

II. Fair Housing Laws

The Development of Segregated Housing Patterns

Prior to 1900, racially segregated urban ghettos did not exist. They are the product of a combination of public policies and private practices that began in the Reconstruction era and spread rapidly during the final decades of the nineteenth century. Segregated housing patterns are a vestige of an elaborate system of racial subordination that was legitimized by the U.S. Supreme Court's 1896 decision in *Plessy v. Ferguson*. During the early years of the 20th Century, efforts to establish segregated neighborhoods were a reaction to the migration of thousands of African-American families from rural areas in the south to northern industrial centers. The beginnings of this migration from field to factory coincided with the First World War and continued up to and after the Second World War (Myrdal 1944). One response to the influx of African-American families was the adoption of municipal ordinances that prohibited them from occupying property except in officially designated locations. Because these laws involved state action that discriminated on the basis of race, they were challenged and eventually declared unconstitutional in a 1917 decision, *Buchanan v. Warley*, which held that segregation laws violated the Equal Protection Clause of the Fourteenth Amendment.

After *Buchanan*, property owners resorted to private covenants to maintain segregated neighborhoods. The covenants were restrictions in deeds that prevented property owners and subsequent purchasers from conveying their property to racial and religious minorities. This approach avoided the Fourteenth Amendment problems that resulted in the holding in *Buchanan*. The Supreme Court implicitly endorsed the validity of private covenants in a 1926 decision, *Corrigan v. Buckley*. Although the Supreme Court declined to review the merits of *Corrigan* on jurisdictional grounds, it issued an opinion in which it indicated, in dicta, that unlike *Buchanan*, the private covenants in *Corrigan* did not involve the "state action" needed to invoke the Equal Protection Clause of the Constitution. This, in effect, operated to legitimize private covenants as a means of maintaining segregated housing in the United States. White homeowners accomplished with covenants what local governments failed to achieve with ordinances.

After private covenants were approved in *Corrigan*, the use of racially restrictive covenants accelerated. In communities across the nation, African-Americans and other racial and religious minorities were confined to discrete residential districts in which the prominent features were substandard housing and overcrowded conditions. Despite these conditions, the population explosion caused by the continued migration of African-American families created pressures to find ways to circumvent the covenants. The most prevalent of these was the use of a white "straw man" who would purchase property and immediately transfer the title to an African-American purchaser, usually at a substantial profit. One of the bitter ironies of the covenants was that because of the scarcity of housing available to blacks, the square foot cost of such housing was far more expensive than it was for similar housing in white areas.

As part of their campaign against segregation during the 1930s and 40s, lawyers for the

NAACP launched a litigation campaign against restrictive covenants. This was a long-range, carefully orchestrated approach involving several cases handled by the nationwide network of lawyers associated with the NAACP. The NAACP's coordinated strategy culminated in May 1948, when the Supreme Court issued its decision in *Shelley v. Kraemer*. In *Shelley*, the Court held that restrictive covenants were unenforceable because while the covenants themselves were private, the use of the courts to enforce discriminatory agreements constituted state action that violated the Fourteenth Amendment.

Despite its significance as an important civil rights victory, the *Shelley* decision did not alter the pattern of segregated housing. Restrictive covenants were merely one facet of the discriminatory barriers to equal housing opportunities. The federal government played a significant role in perpetuating segregated housing. The predecessor to the Federal Housing Administration (FHA) established the practice of "red-lining" in the 1930s. This was a practice in which housing values were rated on the basis of, among other things, the age and condition of the properties and the ethnicity of the residents of the neighborhood. Properties in racially mixed or all-black neighborhoods were assigned the lowest rating and were ineligible for loans. On maps, a red line was drawn around the perimeters of these areas. In addition to redlining for government insured loans, locations for federally financed public housing developments were selected on the basis of the racial composition of neighborhoods. Developments were located in all-black or all-white areas.

When suburbanization occurred on an unprecedented scale in the years following World War II, African-Americans were excluded as a result of a combination of private discrimination as well as the policies of the Veterans Administration and FHA, federal agencies whose underwriting guidelines, until 1950, required restrictive covenants on properties with government insured mortgages. As a consequence, African-Americans were locked out of one of the most significant wealth-producing programs in American history. White families that were able to take advantage of the federal government's policies encouraging and assisting home ownership in the 1940s and 50s benefited from decades of property appreciation, which researchers estimate at billions of dollars (Oliver and Shapiro, 1995). During the same period, African-American veterans and others who desired, and were able, to afford homes were confined by discriminatory practices to central-city communities that tended to deteriorate and lose value (Oliver and Shapiro, 1995). The federal government's discriminatory policies prevented minority homeowners from accumulating wealth through home ownership and it deprived their children and grandchildren of a valuable asset they would have inherited.

The history of housing segregation in Delaware mirrors that of the nation as a whole. In the late 1970s, a three-judge panel in *Evans v. Buchanan*, the New Castle County school desegregation litigation, officially noted the state's history of racially discriminatory housing practices. In *Evans*, the court found, among other things, that "racial discrimination in the sale or rental of private housing in New Castle County was widespread, was tolerated or encouraged by the real estate industry, and was sanctioned by state officials." The court found that despite the holding in *Shelley*, racially restrictive covenants continued to be recorded in deeds until 1973. It also held that the "pervasiveness of housing discrimination in the New Castle County real estate industry is demonstrated by the Multi-List established by the Greater Wilmington Board of Realtors in April 1965. The Multi-List designated as open those listings where the owner was willing to sell to a minority buyer." The court noted further that discriminatory public housing policies contributed to the concentration of minority residents in Wilmington. The court's finding of "pervasive discrimination" in the New Castle County housing market was critical to the decision to impose a countywide, inter-district

remedy in the school desegregation litigation.

The Federal Fair Housing Act of 1968

The 1968 Fair Housing Act, 42 U.S.C. sections 3601 *et seq.*, prohibits discrimination based on race, color, religion, sex, and national origin in connection with the sale or rental of residential housing. The Act also covers: housing owned or operated by the federal government; dwellings supported in whole or in part with the aid of federal loans; advances, grants or contributions; houses and buildings supported in whole or in part by federally secured financing; and residences purchased, rented, or otherwise obtained using federal funds.

The Act also prohibits, in connection with selling or renting residences: refusal to deal; discrimination with respect to terms and conditions; discriminatory advertising; false representations that a dwelling is not available for sale or rent; and representations, whether true or false, regarding the availability of housing based on the person's race, color, religion, sex, or national origin.

Exemptions from the 1968 Act's coverage included: single family homes owned by private individuals owning less than four dwellings, as long as in any two-year period, the individual did not sell more than one residence in which he was not the most recent resident; and multifamily dwellings consisting of less than four units, if the owner resided in one of the apartments. This did not apply, however, to dwellings sold or rented by a broker or other person involved in the real estate business, or if discriminatory advertising was used in the transaction.

The federal Fair Housing Act was revised in 1988. The provisions that were added by the 1988 amendments fell into three major categories: those related to enhanced methods of enforcement; those designed to provide equal housing opportunities for handicapped persons; and those designed to provide such opportunities to families with children. The revised enforcement mechanism consists of a comprehensive administrative enforcement procedure and an improved system that authorizes civil actions by private parties and the U.S. Attorney General.

Provisions were also added to protect handicapped persons from discriminatory housing practices. These provisions were designed to target practices covered by the prior statute as well as additional practices that are relevant only to handicapped persons. Practices rendered illegal by the 1988 amendments include: the refusal to permit reasonable modifications to dwellings to facilitate handicapped access; the refusal to make reasonable modifications to rules such that the use of housing facilities by handicapped persons may be aided; and the creation of accessibility requirements for some structures to eliminate architectural barriers.

The 1988 amendments also included provisions that protect families with children from discriminatory housing practices. This group is afforded protection from the same types of discriminatory practices prohibited by the Fair Housing Act of 1968.

The Delaware Fair Housing Act

The Delaware Fair Housing Act is similar to the federal statute except that it also prohibits discrimination on the basis of age and marital status, categories not covered by the federal Act. The Delaware Act makes it unlawful to discriminate against any person, in the sale or rental of dwellings, because of race, color, national origin, religion, creed, sex, marital status, familial status, age or handicap.

The Act also prohibits discrimination regarding the terms and conditions of sales or rentals of dwellings, or in the provision of services related to sales and rentals, because of race, color, national origin, religion, creed, sex, marital status, familial status, age or handicap. It is also unlawful under the Delaware law to publish statements or advertisements regarding the sale or rental of dwellings that reflect discrimination against the protected groups.

The Delaware law established a duty to make reasonable accommodations for persons with disabilities. Discrimination on the basis of handicap includes a refusal to permit, at the expense of a handicapped person, reasonable modifications to existing premises if a modification is necessary to afford persons with disabilities full enjoyment of the premises.

Delaware's Landlord Tenant Code, 25 Del. C. § 5116 (2002), which applies to rental properties, also contains anti-discrimination provisions. It states in pertinent part that:

[n]o person, being an owner or agent of any real estate, house, apartment or other premises, shall refuse or decline to rent, subrent, sublease, assign or cancel any existing rental agreement to or of any tenant or any person by reason of race, creed, religion, marital status, color, sex, national origin, disability, age or occupation or because the tenant or person has a child or children in the family.

Wilmington's Fair Housing Ordinance

The City of Wilmington's fair housing ordinance protects individuals from housing discrimination on the basis of race, age, marital status, creed, color, sex, sexual orientation, handicap, national origin, and economic status. It should be noted that sexual orientation and economic status are categories that are not protected by the federal and state Fair Housing Acts. Wilmington's Minority Affairs Commission is vested with the responsibility of enforcing the ordinance. Upon finding a probable cause to believe that an act of discrimination has occurred, the Commission is authorized to petition in the Chancery Court for injunctive relief. Additionally, the City Solicitor is authorized to commence a civil action in Chancery Court to enforce any order or finding of the Commission.