

**REPORT FROM THE
NEW YORK STATE SENATE STANDING COMMITTEES ON**

INVESTIGATIONS AND GOVERNMENT OPERATIONS

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CHAIR

HOUSING, CONSTRUCTION AND COMMUNITY DEVELOPMENT

SENATOR BRIAN KAVANAGH

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**FINAL INVESTIGATIVE REPORT
FAIR HOUSING AND DISCRIMINATION ON LONG ISLAND**

JANUARY 27, 2021

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I. EXECUTIVE SUMMARY

Housing discrimination on the basis of race and ethnicity has plagued our country for well over a century, persisting today despite federal, state, and local fair housing laws and protections. Discriminatory practices such as redlining and exclusionary zoning, as well as unjust government policies in lending and real estate, have led to systemic racial segregation in communities across the nation. While the passage of the federal Fair Housing Act in 1968 brought about significant strides towards housing equality, the promises of the civil rights era remain unfulfilled. Today, over fifty years later, the goal of fair housing for all remains elusive, reflected in the sharp segregation of communities across the United States, including those of Long Island.

On November 17, 2019, Newsday, a Long Island-based newspaper serving the New York City metropolitan area, published the results of a three-year investigation into housing discrimination entitled “*Long Island Divided*,” presenting evidence of unequal and disparate treatment of minority prospective homebuyers and minority communities by real estate agents on Long Island.¹ The investigation’s findings—the product of paired testing over 90 real estate agents, recording over 200 hours of interactions, and analyzing 5,700 home listings—revealed widespread discriminatory treatment of racial minority testers: 49% of the time against Blacks testers, 39% against Hispanic testers,² and 19% against Asian testers. The in-depth probe asserted that many of Long Island’s dominant residential brokerage firms participate in behaviors that help to solidify racial and ethnic segregation on Long Island, including imposing unequal conditions and steering potential homebuyers toward certain communities depending on their perceived race or ethnicity.

¹ Ann Choi, et al., *Long Island Divided*, NEWSDAY, Nov. 17, 2019, available at: <https://projects.newsday.com/long-island/real-estate-agents-investigation/> [hereinafter “*Long Island Divided*”].

² The United States Census Bureau defines Hispanics and Latinos as people of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin regardless of race.

In response to Newsday's report, the New York State Senate Standing Committees on Investigation and Government Operations; Housing, Construction and Community Development; and Consumer Protection initiated a joint investigation into the alleged discrimination and evidence of unequal treatment. The investigation entailed two public hearings, one of which required the use of subpoenas to compel the testimony of real estate brokers and agents accused of discriminatory behavior by Newsday, as well as executives of their brokerage firms. The Committees also issued *subpoenas duces tecum* to 12 individuals, compelling the disclosure of corporate policies, training materials and staff manuals concerning compliance with the federal Fair Housing Act and any similar state or local laws, as well as documents and communications pertaining to individuals involved in Newsday's fair housing investigation.

Even though explicitly discriminatory mechanisms like redlining, restrictive covenants and exclusionary zoning have been outlawed since the passage of the Fair Housing Act, their legacy remains. The nature of contemporary discrimination in housing has evolved. Prior to the passage of fair housing laws, discrimination was overt; minority home seekers were frequently met with slammed doors and racial epithets.³ Today, the image of a slammed door has been replaced with a revolving door, where people are politely escorted in, then out, and ultimately away from desirable housing.⁴ Contemporary discrimination occurs in ways that can be imperceptible to individual homebuyers, often leaving even those directly affected by it unaware that discrimination has occurred.

³ Public Hearing on Long Island Regarding Real Estate Agents' Discrimination of Home Buyers: Joint Hearing Before the S. Comm. on Investigations and Gov. Operations, Housing, Construction, and Community Development, and Consumer Protections, 2019-2020 Leg. Sess. 26 (Dec. 12, 2019) (statement of Fred Freiberg, Co-Founder, Fair Housing Justice Center) (hereinafter "*Joint Hearing: Real Estate Agents' Discrimination of Homebuyers on Long Island* (Dec. 12, 2019)").

⁴*Id.*

Elected officials, regulators, and law enforcement agencies all have a responsibility to ensure fair housing laws are enforced. We must affirm that all New Yorkers—regardless of their race or ethnicity—are afforded equal opportunity to obtain the housing of their choice.

On April 5, 1968, the day after Rev. Dr. Martin Luther King, Jr. was assassinated, President Lyndon B. Johnson wrote to the Speaker of the House of Representatives to urge the passage of the Federal Fair Housing Act, which had been stalled in Congress, extolling the ability to secure a home regardless of skin color as a fundamental American right. Speaking of Dr. King’s death, President Johnson said that “the brutal wound on our conscience forces upon us all this question: What more can I do to achieve ... equality among all Americans?” Six days later, Congress passed the Fair Housing Act.

This report, the culmination of the New York State Senate’s investigation into alleged housing discrimination, reflects the tragic fact that we still have much work to do to live up to the legacy of Dr. King, and to achieve equality among all Americans and the goals of the Fair Housing Act itself. The legislative and policy recommendations the Committees find necessary to ensure that fair housing is a right shared by all New Yorkers regardless of their race or ethnicity are a part of our answer to the question posed by President Johnson half a century ago.⁵

⁵ Reference to the “Committees” within this report refers to the actions and opinions of a majority of Investigation and Government Operations Committee, Housing, Construction and Community Development Committee, and Consumer Protection Committee members.

II. RESIDENTIAL RACE DISCRIMINATION BEFORE THE FAIR HOUSING ACT

Formalized discrimination in residential real estate sales has a long history in the United States, becoming more pronounced as Black Americans migrated to northern states during the early 1900s.⁶ For decades, all levels of government explicitly sanctioned housing discrimination and private parties supported and perpetuated discrimination. Racial segregation soon became the *de jure* policy of local governments and standard operating procedures for landowners.⁷ The emergence of segregated communities did not happen by chance, but was the result of deliberate government policies and the intentional actions of private individuals.⁸ Discriminatory land-use policies, inequitable community development practices, racial bias in mortgage lending and rental housing, and a multitude of other racially motivated policies fostered pervasive negative impacts on people of color across America.⁹

The National Association of Real Estate Boards (NAREB)—the precursor to today’s National Association of Realtors—encouraged racial segregation and discrimination. In 1924, the NAREB adopted and enforced a new Code of Ethics that made it a duty for a member to discriminate based on race and national origin.¹⁰ Article 34 of the Code, which remained in effect until 1950, read:

A Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality or individuals whose presence will clearly be detrimental to property values in that neighborhood.¹¹

⁶ Marc Seitles, *The Perpetuation of Residential Racial Segregation in America: Historical Discrimination, Modern Forms of Exclusion, and Inclusionary Remedies*, 14 FLA. S. U. J. LAND USE & ENVTL. L. 89 (Fall 1998).

⁷ *Id.*

⁸ *Id.*

⁹ Liz Ryan Murray, *Understanding AFFH: What it is and How Does it Work?*, ALLIANCE FOR HOUSING JUSTICE (Sept. 27, 2019), available at: <https://www.allianceforhousingjustice.org/post/understanding-affh>.

¹⁰ *Fair Housing Toolkit*, Fair Housing Justice Center (June 2016), available at: <https://www.bbcfairhousing.org/wp-content/uploads/2018/06/FAIR-HOUSING-TOOLKIT-ALL-1.1.pdf>.

¹¹ *Id.*

During this time, the NAREB coordinated and supported efforts by local real estate boards to develop and implement plans to restrict the movement of people of color into white communities.¹² In 1927, the NAREB drafted and disseminated a “model” racially restrictive covenant to local boards. One provision of the model covenant stated:

The restriction that no part of said premises shall in any manner be used or occupied directly or indirectly by any negro or negroes, provided that this restriction shall not prevent the occupation, during the period of their employment, of janitors’ or chauffeurs’ quarters in the basement or in a barn or garage in the rear, or of servants’ quarters by negro janitors, chauffeurs or house servants, respectively, actually employed as such for service in and about the premises by the rightful owner or occupant of said premises.¹³

By 1928, half of all homes owned and occupied by white people in the United States had deeds with racially restrictive covenants.¹⁴ The proliferation of these covenants, legally enforceable by state courts, exacerbated the racial segregation of communities across America.¹⁵

Until the civil rights era, the policies of federal and local governments expressly reinforced residential racial segregation.¹⁶ The Home Owners Loan Act of 1933 established the Home Owners Loan Corporation (HOLC), a public agency responsible for administering the Federal Home Loan Bank Board (FHLBB), which offered low cost refinancing to assist homeowners struggling to make their mortgage payments.¹⁷ The FHLBB directed the HOLC to use a residential rating system for neighborhoods and “Residential Security Maps,” which included four categories. The areas designated least desirable, where financing was not available, were predominantly Black neighborhoods and were coded “red.”

¹² *Fair Housing Toolkit*, Fair Housing Justice Center, *supra* note 10.

¹³ *Id.*

¹⁴ David M.P. Freund, *Colored Property: State Policy and White Racial Politics in Suburban America* 94 (2007).

¹⁵ *Fair Housing Toolkit*, Fair Housing Justice Center, *supra* note 10.

¹⁶ Abdallah Fayyad, *The Unfulfilled Promise of Fair Housing*, THE ATLANTIC (Mar. 31, 2018).

¹⁷ *Fair Housing Toolkit*, Fair Housing Justice Center, *supra* note 10.

In 1934, Congress created the Federal Housing Administration, which insured private mortgages, lowered interest rates and reduced the size of down payment required to finance the purchase of a house.¹⁸ In determining which private mortgages to insure, the Federal Housing Administration utilized a discriminatory rating system to evaluate the risks associated with loans made to borrowers in specific urban neighborhoods.¹⁹ The Administration rated neighborhoods according to their perceived stability, marking neighborhoods “green” if they were rated A and were considered “in demand” or “red” if they were rated D and were generally considered ineligible for mortgage backing.²⁰

Through the practice commonly referred to as “redlining,” the Administration overwhelmingly designated neighborhoods populated by Black people as red or undesirable. Over time, redlining expanded beyond the federal backing of mortgages, spreading throughout the entire mortgage industry, excluding Black people from most legitimate means of obtaining a mortgage.²¹

Additionally, the Federal Housing Administration created a model racially restrictive covenant, which was required to be used as a condition for obtaining financing.²² An excerpt of the 1938 Federal Housing Administration Underwriting Manual:

Areas surrounding a location are investigated to determine whether incompatible racial and social groups are present, for the purpose of making a prediction regarding the probability of the location being invaded by such groups. If a neighborhood is to retain stability, it is necessary that the properties shall continue to be occupied by the same social and racial classes. A change in social or racial occupancy generally contributes to instability and a decline in values.²³

¹⁸ National Housing Act, Pub. L. No. 73-479, tit. I, 48 Stat. 1246 (1934).

¹⁹ Marc Seitles, *supra* note 6.

²⁰ Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014).

²¹ *Id.*

²² Keith F. Gotham, Urban Space, *Restrictive Covenants and the Origins of Racial Residential Segregation in a US City, 1900-50*, 24 INT’L J. URB. & REG’L RES. 616 (2000).

²³ John Kimble, *Insuring Inequality: The Role of the Federal Housing Administration in the Urban Ghettoization of African Americans*, 32 LAW & SOC. INQUIRY 399, 399-434 (2007).

Between 1930 and 1950, three out of five homes purchased in the United States were financed by the Federal Housing Administration, yet less than two percent of those loans were made to non-white home buyers.²⁴ From its establishment, the Federal Housing Administration utilized public policy to discriminate on the basis of race, thus becoming the first federal agency to openly counsel and support residential segregation.²⁵

Exclusionary municipal zoning also contributed to the perpetuation of residential segregation and housing discrimination. Restrictive zoning ordinances, such as minimum lot size, square footage requirements and single family zoning laws, were utilized to keep poor and minority residents out of the suburbs.

Exclusionary zoning to promote racial residential segregation is epitomized in Levittown, a community in Long Island established in 1947, designed exclusively for white veterans returning from World War II. Homes in Levittown came with racially restrictive covenants prohibiting white homeowners from reselling their homes to Black buyers. Despite fighting the same enemy and against the same hateful ideals, Black veterans could not purchase a home in the same community as their fellow veterans who were white.

Following World War II, communities like Levittown sprang up across the country, their development fostered by federal policies granting government-backed loans to white homebuyers.²⁶ Federal guidelines found their way into real estate practices, spreading residential segregation across the United States. From 1934 to 1962, less than two percent of the \$120 billion in housing financing underwritten by the government went to minority homebuyers extending the shameful track record that had been established by the Federal Housing Administration.²⁷

²⁴ Marc Seitles, *supra* note 6.

²⁵ *Id.*

²⁶ Julia C. Mead, *Memories of Segregation in Levittown*, N.Y. TIMES (May 11, 2003).

²⁷ *Id.*

The Servicemen's Readjustment Act of 1944, commonly known as the GI Bill, was designed to help World War II veterans upon returning home by providing benefits such as college tuition, low-cost home loans and unemployment insurance. While this expansive federal initiative helped millions of white Americans prosper and accumulate wealth, it failed to deliver equal economic opportunities for veterans of color. While the language of the GI Bill did not explicitly exclude Black veterans from its benefits, it was structured in a way that ultimately shut doors for the 1.2 million Black Americans who served in World War II.²⁸ The GI Bill offered low-interest mortgages and other loans, co-signed by the Veterans Administration (VA). However, the VA could not guarantee the loans; instead, white-run financial institutions had the power to guarantee the benefits, having free reign to refuse mortgages and loans to Black veterans.²⁹ This disparity in loans was nationwide; in New York and the northern New Jersey suburbs, fewer than 100 of the 67,000 mortgages insured under the GI bill supported home purchases by minority borrowers.³⁰

Federal housing policies in the 1930s and 1940s helped to solidify residential segregation in metropolitan areas. By 1948, 85% of all new residential developments in the United States were racially restricted.³¹ While the Supreme Court held in *Shelley v. Kramer* in 1948 that racially restrictive covenants could not be enforced in courts of law, the decision did not deter real estate agents and homeowners from continuing to discriminate by placing such restrictive covenants on property deeds through the 1950s and 1960s.³²

By 1950, discriminatory government policies and private market behavior led metropolitan regions to become intensely racially segregated. White people moved out of urban areas and into

²⁸ Erin Blakemore, *How the GI Bill's Promise was Denied to a Million Black WWII Veterans*, HISTORY (June 21, 2019).

²⁹ Servicemen's Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 284 (1944).

³⁰ *Id.*

³¹ *Fair Housing Toolkit*, Fair Housing Justice Center, *supra* note 10.

³² *Id.*

suburban communities, while most Black Americans remained in overcrowded and impoverished urban centers.³³

Prior to the civil rights movement and the passage of the federal Fair Housing Act in 1968, the real estate industry used overt and blatantly discriminatory mechanisms against people of color to maintain residential segregation, their efforts bolstered by prejudicial government policies and guidelines. Today, bad actors often use subtler forms of discrimination; they direct homebuyers of different apparent backgrounds toward different communities, impose more stringent financial requirements on people of color, and provide unequal services to clients based upon their race or ethnicity.

III. FEDERAL AND STATE FAIR HOUSING LAWS

III.A. The Federal Fair Housing Act

On April 11, 1968, President Lyndon B. Johnson signed the Fair Housing Act (FHA), also known as Title VIII of the Civil Rights Act of 1968. The FHA prohibits discrimination concerning the sale, rental and financing of housing on the basis of race, color, national origin, sex, familial status or disability.³⁴ The FHA also requires that the government “affirmatively further fair housing” by proactively integrating communities. The purpose of the FHA was to proscribe acts of housing discrimination and foster integration in a climate where racially segregated

³³ *Fair Housing Toolkit*, Fair Housing Justice Center, *supra* note 10.

³⁴ Fair Housing Act, 42 U.S.C. §§ 3601-3631.

communities and racial violence were common.³⁵ Illegal acts of discrimination prohibited by the FHA include refusal to sell or rent or to negotiate with a party based on protected factors, as well as barring discriminatory differences in terms or conditions offered or the provision of different housing services, and harassment—along with other forms of refusal to make housing available.

The U.S. Department of Housing and Urban Development (HUD) administers and enforces the FHA through its Office of Fair Housing and Equal Opportunity (FHEO), which is responsible for investigating complaints. Individuals who believe they have been discriminated against in obtaining housing may file a complaint with HUD or may file a lawsuit in federal or state court. HUD enforces the FHA in two ways: (1) fair housing testing and (2) investigation of claims of discrimination.

The FHA permits the Department of Justice to file a lawsuit where there is reason to believe an individual has engaged in a “pattern or practice” of discrimination or has engaged in discrimination against a group of persons that raises an issue of “general public importance.” The FHA also requires HUD to attempt a settlement agreement between the parties prior to appearing in front of a judge.

Importantly, as noted above, the FHA also imposes a legal requirement to Affirmatively Further Fair Housing (AFFH) on federal agencies and grantees, including local governments that receive HUD grants. In 2015, the Obama Administration promulgated regulations with the goal of implementing the AFFH provisions, which largely had been dormant since 1968, by providing program participants with an effective planning approach to take meaningful actions to overcome

³⁵ *History of Fair Housing*, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, available at: https://www.hud.gov/program_offices/fair_housing_equal_opp/aboutfheo/history_.

historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.³⁶

However, the Trump Administration effectively suspended the AFFH regulations by delaying program participants' submission of the Assessments of Fair Housing (AFHs) until after October 31, 2020.³⁷ The submission of AFHs is tied to the five-year cycle under which participants must submit to HUD their spending plans, and policies and procedures that detail how participants will take action to affirmatively further fair housing. Unless the new administration of President Joseph Biden revisits the regulations, this delay will mean that most program participants will not be required to submit AFHs for HUD to review until 2024 or 2025. Moreover, the Trump administration rule broadened the definition of affirmatively furthering fair housing, easing the standards participants are required to meet.

III.B. New York State Humans Right Law

New York State Human Rights Law declares that every citizen has the right to an “equal opportunity to enjoy a full and productive life.”³⁸ New York was the first state in the nation to enact a Human Rights Law, which prohibits discrimination in several areas of everyday life, including discrimination in the purchase or rental of housing on the basis of age, race, national origin, sexual orientation, disability, and other specified classes.³⁹

Under the Human Rights Law, it is unlawful to participate in the following acts relating to real estate because of a protected characteristic:

³⁶ Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 1, 2015).

³⁷ Preserving Community and Neighborhood Choice, 85 Fed. Reg. 47,899 (Sept. 9, 2020).

³⁸ N.Y. EXEC. § 290.

³⁹ N.Y. EXEC. § 296.

- Refuse to sell, rent, or lease housing;
- Discriminate in the terms, conditions, or privileges in the sale, rental or lease of housing;
- Discriminate in providing facilities or services in connection with the sale, rental or lease of housing;
- Print or circulate a statement, advertisement or publication expressing a limitation, specification, or discrimination in the sale, rental or lease of housing;
- Use an application for housing that expresses any limitation, specification, or discrimination in the sale, rental, or lease of housing;
- Make any record or inquiry in connection with the prospective purchase, rental, or lease of housing that expresses any limitation, specification, or discrimination;
- Refuse to negotiate for the sale, rental, or lease of housing; or
- Represent that housing is not available for sale, rental, or lease when it is available.⁴⁰

The New York State Division of Human Rights (NYSDHR), within the Executive Department, is responsible for enforcing the Human Rights Law and preventing discrimination in housing. NYSDHR receives and investigates claims of housing discrimination, and where appropriate, holds hearings on alleged violations.⁴¹ If, following a hearing, NYSDHR determines that the accused has engaged in any unlawful discriminatory practice, remedies can include requiring the party to cease and desist from the discriminatory behavior, compelling changes in policies or practices, making the housing available to the victim, assessing money damages or imposing civil fines and penalties.⁴²

Some local governments also afford residents protection against housing discrimination, including New York City Human Rights Law, which prohibits such discrimination based on gender, citizenship status, partnership status, gender identity, lawful occupation, and lawful source of income. Buffalo, Hamburg, West Seneca, and Nassau County also have local laws that prohibit

⁴⁰ N.Y. EXEC. § 296.

⁴¹ N.Y. EXEC. § 295, 297.

⁴² N.Y. EXEC. § 297.

source of income discrimination in housing; this ban became statewide for most housing sources in 2019 as part of the Housing Stability and Tenant Protection Act.

III.C. New York State Real Estate Broker and Agent Statutory Requirements

Article 12-A of the Real Property Law sets forth the training requirements for licensed real estate brokers and agents in New York State. Pursuant to Article 12-A, in order to qualify for a real estate salesperson (agent) license, an applicant must complete 75 hours of qualifying education courses approved by the Department of State.⁴³ To qualify for licensure as a real estate broker, an applicant must meet certain requirements based on experience, education and examination, including at least two years of experience as a licensed real estate agent or at least three years of experience in the general real estate field, or a combination of both. They must also meet certain qualifications as to the type of experience they have had, which the Department of State measures based on a point system, complete both the qualifying agent course of 75 hours and an additional 45 hours of real estate broker courses, and pass a qualifying examination administered by the Department of State.⁴⁴

To renew a real estate broker or agent license, the licensee must complete 22.5 hours of continuing education, at least three of which must pertain to fair housing and/or discrimination in the sale or rental of real property or an interest in real property.⁴⁵ Licensees must renew their licenses—and meet these requirements—every two years.⁴⁶

⁴³ N.Y. REAL PROP. § 441.

⁴⁴ N.Y. REAL PROP. § 441. Applicants for a real estate broker license can also be based on reciprocity or if the applicant is an attorney currently admitted to the New York State bar.

⁴⁵ N.Y. REAL PROP. § 441.

⁴⁶ *Id.*

IV. RESIDENTIAL RACIAL SEGREGATION ON LONG ISLAND

Since the passage of the FHA and New York State's Human Rights Law, some progress has been achieved in promoting integration and combating discrimination; however, the goal of ending residential segregation in American communities remains unfulfilled. Despite a decline since the FHA's passage, residential segregation still persists in metropolitan areas, with Black Americans experiencing the highest levels of segregation among all racial and ethnic groups.⁴⁷

Segregation between white and Black Americans remains very high, despite declining from its peak in the 1960 and 1970s.⁴⁸ In 1940, the average Black resident in metropolitan regions for which data is available lived in a tract that was 40% white; in 2010, according to a study using census data, the average Black resident lived in a neighborhood that is only 35% white.⁴⁹

Today, while Long Island has become more racially diverse, it maintains the unfavorable distinction of being one of the 10 most racially segregated metropolitan areas in the nation.⁵⁰ Between 2000 and 2010, the level of segregation between Black and white residents has only marginally decreased, while the levels of segregation between white and Hispanic residents as well as white and Asian residents has increased.⁵¹

Long Island's history of housing discrimination, combined with inadequate enforcement of federal and state fair housing laws, has led to not only severe residential segregation but also segregated schools, which has resulted in disparities in the quality of education.⁵² While Long

⁴⁷ Michela Zonta, *Racial Disparities in Home Appreciation*, CENTER FOR AMERICAN PROGRESS (July 15, 2019).

⁴⁸ John R. Logan and Brian J. Stults, *The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census*, Census Brief prepared for Project US2010, BROWN UNIVERSITY (Mar. 24, 2011).

⁴⁹ *Id.*

⁵⁰ Elaine Gross, *Underlying America's Unrest is Structural Racism*, THE HILL (June 4, 2020). *See also* *Heading in the Wrong Direction: Growing School Segregation on Long Island*, Erase Racism (Jan. 2015).

⁵¹ *Heading in the Wrong Direction: Growing School Segregation on Long Island*, Erase Racism (Jan. 2015).

⁵² *Id.*

Island collectively has become more diverse, this diversity does not generally show up in the student bodies from school to school; between 2004 and 2016, the number of Long Island school districts that constitute intensely segregated districts—less than 10% white—has doubled.⁵³ The number of students in intensely segregated, majority-minority school districts has nearly tripled, increasing from 22,084 students in 2004 to 65,215 students in 2016.⁵⁴ Approximately three out of every four Black students and two out of every three Hispanic students attend a majority-minority segregated school district.⁵⁵ Residential segregation has perpetuated segregation in Long Island’s public schools, with the divide deepening.

The fragmentation among Long Island’s 124 school districts also perpetuates disparities in resources.⁵⁶ New York State assesses educational economic requirements at the district level in terms of the discrepancy between “need” and “resource capacity.”⁵⁷ School districts are classified based on resource level, as “low need,” “average need,” or “high need.” Low need districts are rich in resources and can provide students with state-of-the-art-learning facilities, technology and faculty, whereas high need districts are resource-starved and students have access to fewer opportunities.⁵⁸ According to NYS Department of Education School Report Cards, the vast majority of Long Island students attend “low” and “average” need school districts.⁵⁹ While only eight percent of all Long Island students attend high need districts, 91% of the students in those high need districts are Black or Hispanic.⁶⁰

⁵³ 2017 Infographic: School Segregation on Long Island, ERASE RACISM, available at: <http://eraseracismny.org/component/content/article/1-resource/498-2017-infographic-school-segregation-on-long-island>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Heading in the Wrong Direction: Growing School Segregation on Long Island*, Erase Racism (Jan. 2015).

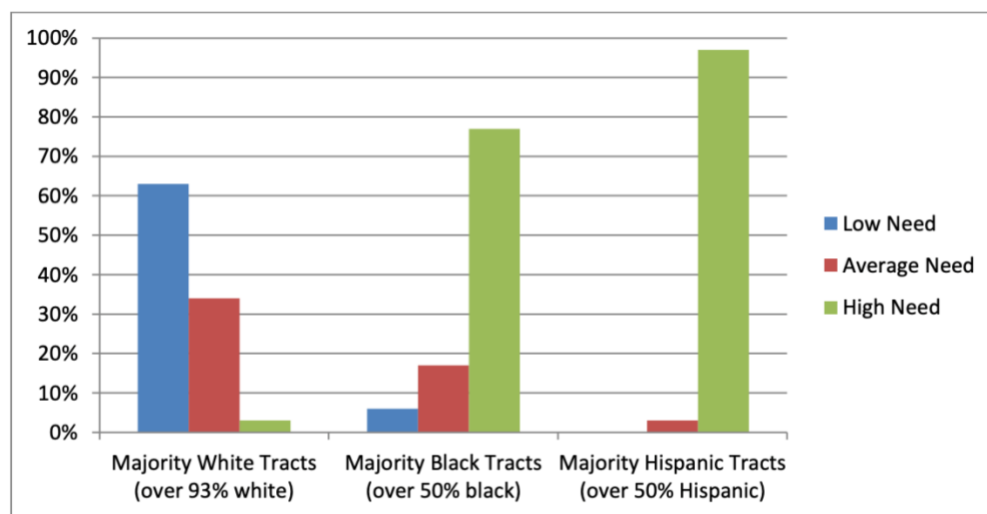
⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

When looking at the disparities between predominantly white census tracts (those that are over 93% white) compared with majority Black tracts (those that are over 50% Black), and majority Hispanic tracts (over 50% Hispanic) on Long Island, educational inequities are visible.⁶¹ In predominantly white neighborhoods, 63% of the population are zoned for low need, resource wealthy school districts, and only three percent attend high need, low resource schools.⁶² In contrast, most majority Black or majority Hispanic census tracts are zoned for high need school districts—six percent of students in Black tracts to low need schools, compared with 77% to high need schools. There are no majority Hispanic tracts are zoned for a low needs schools; 97% attend high need schools.⁶³ The graph below, created by Erase Racism using 2010 census data and 2009-2010 NYS Department of Education School Report Cards, illustrates the racially segregated neighborhoods and disparities in access to high need and low need school districts.⁶⁴



(Sources: 2010 Census data and 2009-2010 NY State School Report Cards)

⁶¹ *Heading in the Wrong Direction: Growing School Segregation on Long Island*, Erase Racism (Jan. 2015).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

The educational disparities—heavily influenced by the residential racial segregation in Long Island—are also reflected in the performance measures.⁶⁵ Sixty-five percent of all Black students, 61% of all Hispanic students, 13% of white students and 10% of Asian students on Long Island are districted to the lowest performing schools, defined as those that are in the bottom 25% based on graduation rates for districts on Long Island.⁶⁶ Conversely, only three percent of Black students and five percent of Hispanic students have access to the highest performing schools, compared to 28% of white students and 30% of Asian students.⁶⁷

While Long Island has large income differences between racial groups, the high levels of residential segregation cannot be explained solely by income disparity; rather, race is often a more important factor in segregation than income.⁶⁸ According to neighborhood-level census data analyzed by sociologist John Logan’s US2010 Project—Black households at all income levels on Long Island live in areas with few white residents, while white residents of all income levels live in very white neighborhoods.⁶⁹

Residential racial segregation is the result of coordinated actions of government policies and the private actions of those in the real estate industry. Real estate brokers and agents play a critical role in the composition of a community and can act—whether intentionally or not—as gatekeepers for neighborhoods, steering potential homebuyers towards certain areas, based on the race or ethnicity of the individual. While housing discrimination is illegal under the federal FHA and state Human Rights Law, some real estate agents utilize subtle ways to discriminate, like racially coded guidance and disparate treatment in services offered. In its report *Long Island*

⁶⁵ *Heading in the Wrong Direction: Growing School Segregation on Long Island*, Erase Racism (Jan. 2015).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ John R. Logan and Brian J. Stults, *The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census*, Census Brief prepared for Project US2010, BROWN UNIVERSITY (Mar. 24, 2011). See also *Heading in the Wrong Direction: Growing School Segregation on Long Island*, Erase Racism (Jan. 2015).

Divided, Newsday revealed evidence that real estate agents still employ these implicit and explicit forms of discrimination, helping to maintain Long Island’s severe residential racial segregation.

V. NEWSDAY’S “LONG ISLAND DIVIDED”

On November 17, 2019, Newsday published *Long Island Divided*, the conclusion of a three-year investigation into discrimination in real estate sales on Long Island, one of the most racially segregated suburban areas in the United States. The report exposed evidence of unequal treatment and discriminatory—potentially illegal—selling practices conducted by real estate agents with the effect of helping to maintain the harsh segregation of Long Island communities.⁷⁰ In 40% of all paired tests, agents engaged in potentially unequal, disparate treatment of minority homebuyers when compared to white homebuyers, with almost 50% of Black homebuyers experiencing unequal treatment.⁷¹

In its investigation, Newsday used paired testing, a practice regularly endorsed by federal and state courts as the sole viable method for detecting violations of fair housing law by real estate agents.⁷² Below is an example of how paired testing works:

Two undercover testers – for example, one Black and one white – separately solicit an agent’s assistance in buying houses. They present similar financial profiles and request identical terms for houses in the same areas. The agent’s actions are then reviewed for evidence that the agent provided disparate service.⁷³

⁷⁰ The allegations of discriminatory and unlawful practices of real estate agents discussed in this report are based on data collected and provided in Newsday’s report, *Long Island Divided*. The opinions and judgments of the fair housing experts referenced in this report are based on data provided by Newsday; they do not constitute legal conclusions. The rates provided by Newsday reflect evidence of disparate treatment as discerned by two fair housing experts consulted by Newsday; they do not reflect conclusions of disparate treatment or legal findings.

⁷¹ *Long Island Divided*, *supra* note 1.

⁷² *Id.*

⁷³ *Id.*

In its three-year probe, Newsday recruited and trained 25 individuals to pose as undercover homebuyers, tested 93 real estate agents, collected 240 hours of recorded interactions, and analyzed 5,763 house listings.⁷⁴ Newsday conducted 86 paired tests in areas stretching from the New York City line to the Hamptons and from the Long Island Sound to the South Shore; 39 of the tests paired Black and white testers, 31 Hispanic and white testers, and 17 Asian and white testers.⁷⁵ To adequately capture the expanse of Long Island, Newsday divided the majority of Nassau and Suffolk Counties into 10 zones, conducting tests in each zone. Collectively, the 10 zones encompassed about 83% of Long Island's population of 2.3-million people, including 80% of the white population and 88% of the minority population.⁷⁶

Newsday's investigation included testing real estate agents from 12 real estate firms. More than half of Long Island's real estate agents are associated with one of these firms.⁷⁷ Paired tests of agents associated with two of the firms—The Corcoran Group and Daniel Gale Sotheby's International Realty—demonstrated no evidence of disparate treatment.⁷⁸ However, tests of agents associated with the following 10 firms did uncover such evidence:

1. Century 21 Real Estate LLC
2. Charles Rutenberg Realty Inc.
3. Coach Realtors
4. Coldwell Banker Residential Brokerage on Long Island
5. Douglas Elliman
6. Keller Williams Realty
7. Laffey Fine Homes
8. RE/MAX LLC
9. Realty Connect USA
10. Signature Premier Properties

⁷⁴ *Long Island Divided*, *supra* note 1.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

Importantly, Newsday tested each of the 93 agents only once, which makes it difficult to draw conclusions regarding any consistent patterns of behavior with respect to any individual agent cited by Newsday in its investigation or included in this report. However, collectively, the individual test results, supported by statistical findings, form a body of evidence that uncovers discriminatory practices by the Long Island real estate industry.⁷⁹

In 49% of cases where a Black tester posing as a homebuyer sought to purchase a home, they were treated unequally compared to a white tester.⁸⁰ This unequal treatment was found against Hispanic testers in 39% of tests and against Asian testers in 19% of tests.⁸¹

The in-depth inquiry uncovered evidence that indicates that brokers and agents at many of Long Island's residential brokerage firms participate in behaviors prohibited by fair housing laws, including imposing unequal conditions and steering prospective homebuyers toward certain communities depending on their perceived race or ethnicity. In many cases, people of color appeared to be steered to predominantly minority neighborhoods or were subjected to more stringent requirements than white homebuyers; many were required to produce mortgage preapproval in order to view home listings.⁸² Altogether, the agents tested provided white testers with an average of 50% more listings than those given to their equally qualified Black counterparts.⁸³

⁷⁹ *Long Island Divided*, *supra* note 1.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

V.A. Evidence of Imposing Unequal Conditions

Fair housing laws prohibit real estate agents and brokers from discriminating against any person in the terms, conditions, or privileges of sale or rental of property because of race, color, religion, sex, familial status or national origin.⁸⁴

In seven of Newsday's paired tests—eight percent of the total—agents accommodated white testers while imposing more stringent conditions on minority testers that might amount to the denial of equal service between testers.⁸⁵ In one instance of possible disparate treatment, an agent required a minority homebuyer to secure preapproval for a mortgage loan prior to showing listings, but did not require the same of the white homebuyer.⁸⁶ An example provided by Newsday:

Although a Black customer told Laffey Real Estate agent Nancy Anderson, “My uncle is actually a loan officer so we crunched the numbers with him,” Anderson refused to provide house tours, emailing, “I need to have the preapproval before we see the listings.” In contrast, she escorted a paired white buyer on house tours after he assured her, “I got a buddy of mine that works at Roslyn Savings & Loan.”⁸⁷

Newsday's two fair-housing consultants—Fred Freiberg, Executive Director of the Fair Housing Justice Center, and Robert Schwemm, professor at the University of Kentucky College of Law—both determined that agent Nancy Anderson's actions are evidence of unequal treatment. With regard to the example above, Mr. Freiberg stated:

The agent's refusal to provide service to the African American tester is an example of disparate treatment based on race. The agent told the African American tester that a preapproval letter was a condition of being shown homes but did not impose this same condition on the white tester.⁸⁸

⁸⁴ 42 U.S.C. § 3604.

⁸⁵ *Long Island Divided*, *supra* note 1.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

Similarly, Robert Schwemm concluded that the agent’s actions were “[e]vidence of blatant discrimination (inferior treatment of the Black tester) regarding not showing houses before receiving a preapproval letter.”⁸⁹

The following four case histories, taken from Newsday’s investigation, appear to demonstrate evidence of disparate treatment of minority potential homebuyers.⁹⁰ More information on these paired tests can be found in Newsday’s report, *Long Island Divided*.⁹¹

Test 93 Agent placed obstacles on Black tester’s search, but none for white tester

House search within 45 minutes of Manhattan and a maximum price of \$550,000

In this test, the agent, Aminta Abarca of Keller Williams Realty of Greater Nassau, refused to show listings to the Black tester unless the tester signed an exclusive broker’s agreement—just hours before she invited the white tester on house tours without requiring such an agreement. Abarca escorted the white tester to view six properties in a seven-week period without placing any conditions on the service. In contrast, Abarca refused to show any listings to the Black tester unless he signed an exclusive agreement empowering her to serve as his buyer’s agent.

Abarca’s striking disparity in treatment of the white and Black tester was apparent on January 19, 2017, when the Black tester visited Abarca’s office after choosing three homes to tour from listings she provided. She rebuffed him, however, saying it is her policy to only show homes after a client has signed an exclusivity agreement. When the Black tester asked, “so my word is not good enough?” Abarca responded that was how she did business.

⁸⁹ *Long Island Divided*, *supra* note 1.

⁹⁰ *Id.*

⁹¹ The case histories referenced and discussed in this report are taken from Newsday’s investigative project, *Long Island Divided*. More information regarding Newsday’s three-year investigation and the specific case histories referenced herein can be found at <https://projects.newsday.com/long-island/real-estate-agents-investigation/>.

Abarca did not impose that same policy upon the white tester, calling him shortly after her contact with the Black tester to offer to start showing the white tester houses. Later that same day, Abarca informed the Black tester, via text message, that he should inform his wife that “agent[s] only take clients (sic) that have a buyer contract with her to show them homes[,]” to which the Black tester responded, “Thanks. I will explain to her that this is your firm policy.”

Collectively, Abarca provided the white tester listings in neighborhoods that were 61% white, compared to those given to the Black tester, which were 43% white. Abarca recommended heavily minority communities of Baldwin and Elmont only to the Black tester.

According to Schwemm, one of Newsday’s independent fair housing consultants, Abarca’s conduct is evidence of blatant discrimination by refusing to show the Black tester houses prior to his signing of an agent agreement. Additionally, the paired testing provided evidence of differential treatment and steering; the white tester received listings in predominantly white areas that the Black tester did not receive and the Black tester received listings in more minority areas that the white tester did not receive.

Test 30 Agent offers white tester house tours, refuses to provide listings to Black tester without mortgage prequalification

House search within 30 minutes of Northport and a maximum price of \$500,000

In the summer of 2016, a Black and white tester each met with agent Anne Marie Queally Bechand of Signature Premier Properties a month apart. Both testers were seeking listings with identical criteria in Northport, a community that is 90% white.

When meeting the white tester, Queally Bechand provided advice and was responsive to all of the white tester’s questions, even promising to provide listings and arranging dates to tour homes. Queally Bechand provided 79 listings to the white tester and showed the white tester four

homes without first obtaining proof of financial prequalification. In contrast, the Black tester was met with resistance from Queally Bechand, including the agent's refusal to provide listings or a tour unless the Black tester prequalified for a mortgage.

Affirmed by Newsday's consultant Freiberg, Queally Bechand's refusal to provide service to the Black tester is an example of disparate treatment based on race. Queally Bechand told the Black tester that she does not give customers tours without receiving a mortgage prequalification letter and refused to provide the tester with any home listings, while she agreed to provide listings and tours to the white tester without first receiving a mortgage prequalification letter.

Test 78 Agent offers white tester listings and tours, requires Hispanic tester to sign contract

House search within an hour of Manhattan and a maximum price of \$600,000

In this test, agent Reza Amiryavari, of Realty Connect USA, told the Hispanic tester that he only assists customers after they sign an exclusive broker's agreement and secure mortgage pre-approvals. Amiryavari provided listings and tours to the white tester without any such prerequisites.

Amiryavari noted the need to secure mortgage pre-approval to the white tester, but brushed off the requirement, immediately moving to discuss viewings and listings. Amiryavari offered the white tester the option of signing a buyer's agent agreement, but informed the white tester he would help him whether or not such an agreement was made. Amiryavari provided the white tester with 39 listings, including homes stretching from Franklin Square to Syosset. He also showed the white tester homes in Carle Place and East Meadow.

While touring homes, Amiryavari advised the white tester to look at homes in Franklin Square, which is 65% white, over Elmont, which is 85% minority, stating, “[y]ou don’t want to be— I don’t think you should be in Elmont. I think you should probably just be [in] Franklin Square.” Amiryavari further explained to the white tester the prohibited practice of steering, stating,

“I think you want to stay in Franklin Square, if you go there. Here, great. East Meadow, OK, no issues, as far as, you know, the feedback that I get from, you know, buyers, and I’ve looked stuff up. But, technically, as a real estate agent, we shouldn’t tell you, the buyers, which school district is better. Really, we’re not supposed to ... School district-wise only. Because there’s something called steering, you know, like steering.”

In meeting with the Hispanic tester, 10 months after the white tester, Amiryavari evaluated the tester’s family income and expenses, and performed a calculation intended to show the Hispanic tester what he could afford. Amiryavari declined to accept the Hispanic tester’s assertion that he was able to afford a \$600,000 home with \$120,000 down.

While Amiryavari gave the white tester the option of agreeing to be the white tester’s exclusive buyer’s agent, he instructed the Hispanic tester that the agreement was a prerequisite for receiving services. Such an agreement would require the Hispanic tester to give Amiryavari a two percent commission if the seller refused to pay the fee. After their meeting, Amiryavari shared the name of a mortgage contact with the Hispanic tester, to which the tester responded by inquiring about next steps for house hunting. Amiryavari responded that before the Hispanic tester could begin touring homes, he must get mortgage pre-approval.

According to Newsday’s fair housing consultants, Amiryavari’s conduct—providing the white tester with listings without financial pre-approval, but requiring financial pre-approval from

the Hispanic tester—constitutes evidence of disparate treatment based on race. Additionally, Amiryavari made statements to the white tester that indicate strong evidence of steering.

Amiryavari provided inferior service to the Hispanic tester by refusing to provide house tours to the Hispanic tester without first meeting financial prerequisites; neither of these requirements were placed upon the white tester.

Test 09 Agent waives preapproval policy for white tester, enforces it on Black tester

House search within the area around Brentwood and a maximum price of \$400,000

In this test, agent Edwin Torres of Plainview-based Charles Rutenberg Realty informed both the white and Black testers that mortgage pre-approval from a bank is a prerequisite to receiving listings or house tours.

After explaining to both testers that the policy of pre-approval is required to demonstrate the capability and sincerity of potential homebuyers, both testers still asked Torres to send home listings. Despite discussing this policy, Torres granted the request for the white tester, providing 20 listings, but did not provide any listings to the Black tester.

Exchange between Torres and the white tester, granting the request:

White Tester: Is it possible to for you to start sending me some listings?

Torres: I can send you I can send you listings in those areas.

White Tester: In those areas?

Torres: I would say like based on your income, a ballpark figure, I would say anywhere between two and 350 I'll send you. That's the bracket that I'm gonna put it in.

White Tester: OK.

Torres: And when you receive it, you'll be able to view them.

White Tester: Yeah.

Torres: But, like I said, I need that [preapproval], OK?

White Tester: Gotcha.

Exchange between Torres and the Black tester, denying the request:

Black Tester: OK. So, you need that [preapproval].

Torres: Definitely.

Black Tester: Absolutely.

Torres: Absolutely.

Black Tester: Can you look at listings or anything?

Torres: I don't really know what to show you.

Torres provided the white tester with listings to properties in Deer Park, Brentwood, Bay Shore, and West Islip. Additionally, Torres took the white tester to tour one of the 20 listings provided, while still pressing him to secure the mortgage preapproval.

When the Black tester followed up regarding house tours, Torres responded, via text, "I don't know if there was a misunderstanding when we met. But I'm awaiting your pre-approval first and at that time I will start sending properties to you based on your approval."

Torres' refusal to provide service to the Black tester suggests evidence of disparate treatment and discrimination based on race. Torres enforced the mortgage pre-approval requirement on the Black tester and refused to give him listings without the pre-approval; he did not enforce the pre-approval requirement for the white tester and still provided the white tester with 20 listings and a tour.⁹²

⁹² Evaluations of agent's conduct are the opinions of Newsday's fair housing consultants, Fred Frieberg, executive director of the Fair housing Justice Center, and Robert Schwemm, professor at the University of Kentucky College of Law. The opinions of Freiberg and Schwemm are based on data provided by Newsday. Their judgements do not constitute legal conclusions.

V.B. Evidence of Steering

Steering in real estate is a process by which agents attempt to guide prospective homebuyers towards or away from or towards housing in a specific area. Originally, steering was interpreted as guiding potential purchasers through verbal persuasion, but the concept of steering has expanded to include any act which influences the choice of a buyer or impedes the purchase of a home.⁹³

Federal, state, and local laws prohibit real estate agents and brokers from steering prospective buyers to certain communities based on race or ethnicity. Section 3604 of the Federal Fair Housing Act makes it unlawful:

[t]o 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, familial status, or national origin.⁹⁴

Since the Fair Housing Act's passage, federal courts have interpreted the language to mean that Congress intended to cover a broad range of activities—including race-based steering—recognizing that discrimination does not occur solely from refusals to sell property but also through more subtle means.⁹⁵

House hunters rely on representations made to them about the residents, schools, and public services of an area. While prospective buyers may have access to other sources of information, the behaviors of an agent or broker can deprive them of housing opportunities.

⁹³ Neil C. Bruce, *Real Estate Steering and the Fair Housing Act of 1968*, 12 TULSA L. J. 758 (2013).

⁹⁴ 42 U.S.C. § 3604(a)

⁹⁵ See Neil C. Bruce, *Real Estate Steering and the Fair Housing Act of 1968*, *supra* note 93.

Contemporary steering tactics include restricting client access to properties, misrepresentations to prospective purchasers, and selective advertising. Typically, steering is based on the notion that the prospective buyer is either incompatible or unacceptable to the current residents of a neighborhood or community due to the buyers race, religion or ethnicity, or *conversely*, the residents of a neighborhood or community are unacceptable to that buyer due to racial, religious, or ethnic differences.⁹⁶ The agent or broker directs the prospective buyer to an area where they believe the buyer will be most comfortable.⁹⁷

Today, steering rarely entails an agent or broker openly refusing to sell based on the prospective buyer's perceived race or ethnicity; rather, steering and discrimination occur in the behavior of an agent or broker towards the buyer, such as the willingness of the broker to divulge information regarding home values or schools to certain individuals but not to others.⁹⁸

Directing homebuyers toward certain communities and away from others can have adverse economic and social consequences for the disregarded communities. Research co-published in 2017 by Jacob Faber, Assistant Professor of Sociology at New York University, entitled *Investigating the Relationships Between Real Estate Agents, Segregation, and House Prices: Steering and Upselling in New York State*, makes the point that real estate agents have strong incentives to steer buyers by race.⁹⁹ Faber, with his co-author Max Besbris, interviewed 45 real estate agents in New York State, some of whom admitted to steering customers, stating it is what the buyers and sellers want.¹⁰⁰ The study noted “when ... agents are incentivized to concentrate in already non-Hispanic white, wealthy areas and upsell buyers within those areas, they likely play a

⁹⁶ *Long Island Divided*, *supra* note 1.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

role in the production of prices and segregation in those areas.”¹⁰¹ Restricting the supply of prospective buyers in a community can negatively impact homeowners interest and the potential sale of property in the circumvented communities. Segregation nurtures the concentration of poverty as well as the concentration of people of color, as the wealth accumulation associated with home ownership is undercut for people of color because of their continued exclusion from more favored neighborhoods.¹⁰²

According to Newsday, in a class on fair housing held by the Long Island Board of Realtors in October of 2018, the instructor—former board president Donald Scanlon—said buyers often drive agents to make tough choices.¹⁰³ In the 1900s, steering “meant bringing people of color to one side of town or to a mixed side of town and bringing people who are white [to] the white side of town,” compared with today, Scanlon stated, the prohibited practice means “helping people make choices on where to live based on who they are or who lives in the area.”¹⁰⁴ Scanlon went on to state of contemporary real estate sales:

“Here is our dilemma: Do buyers want to know who their neighbors are going to be? Absolutely,” he said, adding: “Not just their immediate neighbors but who lives in the area. That’s an important factor in them making their decision whether to buy or not. And we can’t help them with that. But yet we’re asked all the time.”¹⁰⁵

Scanlon then informed the class that knowing the makeup of a neighborhood is a significant issue, and that it is “why [agents] are so easy to get. We are easy to be entrapped” into a steering violation.¹⁰⁶ When asked to explain his meaning behind “entrapped,” Scanlon stated that buyers

¹⁰¹ *Long Island Divided*, *supra* note 1.

¹⁰² *Joint Hearing: Real Estate Agents’ Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Theresa Sanders, President, Urban League of Long Island), *supra* note 3.

¹⁰³ *Long Island Divided*, *supra* note 1.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

often ask agents to engage in conduct that he perceives as steering.¹⁰⁷ He further opined on this “dilemma” stating,

“The agents today are faced with that dilemma, [d]o they do what the buyers ask them to do and potentially violate the law, or are they very rigid? And then [buyers] will say, ‘Well, you know, so and so would show me. So why aren’t you showing me? What do I need you for?’ This is what we’re facing....That’s how easy it is for agents to get entrapped.”¹⁰⁸

Newsday’s investigation revealed that agents of many of the dominant residential brokerage firms operating in Long Island help to perpetuate racial separation through the prohibited act of steering. The agents working for these firms frequently directed white clients towards areas with the highest white representations and minority clients to more integrated communities. In 24% of the paired tests, agents directed white and minority buyers to different communities through listings that had the earmarks of steering.¹⁰⁹

The agents tested by Newsday had 211 opportunities to recommend house listings to paired testers in eight of Long Island’s predominantly Black and Hispanic communities; however, the agents largely avoided these areas, suggesting homes in these communities only 15 times.¹¹⁰ According to Greg Squires, a professor of public policy at Georgetown University and a consultant to fair housing groups and HUD, avoiding these predominantly minority communities, despite each falling within the home search areas 211 times, constitutes steering based on racial composition of a neighborhood regardless of the fact that the potential homebuyers of all races and ethnicities were steered from these areas.¹¹¹ Together, the 12 real estate companies included in

¹⁰⁷ *Long Island Divided*, *supra* note 1.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Those 8 predominantly minority communities are Freeport, Elmont, Hempstead, Brentwood, Central Islip, Uniondale, Roosevelt and Wyandanch. *Id.*

¹¹¹ *Id.*

Newsday's investigation have 218 branch offices in Nassau and Suffolk counties, but no offices are in the eight predominantly minority communities of Long Island.¹¹²

Ms. Lenora W. Long, a broker based in Hempstead, has experienced similar racial trends in real estate sales in Long Island, with white agents employed by the large firms contacting her about listings in Hempstead on behalf of a Black or Hispanic client. Ms. Long told Newsday that in her 18 years as a broker in Hempstead, an agent from the North Shore or South Shore of Long Island has never brought a white potential homebuyer to Hempstead.

Newsday conducted tests in 86 zones, 37 of which covered at least one of the eight predominantly minority communities. Many of the tests covered geographically close communities, giving agents the opportunity to recommend listings in multiple towns in a single test.¹¹³ The average number of listings recommended in other Long Island communities was more than twice the average in the eight predominantly minority communities.¹¹⁴ In the few instances where agents provided listings within the minority communities, they gave the minority testers nearly four times as many listings as the white tester, 115 to minority buyers and 32 to white buyers.¹¹⁵

The imbalance in the listings offered in predominantly minority areas compared to predominantly white ones is evident in their approach to individual communities:

Agents suggested Bethpage, Commack, East Northport and Hauppauge—83 to 90% white—a total of 80 times, averaging 135 listings each time.

In contrast, agents suggested Roosevelt, Uniondale, Hempstead and Brentwood—1 to 21% white—a total of 10 times, averaging 16 listings each time.¹¹⁶

¹¹² *Long Island Divided*, *supra* note 1.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

In one paired test, agent Adelheid O'Brien of Coach Realtors met with a Black and white tester to help find a \$400,000 home within 30 minutes of Bay Shore; O'Brien avoided the nearby community of Brentwood for both testers.¹¹⁷ In speaking with the white tester, O'Brien stated they would not want to be located in the Brentwood school districts. The Brentwood district has a student body of 96% minority, predominantly Hispanic students.¹¹⁸ O'Brien neither advised the Black tester to avoid Brentwood nor mentioned the school district.¹¹⁹ Newsday's fair housing consultants also perceived O'Brien's behavior to constitute evidence of broader steering; O'Brien provided the white tester with double the number of listings than given to the Black tester, 14 compared with seven.¹²⁰ Additionally, O'Brien provided the white tester with listings in areas that averaged 84% white, compared with 70% white given to the Black tester.¹²¹

Fair housing laws also bar real estate agents from discussing the backgrounds of residents in a community as a form of verbal racial or ethnic steering. Agents are required to provide equal guidance to potential homebuyers about interested communities. In several of Newsday's paired tests, agents provided differing information to white testers than their minority counterparts.

For example, Century 21 agent Raj Sanghvi warned a white tester about buying in Huntington, stating they "don't want to go there. It's a mixed neighborhood," adding "[y]ou have [w]hite, you have Black, you have Latinos, you have Indians, you have Chinese, you have Koreans; everything."¹²² Agent Sanghvi did not make similar statements to the Asian counterpart tester.

¹¹⁷ *Long Island Divided*, *supra* note 1.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

Similarly, RE/MAX agent Joy Tuxson, in speaking about a predominantly minority community, told a white tester “I’m not going to send you anything in Wyandanch unless you don’t want to start your car to buy crack, unless you just want to walk up the street.”¹²³

In another possible example of disparate guidance, Keller Williams Realty Agent Le-Ann Vicquery told a Black tester, “[e]very time I get a new listing in Brentwood, or a new client, I get so excited because they’re the nicest people.” In contrast, she urged the paired white tester to “please kindly do some research on the gang related events in that area for safety,” referring to reported MS-13 gang murders in Brentwood.¹²⁴

Overall, agents repeatedly provided Black testers with the smallest share of listings in towns with the highest proportions of white residents, while the biggest share of listings were in areas where white residents were less prevalent.¹²⁵ Where white residents composed 20% or less of the population, agents provided seven out of 10 listings to minority testers; only when white residents composed 56% of the population did agents give most of the listings in a community, 63%, to white testers.¹²⁶

V.C. Experiences Based on Race

After the testing was completed, Newsday revealed to testers the experiences of their counterparts. Many of the testers felt that the results brought to light evidence of discrimination that were hidden behind the “smiles and handshakes” offered by the agents.¹²⁷ Martine Hackett, a

¹²³ *Long Island Divided*, *supra* note 1.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

professor of public health at Hofstra University and one of Newsday's Black female testers, encountered evidence of disparate treatment with three of the seven agents she met.¹²⁸ Surprised she received differing treatment compared with her white counterpart, she stated:

To sort of have the options to be limited in that way sort of makes me think about what options are available that people might not know about. And who's making those choices? That's the other thing that I feel, is that the choice, in terms of the choice of what would be theoretically the best choice for me and my family, was sort of removed.¹²⁹

An Asian tester, Alex Chao, after learning an agent declined to provide him with house listings, but had provided them to his white counterpart, found the difference in treatment deeply disturbing. Chao believed he was treated unfairly, stating, "[t]hat's pretty outrageous and, of course, offensive, upsetting to find out. You know you read about these things, you never think they would happen to you."¹³⁰

The inequality of service data—eight percent of tests—compared with the data of disparate treatment—40% of tests—demonstrates that much (though not all) of the contemporary discrimination in real estate sales on Long Island is implicit, not explicit. Discriminatory conduct materializes in the use of subtle practices, including steering and coded language. Discussions on the quality of school districts and crime are used as a proxy for race. While explicit discrimination is abhorrent and predominantly responsible for the residential segregation across the nation, implicit discrimination—as evident in Long Island—is primarily responsible for allowing segregation to persist.

¹²⁸ *Long Island Divided*, *supra* note 1.

¹²⁹ *Id.*

¹³⁰ *Id.*

i. Black Testers

Newsday's undercover Black testers experienced disparate treatment 49% of the time compared to white testers.¹³¹ Newsday conducted 39 paired tests matching Black and white potential homebuyers; in 19 of those tests, the evidence suggests Black homebuyers experienced disparate treatment compared with their white counterparts.¹³² With respect to Black potential homebuyers, Newsday's paired testing provided the following evidence:¹³³

Black testers experienced disparate treatment (49%) at higher rates than did Hispanic (39%) and Asian testers (19%).

In 11 cases, agents directed Black testers to different neighborhoods than their matched white testers, showing evidence of steering.

In five instances, agents placed conditions on Black testers, amounting to the denial of equal service compared with conditions requested of their matched white testers.

In three cases, agents either spoke about steering to the white tester but not the matched Black tester or volunteered information about the ethnic makeup of communities only to white testers.

Collectively, agents provided white testers an average of 50% more listings than they gave to Black counterparts – 39 compared with 26, including instances when agents provided no listings to one tester.

The significant gap in listings offered between white and Black homebuyers, 39 compared with 26, respectively, was not present in paired tests involving Hispanic or Asian homebuyers.¹³⁴ Agents tested by Newsday gave both Hispanic and white testers an average of 42 listings, and Asian testers received 18 listings compared with 22 given to their white

¹³¹ *Long Island Divided*, *supra* note 1.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

counterparts.¹³⁵ Limiting choices in real estate can help buyers toward and away from certain communities; the withholding of information is a powerful tool used in steering.

While discrimination in real estate sales is prohibited under fair housing laws, bad actors use more coded forms of discrimination, including directing homebuyers of different background toward different communities—steering—or requiring minority home seekers to overcome higher financial barriers than their white counterparts. Provided by Newsday, included below are summaries of four tests that show evidence of the hidden disparate treatment of Black potential homebuyers in Long Island; more information can be found in Newsday’s report, *Long Island Divided*, including any agent and company responses.

Test 67 Agent diverts a Black homebuyer from agent’s hometown in Plainview

House search within 30 minutes of Bethpage and a maximum price of \$550,000

Donna Rogers of Douglas Elliman Real Estate advised the white tester that \$550,000 would buy him access to houses requiring minimal renovations in Plainview and Bethpage, going as far to reassure the white tester that she was confident of finding a home that fits the criteria.

A Black tester met with Rogers in October 2016, also seeking a home with the same criteria. Rogers informed the Black tester that a \$550,000 budget would limit choices in Plainview, affirming that Plainview is out of the question given the Black tester’s house criteria. In lieu of Plainview, Rogers suggested other possibilities to the Black tester Hicksville, East Meadow and Farmingdale, which have school populations consisting of 33% white, 54% white and 65% white,

¹³⁵ *Long Island Divided*, *supra* note 1.

respectively, compared with the more than 70% of white residents in Plainview and Bethpage. Rogers did not offer these possibilities to the white tester.

Additionally, Rogers discussed school districts with both testers. Rogers informed the white tester that Plainview and Bethpage have good school districts but neglected to share similar information to the Black tester regarding the quality of the schools in Plainview or Bethpage, telling the Black tester to independently research the school districts.

Rogers provided listings to the white tester in areas with a higher percentage of white residents than in the areas suggested to the Black tester. Additionally, the listings offered to the Black tester were located in school districts with higher minority representations.

Collectively, the white tester's listings—five in Plainview and five in Bethpage—were located in census tracts where white residents made up 82% of the population. The Black tester's listings, 11 in total, were spread among Hicksville, Levittown, Bethpage, East Meadow and Farmingdale, located in tracts where white residents made up 72% of the population. According to data provided by Zillow, there were more than 30 listings on the market in the Plainview ZIP code on the dates of both tests.

Newsday's fair housing consultant, Freiberg, concluded that the agent's comments and conduct suggested racial steering. According to Schwemm, another consultant for Newsday, the agent's behavior qualified as steering not because of the number of listings in the white areas, but the total lack of listings for the Black tester in Plainview when the white tester received several in the area.

Test 76 Agent demands identification from Black tester but not white tester

House search within an hour of Manhattan and a maximum price of \$600,000

A white tester met with Margaret Petrelli, of Realty Connect USA, in June 2016, informing Petrelli of her listing criteria and also that she has a four-year-old son. Petrelli provided the white tester with names of school districts, citing Wantagh as “blue ribbon” and touting Seaford, Plainedge, Bethpage, Levittown, Bellmore, North Bellmore and Merrick, all of which range from 79% to 92% white. Additionally, Petrelli informed the white tester of Massapequa, 91% white, but excluded the area of Massapequa that falls within the neighboring Amityville district, stating “[y]ou’re not going to like those schools.” Amityville has a school population that is 92% Black and Hispanic.

A Black tester met with Petrelli five months later, seeking listings with the same criteria as the white tester. The Black tester informed Petrelli that school districts are an important factor, as she had a four-year-old child. In contrast with the white tester, Petrelli did not provide the Black tester with recommendations for school districts.

Petrelli provided the white tester with eight listings in Levittown and Wantagh, both of which are 88% white, and gave the Black tester two listings in East Meadow and Hicksville, both averaging 58% white.

More problematic still, Petrelli asked the Black tester for identification, but did not require it of the white tester prior to embarking on house tours. To follow up on this discrepancy, a Newsday reporter, posing as the Black tester’s husband, asked about the ID requirement; Petrelli asserted that it was the office policy to ask all customers for identification.

Fred Freiberg concluded that Petrelli's actions toward the Black tester constituted denial of equal service, racial steering, and discriminatory treatment. Similarly, Schwemm stated the actions are evidence of blatant inferior treatment of the Black tester and steering.

Test 96 Agent recommends 27 homes to Black tester, warns white tester of gangs

House search within 30 minutes of Brentwood and a maximum price of \$400,000

A Black tester met with Le-Ann Vicquery of Keller Williams to discuss his housing criteria in November 2016. Brentwood has the highest proportion of minority residents on Long Island; at the time the community was 64% Hispanic, 14% Black, 18% white and 2% Asian.

In response to the Black tester's desire for a home in Brentwood, Vicquery noted that she enjoyed working with clients in Brentwood, stating that her clients in Brentwood are the "nicest clients." Vicquery and her colleague Jean Gillin sent the Black tester 37 listings, 27 of which centered on Brentwood in areas averaging 17% white.

A white tester met with Vicquery two months after the Black tester, requesting listings with the same criteria. After sharing with Vicquery two listings of interest to the white tester, Vicquery later recommended that the white tester "look into recent gang killings in the Brentwood area online." Vicquery repeated the warning in an email to the white tester, stating "please kindly do some research on the gang-related events in that area for safety."

In September of 2016, two months before Vicquery met with the Black tester, members of the MS-13 gang allegedly murdered two teenage girls in Brentwood. The murders sparked intense media coverage, both nationally and locally. Between the double murder and the Black tester's

meeting with Vicquery, Newsday published 25 stories related to MS-13 activity in Brentwood. Vicquery did not warn the Black tester about the presence of gang activity.

Vicquery shared 11 listings with the white tester, all of which were outside of Brentwood and were communities whose census tracts averaged 86% white.

According to Newsday's fair housing consultants, Vicquery's actions provide a "textbook example of racial steering." Vicquery discouraged the white tester from considering listings in Brentwood because of recent gang killings and did not provide any listings in the area. Conversely, Vicquery informed the Black tester that the "nicest people" reside in Brentwood, providing multiple listings in the area and neglecting to share similar information regarding gang-related activity. Consultant Schwemm, stated that this test is a classic example of modern steering, in that racial epithets are no longer used, but the statements regarding gang violence and other situations are mentioned only to the white tester.

**Test 45 Agent states Freeport homes are a bad investment for white tester,
fine for Black tester**

House search within 30 minutes of Garden City and a maximum price of \$450,000

In June 2016, agent Diane Etri met separately with a white tester and a Black tester in Coldwell Banker's Bellmore office, just 22 days apart. Etri focused the Black tester on Franklin Square, a community that borders Garden City and is 65% white. Etri did not mention Franklin Square to the white tester. For the white tester, Etri focused on communities approximately ten miles from Garden City: Bellmore, 88% white and Merrick, 87% white.

After stating she wanted to ensure a long-term investment for the client, Etri advised the white tester to avoid Freeport, a village with a population of 43,000 that adjoins Merrick and has a predominantly minority population 42% Hispanic, 30% Black, 24% white and 1% Asian.

Speaking to the white tester, Etri stated

“[s]o a lot of people will say to me, ‘Oh, I don’t care. I’ll take Freeport and all the houses are cheap there. I don’t care about the school district. I don’t have any children.’ I say, ‘But you have to protect your investment,’...[y]ou’re not really putting your money in the right place, because now you’re in a bad school district, and that’s not good for resell value.’”

While Etri similarly pledged to protect the Black tester’s investment, Etri provided a contrasting perspective on Freeport, stating the Black tester “can do Freeport” and that they “might like Freeport.” Additionally, Etri told the Black tester that Roosevelt, 1% white, was “a terrible area,” and also that East Meadow, 69% white, “could be a little shady.”

Collectively, Etri provided the white tester with 16 listings in Merrick, North Merrick, Bellmore, North Bellmore and Wantagh, all within a 15-minute drive from Garden City. In contrast, Etri provided the Black tester with seven listings, three across the border from Garden City in Franklin Square, one that had a Garden City address but was in a district served by Franklin Square schools and three listings in Merrick or Bellmore.

Etri’s recommendations for the white tester were in census tracts where white residents averaged 83% of the population, compared with the listings provided to the Black tester, where census tracts averaged 76% white.

After showing the testers the results of their paired experience, the Black tester stated of Etri, “[s]he was steering me to one area that she felt that, I guess, that she thought I would be more comfortable in instead of giving me more of a variety of choices. What she did, as I said, she took my choices of where to live from me.”

According to Newsday's fair housing consultants, Etri's statements, coupled with the kind of home listings provided to each tester, suggest evidence of steering and is a classic example of disparate treatment due to race, which is strictly prohibited under the Fair Housing Act.

The difference in advice provided to the testers, with greater advice provided to the white tester than the Black tester, is an example of housing discrimination, particularly the different statements about Freeport, which, according to Schwemm, can be presumed to be race-based because they were only made to the white tester.

ii. Hispanic Testers

Newsday recruited and trained five Hispanic testers to go undercover; all told, those testers were met with evidence of disparate treatment 39% of the time.¹³⁶ Paired with matching white potential homebuyers, the five Hispanic testers went house hunting 31 times. Of those 31 times, 12 of the tests showed evidence of disparate treatment.¹³⁷

Agents provided the Hispanic homebuyers with 12% less listings than the white homebuyers in the paired tests, the gap larger in the predominantly white communities of Rockville Centre, Oceanside, Roslyn, Levittown, Merrick and Kings Park. In those communities, the agents provided white homebuyers with seven times more house listings than to the matching Hispanic homebuyers.

Agents provided Hispanic testers with listings in 18 census tracts in the Town of Huntington, picked listings in these areas for Hispanic testers at twice the rate compared with white testers, 11 of the 18 tracts show growing Hispanic populations.

In one case, an agent imposed more stringent requirements on a Hispanic tester than a white tester, amounting to denial of equal service.¹³⁸

¹³⁶ *Long Island Divided*, *supra* note 1.

¹³⁷ *Id.*

¹³⁸ According to evaluations by Newsday's fair housing consultants.

The following three case histories, provided by Newsday, appear to show evidence of the disparate treatment of Hispanic potential homebuyers.¹³⁹ More information on these case histories can be found in Newsday's report, *Long Island Divided*.

Test 42 An agent complains to a white house hunter that fair housing laws bar him from warning buyers away from certain communities, offers the customer choices in predominantly white areas and directs a Hispanic house hunter to predominantly minority communities.

Test 07 An agent tells a white buyer that she would look in areas that surround a predominantly minority community while telling the Hispanic buyer that she would concentrate more on that community.

Test 87 An agent tells a white customer that he “might be more comfortable in a certain demographic area,” says she is barred from talking about demographics – but adds her colleague will educate the customer, whom she describes as a “stand-up guy.”

The area of Huntington, Long Island, was recommended for Hispanic testers at a much higher rate than for white buyers, even though none asked specifically to live in the area.¹⁴⁰ In recent years, the white population in Huntington has dropped, while the Hispanic population has steadily increased. In five tests, white and Hispanic potential homebuyers sought homes listed between \$450,000 to \$500,000 within 20 or 30 minutes of Greenlawn or Northport (driving distance from downtown Huntington) or a home worth \$600,000 within 30 minutes of Syosset, an area also encompassing Huntington.¹⁴¹ Collectively, agents provided the testers 453 listings, recommending 65% to Hispanic homebuyers.¹⁴² Among the 453 listings, agents provided 173 listings within the communities of Huntington, Huntington Station and South Huntington.¹⁴³ Of

¹³⁹ *Long Island Divided*, *supra* note 1.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

the total listings for these communities, 84% went to Hispanic buyers, with no agent providing a majority of listings in these areas to a white potential homebuyer.¹⁴⁴ In five of the paired tests, agents avoided Huntington altogether for white buyers.¹⁴⁵

According to Newsday's fair housing consultants, the gap in the amount of listings offered to Hispanic and white buyers in three of the tests was significant enough to suggest that the agents had steered Hispanic homebuyers into the Huntington area.¹⁴⁶ The three agents recommended listings in the Huntington area 78 times to Hispanic testers and only three times to their white counterparts, an imbalance of 96% for the Hispanic testers and four percent for white testers.¹⁴⁷ In contrast, for six similar Black and white paired tests, agents recommended Huntington to the Black tester 39% of the time.¹⁴⁸

iii. Asian Testers

Newsday recruited three Asian undercover homebuyers to participate in 16 paired tests.¹⁴⁹ As a whole, Asian potential homebuyers experienced fewer instances of discrimination than Black and Hispanic potential homebuyers in Newsday's tests. In all but three of the 16 tests, agents provided comparable service to Asian and white potential homebuyers, constituting evidence of discrimination 19% of the time.¹⁵⁰

¹⁴⁴ *Long Island Divided*, *supra* note 1.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

The three exceptions included evidence that one real estate agent denied equal service to an Asian tester compared with his white paired tester and two agents provided more information about communities to white testers.¹⁵¹ Notably, none of the tests pairing Asian and white homebuyers showed evidence of steering. However, in its reporting, Newsday suggests that the rate of discrimination in 19% of the tests reflects apparent personal discrimination against Asian testers.¹⁵²

iv. White Testers

The results of Newsday's three-year probe strongly indicate that there are privileges of house hunting in Long Island as a white prospective buyer. In 40% of the 86 tests conducted, evidence suggests that brokers subjected minority testers to disparate treatment when compared with white testers.¹⁵³

In seven of the tests—eight percent of the total—real estate agents accommodated white testers while imposing more stringent conditions on minority testers, which according to Newsday's fair housing experts, amounted to the denial of equal service.¹⁵⁴ These agents provided ready service to white testers, offering listings to consider and conducting tours while taking on faith that the white testers had the financial capability to purchase a home.¹⁵⁵ In contrast, the agents denied similar service to minority testers, refusing to provide listings or give tours unless the tester

¹⁵¹ *Long Island Divided*, *supra* note 1.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

provided proof of financial capability.¹⁵⁶ Black testers received the denial of service most frequently, in five of the tests, followed by one Hispanic and one Asian test each.¹⁵⁷

Three Long Island communities—Merrick, Levittown and Rockville Centre—emerged in the investigation as areas agents overwhelmingly chosen for white potential homebuyers.¹⁵⁸ The communities are predominantly white, ranging from 75% to 88% white.¹⁵⁹ While none requested listings in these areas, seven real estate agents specifically suggested them almost exclusively to white potential homebuyers.¹⁶⁰ The seven agents gave white potential homebuyers 13 times more listings in those three areas than they provided to matching minority homebuyers.¹⁶¹ Two agents provided listings only to their white potential homebuyers.¹⁶²

V.D. Training

Licensed agents and brokers in New York State are responsible for adhering to federal and state fair housing standards in their real estate practice. To assess the quality of fair housing training, Newsday sent representatives to attend six fair housing training classes sponsored by the Long Island Board of Realtors.¹⁶³ Experts, consulted by Newsday, allege five of the six classes failed to adequately cover fair housing, describing the instruction as “shocking[ly] thin in content.”¹⁶⁴

¹⁵⁶ *Long Island Divided*, *supra* note 1.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

Eight fair housing experts who reviewed transcripts and notes of the training classes found that in five of the six classes, instructors provided information that was regularly “inaccurate, incomplete, confusing or lacking in quantity and quality.”¹⁶⁵ Comments by some of the instructors about ethnic and religious groups “risked reinforcing discriminatory attitudes,” with one instructor likening fair-housing laws to speed limits faced by a cab driver rushing a customer to the airport, stating “[y]ou get to choose whether you break the law.”¹⁶⁶ Only one of the six classes included the required three hours of fair housing law instruction.¹⁶⁷ The instructors whose classes were reviewed included one current and three former presidents of the Long Island Board of Realtors, including one of whom is now an attorney for the Board.¹⁶⁸

According to Newsday, of the six classes reviewed, one included only 20 minutes on fair housing, another only 35 minutes, and three ranging from about 50 minutes to two hours. Only one of the instructors, Nicholas Gigante, a former president of the Long Island Board of Realtors, met the state-mandated three hours of fair housing instruction.¹⁶⁹

Diane Scalza, current president of the Long Island Board of Realtors, taught two courses observed by Newsday; the Long Island Board of Realtors website description of Scalza’s course, titled “Ready, Set, Buy! Representing a Buyer in a Real Estate Transaction,” promised to include the mandated three hours of fair housing instruction.¹⁷⁰

According to Newsday, in one of the sessions, Scalza spent a mere 20 minutes discussing fair housing. Scalza instructed that landlords and agents may not ask potential buyers or renters about their familial or religious backgrounds, stated discrimination on sexual preference is illegal

¹⁶⁵ *Long Island Divided*, *supra* note 1.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

and noted that an agent cannot fulfill a client's request for a home "in a Jewish neighborhood."¹⁷¹ Despite her instruction on illegal inquiries, Scalza asked the class if anyone was Jewish, even pressing further, asking one student, "[y]ou're not Orthodox, are you?"¹⁷²

Aside from the 20-minute segment, Scalza only made one other comment on the topic, stating how school district preferences can become proxies for race in real estate sales, providing the following example of one client:

She didn't want Bay Shore because they didn't like the school district. I have to tell you, Bay Shore is actually a good school district. What people are really saying is that there's too many minorities there. You need minorities. You can't grow up without minorities. You have to work with other people of all different sizes, shapes, colors, creeds, whatever.¹⁷³

In a second session observed by Newsday, Scalza asked a few class members to identify themselves, including the Newsday reporter. In this class, Scalza discussed fair housing for about 90 minutes, only informing the members about six of the seven federally protected classes.¹⁷⁴ Scalza did not discuss the other characteristics that provide additional protections under state and local fair housing laws.¹⁷⁵ In warning students not to use offensive language, Scalza recalled using an anti-Semitic stereotype to a Jewish friend and repeated an Italian-language slur for Black Americans.¹⁷⁶ She also recalled standing up to a seller who tried to prevent a sale to a mixed-race couple, stating "if [the seller] refused to sell, I would have been required to release the listing and report it to HUD".¹⁷⁷

¹⁷¹ *Long Island Divided*, *supra* note 1.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

Newsday asked five experts on fair housing training to review Scalza's two courses; all five experts unanimously concluded that the presentations lacked basic information necessary to ensure agents abide by fair housing laws and that Scalza's statements regarding racial and religious bias could reinforce stereotypes rather than dispel them.¹⁷⁸ In her response to an invitation to speak with Newsday, Scalza stated the anecdotes of prejudice were intended to educate the class about ways people may offend others or discriminate, stating the purpose of her examples are to:

[T]ell my students, when you put that Realtor hat on you have to leave your prejudice at the door...I can't tell people not to be prejudiced. That's a moral thing. But what I can do is, I can give them examples of everyday things that happen that you may not realize that you say, that you do, and how is that affecting those people? That's really what I'm trying to get across.¹⁷⁹

Newsday also evaluated a course instructed by former LIBOR president Donald Scanlon. In reviewing transcripts of the hour and 50 minutes Scanlon spent discussing fair housing issues, two fair housing training experts found his instruction to be incomplete, confusing, and occasionally inaccurate.¹⁸⁰

Discussing an agent's fair housing obligation, Scanlon stated, "I'm trying to share with you here how not to get caught and the way not to get caught is not to violate the law, and the way not to violate the law is to know what the law is."¹⁸¹ He then told the class it is their choice to get caught, saying "[i]f you know what the law is, if you know how you can get caught and you can decide how far are you going to push, you can decide."¹⁸²

Scanlon told the class he had three rules to impart regarding fair housing. The first, relating to how to proceed if charged with violating the law, is that "[i]t's always cheaper to settle...[e]ven

¹⁷⁸ *Long Island Divided*, *supra* note 1.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

if you did nothing wrong, it's cheaper to settle.”¹⁸³ Second rule: “[d]on’t draw attention to yourself. Fly under the radar[.]” urging agents to take care with the wording of advertisements.¹⁸⁴ The third recommended removing any references to people “out of any marketing, advertising and vocabulary,” reasoning “the moment that I start talking about [people]...I am talking about someone who is ultimately in a protected category.”¹⁸⁵

In discussing the coverage of federal, state and local fair housing laws, Scanlon informed the agents that those included in the protected classes have increased over the decades, stating “[s]o, just remember if they breathe, they’re protected.”¹⁸⁶ Scanlon also focused on steering, telling the agents that potential buyers are often curious as to “who their neighbors are going to be[.]” but warned “we can’t help them with that.”¹⁸⁷

As part of its review of the quality of training, Newsday asked the Department of State about its monitoring of continuing education classes from 2016 to 2018. The Department of State is responsible for licensing agents and brokers and for supervising the continuing education of licensed agents and brokers. The Department informed Newsday that it monitored four classes in January and February of 2019, all of which were in compliance.¹⁸⁸

Nicholas Gigante, who has previously served as president of LIBOR and was found to have given the most informative instruction by Newsday’s experts, told Newsday that in his more than 30 years of teaching, he does not recall the Department of State attending “any one of [his] courses or anybody else’s.”¹⁸⁹

¹⁸³ *Long Island Divided*, *supra* note 1.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

VI. SENATE INVESTIGATIVE HEARINGS

On December 12, 2019, the Senate Standing Committees on Investigations and Government Operations, Housing, and Consumer Protection held a joint public hearing to gather testimony and gain insight about potential legislative responses to allegations of housing discrimination on Long Island. The hearing was a direct response to the Newsday investigation concerning racial discrimination and evidence of unequal treatment by real estate agents on Long Island.

The December hearing included the testimony of local government officials, fair housing experts, Newsday's testers, state government officials and experts, real estate trade organizations, Arthur Browne, Project Director for Newsday, and one real estate executive. In total, 76 individuals were invited to testify, 68 of whom were either real estate agents (35) or representatives of real estate companies (33) that were involved in Newsday's story. Of those 68 real estate professionals invited to testify, only one individual agreed to testify: Ryan Gorman, the President and Chief Executive Officer of NRT, the company-owned real estate brokerage operations of Realogy Holding Corp, which operates as Coldwell Banker Residential Brokerage, the Corcoran Group, Citi Habitats and Sotheby's International Realty in the state of New York.

The refusal of agents and brokers to provide testimony at the December 2019 hearing left gaps in the information needed to develop a legislative response to the allegations raised by Newsday. Understanding the significance of receiving this testimony, the Senate took the rare step of issuing subpoenas to compel testimony of agents and brokers at a follow up hearing. In total, 33 individuals were subpoenaed from six real estate companies, all of whom had been invited to testify at the original December 2019 hearing, but had refused to attend or submit written

testimony. In addition to compelling testimony at the second hearing, the Senate issued *subpoenas duces tecum* to twelve (12) individuals, representatives of the realty groups involved in Newsday's investigation, requesting the following information and documentation:

1. Any and all corporate policies, training materials and staff manuals concerning compliance or non-compliance with the federal Fair Housing Act and any similar state or local laws in effect and/or provided to staff between April 1, 2016 and December 31, 2019;
2. Any and all documents and/or communications in your custody and control pertaining to the individuals serving as paired testers in the Newsday investigation of real estate agents on Long Island, later identified by Newsday to be ([real estate agents]), between April 1, 2016 and December 31, 2019;
3. Any and all records of real estate sales brokered and/or otherwise facilitated by ([real estate agents]), closing between January 1, 2019 and December 31, 2019; and
4. Any and all non-privileged documents and/or communications in your custody and control relating to internal investigations or disciplinary proceedings ([real estate agents]), made between April 1, 2016 and December 31, 2019.

The follow up hearing, initially scheduled for April 17, 2020, was meant to give the individuals who did not appear during the first hearing the chance to testify and provide information regarding housing discrimination on Long Island. The hearing was also expected to include testimony from experts on fair housing laws, best practices for ensuring compliance and related matters. However, due to the COVID-19 pandemic, the April 17, 2020, hearing was postponed and rescheduled for September 17, 2020. The following individuals testified at the follow up hearing:

Douglas Elliman

- Ann Conroy, Chief Executive Officer
- Donna Rogers, Agent
- Francia Perez, Agent
- Judi Ross, Agent

- Lisa Casabona, Agent
- [Keller Williams Greater Nassau](#)
- Richard Amato, Broker in charger
- [Compass](#)
- Kevin Geddie, Agent
- [Charles Rutenberg Realty](#)
- Joseph Moshe, Broker and Owner
 - Stephanie Giordano, Agent
 - Maurice Jonson, Agent
 - Edwin Torres, Agent
- [RE/MAX Beyond](#)
- Alan Eldridge, Broker
 - Joy Tuxson, Broker and Agent
 - Christopher Hubbard, Broker and Agent
- [Coldwell Banker Realty](#)
- Rosaria Marando, Agent
 - Akhtar Somekh, Agent
 - Rosalind Resnick, Agent
- [Fair Housing Experts](#)
- Dr. Jacob Faber, Associate Professor, New York University's Robert F. Wagner School of Public Service
 - Dr. Max Besbris, Assistant Professor of Sociology, University of Madison Wisconsin
 - Elaine Gross, President and CEO, Erase Racism
 - Fred Freiberg, Founder and Executive Director, Fair Housing Justice Center

The day before the hearing, four individuals from Realty Connect USA notified the Senate they would not comply with their subpoenas and declined to testify before the Committees. In response, Senate Counsel went before a Supreme Court judge to enforce the legislature's subpoenas. After discussion between counsel and Senate personnel, the four individuals agreed to testify on Friday, September 25, 2020. The following individuals testified on that date:

- Bart Cafarella, Broker and Owner
- Reza Amiryavari, Agent
- Joseph Jannace, Agent
- Margaret Petrelli, Agent

VII. INVESTIGATIVE FINDINGS AND POLICY RECOMMENDATIONS

Housing discrimination manifests in many forms and occurs in all aspects of the industry, including rentals, real estate sales, and mortgage lending. In 2019, there were 28,880 reported complaints of housing discrimination in the United States.¹⁹⁰ Of these complaints, 21,117 (73%) were processed by fair housing organizations, 1,771 (6.1%) complaints were processed by HUD, 5,953 (20%) were processed by FHAP agencies, and 39 (0.14%) were processed by the United States Department of Justice.¹⁹¹ Race-based complaints constituted 16% of all 2019 complaints, second to disability complaints at 59%.¹⁹²

The findings in *Newsday*'s report are very disturbing, but should not be so surprising; housing discrimination on the basis of race has been occurring for decades. In the mid-2000s, the National Fair Housing Alliance (NFHA) conducted a multi-year, multi-city real estate sales investigation, which found an 87% rate of racial steering.¹⁹³ The study consisted of 145 matched pair tests in 12 cities. Many of the testers were provided listings or shown homes only in neighborhoods occupied predominantly by people of the tester's race.¹⁹⁴

In one test, a real estate agent in Brooklyn drew red lines on a map around white neighborhoods in which the white tester's housing search should be limited, and red arrows to indicate to the tester the neighborhoods that were "changing."¹⁹⁵ In Atlanta, another agent brought two sets of listings to a meeting with a tester, explaining that he could not tell if the tester was

¹⁹⁰ 2020 Trends Report, *Fair Housing in Jeopardy: Trump Administration Undermines Critical Tools for Achieving Racial Equity*, National Fair Housing Alliance (2020), available at: <https://nationalfairhousing.org/wp-content/uploads/2020/09/NFHA-2020-Fair-Housing-Trends-Report.pdf>.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Cat Cloud, et al., *Fair Housing Solutions: Overcoming Real Estate Sales Discrimination*, National Fair Housing Alliance (Dec. 2019).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

white or Black over the phone; when he saw the tester was white, he discarded one set of listings, saying he would not need those houses.¹⁹⁶ The white tester only viewed homes in predominantly white neighborhoods, even after asking the agent to view a home in an integrated neighborhood.¹⁹⁷

Similar to *Newsday*'s report, NFHA's investigation revealed evidence that real estate agents used school quality as a proxy for race and as a mechanism to steer potential homebuyers based on race. In addition, agents refused to provide services to clients of color, showed home seekers of color far fewer listings than their white counterparts, provided inaccurate information to borrowers of color, made inappropriate statements based on race, and imposed higher requirements on clients of color.¹⁹⁸

Over a decade after NFHA's investigation, *Newsday*'s investigation into real estate agents in Long Island imparts a clear message: the goals of fair housing laws are far from realized. Housing discrimination is still rampant. Many of America's metropolitan areas remain segregated, with such divisions purposefully maintained by the actions of many of those entrusted with helping people achieve one of the ultimate American dreams: homeownership.

While ending discrimination and promoting fair housing is everyone's province, there is an absolute need for government to better engage this crisis, particularly given the fact that government, along with other major institutions, played an enormous role in establishing America's current state of residential segregation.¹⁹⁹

Addressing the rampant housing discrimination in New York should be a statewide priority. It is the Committees' opinion that state legislative and policy changes are necessary to

¹⁹⁶ Cat Cloud, et al., *Fair Housing Solutions: Overcoming Real Estate Sales Discrimination*, *supra* note 193.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Joint Hearing: Real Estate Agents' Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Fred Freiberg, Co-Founder, Fair Housing Justice Center), *supra* note 3.

ensure fair housing opportunities for all New Yorkers, regardless of their perceived race or ethnicity. While enacting additional legislation is only one step towards a more just housing market, it is a necessary step. As Supreme Court Justice Thurgood Marshall noted, "[t]here is very little truth in the old refrain that one cannot legislate equality. Laws not only provide concrete benefits, they can even change the hearts of men—some men, anyhow—for good or evil."²⁰⁰

The legislative and policy recommendations included in this report are derived from the Committees' investigative findings; they represent the culmination of information gathered from Newsday's *Long Island Divided*, witness testimony, subpoenaed documents, policy meetings, and committee research. Heading into the current legislative session, the Committees strongly encourage State agencies, Members of the Legislature, and other elected and government officials, and the real estate industry to develop and pursue reforms that seek to address this fair housing crisis. As the 2021 legislative session begins, the Committees strongly encourage State agencies, Members of the Legislature, and other elected and government officials to develop and pursue the reforms identified below that seek to address this fair housing crisis.

- *Develop a New York State Fair Housing Strategy*
- *More Proactive Enforcement of Fair Housing Laws*
 - Investigate and enforce fair housing laws through testing
 - Increase funding to support fair housing efforts
 - Mandate statewide collection of demographic data
- *Licensing and Renewal Training Requirements*
 - Enhance the training required for licensed real estate agents and brokers
 - Ensure effective curriculum and quality of training instruction
 - Ensure quality of course instructors
 - Rescind rule requiring classes be recorded
- *Increased Penalties and Broader Accountability*
 - Increase penalties for violating fair housing laws
 - Improve broker supervision of agents

²⁰⁰ Gilbert King, *DEVIL IN THE GROVE: THURGOOD MARSHALL, THE GROVELAND BOYS, AND THE DAWN OF NEW AMERICA* (2012).

- Require brokers to standardize their policies for all home seekers
- *Ensure that Government at All Levels is Part of the Solution*
 - Require state and local governments to affirmatively further fair housing
- *Brokerage Industry Reforms*
 - Open offices in communities of color
 - Disseminate a model fair housing policy
 - Create a more diverse real estate sales force

VII.A. Develop a New York State Fair Housing Strategy

New York State requires a well-resourced, proactive, and better coordinated fair housing strategy. While existing fair housing standards are fundamental, the State must incorporate other initiatives that reinforce the goals of fair housing laws to eradicate residential segregation and its harmful consequences on people and communities, especially those of color. The Committees recommend the State pursue the establishment of the following initiatives, which are necessary in addressing the systemic discrimination in housing that exists statewide, not just in Long Island.

VII.B. More Proactive Enforcement of Fair Housing Laws

Upon conclusion of this investigation, the Committees find that the failure to prioritize fair housing standards at all levels of government has significantly contributed to the contemporary segregation of communities across New York State. While Newsday’s report focuses on the discriminatory practices of private actors, those practices have been facilitated and supported by

governmental action—or inaction—perpetuating the established residential segregation on Long Island.²⁰¹

According to Fred Freiberg, Co-Founder and Director of the Fair Housing Justice Center, the Division has neglected its obligation to ensure equal opportunity in housing.²⁰² While the Fair Housing Justice Center has brought evidence of discrimination directly to the Division, the Center generally chooses to seek private rights of action because of their previous poor experiences with the Division.²⁰³ The Division, after reviewing the alleged conduct, will dismiss the allegations despite their obviously discriminatory nature.²⁰⁴ Speaking of the Fair Housing Justice Center's interactions with the Division, Mr. Freiberg testified:

But we've had a dismal experience, frankly, with that. Every time we've gone to the State Division of Human Rights, we practically had to go to an Article 78 in state court and have their decisions overturned. And we succeed each time, too.²⁰⁵

As characterized by Mr. Freiberg, housing discrimination has been a low priority for the Division, which has neglected to investigate and sanction bad actors.²⁰⁶

Similarly, when asked to rank on a scale from one to 10 how seriously the Department of State treats housing discrimination currently—one being little to no seriousness and 10 being the most serious—Fred Freiberg and Elaine Gross of Long Island's ERASE Racism responded, minus one and zero, respectively.²⁰⁷

²⁰¹ *Joint Hearing: Real Estate Agents' Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Theresa Sanders, President, Urban League of Long Island), *supra* note 3.

²⁰² *Joint Hearing: Real Estate Agents' Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Fred Freiberg, Co-Founder, Fair Housing Justice Center), *supra* note 3.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

On February 14, 2016, Governor Cuomo announced the launch of a Fair Housing Enforcement Program, an initiative to uncover discrimination in rental and home sale transactions.²⁰⁸ Under this program, the Division of Housing and Community Renewal is authorized to participate in using trained fair housing testers to test for discriminatory bias amongst sellers and landlords.²⁰⁹ However, according to Freiberg, this program is no longer active.²¹⁰ Governor Cuomo also directed the Division of Human Rights and the Department of State to propose new regulations to strengthen housing enforcement efforts.²¹¹ The Governor also directed the Division of Human Rights to promulgate regulations that would clarify that it is an unlawful practice under the State Human Rights Law to discriminate against individuals because of their relationship or association with members of a protected class.²¹²

In response to *Newsday*'s report, on December 16, 2019, Governor Cuomo announced new regulations for real estate agents to help combat housing discrimination. The new regulations mandate enhanced disclosures by real estate professionals to help potential homebuyers and renters receive adequate information of their rights and protections under Fair Housing laws. The new regulations, adopted on April 21, 2020, provide for additional fair housing protections:

19 NYCRR 175.29 – Notification of Fair Housing Laws. Requires real estate brokers to ensure that each licensed real estate agent associated with such broker provides to a prospective purchaser, tenant, seller, or landlord upon first substantive contact the Fair Housing and Anti-Discrimination Disclosure, furnished by the Department of State. The party that provides the disclosure notice must obtain a signed acknowledgement from the prospective client and retain such signed notice for no less than three years.

²⁰⁸ Press Release, New York State Governor Andrew Cuomo, Governor Cuomo Announces Initiative to Strengthen State's Anti-Discrimination Efforts (Feb. 14, 2016), available at: <https://www.governor.ny.gov/news/governor-cuomo-announces-initiative-strengthen-states-anti-discrimination-efforts>.

²⁰⁹ *Id.*

²¹⁰ *Joint Hearing: Real Estate Agents' Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Fred Freiberg, Co-Founder, Fair Housing Justice Center), *supra* note 3.

²¹¹ Press Release, Governor Cuomo Announces Initiative to Strengthen State's Anti-Discrimination Efforts, *supra* note 208.

²¹² *Id.*

19 NYCRR 175.29 – Posting of Fair Housing Laws. Requires the new Fair Housing and Anti-Discrimination Notice to be displayed in the window of each office operated by a real estate broker, on all websites operated by real estate licensees, and at each open house.

19 NYCRR 177.9 – Video Recording and Record Preservation. Requires each entity, approved to provide instruction pertaining to fair housing and/or discrimination in the sale or rental of real property or an interest in real property, to record each “Fair Housing” course in its entirety, and maintain such recording for a period of one year.

In response to Governor Cuomo’s initial announcement of the proposed regulations, the Fair Housing Justice Center and New York’s five other fair housing organizations released a joint statement expressing their collective view that the proposed regulations were an inadequate step toward ensuring equal housing opportunity for all New Yorkers.²¹³ While recognizing the good intentions behind improving consumer knowledge of fair housing laws, the groups explained that increasing notification alone will not result in ridding the housing market of discrimination.²¹⁴ Increased education often will not permit consumers to exercise their rights because—as discussed above—in many cases they are completely unaware that they are being discriminated against.²¹⁵

The testimony before the Committees as well as Newsday’s findings demonstrate a clear necessity for further governmental oversight of professionals in the real estate industry. New York State laws and regulations allow for too much self-monitoring of anti-discriminatory behavior as the major enforcement mechanism to ensure equal and fair housing opportunities. Proactive outside oversight is crucial in ensuring that those who hold the keys to communities across the

²¹³ Craig Waletzko, *An Open Letter to Governor Cuomo*, FAIR HOUSING JUSTICE CENTER (Jan. 30, 2020), available at: <https://www.fairhousingjustice.org/newsletters/january-30-2020/>.

²¹⁴ *Id.*

²¹⁵ *Id.*

State are meeting their fair housing obligations. The Committees strongly recommend that the Department of State, the Division of Human Rights, and New York State Homes and Community Renewal reevaluate and strengthen their current fair housing efforts, including implementing and supporting the following recommendations.

i. Recommendation: Investigate and Enforce Fair Housing Laws Through Testing

As the Newsday investigation demonstrates, and as fair housing experts have testified, fair housing testing is an invaluable tool to identify—and subsequently eliminate—discriminatory practices. Contemporary housing discrimination has evolved since the beginning of the fair housing movement; discrimination, once overt, is now much more subtle. Mechanisms like coded language, steering, provision of unequal services, and the placement of greater financial requirements on minority homebuyers are employed to maintain residential segregation. These mechanisms occur in such a subtle manner, many are unaware that discrimination has occurred.

According to testimony at the Senate hearings, bad actors have learned to conceal illegal conduct, calling into question the validity of the complaint-responsive approach that most public agencies have adopted to enforce fair housing laws.²¹⁶ Testers who participated in the Newsday investigation repeatedly stated that they did not realize they had been subjected to unequal treatment by real estate agents until they learned from recordings and other evidence how their counterparts had been treated.²¹⁷ Needless to say, in ordinary circumstances, prospective homebuyers don't have the opportunity to view hidden-camera video of an agent's interactions

²¹⁶ *Joint Hearing: Real Estate Agents' Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Fred Freiberg, Co-Founder, Fair Housing Justice Center), *supra* note 3.

²¹⁷ *Long Island Divided*, *supra* note 1.

with other prospective homebuyers. If victims of housing discrimination are unaware that their fair housing rights are being violated, complaints will not be filed. Without complaints, no enforcement action will occur, and the unlawful practices will continue.²¹⁸

While public agencies should continue to investigate complaints of discrimination thoroughly and expeditiously, the State's fair housing enforcement paradigm must shift towards a strategy that places a greater emphasis on the proactive enforcement and use of fair housing testing to uncover subtle and systemic forms of housing discrimination.²¹⁹ Fair housing testing, as demonstrated in *Newsday's* report, is an efficient and effective tool in unearthing patterns of illegal discrimination in the housing industry.

Senate Bill 112, sponsored by Senator Kaplan, directs the Attorney General to conduct yearly fair housing testing through the use of fair housing testing, and report the annual testing results to the Governor and the Legislature. The annual testing report includes the number of tests conducted, the number of instances of possible discrimination found, and any resulting enforcement action brought as a result of fair housing testing. This bill also permits the Attorney General to contract with a non-profit organization that operates a fair housing program and has expertise in conducting fair housing testing for at least two years to execute any or all of its testing obligations.²²⁰ The Committees recommend the Legislature pursue passage of S112 in the 2021 legislative session.

²¹⁸ *Joint Hearing: Real Estate Agents' Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Fred Freiberg, Co-Founder, Fair Housing Justice Center), *supra* note 3.

²¹⁹ *Id.*

²²⁰ *Id.*

ii. Recommendation: Increase Funding to Support Fair Housing Efforts

Funding for systemic fair housing testing across New York State is crucial. The State does not currently provide funding to support the efforts of fair housing organizations, that rely upon limited funds available through the federal government.²²¹ The Fair Housing Justice Center conducts, on average, 200 paired tests a year; the State does not assist in funding these tests.²²² There are six fair housing groups operating in New York State, none of which receive any funding from the State to support its activities.²²³ The Fair Housing Justice Center has a contract with the City of New York for \$20,000 to conduct source-of-income testing; a comparable fair housing organization based in Los Angeles receives \$900,000 from the City and County of Los Angeles.²²⁴ As Freiberg testified, “we’re in a fair-housing desert here when it comes to resources and funding for testing.”²²⁵

Pursuant to Real Property Law, the fee to receive or renew a real estate broker and agent license are \$155 and \$55, respectively. According to data maintained by the Department of State, as of December 2, 2020, there are 52,748 licensed brokers and 77,830 licensed real estate agents in New York State.²²⁶ Implementing a minor surcharge on the licensing fees for brokers and agents would provide significant funding dedicated to fair housing testing efforts statewide. As renewals are required every two years, an estimated 26,000 brokers and 38,000 agents will pay fees of \$150 and \$55 annually, respectively; if, for example, a minor surcharge of \$30 is added to the broker

²²¹ *Joint Hearing: Real Estate Agents’ Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Loraine Y. Collins, Director of Policy and External Affairs, Enterprise Community Partners, Inc.), *supra* note 3.

²²² *Joint Hearing: Real Estate Agents’ Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Fred Freiberg, Co-Founder, Fair Housing Justice Center), *supra* note 3.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ Active Real Estate Salespersons and Brokers, NEW YORK STATE DATA (last viewed Dec. 6, 2020), available at: <https://data.ny.gov/Economic-Development/Active-Real-Estate-Salespersons-and-Brokers/yg7h-zjbf>.

license fee and \$10 to the agent license fee, over \$1 million could be earmarked to fund fair housing efforts. The Committees recommend amending Real Property Law Section 441-b to implement a surcharge on the licensing fee of real estate brokers and agents— funds dedicated to sponsoring statewide testing, as well as fair housing counselors, whose work has been shown to result in more equitable outcomes, and better integrated communities.²²⁷ The additional funding will enable the State to act against discrimination without the prompt of a news organization.

Senate Bill 2133, sponsored by Senator Skoufis proposes to enact such a surcharge on broker and salespersons licenses, designating that the funds be used for statewide fair housing testing efforts. The Committees strongly encourage the Legislature pursue the passage of this bill in the 2021 legislative session.

iii. Recommendation: Mandate Statewide Collection of Demographic Data

As discussed in this report, outside oversight is necessary to ensure those in the real estate industry are meeting their fair housing obligations. One possible tool to ensure standards are met would be the statewide collection of data on demographics of prospective homebuyers and renters who seek the advice of in real estate brokers and agents, and the outcomes of their interactions. The Committees recommend the Legislature enact a statute similar to the Home Mortgage Disclosure Act, which requires every mortgage lender to disclose data to the federal government on every application received including the applicant’s basic demographic information, the

²²⁷ To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island, Joint Hearing Before the S. Comm. on Investigations and Gov. Operations, Housing, Construction, and Community Development, and Consumer Protections, 2019-2020 Leg. Sess. 26 (Sept. 17, 2020) (statement of Dr. Max Besbris, Assistant Professor of Sociology, University of Wisconsin, Madison) (hereinafter “*Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020)”).

application decision, and, where applicable, the price of the loan. A similar mandate for the real estate brokerage industry—such as requiring brokers to disclose demographic information regarding their clients—would help to identify and potentially reduce discriminatory patterns, implicit biases, and other concerning indicators.²²⁸

It is imperative that the State be proactive in identifying eliminating housing discrimination and affirmatively identify bad actors. Developing, maintaining and monitoring such data in a timely manner will allow the State to better understand the dynamics of the housing market as experienced by people of various races and ethnicities, and will enable both the state and realty firms to review their progress in promoting fair housing goals and treating clients equally without regard for their race or ethnicity. Senate Bill 2525, sponsored by Senator Kavanagh would establish this data reporting requirement. The Committees recommend the Legislature pursue passage of this bill in the 2021 legislative session.

VII.C. Licensing & Renewal Training Requirements

i. Recommendation: Enhance the Training Required for Licensed Real Estate Agents and Brokers

The Committees' investigation and Newsday's report highlights the need to thoroughly examine all aspects of New York State's real estate training requirements and standards related to fair housing. In order to qualify for a real estate salesperson (agent) license, an applicant must complete 75 hours of instruction approved by the Secretary of State and pass an examination

²²⁸ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Dr. Jacob Faber, Associate Professor, New York University's Robert F. Wagner School of Public Service), *supra* note 227.

administered by the Department of State. All licensed real estate agents must renew their license every two years and are required to complete 22.5 hours of continuing education instruction, including at least three hours of instruction pertaining to fair housing and discrimination.

The 75 hours of required instruction for new licensees is less time than many other states require. For example, Texas requires new real estate agents to complete 180 hours of instruction; California requires 135 hours; Colorado 162 hours; Oregon 150 hours; Ohio 120 hours; Utah 120 hours; South Dakota 116 hours; Delaware 99 hours; Kentucky 96 hours; Arizona 90 hours; Idaho 90 hours; Indiana 90 hours; Louisiana 90 hours; Nevada 90 hours; New Mexico 90 hours; Oklahoma 90 hours; and West Virginia 90 hours. The State of New York could increase mandated instruction hours without unduly burdening those interested in becoming licensed agents.²²⁹ The topic of fair housing constitutes less than five percent of the curriculum of the state-mandated course required to become a licensed real estate agent.²³⁰ The Committees recommend the 75 hour instruction requirement for real estate agent licenses be increased to at least 77 hours by increasing the fair housing training from four hours to six hours.

In order to qualify for licensure as a real estate broker, an applicant must have at least two years of experience as a licensed real estate agent or at least three years of experience in the general real estate field, or a combination of both; have satisfactorily completed both the qualifying salesperson (agent) course of 75 hours and an additional 45 hours broker course; and pass an examination administered by the Department of State.²³¹ In evaluating relevant experience, the Department of State utilizes a point system that takes into consideration the amount and type of

²²⁹ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Dr. Max Besbris, Assistant Professor of Sociology, University of Wisconsin, Madison), *supra* note 227.

²³⁰ *Id.*

²³¹ N.Y. REAL PROP. § 441.

qualifying activities performed and assigns a weighted value to each function. To qualify for a broker's license based on experience as a real estate agent, an applicant must accumulate 3,500 points. To qualify based on equivalent experience in general real estate business, applicants must accumulate 5,250 points.

The Department of State has the responsibility and authority to determine such qualifications for the licensing of real estate brokers. In consultation with industry stakeholders, the Committees strongly urge the Department of State to reevaluate the necessary experience points required for brokers, increasing from 3500 to 6000 points for those with at least two years of experience as an agent and from 5250 to 7550 for those with three years of experience in the field or those who are applying using a combination of experience. In addition, the Committees recommend amending Real Property Law to include additional hours of instruction for a broker's license—from 45 to 75—including additional hours dedicated to fair housing and discrimination, as well as the responsibility of a broker to ensure agents under their license are fulfilling fair housing obligations.

Senate Bill 2132, sponsored by Senator Skoufis, proposes to enhance the training requirements of real estate brokers and agents by requiring that the content of instruction pertaining to fair housing and discrimination include, but not be limited to, courses on (1) the legacy of segregation, unequal treatment, and historic lack of access to opportunity in housing; (2) unequal access to amenities and resources on the basis of race, disability, and other protected characteristics; (3) federal, state, and local fair housing laws and (4) anti-bias training. In addition, this bill will increase the mandatory hours of instruction required for a real estate broker license from at least 77 hours to 152 hours. The content must also include instruction on the responsibility of a broker for ensuring that each licensed real estate salesman under such broker's supervision is

in compliance with his or her obligations under applicable federal, state, and local fair housing laws. S2132 will also require applicants for real estate agents to complete at least 77 hours of courses. The Committees further recommend Senate Bill 538A, sponsored by Senator Kaplan, which proposes to incorporate two hours of implicit bias training as part of an agent's 22.5-hour continuing education instruction. Realtor testimony at the Senate hearings made it clear that a greater emphasis on implicit bias is needed as part of the ongoing training that agents receive every two years. The Committees recommend the Legislature pursue the passage of the aforementioned bills in the 2021 session.

ii. Recommendation: Ensure Effective Curriculum and Quality of Training Instruction

The investigation revealed that the quality of curriculum developed for licensees—and how it was instructed—was staggeringly inadequate. The content of training courses, reviewed by fair housing experts, was often inaccurate, incomplete or confusing, and lacking in quantity and quality.²³² According to fair housing experts consulted by Newsday, only one of the six classes reviewed included the required three hours of fair housing law instruction.²³³ In two classes, conducted by the same instructor, experts unanimously concluded that the instruction lacked basic information necessary to ensure agents understand and adhere to fair housing laws.²³⁴ Additionally, the experts noted that when the instructors made statements regarding racial and religious bias, the instructor warned students not to use offensive language, but then repeated offensive terms in anecdotes—reinforcing stereotypes rather than dispelling them.²³⁵ In another

²³² *Long Island Divided*, *supra* note 1.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

class analyzed by fair housing experts, an instructor informed the class that the purpose of the instruction, was to inform them on how “not to get caught” violating fair housing laws, rather than to inform the class of the purpose of fair housing laws.²³⁶

With few exceptions, those real estate agents that testified at the Committees’ September 17, 2020, hearing denied not only partaking in any unlawful or unethical behavior, despite Newsday’s alleged evidence of fair housing violations, but most also denied having ever witnessed such behavior from colleagues. Additionally, representatives from the corporations also testified their agents did not participate in any discriminatory behavior. One agent, Donna Rogers, of Douglas Elliman, provided an unsubstantiated opinion on the quality of schools in a certain area to a white tester, while instructing a paired Black tester to conduct his own research on school quality and cautioning that online ratings may not be the best indicators.²³⁷ In her testimony to the Committees, Ms. Rogers claimed the difference in statements made to the white and Black tester was due to the fact that in between the respective tests, she attended trainings which taught her how discussing the quality of schools can be considered steering.

Rosalind Resnick, an agent for Coldwell Banker, made statements about the racial or religious makeup of a community, an act specifically prohibited by the Fair Housing Act. In her testimony before the Committees, Ms. Resnick stated she believed her lack of experience at the time the tests were conducted contributed to her violation, explaining that, at the time of the tests, she had only been in the industry just over a year.²³⁸ Despite being a fully-licensed real estate agent, and thus having successfully completed the mandated 75 hours of instruction and the

²³⁶ *Long Island Divided*, *supra* note 1.

²³⁷ *Id.*

²³⁸ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Rosalind Resnick, Real Estate Agent, Coldwell Banker), *supra* note 227.

examination administered by the Department of State, Ms. Resnick engaged in conduct that might be in violation of fair housing standards, attributing her failure to do so to her lack of experience. While Ms. Resnick was one of the few individuals who apologized for her error, lack of experience should not be an impediment to agents meeting their fair housing obligations if they are properly trained before they are licensed. The real estate licensure courses, approved by the Secretary of State, should enable all applicants to meet their fair housing obligations once they are in the field.

Another tester, Francia Perez, agent for Douglas Elliman, was identified by Newsday as providing differential treatment in the provision of services for a white and Asian tester. Although neither tester received preapproval financing, Ms. Perez was reluctant to provide services to the Asian tester, withholding listings from the Asian tester for five weeks, while she accepted the word of the white tester that they prequalified, and provided listings and a house tour to the white tester, within four days of their initial meeting.²³⁹ When asked about Ms. Perez's alleged differential treatment, Ann Conroy, Chief Executive Officer for Douglas Elliman, she testified, "I did not see any discriminatory intent on [Ms. Perez's] part."²⁴⁰

Conscious intent to discriminate is not necessary for a violation of the fair housing laws. The Supreme Court, in *Texas Dept. of Housing and Community Affairs v. Inclusive Community Project, Inc.*,²⁴¹ held that disparate-impact claims are cognizable under the Fair Housing Act, reasoning that the statutory language of the FHA focuses on the consequences of the actions in question rather than the actor's intent.²⁴² In reaching its conclusion that the FHA encompasses disparate-impact claims, the Court ruled:

²³⁹ *Long Island Divided*, *supra* note 1.

²⁴⁰ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Ann Conroy, Chief Executive Officer, Douglas Elliman), *supra* note 227.

²⁴¹ 135 S. Ct. 2507 (2015).

²⁴² *Id.*

Recognition of disparate-impact liability under the FHA also plays a role in uncovering discriminatory intent: It permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment. In this way disparate-impact liability may prevent segregated housing patterns that might otherwise result from covert and illicit stereotyping.²⁴³

Based on testimony provided, it is evident there is a deep misunderstanding among those in the real estate industry—agents and brokers—that fair housing laws are not violated if the actor did not intend to discriminate. The content of instruction on intent and housing discrimination, as Allan R. Eldridge, broker for RE/MAX Beyond, stated is “woefully inadequate.”²⁴⁴ In explaining where he believes the inaccurate “intent” standard originated, Mr. Eldredge explained:

Well, I think, first of all, that the past training that we've had in this area is—is woefully inadequate. I mean, we have to take three—I think it's three hours of fair housing every two years. I've had agents, you know, 10 years, they take the same course every 2 years. So, I mean they've had 15 hours of fair housing, but they've heard the same over and over and over, and it goes back to citing, you know, when the first law was enacted back in 1867. And the next law was enacted in 1879, and then 1912, rather than really getting into the crux of the issues.²⁴⁵

It is the opinion of the Committees that courses discussing fair housing and discrimination must include a discussion of implicit bias, the attitudes or stereotypes that affect one's understanding, actions and decisions in an unconscious manner. Even those acting with the best intent can still harbor biases around race, ethnicity, and other protected characteristics. Introducing

²⁴³ 135 S. Ct. 2507 (2015).

²⁴⁴ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Alan Eldridge, Broker, RE/MAX Beyond), *supra* note 227.

²⁴⁵ *Id.*

and discussing the concept of implicit bias can influence agents and brokers to reflect upon their own actions and the consequences of their actions.²⁴⁶

At the Committees' hearings, several experts testified that there is a fundamental misunderstanding among real estate agents as to what housing discrimination is and the effect it has on people and communities. Additionally, based on the testimony of agents and brokers regarding the accusations of discriminatory behavior, the misunderstanding of what constitutes discrimination was obvious. For example, Bart Cafarella, Broker for Realty Connect, testified that his agents did not participate in racial discrimination, explaining, "[t]he spirit of the racial laws was not violated."²⁴⁷

New York State real estate licensees must be better trained on how to handle situations in which clients ask about the racial composition of a neighborhood. Simply ignoring race in racism itself perpetuates inequality among races.²⁴⁸ Agents can be instructed on ways they can respond to questions of race from homebuyers and confront racism by being transparent about their responsibilities under fair housing laws.

Evident throughout the Committees' investigation, and highlighted in *Newsday's* paired testing probe, agents used the perceived quality of school districts in recommending areas potential homebuyers should consider buying or avoiding. The reliance on school ratings as a top selling

²⁴⁶ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Dr. Max Besbris, Assistant Professor of Sociology, University of Wisconsin, Madison), *supra* note 227.

²⁴⁷ *To Examine Possible Illegal and Unequal Treatment of Homebuyers of Color on Long Island and the Effectiveness of Legislative Actions and Proposals to Combat Such Treatment*, Joint Hearing Before the S. Comm. on Investigations and Gov. Operations, Housing, Construction, and Community Development, and Consumer Protection, 2019-2020 Leg. Sess. 26 (Sept. 25, 2020) (statement of Bart Cafarella, Real Estate Broker, Realty Connect USA) (hereinafter "*Joint Hearing: To Examine Possible Illegal and Unequal Treatment of Homebuyers of Color on Long Island and the Effectiveness of Legislative Actions and Proposals to Combat Such Treatment* (Sept. 25, 2020)").

²⁴⁸ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Dr. Max Besbris, Assistant Professor of Sociology, University of Wisconsin, Madison), *supra* note 227.

point enables agents to serve as gatekeepers for the 124 school districts on Long Island whose test scores, graduation rates, and racial compositions vary tremendously.²⁴⁹ Discussions about the quality of school districts have fair housing implications, as school standards can become a proxy for talking about a community's racial or ethnic composition.

While some agents involved in Newsday's paired testing correctly informed testers that they are legally barred from discussing school quality, some agents recommended independently researching schools, while others went as far as to offer opinions based on individual knowledge on schools. One agent, Joy Tuxson of RE/MAX, told testers to evaluate school data to determine a community's socioeconomic status.²⁵⁰ Here is Tuxson, informing the white tester that while she is unable to direct her towards or away from certain areas, she can tell her where to look, explaining:

Everything is online for the school districts. You're going to see who graduates. How many kids. The ethnic breakdown, how many free lunches. You can get a good idea of the socioeconomic makeup of the neighborhood when you look at the school districts.²⁵¹

Tuxson provided similar advice to the paired Asian tester, recalling what she told her nephew who was house hunting, including in Amityville school district, in which 90% of students are either Black or Hispanic:

I sold my nephew a house, him and his bride...I said... you sent me houses with seven different school districts...Do you really want your future children going to Amityville school districts?²⁵²

²⁴⁹ *Long Island Divided*, *supra* note 1.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

A Realty Connect USA agent, Margaret Petrelli, provided a white tester with a list of seven school districts whose student populations average nearly 85% white, going as far as pointing out which specific school districts for the white tester to consider and which to avoid.²⁵³ Ms. Petrelli did not provide the Black tester with a list of school districts to evaluate.²⁵⁴ Newsday’s fair housing consultants both concluded Ms. Petrelli’s statements and actions was evidence of racial steering and discriminatory treatment.

In appearing before the Committees, Ms. Petrelli testified that she believed she did not violate fair housing laws and did not have the intent to treat either tester differently.²⁵⁵ She also explained her statement to the white tester urging them to avoid Amityville—“you’re not going to like those schools”—was discussed with respect to resale value, not as a proxy for the racial makeup of the community.²⁵⁶

Judi Ross, an agent for Keller Williams Realty Elite during the Newsday investigation and now practicing real estate with Douglas Elliman, made statements regarding her personal opinions on certain schools to the white tester, but informed the Black tester he can conduct his own research.²⁵⁷ While speaking with the white tester, she directed him away from areas served by three school districts that are predominantly minority, stating “I wouldn’t go near them,” while acknowledging such remarks are illegal.²⁵⁸ Ms. Ross testified to the Committees that her comments to the white tester were not “racially motivated,” stating the white tester “kept asking me about

²⁵³ *Long Island Divided*, *supra* note 1.

²⁵⁴ *Id.*

²⁵⁵ *Joint Hearing: To Examine Possible Illegal and Unequal Treatment of Homebuyers of Color on Long Island and the Effectiveness of Legislative Actions and Proposals to Combat Such Treatment* (Sept. 25, 2020) (statement of Margaret Petrelli, Real Estate Agent, Realty Connect USA), *supra* note 247.

²⁵⁶ *Id.*

²⁵⁷ *Long Island Divided*, *supra* note 1.

²⁵⁸ *Id.*

school-district quality, and that's just what popped into my mind."²⁵⁹ When asked about Ms. Ross' school district statement of "I wouldn't go there," Ann Conroy, CEO of Douglas Elliman, stated "on face value, if you just said [that] that sounds terrible...but I don't know the whole conversation."²⁶⁰ Ms. Conroy then went further, stating that the remark was not related to race, and that it was taken out of context in relation to the entire conversation between Ms. Ross and the white tester.²⁶¹

References to school quality, especially in areas like New York City and Long Island where schools are heavily racially segregated, can be used as a proxy to discuss a community's racial composition.²⁶² Several agents testified that prior to the Newsday investigation, they were unaware of the legal issues that arise from discussing schools or the impact it has on residential segregation. Ms. Rogers, for example, testified that in between meeting with the white and minority testers, she "didn't realize" making subjective comments about school districts is considered steering.²⁶³

As Freiberg explained in his testimony before the Committees:

When they start offering their personal opinions, "[t]his school is bad," you know, "Elmont is a terrible place for schools," even though the Elmont High School is a 96 percent graduation rate, and [...] has a great track record [...] they are really talking about the race of students, not the performance of the school.²⁶⁴

²⁵⁹ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Judi Ross, Real Estate Agent, Douglas Elliman), *supra* note 227.

²⁶⁰ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Ann Conroy, Chief Executive Officer, Douglas Elliman), *supra* note 227.

²⁶¹ *Id.*

²⁶² *Joint Hearing: Real Estate Agents' Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Fred Freiberg, Co-Founder, Fair Housing Justice Center), *supra* note 3.

²⁶³ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Donna Rogers, Real Estate Agent, Douglas Elliman), *supra* note 227.

²⁶⁴ *Joint Hearing: Real Estate Agents' Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Fred Freiberg, Co-Founder, Fair Housing Justice Center), *supra* note 3.

Those agents who testified before the Committees and were accused of racial steering by Newsday categorically denied any intentional or unintentional steering of potential homebuyers based on race. However, when asked to define “steering,” most agents could not explain what they believe the act entails, despite claiming their behaviors are being misrepresented as such. For example, agents for Douglas Elliman struggled to provide an answer despite being “retrained” on the importance of fair housing and anti-discrimination protocols following Newsday’s investigation.²⁶⁵ Agent Francia Perez stated, “[s]teering, I don’t even—I can’t even explain, because I don’t—I don’t do it, I don’t know about it.”²⁶⁶ Ms. Conroy, CEO of Douglas Elliman, asserted, “[t]hey very well know what ‘steering’ is. Maybe they don’t know how to articulate it to your satisfaction, but they know what ‘steering’ is, and they know that it is completely against all fair housing laws.”²⁶⁷

Several agents, all accused of racial steering by Newsday, made attempts to avoid naming or describing steering, while also claiming they do not participate in it. By making the assertion that their behavior did not constitute racial steering, and subsequently stating that they are unaware of what racial steering is, these agents directly contradicted themselves and demonstrated that the current real estate licensure and training requirements fail to teach them this critical and basic concept of fair housing.

According to research conducted by Dr. Max Besbris, few real estate agents outwardly support residential racial segregation, but agents’ primary concern about racial steering was

²⁶⁵ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Ann Conroy, Chief Executive Officer, Douglas Elliman), *supra* note 227.

²⁶⁶ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Francia Pere, Real Estate Agent, Douglas Elliman), *supra* note 227.

²⁶⁷ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Ann Conroy, Chief Executive Officer, Douglas Elliman), *supra* note 227.

avoiding getting caught, rather than the impacts of their discriminatory behavior.²⁶⁸ If the training required of agents and brokers could enable them to better understand these impacts and their essential role in preventing the harms of residential segregation, we may have more success in ensuring the agents and brokers are not engaging in discriminatory conduct.

The Committees strongly urge the Department of State, the agency responsible for approving and monitoring real estate license courses, to reevaluate the content of these courses to ensure real estate agents and brokers are competently educated of their legal obligations under fair housing standards. As fair housing experts testified before the Committees, most real estate agents and brokers lack a fundamental understanding of discrimination and its impact on communities as a whole. Specifically, the Committees recommend amending current course requirements to include required instruction on implicit bias and unintentional discrimination as well as a comprehensive instruction on what constitutes discrimination in housing and the role discriminatory behavior has in perpetuating residential segregation and racial inequality. Moreover, real estate agents and brokers should complete their required instruction with a firm understanding of the impacts that residential segregation has, especially on people of color.

In redesigning the fair housing components of the curriculum, the Department of State should consult with experts in fair housing, real estate brokerage practices and other relevant fields, and should consider instituting a process of routinely reviewing and updating the curriculum, to ensure that it stays relevant to contemporary challenges brokers, agents, and home-seekers face.

²⁶⁸ *Id.*

iii. Recommendation: Ensure Quality of Course Instructors

The deficiency in the quality of real estate licensure and training course instructors was evident throughout the investigation and was well-documented in Newsday's review of in-person classes. Moreover, there appears to be a theme of insufficient oversight in how these courses are taught. For example, in the classes attended by Dr. Max Besbris, instructors spent precious time making flippant jokes about discrimination, debating with students about whether or not ethnic or religious groups constituted racial categories, and what kind of individuals are more or less racist.²⁶⁹

Thomas Silverstein, Associate Counsel with the Fair Housing & Community Development Project at the Lawyers' Committee for Civil Rights Under Law, in reviewing transcripts and notes from three LIBOR courses, stated:

The trainers veered pretty far away from actually covering the important topics that a Realtor or real estate agent would need to understand in order to comply with their obligations.²⁷⁰

In one class, the instructor spent only 20 minutes discussing fair housing and discrimination, despite advertisements for the course promising to include the mandated three hours of fair housing.²⁷¹ After 16 minutes of her 20-minute overview, the instructor made the following comment to a Black student:

We may not look alike, but deep down inside, you're still my sister. If we could just treat people with that kind of kindness, it would be a wonderful thing. OK, so fair housing. OK, we covered that.²⁷²

²⁶⁹ *Long Island Divided*, *supra* note 1.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

Aside from the 20 minutes spent on fair housing, the instructor did not mention the topic again, other than offering the following example of how school preferences can become proxies for race in real estate sales:

She [the client] didn't want Bay Shore because they didn't like the school district. I have to tell you, Bay Shore is actually a good school district. What people are really saying is that there's too many minorities there. You need minorities. You can't grow up without minorities. You have to work with other people of all different sizes, shapes, colors, creeds, whatever.²⁷³

As evidenced by these examples, the need for higher standards for licensing real estate instructors is critically important in ensuring fair housing access to all in New York State. The State must impose effective standards for instructor licensing and should proactively ensure the content of instruction goes beyond simple memorization of federal, state and local fair housing laws.²⁷⁴

Instructors were observed routinely disregarding the mandated components of fair housing for license renewal. To better enforce these mandates and ensure instructors are fulfilling their requirements for instruction, instructors should be required to sign a document under oath, approved by and submitted to the Department of State, attesting to compliance with state fair housing laws. If instructors fail to meet their obligations prescribed under Real Property Law and Department of State regulations, their licenses should be temporarily suspended for non-compliance for their first offense and permanently revoked for any subsequent offenses. Furthermore, those instructors that have their licenses lawfully revoked should then be barred from reapplying for licensure, for a period of at least five years. Senate Bill 2134, sponsored by Senator

²⁷³ *Long Island Divided*, *supra* note 1.

²⁷⁴ *Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Dr. Max Besbris, Assistant Professor of Sociology, University of Wisconsin, Madison), *supra* note 227.

Skoufis, will accomplish this legislative goal. The Committees urge the Legislature to pursue the passage of S2134 in the 2021 legislative session.

iv. Recommendation: Rescind Rule Requiring Classes to Be Recorded

As noted above, in December 2019, the Department of State issued a new rule, 19 NYCRR 177.9, which requires fair housing courses to be recorded. In response, several fair housing groups urged the Department to eliminate this proposal, asserting:

The fair housing trainings we and other fair housing trainers conduct are the rare occasions in which real estate professionals are able to speak more candidly and openly of the challenges they have in interpreting and complying with fair housing laws. That open dialogue is hugely valuable in addressing real-world questions facing real estate professionals and helping them work through the difficult issues that sit at the core of housing discrimination. If trainings are recorded, we believe it will have a chilling effect on these conversations, impeding learning and making it more difficult for fair housing advocates and teachers to connect effectively with the line agents.²⁷⁵

If the Department is interested in evaluating the quality of these courses, fair housing experts recommended the Department take a similar approach to that of Newsday and audit the courses to evaluate their adequacy.²⁷⁶ The Committees further point out that the Governor's proposal does not prompt the instructors to do anything with the recordings, other than maintain them for a designated period of time, rendering them of little practical value. The Committees join the fair housing organizations and experts in recommending this rule be rescinded.

²⁷⁵ Craig Waletzko, *An Open Letter to Governor Cuomo*, *supra* note 213.

²⁷⁶ *Id.*

VII.D. Increased Penalties and Broader Accountability

i. Recommendation: Increase Penalties for Violating Fair Housing Laws

Article 12-A of Real Property Law authorizes the Department of State to regulate licensed real estate brokers and agents. The Department of State may revoke, suspend, fine (maximum of \$1,000) or reprimand a broker or agent if they are found to have, among other things, violated any provision of Article 12-A of Real Property Law, engaged in fraudulent practices, produced dishonest or misleading advertising, or demonstrated untrustworthiness or incompetency in their profession.²⁷⁷

Fair housing experts, including Fred Freiberg, testified to the Committees that the penalties under the Division of License and Services, a maximum of \$1,000, are insufficient in practice to deter violations, and should be raised. Experts also noted that the imposition of punitive damages is necessary to prevent and deter fair housing violations.²⁷⁸ Imposing meaningful financial penalties will incentivize real estate agents and brokers to fulfill their obligations under fair housing laws.

The Committees recommend amending Section 441-C of Real Property Law to increase the fines that may be imposed by the Department of State for such violations, discussed previously. Senate Bill 715, sponsored by Senator Thomas, aims to deter fair housing violations by increasing penalties related to any claims brought by the Commissioner of New York State's Division of Human Rights and by the Attorney General, in relation to patterns and practices of fair housing violations. This bill will amend the Executive Law to add a new section, authorizing the

²⁷⁷ N.Y. REAL PROP. § 441-C.

²⁷⁸ *Joint Hearing: Real Estate Agents' Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Theresa Sanders, President, Urban League of Long Island), *supra* note 3.

Commissioner of the Division of Human Rights to (1) award compensatory or punitive damages, (2) require the cease and desist of discriminatory conduct, and (3) assess a civil penalty, using a graduated penalty structure, for violations to vindicate the public interest. Courts will also be permitted to assess a civil penalty, to vindicate the public interest, when the Attorney General brings a case based on alleged patterns and practices of discriminatory conduct.

Senate Bill 945, sponsored by Senator Gaughran, proposes to increase the fine threshold from \$1,000 to \$2,000 and would divert 25% of the revenue collected from these fines to county-level Human Rights Commission offices and 25% towards a new special fair housing fund called the Anti-Discrimination in Housing Fund. This new fund would be established by, and in the custody of, the State Comptroller. Funds would be made available to the Commissioner of the Division of Human Rights to allocate and expend solely for grants for not-for-profit agencies specializing in housing anti-discrimination.

The Committees recommend the Legislature pursue passage of both S715 and S945 in the 2021 legislative session.

ii. Recommendation: Improve Broker Supervision of Agents

In New York State, real estate brokers are responsible for the supervision and conduct of the real estate brokerage business, under which licensed real estate salesperson work as the representative broker's agent. Pursuant to 19 NYCRR 175.21, brokers are responsible for the supervision of real estate agents under their license including providing regular, frequent, and consistent personal guidance, instruction, oversight and superintendence.

During the Committees' hearings, subpoenaed brokers testified to their supervisory role as holders of brokerage licenses. As stated, brokers are responsible for supervising the conduct of all licensed real estate agents under their brokerage business. Included below is a list of brokers that testified to the number of real estate agents working under their brokerage license:

- Ann Conroy, CEO of Douglas Elliman – about 1700 agents;
- Richard Amato, Broker in Charge for Keller Williams Greater Nassau – 418 agents;
- Joseph Moshe, Broker and Owner of Charles Rutenberg Realty – 834 agents; and
- Bart Cafarella, Broker, Realty Connect USA – over 400 agents.

The broker-to-agent ratios are alarming; it is inconceivable that one individual broker can monitor the actions of over 400 agents and ensure fair housing standards are being satisfied on a daily basis. When asked how Ms. Conroy could supervise the 1700 agents under her brokerage license, she described a tiered corporate structure with five senior managers reporting directly to her, while 26 mid-level managers report to those five senior-level managers.²⁷⁹ It is the Committees' opinion, supported by the testimony of fair housing experts, that such structures are ineffective in ensuring agents are complying with fair housing laws. The Committee recommends the Department of State, in consultation with the Division of Licensing Services, reevaluate broker supervision of agents and determine a set of metrics that provide more robust support and accountability for agents.

The Committees urge the Department of State to consider the following factors in its reevaluation of whether a broker's supervision of agents is adequate and reasonable:

- The availability of the supervising broker to all agents under the supervision of the broker to review and approve all documents;

²⁷⁹*Joint Hearing: To Examine and Identify Whether and How Potential Homebuyers of Color Suffer Illegal and Unequal Treatment by Real Estate Agents on Long Island* (Sept. 17, 2020) (statement of Ann Conroy, Chief Executive Officer, Douglas Elliman), *supra* note 227.

- Whether the supervising broker's main location is more than a predetermined distance from a branch office with agents the supervising broker oversees; and
- The availability of the broker to familiarize the agents with the requirements of federal and state law governing real estate transactions, including, without limitation, prohibitions against discrimination.

Under Real Property Law § 441-a, real estate brokers are required to maintain and supervise a definite place of business, but are permitted to appoint office managers to supervise branch offices. An office manager is a licensed associate real estate broker who elects to work as an office manager, under the name and supervision of another broker.²⁸⁰ Such associate broker retains their license as a broker, but the behavior and practices of real estate sales and brokerage by such individual as an associate broker are governed exclusively by the standards set for salespersons.²⁸¹

Brokers have a responsibility to ensure agents practicing under their license are meeting their fair housing and anti-discrimination obligations. If a broker maintains numerous offices and chooses to appoint associate brokers as office managers—passing on the responsibility of agent oversight—office managers should be held to the same standards as licensed brokers, not salespersons. The Committees recommend amending Real Property Law to mandate that licensed associate brokers, operating as office managers, have the same fair housing oversight obligations that are placed on brokers at their definite place of business. In addition, Real Property Law should be amended to require that office managers have an additional two years of experience as a licensed broker, before a broker may receive a supplemental license approving the appointment of an office manager at a branch office. Senate Bill 2157, sponsored by Senator Thomas, would make this

²⁸⁰ N.Y. REAL PROP. § 441-a.

²⁸¹ *Id.*

change. The Committees recommend the legislature pursue the passage of this bill in the 2021 legislative session.

iii. Recommendation: Require Brokers to Standardize Their Policies for All Home Seekers

As outlined earlier in this report, in seven tests conducted by Newsday, agents demonstrated a pattern of providing unequal services to minority prospective homebuyers, compared with their white counterparts. While it is apparent that implicit discriminatory behavior—such as racial steering—is more prevalent than explicit discrimination—regardless of its infrequency—must be stamped out.

Senate Bill 2131, sponsored by Senator Skoufis, aims to prevent these violations of fair housing laws by directing the Secretary of State to promulgate rules and regulations requiring brokers to institute standardized operating procedures for the perquisites prospective homebuyers must meet prior to receiving any services, including, but not limited to:

- Whether prospective clients must show identification;
- Whether an exclusive broker agreement is required; and
- Whether pre-approval for a mortgage loan is required.

While the Committees do not recommend prescribing how each broker should standardize their policies, it is of utmost importance that prospective clients of color are treated the same as prospective white clients in the lead-up to a realtor providing services. Each broker's policy, and any changes thereof, should be submitted to the Department of State. Every agent must adhere to their broker's policies or face non-compliance penalties prescribed by the Department of State—including monetary fines or the revocation of real estate licensure. The Committees recommend that the Legislature pursue the passage of S2131 in the 2021 legislative session.

VII.E. Ensure That Government at All Levels Is Part of the Solution

i. Recommendation: Require State and Local Governments to Affirmatively Further Fair Housing

The Human Rights Law should be amended to require state agencies, local governments, public housing authorities and other public entities receiving state funding relating to housing and community development to proactively take steps to “affirmatively further fair housing” and to refrain from any action that is materially inconsistent with this obligation.²⁸² Senate Bill 1353, sponsored by Senator Kavanagh, would accomplish this by requiring all state agencies administering housing programs or enforcing housing laws and all localities administering housing programs and receiving state funds for such activities to affirmatively further fair housing. By creating an obligation to affirmatively further fair housing for all state agencies and localities administering housing-related programs and laws, this bill will ensure not only that New York will no longer participate in harmful, discriminatory practices but that the state will actively seek to create more diverse, inclusive communities. California adopted a similar affirmative fair housing policy in 2018.

The Committees recommend that the Legislature pursue the passage of S1353 in the 2021 legislative session. The Committees also recommend that the Biden Administration consider reviving the Obama Administration AFFH regulations for HUD-funded programs that the Trump Administration effectively suspended, as discussed in Section III.A., above.

²⁸²*Id.* See also *Joint Hearing: Real Estate Agents’ Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statements of Fred Freiberg, Co-Founder, Fair Housing Justice Center and Elaine Gross, President and CEO, Erase Racism), *supra* note 3.

VII.F. Brokerage Industry Reforms

The legislative and policy recommendations discussed in this report, while crucial to combating housing discrimination, will inevitably fall short if professionals in the real estate industry do not respect the history and purpose of fair housing laws or do not understand the legacy of housing segregation and discrimination and its adverse consequences to society.

Industry participants should be proactive in promoting fair housing. Satisfying minimum education requirements and merely abiding by standards are no longer sufficient to help address the fair housing crisis. To that end, the Committees urge the industry to implement the following modest reforms:

i. Recommendation: Open Offices in Communities of Color

The 12 companies whose agents were tested by Newsday had a total of 218 branch offices across Nassau and Suffolk counties; however, none had an office located in the eight predominantly minority communities on Long Island.²⁸³ On average, the population in towns where the real estate brands had their offices ranged from 75% white (Century 21) to 86% white (Keller Williams).

When asked by Newsday about the lack of presence in Long Island's predominantly minority communities, representatives from only three of the 12 companies responded: Daniel Gale Sotheby's, Coldwell Banker Residential Brokerage on Long Island, and RE/MAX LLC.²⁸⁴ A

²⁸³ *Long Island Divided*, *supra* note 1.

²⁸⁴ *Id.*

spokesperson for Daniel Gale Sotheby's responded that the company had "grown over the years to over 28 locations. While they are not in every community, we look forward to expanding into many more locations in the years to come."²⁸⁵ Coldwell Banker's spokesperson told Newsday that the firm's "market share has steadily increased year over year from 2016 through 2018 collectively, in communities [Newsday] named: Elmont, Freeport, Hempstead, Roosevelt and Uniondale."²⁸⁶ A RE/MAX representative stated that the company operated a franchise in Freeport from 2000 to 2010 and in Hempstead from 2005 to 2017, also stating "[w]e do not share actual figures of this nature but can confirm RE/MAX agents have had many listings and have closed transactions in each and every one of these neighborhoods in the past year."²⁸⁷

These 12 large firms have controlled more than 50% of the listings across Long Island, but in the minority communities, the market share has ranged from about 20% in Wyandanch to 33% in Freeport and Elmont. Agents practicing under the license of smaller, locally based brokerages service most of the listings in Long Island's eight minority communities.²⁸⁸

Many agents appeared to make efforts to avoid the predominantly minority communities of Long Island. During Newsday's paired testing investigation, 211 listings located in minority communities fell within the home search parameters provided by the paired testers. However, agents only recommended 15 homes in these areas, often exclusively to the minority testers.²⁸⁹

One measure that the industry can undertake immediately is to open offices in underserved or underrepresented communities. Opening offices and maintaining a presence in a neighborhood

²⁸⁵ *Long Island Divided*, *supra* note 1.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

will help to ensure equal and fair access to housing is being provided to all, regardless of their race or ethnicity.

ii. Recommendation: Disseminate a Model Fair Housing Policy

Until 1950, Article 34 of the National Association of Realtors (NAR) Code of Ethics stated:

A Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality or individuals whose presence will clearly be detrimental to property values in that neighborhood.²⁹⁰

Under this racist and archaic policy, local and state Boards of Realtors sanctioned and expelled Realtors who failed to meet their “ethical” obligation to discriminate based on a client’s race or national origin. The Association even provided states with a model licensing agreement to encourage its adoption, so that states would have the statutory authority to discipline or revoke the licenses of real estate agents that violated their obligation to discriminate.²⁹¹

Today, Article 10 of NAR’s Code of Ethics states:

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.²⁹²

²⁹⁰ Article 34 of the Code of Ethics for the National Association of Real Estate Boards, today known as the National Association of Realtors.

²⁹¹ ERASE Racism and Fair Housing Justice Center Issue Five-Point Plan to Address Housing Discrimination (Dec. 13, 2019), available at: <https://www.fairhousingjustice.org/newsletters/december-12-2019/>.

²⁹² *Id.*

Adopting a Code of Ethics and outlining the fair housing responsibilities of NAR's members, while important, is ineffectual if its members do not adhere to their obligations in practice. The real estate industry, through its professional associations like NAR, should provide a model fair housing policy to all members, delineating best practices in non-discriminatory real estate transactions and marketing. Real estate firms should adopt and share clear and concise fair housing policy statements to all of their brokers and agents, including an explanation of the consequences of noncompliance with fair housing laws.²⁹³

The Committees echo the request issued by ERASE Racism and the Fair Housing Justice Center asking that NAR, as well as state and local real estate boards, show the same level of determination that they demonstrated when they sought to sanction and expel realtors and other licensees who refused to discriminate against people, now that its code of ethics rightfully prohibits housing discrimination.²⁹⁴ A strong, unequivocal stand by trade associations is also necessary, in light of the lack of disciplinary action to date by brokers whose agents were exposed in the Newsday housing discrimination investigation.

iii. Recommendation: Foster a More Diverse Real Estate Sales Force

The real estate industry in the United States significantly lacks diversity. A 2017 profile conducted by NAR found that 80% of its members were white, while only nine percent were Hispanic or Latino, five percent were Black, five percent were Asian or Pacific Islander and just one percent were American Indian, Eskimo, or Aleut.²⁹⁵

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ Amanda Riggs, *2017 Member Profile; Demographics of Real Estate Agents Examined Up Close*, NATIONAL ASSOCIATION OF REALTORS (May 16, 2017).

The real estate industry should adopt affirmative hiring practices to create a more diverse and inclusive workforce.²⁹⁶ Through its trade associations—including NAR—the industry should create and promote outreach programs that interest, incentivize, and encourage members of racial and ethnic minority groups to consider careers in real estate. This could include educational programs in schools, scholarships, internships, mentoring opportunities, and placement programs.²⁹⁷

VIII. CONCLUSION

Residential segregation, reinforced by discriminatory housing practices, has profound and lasting consequences on individuals who are excluded and the communities that are segregated; it creates a vicious cycle of inequality that continues to inflict serious harm on people and communities of color.²⁹⁸ Segregation did not happen by chance, but was the direct result of the coordinated actions of government and private industry. While explicit discrimination persists today, the majority of contemporary discrimination in housing has become more subtle and therefore much harder to stamp out.

For decades, racial discrimination in housing was sanctioned by all levels of government and perpetuated by the overt discriminatory actions of private individuals. After this long, shameful history of actively promoting segregation, government began formally opposing discrimination in housing with the passage of the Fair Housing Act and other civil rights measures.

²⁹⁶*Joint Hearing: Real Estate Agents' Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Fred Freiberg, Co-Founder, Fair Housing Justice Center), *supra* note 3.

²⁹⁷ ERASE Racism and Fair Housing Justice Center Issue Five-Point Plan to Address Housing Discrimination.

²⁹⁸ *Joint Hearing: Real Estate Agents' Discrimination of Homebuyers on Long Island* (Dec. 12, 2019) (statement of Fred Freiberg, Co-Founder, Fair Housing Justice Center), *supra* note 3.

However, the agencies charged with enforcing these laws and promoting fair housing have been historically reactive in their approach, acting only after specific instances of discrimination have been brought to light by complaints or inquiries by outside parties. To ensure fair housing opportunities for all New York residents, especially for those historically excluded, New York State must develop a comprehensive, proactive fair housing strategy.

The current insufficient enforcement of fair housing laws was apparent throughout the Committees' investigation and exposed in *Newsday's* report. The Committees strongly recommend the Executive and the Legislature develop the new approaches presented in this report and provide the resources necessary to better enforce fair housing laws and combat housing discrimination. Moreover, the obligation to ensure fair housing exists extends beyond government; professionals in the real estate industry must take affirmative steps to ensure compliance with fair housing laws and remedy any violations.²⁹⁹ Whether the failure to provide services in these communities was based on willful avoidance or abject neglect, is irrelevant. It is illegal and unethical for real estate brokers and agents to provide unequal access to housing based on their racial or ethnic perceived identity of the home seekers or the makeup of communities. As described above, the industry also has the opportunity to take active steps to remedy these failings.

As it was a combination of government policies and private actions that created this legacy of residential racial segregation, it follows that the government and industry have the responsibility to repair the harm caused over the last century. Both must simultaneously take affirmative measures to change the culture of the real estate industry, from one that previously perpetuated segregation to one antithetical to discrimination that places an importance on equal opportunity for all New Yorkers, regardless of the color of their skin.³⁰⁰

²⁹⁹ *Id.*

³⁰⁰ Fred Freiberg, et al., *Ending Racism in Residential Real Estate*, FAIR HOUSING JUSTICE CENTER (Oct. 2020).

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