforcing detrimental stereotypes that prevent intellectual and social development. NFHA stated "there is strong evidence that students of all races and ethnicities who are exposed to diversity experience greater intellectual and social development."³⁴

Dayton Suffers from the Artificial Manipulation of its Real Estate Sales Market

NFHA's enforcement study showed that about 20 percent of the time, African-American and Latino testers were refused real estate services or received very limited services. NFHA's study also demonstrated that steering patterns were extremely consistent. In most cases, Whites were shown homes in primarily White neighborhoods, African Americans were shown homes in primarily African-American neighborhoods, and Latino were shown homes in primarily Latino neighborhoods.³⁴

Dayton was no exception to these findings. Dayton's communities of color are being detrimentally impacted by the discriminatory artificial manipulation of its real estate market. The long-term effects of the forced segregation shown through NFHA's study will negatively impact Dayton's economic growth and mobility, and will stunt intellectual and social development generationally.

2011 HUD Housing Discrimination Study

Overview: Office of Policy Development and Research, An Estimate of Housing Discrimination against Same-Sex Couples in 50 U.S. metropolitan areas: AN ESTIMATE OF HOUSING DISCRIMINATION AGAINST SAME-SEX COUPLES 2011 Prepared for U.S. Department of Housing and Urban Development

Although stigma and prejudice based on sexual orientation are widespread, and employment discrimination against LGBT individuals has been well documented, up until recently there has been little empirical research examining housing discrimination against the LGBT community in the United States.

In 2007 four fair housing centers in Michigan conducted a testing audit of housing discrimination based on sexual orientation and found disparate treatment in 32 out of 120 (27 percent) of the fair housing tests it conducted.³⁵

In 2011 HUD sponsored the first large-scale, paired testing study done on a national scale to measure treatment of same-sex couples in the electronically advertised rental housing market. The results were based on 6,833 paired e-mail tests conducted in 50 metropolitan areas from June through October of 2011.³⁶

The large-scale study found that same-sex couples are significantly less likely than heterosexual couples to be able to access the study's target rental unit. The gross estimates of discrimination, which reflect the extent to which heterosexual couples were consistently favored over gay male or lesbian couples, are 15.9 and 15.6 percent. These estimates are comparable to the incidence of consistently White-favored treatment, relative to Black and Hispanic home seekers found through in-person audits (21.6 and 25.7 percent respectively).³⁷

Adverse treatment of same-sex couples was present in every metropolitan area where these tests were conducted. The city of Dayton was one of the 50 metropolitan areas included in this testing.³⁷

Since this study provides only an initial look at how same-sex couples are treated relative to heterosexual couples at the threshold of the rental housing search it potentially underestimates the extent to which same-sex couples face discrimination in the whole rental housing market compared to heterosexual couples. More testing is needed, along with enforcement and education efforts to combat this discrimination.

2012 HUD Housing Discrimination Study

Overview: The Urban Institute, *Housing Discrimination against Racial and Ethnic Minorities 2012*, (June 2013), and what it means for the Dayton MSA

The Study: Nationwide Testing of Discrimination in the Rental and Sales Market, including Ohio

In 2012, the Urban Institute conducted a study for HUD to monitor the trends in racial and ethnic discrimination in housing rental and sales markets.³⁷ The study involved 28 metropolitan areas, including Cleveland, Ohio, to produce national estimates of discrimination against Blacks, Hispanics, and Asians in rental and sales markets.

The study used paired testing of minority and White testers to gather the research data. The minority samples consisted of Blacks, Hispanics, and Asians. Minority and White testers were matched on age and gender. Each were assigned income, assets, and debt levels to make both testers unambiguously well qualified, with the minority tester being slightly better qualified than the White tester.³⁵

Discrimination was found in both Rental and Sales Markets, with Blacks experiencing the most Discriminatory Treatment

The study found that discrimination persisted in both the rental and sales markets nationally. In comparing the testing data, the study concluded that the Black testers experienced more discrimination than Hispanic and Asian testers.³⁵

Black-White Paired Testing

The study showed that the Black testers seeking rentals were provided fewer housing options and shown units with more condition problems. Blacks were also more likely to be quoted a higher monthly rent and not told about rental incentives or that the fees and deposits were negotiable. Additionally, the Black testers were more likely to receive comments about credit standing.³⁵

Testing in the sales market revealed that the Black testers were more likely to be denied an appointment than White testers. Furthermore, like in the rental market, the Black testers were informed about fewer housing options and provided poorer quality housing options.³⁵

The Black testers also were asked about prequalification and credit and, unlike White testers, were not offered help with prequalification or assistance with financial affordability. The Black testers also were less likely to be recommended homes in substantially White neighborhoods. Overall, agents spent less time with the Black testers and provided less guidance than compared to the White testers. The study noted that Black homebuyers that were childless or male experienced significantly higher levels of discrimination.³⁵

Hispanic-White Paired Testing

The study found that Hispanic testers seeking rentals were told about and shown fewer housing options and were offered higher rent. Also, the Hispanic testers were not told about rental incentives or that fees and deposits were negotiable. Furthermore, there was less follow-up from the agents with the Hispanic testers than compared to the paired White testers. In the sales market, the study did not find any significant differences other than the Hispanic testers were more likely to be asked about credit and the White tester was more likely to hear positive comments about housing as an investment.³⁵

Asian-White Paired Testing

The study found the Asian testers seeking rentals were told about and shown fewer housing options. Also, the Asian testers were less likely than their White counterparts to be told about rental incentives or that the fees and deposits were negotiable. In the sales market, there was no difference in the ability to receive an appointment. But the Asian testers were provided less housing options and were offered less assistance and guidance financially or otherwise than their white counterparts. Also, the Asian testers were less likely to be informed about housing in significantly White neighborhoods than the White testers. Additionally, the Asian testers were shown lower-priced homes than the White testers.³⁵

“White Privilege” and Steering

Overall the study showed that the White testers were provided better quality housing options and wider services and tools to allow for more housing choice and to lower housing costs than the paired minority testers. Furthermore, those perceived to be White were more likely to obtain a housing appointment than those that were presumed to be of another race or ethnicity. This is especially true for the Black and Asian testers with names or speech that provided an inference that they were Black or Asian, or more to the point, not White.³⁵

But the “extra” services provided to the White testers in the sales market overwhelmingly included the practice of steering. The agents routinely steered Whites to significantly predominantly White neighborhoods and away from mixed or minority neighborhoods.³⁵

The Study’s Conclusion

The study found that while the blatant “door slamming” type of discrimination has gone down from past decades, less easily detectable discrimination overwhelmingly still persists. Minority home seekers are provided less housing choice and subjected to lower quality homes and higher housing costs than White home seekers.³⁵

What the Study Means for the Dayton MSA and Fair Housing Enforcement

Not only was the study structured in a manner to detect discriminatory housing trends nationally, it included Ohio.³⁵ Therefore, the study’s findings are equally applicable to the Dayton MSA. The study shows that fair housing enforcement efforts in the Dayton MSA need to focus on paired testing and education. The study shows that the current pervasive forms of discrimination are less detectable and were only discovered through paired testing. Furthermore, more education is required to combat the steering of White home seekers through agents’ subjective positive and negative commentary about particular neighborhoods and schools that have the force and effect of promoting segregation within the already segregated housing market.

2013 Investigation of Housing Discrimination against Deaf and Hard of Hearing

Overview: National Fair Housing Alliance, (Summer 2013)

In 2013, the National Fair Housing Alliance, in conjunction with eleven fair housing organizations, conducted testing across the country focused on the treatment of individuals who are deaf or hard of hearing on the individual’s ability to obtain rental information. The Miami Valley Fair Housing Center (MVFHC), conducting testing within the Dayton MSA, participated in the study.

The investigation tested regional and national rental firms. Each organization conducted “matched-pair testing” by pairing one hearing tester and one deaf or hard of hearing tester, who were equally qualified financially to rent the apartment, who were seeking the same size apartment, and who had similar move-in dates. Testers placed calls to the same rental firm, close in time, to inquire about the availability of apartments. The testing was

conducted via telephone. The hearing testers spoke directly into the telephone; the deaf tester spoke through an interpreter using IP Relay.

IP Relay allows a deaf person to converse over the telephone with a hearing person through an IP operator, who is acting as an interpreter. The deaf caller, through the use of a computer, instructs the operator to dial a specific phone number. Once the housing provider answers the phone, the operator immediately explains that s/he is calling on behalf of a person who is deaf or hard of hearing. The operator then asks if the hearing person is familiar with IP Relay and an explanation is provided, if necessary. For the purpose of this investigation, deaf testers began by explicitly stating that they were deaf and were interested in a particular-sized unit, to eliminate any doubt as to why the deaf person was calling via the IP Relay system.

Nationally, NFHA found that the systemic investigations revealed that:

- 40 percent of rental firms hung up on deaf or hard of hearing individuals at least once during their interaction and, in certain instances, multiple times, after the deaf caller attempted to call back;
- 86 percent of the rental firms gave more information about available apartments and amenities to the hearing callers than to deaf or hard of hearing callers. This includes, but is not limited to, mentioning multiple complex amenities; providing leasing office hours; highlighting apartment features such as high ceilings and brand-new appliances; and providing information about apartment square footage;
- 76 percent of rental firms told hearing testers about more available units than their deaf or hard of hearing counterparts;
- 70 percent of rental firms quoted higher rental rates to deaf or hard of hearing testers, even though both callers inquired about the same sized units and shared similar move-in dates;
- 64 percent of all follow-up contacts that rental firms made throughout this investigation were to hearing callers. Follow-up was received via email and/or voicemail messaging;
- 56 percent of rental firms emphasized financial qualifications and background checks to deaf or hard of hearing callers, such as requiring good credit, sufficient employment history and no criminal record, whereas not all such requirements were emphasized to hearing callers;
- 36 percent of rental firms failed to notify deaf or hard of hearing callers of current leasing specials, while this information was freely shared with the hearing individuals;
- 33 percent of rental firms quoted higher application fees to deaf or hard of hearing callers while quoting lower fees to the hearing callers.³⁸

In the Dayton MSA, MVFHC filed three housing discrimination complaints based upon the results of the testing. Within the testing, MVFHC found housing providers were unwilling to engage with the individuals using IP Relay, often hanging up on them and being non-responsive to messages regarding requests for more information. All complaints filed by MVFHC are currently pending with administrative agencies.

As part of a partnership grant funded by HUD, the City of Dayton's Human Relations Council contracted with MVFHC to do testing and requested that MVFHC included tests on how deaf and hard of hearing individuals are treated in the city. MVFHC coordinated these tests with NFHA's project.

2014 NFHA studies on Bank-Owned Residential Properties in Foreclosure (REOs)

Overview: *Zip Code Inequality: Discrimination by Banks in the Maintenance of Foreclosed Homes in Neighborhoods of Color*, National Fair Housing Alliance, August 27, 2014, and what it means for the Dayton region

As a consequence of the recent housing crisis and the resulting foreclosures, many neighborhoods in and around the Dayton MSA have experienced a tremendous increase in the number of bank-owned properties (also known as Real Estate Owned or REO properties). Many of these REOs remain vacant for many months or years before being sold or demolished, and if there is not a viable plan for the maintenance of these properties then the resulting disrepair contributes significantly to the creation of blight, decline in property values, crime and other negative outcomes for a neighborhood. Early on many fair housing organizations noticed a pattern of disparity in the maintenance of these properties correlating to the neighborhoods in which they were located.

This problem was recently explored in "*Zip Code Inequality: Discrimination by Banks in the Maintenance of Foreclosed Homes in Neighborhoods of Color*," a report completed by NFHA and 17 of its partner organizations, including MVFHC. This report detailed the results of an investigation of more than 2,400 REO properties located in and around 30 major U.S. cities, including Dayton, done between April 1, 2012 and December 31, 2013. The report provided information about the broadest investigation to date into REO discrimination. Both white neighborhoods and neighborhoods of color comprised of middle and working class communities with high foreclosure rates and high owner-occupancy rates were investigated.

These investigations revealed disturbing and consistent trends in the maintenance and marketing of REO properties by lenders and servicers depending upon the racial

composition of the neighborhoods where the properties were located. The statistical results demonstrated a pattern of substandard maintenance in minority neighborhoods exacerbating the ongoing damage and decline already occurring to these neighborhoods.

Out of a total of 97 REOs that were investigated in Dayton, several egregious disparities were uncovered:

- REOs in communities of color were 2.9 times more likely to have exposed or tampered utilities than REO homes in White communities.
- REOs in communities of color were 2.1 times more likely to have damaged steps or handrails compared to REO homes in White communities.
- REOs in communities of color were 2.3 times more likely to have unsecured, broken or boarded doors compared to REOs in White communities.³⁹

Minority neighborhoods, which are already devastated by high numbers of foreclosures as a result of having been targeted by predatory lenders, are now suffering from a disproportionate amount of negligence and maltreatment caused by the maintenance policies of banks, lenders and servicers. This discriminatory neglect is causing a cascade of adverse effects on these neighborhoods; harming homeowners, individuals who have purchased REO properties and the local governments where these neighborhoods are located.

As this report demonstrates, communities of color in Dayton are being left behind in the nation's housing recovery because of this discriminatory treatment. Although fair housing organizations have filed administrative complaints with HUD to force compliance with the Fair Housing Act, our community must demand that banks, lenders, trustees, and investors who own REOs restructure their maintenance and marketing models to ensure equal treatment of REO properties in all neighborhoods. Bad actors should be required to compensate these communities for the harm that has been caused by these practices.

Local Study of Importance

2010 Zoning Study for Montgomery County

Overview: *Fair Housing Act Compliance Concerns Arising from Zoning Laws of Jurisdictions within Montgomery County, Ohio, and the Impact Upon People with Disabilities*, by Jim McCarthy, Simone Boothe, and Andrew C. Sigmon, Miami Valley Fair Housing Center.

This report examines the zoning laws of municipal jurisdictions within Montgomery County to determine whether the municipal zoning laws of jurisdictions within the county pose obstacles to the establishment of Supported Living Homes. (See the Executive Summary in the Appendix 1.) MVFHC, Miami Valley In-Ovations (MVIO), and the Montgomery County Board of Developmental Disability Services collaborated to complete the study because of difficulties that MVIO encountered as it tried to establish Supported Living arrangements for people with disabilities throughout Montgomery County. The report found four primary obstacles to establishing Supported Living arrangements. The report stated:

Review of the municipal zoning laws within Montgomery County presents four primary obstacles to establishing Supported Living Homes. The first obstacle is a narrowly written definition of “Family.” Second, a jurisdiction’s chosen terminology for defining group living arrangements for individuals with disabilities may be inaccurate or otherwise lacking. The third obstacle is a jurisdiction’s residential district regulations. Fourth is adoption of provisions specifically governing the group living arrangements of individuals with disabilities. A matrix summarizing the issues present in municipal jurisdictions within Montgomery County that pose obstacles to the establishment of Supported Living Homes is included as an attachment to the report.

Since the report was published, 58% of the jurisdictions have come into compliance, and the fair housing center has some advisory work in process with a few of the remaining jurisdictions. Kettering is very much in compliance and Dayton is considered to be in compliance, but Dayton’s definition of family should be broadened or even eliminated, as Kettering’s is.⁴⁰ It is disheartening that five years after the study’s publication there is still not 100% compliance. The entitlement jurisdictions press all smaller recalcitrant municipalities to come into compliance. Broadening zoning law definitions and dismantling preconceived notions written into the zoning code is still needed.

C. Settlements in Recent State and Federal Fair Housing Cases

Select U.S. Department of Justice Settlements

*United States v. Zaremba Management Co., CASE NO. 1:13-cv-02152-SO (ND Ohio).*⁴¹

Overview: Familial Status – apartment rental terms and conditions, Lawsuit was filed in September 2013 Consent Order 9 -5 14, Cleveland, Ohio

The Department of Justice settled a lawsuit filed against a manager and owner of Linden House, a Cleveland apartment complex, for refusing to rent to families with children. The lawsuit also alleged that Linden House had a policy of evicting tenants or asking tenants to relocate if they had children while living at Linden House Apartments. Linden House did not meet requirements for exemption to limit housing to 55 and older. The lawsuit was settled after Linden House agreed to pay \$90,000 to victims and \$10,000 to the United States in civil penalties.⁴¹

*United States v. Ruth, et al. Case No. 5:11-cv-1322-JRA (N.D. Ohio, August 25, 2014)*⁴²

Overview: Race and Familial Status - apartment rental terms and conditions

In this case the defendants, landlords at three Massillon, Ohio, apartment complexes, agreed to pay \$850,000 to settle lawsuits alleging that they discriminated against African Americans and families with children. Under terms of the settlement, defendants agreed to pay \$650,000 in damages and attorney's fees to plaintiffs. In related civil suits they agreed to pay \$175,000 in damages to 11 additional former residents and employees identified by the United States who had been harmed by the defendants' discrimination and they were ordered to pay a \$25,000 in a civil penalty to the United States.⁴³

*Oregon on behalf of Robin Buckley v. Prometheus Real Estate Group*⁴⁴

Overview: Disability: rental terms and conditions and failure to provide Reasonable accommodation, Conciliation in Oregon State Court January 2015

This a case from the State of Oregon that can have a profound impact on entities across the nation including our local jurisdictions and housing providers that are obligated by guidance from HUD and the Justice Department to give "prompt responses" to requests for reasonable accommodations from persons with disabilities. The HUD's Joint Statement on Reasonable Accommodations states:

A provider has an obligation to provide prompt responses to accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.⁴⁵

In this case, the apartment complex waited too long to provide an accommodation and the tenant died from injuries caused by a fall.

Robin Buckley and her husband Jim Calogridis requested a reasonable accommodation to have a disabled parking space closer to their apartment. Jim Calogridis did not walk very

well due to complications with diabetes that affected his heart, kidneys and lungs. George Rede of *The Oregonian* reported the following:

After filling out a form provided by the housing provider for the special request, they waited seven months for approval, all the while having to send to the landlord, in addition to the form many emails, faxes, doctor's verifications and a request for a notarized signature. On Jan. 29, 2012, still waiting for the requested space, Calogridis fell in the parking lot on his way from his car to his apartment. He was hospitalized for a week and sent home on Feb. 6 with a walker. On Feb. 7, Calogridis celebrated his 61st birthday. On Feb. 8, the disabled parking signage was installed. On Feb. 9, Calogridis collapsed in his bathroom and died." Robin Buckley won a \$475,000 housing discrimination settlement against Prometheus Real Estate Group, the California-based operator of the One Jefferson housing complex in Lake Oswego.⁴⁵

County and City Cases

Over the last decade there have been many important cases involving county and city governments in violation of either local, state, or the federal fair housing laws.

United States v. Westchester County, New York

This ground-breaking litigation "is the first to employ the federal False Claims Act ("FCA") to enforce a County's obligation to "affirmatively further fair housing." The landmark settlement combines FCA remedies with those traditionally used in housing desegregation litigation. With close oversight by a federal monitor, Westchester will be required to appropriate and spend nearly \$52 million in County funds to develop at least 750 affordable housing units in Westchester neighborhoods with very small African-American and Latino populations."⁴⁶

*Greater New Orleans Fair Housing Action Center v. St. Bernard Parish*⁴⁷

Overview: Race: exclusionary land-use laws blocking outsiders and blocking affordable housing development. Settlement Agreement December 19, 2014 St. Bernard Parish, LA

In this case⁴⁸, the Greater New Orleans Fair Housing Action Center (GNOFHAC) settled all claims against St. Bernard Parish stemming from a 2006 lawsuit that challenged Parish ordinances designed to restrict rentals. These ordinances included the "blood relative ordinance," which stipulated that owners of single-family homes could only rent to their

blood relatives. Specifically, the agreement settled all matters on appeal and requires the Parish to pay \$1,843,728 in fees to GNOFHAC, any other plaintiffs, and their attorneys.

Pacific Shores Properties, LLC v. City of Newport Beach⁴⁹

Overview: Disability – Group Homes, Land use and Disparate Impact

In this case, the Ninth District Court of Appeals reversed the granting of summary judgment to the City of Newport on claims that a City ordinance violated the Fair Housing Act, the Americans with Disabilities Act, the California Fair Employment and Housing Act, and the Equal Protection Clause by having the practical effect of prohibiting new group homes for recovering alcoholics and drug users from opening in most residential zones.⁴⁹

The Ninth District found that the district court erred in disregarding the evidence that the City's sole objective in enacting and enforcing its ordinance was to discriminate against persons deemed to be disabled under state and federal fair housing laws. The Ninth District held that the plaintiffs were not required to identify similarly situated individuals who were treated better than themselves in order to survive summary judgment. The Ninth District reasoned that where there is direct or circumstantial evidence that the defendant acted with a discriminatory purpose and has caused harm to members of a protected class, such evidence is sufficient to permit the protected individuals to proceed to trial under a disparate treatment theory. This case has been remanded back to the District Court for trial.⁴⁹

HUD Lending Case

One recent HUD initiative was to investigate lenders' policies around making loans to pregnant women to ensure that these women or families were not treated differently than those not expecting children. This initiative produced multiple settlements compensating victims and producing changes in underwriting policies to make sure that they are in compliance with fair housing laws and to prevent future discrimination.⁵⁰

HUD v. Wells Fargo

Overview: Sex/Familial Status violated under mortgage terms and conditions based on an applicant's pregnancy. Voluntary compliance Agreement, August 2014.

In its press release, HUD summarized this case as follows:

Each HUD complaint alleged that Wells Fargo's underwriting policy for its FHA-insured home mortgage loans and the implementation of its policy violated the Fair Housing Act by discriminating against women on maternity leave. The complaints included allegations that Wells Fargo discriminated in lending services in connection with home sales, by making loans unavailable based on sex and familial status; or by forcing women applicants to sacrifice their maternity leave and return to work prior to closing on their loan; and by making discriminatory statements to and against women who were pregnant or who had recently given birth. Women applicants who sacrificed their maternity leave in order to ensure that their loan closed reported emotional distress at the loss of time with their infants and complications that arose in finding emergency child care and establishing the ability to nurse.

Since 2010, HUD has focused on ending maternity leave-related lending discrimination. One of HUD's first cases resulted in a Department of Justice settlement with Mortgage Guarantee Insurance Corporation (MGIC), the nation's largest mortgage insurance provider, which established a \$511,250 fund to compensate 70 people, and pay a \$38,750 civil penalty. Other settlements include a November 2013 settlement with Bank of America for \$45,000 and a 2011 settlement with Cornerstone bank for \$750,000.⁵⁰

D. Fair Housing Responsibilities within this Dynamic Era

The fair housing laws, studies, HUD rules, and cases outlined in this section highlight the current housing market's duality between momentum toward equality and the stagnation caused by continued biases. The momentum to protect sexual orientation is at an all-time high. The U.S. Constitution and the Ohio Constitution arguably make it illegal for federal and state actors to discriminate based on sexual orientation. Well before the recent U.S. Supreme Court case protecting same-sex couples' right to marry, the City of Dayton made it illegal for private actors to discriminate based on sexual orientation or gender identity. HUD also made sure that its programs did not discriminate based on sexual orientation or gender identity. The City of Kettering should follow suit.

The promotion of integration and creating policies and procedures to allow for increased integration is seeing renewed emphasis. The recent U.S. Supreme Court case upholding disparate impact claims under the federal fair housing act, along with HUD's recent Affirmatively Furthering Fair Housing rule place concrete fair housing obligations upon all recipients of federal funds. Montgomery County, Dayton, and Kettering are on notice; and to avoid liability each should proactively take steps to ensure that its policies not only

do not inhibit integration, but take affirmative steps to address the current housing landscape that past discrimination created and current policies perpetuate.

Lastly, the studies and cases show that the housing landscape is fraught with conscious and unconscious biases that remove or impede housing choice. The harm created by these biases needs to be assertively dealt with through enforcement, education, progressive public policies and partnerships. For example, in combating biases, Montgomery County, Dayton, and Kettering should conduct an unflinching retrospective of laws, policies, and procedures that either in form or practice facilitate the marginalization of protected classes, and then the three jurisdictions should work proactively to address the issues they find.

Montgomery County, Dayton, and Kettering should strive to continue the march forward toward the realization of the promises embodied in the Fair Housing Act rather than to remain stagnant. Now is an exciting time in fair housing. Montgomery County, Dayton, and Kettering can continue Ohio's progressive fair housing stance by taking advantage of the federal momentum to ensure fair housing choice.

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