



The Housing Journal



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“A dream of equality of opportunity, of privilege and property widely distributed; a dream of a land where men will not take necessities from the many to give luxuries to the few; a dream of a land where men will not argue that the color of a man's skin determines the content of his character; a dream of a nation where all our gifts and resources are held not for ourselves alone, but as instruments of service for the rest of humanity; the dream of a country where every man will respect the dignity and worth of the human personality.”

-- Dr. Martin Luther King, Jr., 1961 Address to the AFL CIO.

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44 Years After King's Death, American Neighborhoods and Schools Remain Deeply Segregated

Daniel Denvir

Martin Luther King, a giant of the movement for integration, was assassinated nearly 44 years ago, the national holiday in his honor established in 1983. Yet American neighborhoods and schools remain profoundly segregated.

As I reported in *Salon* [1], the 2010 census showed that racial segregation in housing remains extremely high and is “decreasing [only] slowly, although the dividing lines are shifting as middle-income blacks, Latinos and Asians move to once all-white suburbs — whereupon whites often move away, turning older suburbs into new, if less distressed, ghettos.”

Our schools are similarly separate and unequal: an August 2011 study [2] by Brown University sociologist John Logan found that the average white student attended an elementary school that scored nearly twice as high on state tests than the school attended by the average black child.

“It is hard,” says Logan, “to imagine how the disadvantages in schools attended by black and Hispanic children can be redressed unless there are major changes in the segregation of schools by race and class. And the issue of segregation is not on the policy agenda.”

It's not on the agenda in part because of the big distinction people make between the *de jure* segregation of the Jim Crow South and the *de facto* segregation of the industrial North. But the segregation King marched against in Chicago—where protesters were attacked by a white mob, and King hit in the head with a brick—was established by whites-only deeds that were as ferociously exclusive as any North Carolina lunch counter. And while working class white “ethnics” often catch the blame for opposing neighborhood integration, rich people are just more subtle: witness the limousine liberal suburbs of Westchester, New York, currently defying a court order [3] to integrate housing.

Southern cities are often deeply segregated [4] too, though historically the region's racial hierarchy relied more on social distance furnished by Jim Crow than the physical separation of the industrial metropolises of the North. And the 2008 election provided strong evidence of lingering racism of the old-fashioned sort: in much of the region, 9 out of 10 whites supported John McCain. There were few other places in the United States, red or blue, where McCain outdid George W. Bush's 2004 performance.

Conservatives have nonetheless become obsessed—and have obsessed over distorting—Martin Luther King Jr.'s legacy. Indeed, they have fixated on a single sentence of his I Have a Dream speech, his “dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.”

The political establishment, and conservatives in particu-

lar, have opposed any solution to the enduring crisis of racial segregation—and they have done so in the most disingenuous of terms.

As Daniel Rodgers writes in his history *Age of Fracture*, the right moved from strenuously opposing civil rights to arguing for a “color-blind” society and touting themselves as the movement's true heirs. They say that it is in fact the collective solutions that are racist—or, as the formulation has it, “reverse racist” against individual whites—seemingly unaware that the institutions of slavery and Jim Crow were applied collectively to all black Americans.

“One wonders,” Justice Harry Blackmun wrote in 1989 [5], “whether the majority still believes that race discrimination – or, more accurately, race discrimination against nonwhites – is a problem in our society, or even remembers that it ever was.”

Conservatives don't frequently quote from King's 1967 speech against the Vietnam War, when he noted “the cruel irony of watching Negro and white boys on TV screens as they kill and die together for a nation that has been unable to seat them together in the same schools. And so we watch them in brutal solidarity burning the huts of a poor village, but we realize that they would hardly live on the same block in Chicago.”

That divide continues.

A 2011 Pew study [6] discovered that the recession decimated wealth gains made by blacks and Latinos: black household wealth fell by 55% and Hispanics lost 66%, while whites lost just 16%. The average white American now has a net worth twenty times larger than blacks and 18 times larger than Hispanics—the largest racial wealth gap in at least a quarter century.

Segregation is not natural. Rather, it's political—and economic.

Yet Republican presidential candidates insist on regurgitating hackneyed “culture of poverty” fairytales that script the black underclass as pathologically enfeebled by government handouts. The newly credible Rick Santorum, for example, said he doesn't want to “make black people's lives better by giving them somebody else's money.” (He now insists that he said “blah,” not black).

While racist derision grabs headlines, it is malign neglect that holds segregation in place. American politics are now controlled by people living in racially homogenous exurbs [7] or pleasantly gentrified downtowns. 20 years after the LA riots, the endurance of a deeply impoverished black ghetto is increasingly out-of-site and very much out-of-mind. There's no longer even gangster rap blasting out of exurban teenage bedrooms to annoy white conservatives and remind them

that poor black people still exist. Today, Jay-Z congenially shares a very race-neutral dream: “There’s nothing you can’t do, now you’re in New York.”

The solutions to segregation—what sociologists Douglas Massey and Nancy Denton call **American Apartheid** [8]—are also political and economic. Metropolitan regions, a single economic unit, should equitably share revenues to fund schools instead of depending on municipal property taxes. Affordable housing, including public housing and Section 8 vouchers, should be equitably spread across the region and not ghettoized in neighborhoods with high violent crime and the worst schools.

But in the era of Occupy Wall Street it’s important to remember that segregation is today also a function of class (not that this makes things any better for poor black people): a 2011 Stanford University study [9] finds that the rich are increasingly likely to live in rich neighborhoods, the poor even more likely to live in poor neighborhoods. Our hollowed-out service economy is a segregated hour-glass structure with a big bottom, small middle, and tiny top.

Whites have collectively reaped the benefits of segregation. But we have in no way profited equally. King, who died in Memphis supporting striking sanitation workers, believed that “our needs are identical with labor’s needs.” Indeed, his dream was much bigger than today’s conventional—and reactionary—wisdom would have you believe, as he makes clear in this 1961 speech to the AFL-CIO.

“A dream of equality of opportunity, of privilege and property widely distributed; a dream of a land where men will not take necessities from the many to give luxuries to the few; a dream of a land where men will not argue that the color of a man’s skin determines the content of his character; a dream of a nation where all our gifts and resources are held not for ourselves alone, but as instruments of service for the rest of humanity; the dream of a country where every man will respect the dignity and worth of the human personality.”

On a day full of solemn speeches signifying nothing, remember that you can judge a nation’s character by the welfare of its people. We shouldn’t need King to remind us that we’re in bad shape. ✎

- [1] http://www.salon.com/2011/03/29/most_segreated_cities/singleton/
- [2] <http://www.citypaper.net/blogs/nakedcity/Segregation-New-Study-Shows-Philly-Has-Nations-Most-Separate-and-Unequal-Schools-Neighborhoods.html>
- [3] http://www.salon.com/2011/07/01/denvir_westchester_segregation/singleton/
- [4] http://www.salon.com/2011/04/03/myth_10_segreated_cities/singleton/
- [5] http://www.law.cornell.edu/supct/html/historics/USSC_CR_0490_0642_ZD.html

- [6] http://www.washingtonpost.com/politics/census-data-show-wealth-of-whites-is-20-times-that-of-blacks-widest-us-gap-in-quarter-century/2011/07/25/gIQAvOw4YI_story.html
- [7] http://www.salon.com/2012/01/03/io-wa-centric_candidates_ignore_the_urban_crisis/
- [8] <http://www.hup.harvard.edu/catalog.php?isbn=9780674018211>
- [9] <http://graphics8.nytimes.com/packages/pdf/national/RussellSageIncomeSegregationreport.pdf>

Daniel Denvir is a reporter at the Philadelphia City Paper and a contributing writer at Salon. This article was reprinted with the author’s permission. It was originally posted at AlterNet on January 16, 2012 and can be found online at http://www.alternet.org/newsandviews/763249/44_years_after_king%5C%27s_death%2C_american_neighborhoods_and_schools_remain_deeply_segreated.

What Martin Luther King Really Said

H. Bruce Franklin

Preaching to Black ministers assembled in Memphis on November 13, 1993, President Clinton told them--and the nation--what Martin Luther King "would say" about ghetto violence if he were now to return twenty-five years after being assassinated. Like a ventriloquist, the President put these words in the mouth of Dr. King: "I did not live and die to see young people destroy their own lives with drugs and then build fortunes destroying the lives of others. . . . I did not fight for the right of black people to murder other black people with reckless abandonment." Dr. King's gospel, according to the President, seems to be that the main causes of ghetto violence are the inhabitants of the ghetto.

If President Clinton believes this is what Martin Luther King would have said on this subject, he must not remember what he did say:

"As I have walked among the desperate, rejected and angry young men, I have told them that Molotov cocktails and rifles would not solve their problems. . . . They asked if our own nation wasn't using massive doses of violence to solve its problems, to bring about the changes it wanted. Their questions hit home, and I knew that I could never again raise my voice against the violence of the oppressed in the ghettos without having first spoken clearly to the greatest purveyor of violence in the world today--my own government."

In the twenty-six years since Dr. King spoke these words in his great April 4, 1967 sermon about U.S. militarism and imperialism, his analysis of the interrelations between U.S. global policies and the most severe domestic problems has become more and more telling. President Clinton's rhetorical stance assumed that Dr. King would be surprised by what he would see if he returned today.

But in fact King predicted these conditions as consequences of "American life and policy," for "racism, materialism, and militarism" will continue to grow so long as "machines and computers, profit and property rights are considered more important than people." The fundamental cause of ghetto violence, according to Dr. King's actual, rather than fantasized, words, is that our nation is on the "wrong side of a world revolution," fighting globally to protect "the immense profits of overseas investment" gained through the emiseration of poor and working people abroad and at home.

Martin Luther King decried the alliance between our nation and the "landed gentry" of Latin America, which has led to an intercontinental "pattern of suppression." He pointed unwaveringly at the "glaring contrast of poverty and wealth," most visible to its victims throughout the Third World, including the ghettos and barrios of the United States. He castigated the global warfare waged by America against the revolutionary aspirations of peoples of color. "The need to main-

tain social stability for our investments accounts for the counterrevolutionary action of American forces," and for "American helicopters" and "American napalm and green beret forces" being used against people in Latin America and Asia who "are revolting against old systems of exploitation and oppression." At the very core of all this, embodying the nation's deepest sickness, Dr. King saw America's war against Vietnam: "If America's soul becomes totally poisoned, part of the autopsy must read `Vietnam.'"

In the quarter century since Dr. King's murder, the United States has: devastated Vietnam, Laos, and Cambodia far more savagely than in the years before his death; helped a terrorist junta overthrow the legally elected government of Chile; invaded and occupied Grenada; bombed Libya; sacked Panama to replace one former U.S. stooge with a more compliant replacement; organized the overthrow of a Nicaraguan government committed to ending the exploitation King denounced; armed, trained, and financed a terrorist regime in El Salvador; slaughtered at least one hundred thousand people in Iraq to punish a dictator armed by Washington; killed hundreds of civilians in Somalia; covertly financed a drug-running military cabal in Haiti; and worked remorselessly to annihilate Latin America's most successful health and education system in Cuba.

President Clinton's main theme, enunciated in his opening sentence, was "the great crisis of the spirit that is gripping America today." When he was alive and could not be used as a ventriloquist's dummy, Martin Luther King eloquently named and predicted this crisis: "A nation that continues year after year to spend more money on military defense than on programs of social uplift is approaching spiritual death." For him, the violence in the ghetto is the direct product of our nation's betrayal of its "promise of hope for the poor" and a clear manifestation of "a society gone mad on war." 

Originally printed in the Nation, December 6, 1993, and widely reprinted. Howard Bruce Franklin: American cultural historian and John Cotton Dana Professor of English and American Studies at Rutgers University in Newark, New Jersey. In 2008, the American Studies Association awarded him the Pearson-Bode Prize for Lifetime Achievement in American Studies. Reposted by Jane Franklin on 1/15/12, <http://groups.yahoo.com/group/CubaNews/message/130058>

With U.S. Moving Toward Minority-Majority, Economic Inequalities Persist Maz Ali & Shannon Moriarty, United for a Fair Economy

In 2042, thirty years from now, the United States will be a majority minority country. If we continue on the same path that we have been on for the last thirty years, the economic divide between races will not be significantly reduced by 2042, and in many regards, it will be considerably worse.

The racial economic divide is a national embarrassment. Eliminating it should be a moral imperative, and as the non-White share of the population grows, it will become an increasingly urgent economic necessity.

United for a Fair Economy's ninth annual Martin Luther King, Jr. Day report, *State of the Dream 2012: The Emerging Majority*, assesses the state of the racial economic divide since the election of Ronald Reagan in 1980, and uses the trends of the last thirty years to project thirty years forward to 2042. The report finds that the past thirty years of public policy has done little to address racial economic disparities. If the current trends continue, the racial economic divide will be immense in 2042 across a wide variety of indicators. Progress toward economic parity between Black and White is slow and inconsistent and, in some cases, inequality is increasing. Latinos who account for most of the growth of the population are, in most cases, experiencing a decrease in economic well being relative to Whites.

If the current trends continue:

Income: Black and Latino median incomes will be 61 cents and 45 cents, respectively, for every dollar of median White income in 2042. Blacks will have gained only 4 cents while Latinos will have lost 15 cents of median income relative to Whites from 2010 to 2042.

Poverty: In 2010, poverty rates among Blacks (25.7%) and Latinos (25.4%) were more than two and a half times the White poverty rate. By 2042, the Black and Latino poverty rates will remain 1.9 times and 2.6 times that of the White poverty rate.

Jobs: The current unemployment rates stand at 7.5 percent for Whites, 15.8 percent for Blacks and 11 percent for Latinos. In 2042, Black and Latino unemployment will be 1.8 times and 1.5 times higher than White unemployment, respectively.

Wealth: By 2042, Blacks and Latinos will both have lost ground in average wealth, holding only 19 cents and 25 cents for each dollar of White wealth. The average net worth of Black and Latino families in 2007 was 20 cents and 27 cents, respectively, for every dollar of White net worth.

Higher Education: Black adults were 60 percent as likely to have a college degree as White adults in 2010, while Latino adults were only 42 percent as likely as Whites to have a college degree. By 2042, Black will be 76 percent as likely as Whites to have earned a college degree; Latinos will have

become even less likely (37 percent) than Whites to have a college degree.

Incarceration: In 2010, Blacks were a staggering 6.1 times more likely to be incarcerated than Whites. Latinos were 2.5 times more likely than Whites to be incarcerated, and this figure does not include the disproportionately Latino population being held in immigration detention centers. In 2042, Blacks will still be six times and Latinos two times as likely as Whites to be incarcerated.

It does not have to be this way. Public policy does not have to follow the course that it has been on since Reagan. The growing share of the non-White population presents an opportunity for Blacks and Latinos to build political power. In the current era of extraordinary economic inequality, the fate of the vast majority of the White population is more connected with the economic interests of Blacks and Latinos than with the ruling political elite.

Shifting from the dominant conservative public policy direction of the last thirty years that has not addressed racial equality will require a broad coalition dedicated to eliminating the racial economic divide.

The report proposes policy solutions to significantly reduce the racial divide. Foreclosure relief, federal aid to states and targeted job creation programs are needed to both combat the economic slump and to reduce racial economic disparities. Longer-term strategies including wealth-building programs, increasing taxes on the rich, strengthening safety net programs, ending the war on drugs, and humane immigration reform are needed in order to substantially reduce the racial inequality.

The racial economic divide is the legacy of centuries of White supremacy practiced as national policy. As a nation, we honor Martin Luther King Jr. with a holiday, but we tolerate the perpetuation of racial inequality that he dedicated his life to fighting. If we do not change course, our economy will not be able to bear the swelling numbers of Blacks and Latinos out of work, in poverty and in prison. Absent a powerful and sustained political movement aligned not just along the lines of race but by economic interests, Whites will still make a disproportionate share of the national income and hold an overwhelming majority of the nation's wealth and power in 2042.

United for a Fair Economy is a national, independent, nonpartisan, 501(c)(3) non-profit organization located in Boston, Massachusetts, that works to promote economic justice by supporting social movements for greater equality. Learn more at www.faireconomy.org.

At Risk: America's Poor During and After the Great Recession A Recent Report from Indiana University Bloomington

“The number of people living in poverty is increasing and is expected to increase further, despite the recovery. The proportion of people living in poverty has increased by 27% between the year before the onset of the Great Recession (2006) and 2010. Poverty is expected to increase again in 2011 due to the slow pace of the economic recovery, the persistently high rate of unemployment, and the long duration of spells of unemployment.”[1]

New research on poverty and the Great Recession -- official start December 2007 and end June 2009 -- finds that we now have the largest number of long-term unemployed people in the United States since records were first kept in 1948 -- four million report they've been unemployed for more than a year. The authors indicate that a "slow recovery is underway, but the severity and extended duration of the downturn have inflicted long-lasting damage to individuals, families, and communities."

Focusing on "not only the well-being of the poor but the near poor and the 'new poor,' the millions of families who are entering poverty," the research examines the recent trends in poverty, nationally and in the 50 states.

Findings from the Executive Summary

1. *The Great Recession has left behind the largest number of long-term unemployed people since records were first kept in 1948.* More than four million Americans report that they have been unemployed for more than 12 months. Although the official rate of unemployment is declining, much of this apparent progress is attributable to the fact that many adults are giving up on the search for a job. The more telling indicator of an economy's job-producing performance, the ratio of the number of employed people to the number of working-age adults (the "job-to-people" ratio), has improved only slightly since the Great Recession ended in June 2009. If the long-term unemployed lose their unemployment insurance benefits before the economy produces enough well-paying jobs to approach full employment, the ranks of the "new poor" will steadily swell between now and 2017.

2. *Large numbers of Americans are already poor.* The official federal measure of poverty and a new "Supplemental Measure," which accounts for several shortcomings in the official measure, both reveal a sobering fact: poverty in America is remarkably widespread. In 2010, about 46.2 million Americans were living in poverty according to the official measure, or about 15.1% of the U.S. population. The rate of poverty is slightly larger (16%) using the supplemental measure. The five states with the highest rates of poverty are somewhat different according to the two measures (2009): Mississippi (23.2%), Arizona (21.3%), New Mexico (19.6%), Arkansas (19.1%), and Georgia (18.5%), according to the official measure; California

(22.4%), Arizona (21.6%), Florida (19.5%), Georgia (18.8%), and Hawaii (18.0%), according to the supplemental measure. The supplemental measure accounts for geographical differences in the cost of living and thus gives more emphasis to poverty in urban areas, where day-to-day living costs, especially housing, are higher than they are in rural areas.

3. *The number of people living in poverty is increasing and is expected to increase further, despite the recovery.* The proportion of people living in poverty has increased by 27% between the year before the onset of the Great Recession (2006) and 2010. During the same period (2006-2010), the total population of the United States grew by less than 3.3%. The official national estimates of people in poverty have risen each year since 2006: 36.5 million (2006), 37.3 million (2007), 39.8 million (2008), 43.6 million (2009), and 46.2 million (2010). Poverty is expected to increase again in 2011 due to the slow pace of the economic recovery, the persistently high rate of unemployment, and the long duration of spells of unemployment.

4. *The recent increase in the rate of poverty has not been uniform across subgroups.* The increase in poverty since 2006 has been greater among Hispanics and African Americans than among Whites, greater among children than among the elderly, and greater among female-headed households than other households. More surprising, however, is the growth in poverty among working-age adults, especially younger people between the ages of 18 and 34.

5. *Some states have experienced much larger increases in the rate of poverty than other states.* The ten states that have experienced the largest percentage point increase in the rate of poverty, since the onset of the Great Recession, are (in rank order) Florida, Nevada, Arizona, Michigan, Indiana, Ohio, California, Connecticut, South Carolina, and Minnesota/North Carolina/Wyoming (tied for 10th). Some large states, such as Texas and New York, have not experienced large increases in the rate of poverty. Other states, such as Mississippi, are not in the top 10 but had consistently high poverty rates before, during and after the Great Recession.

6. *Since the onset of the Great Recession, the performance of the American "safety net" has been uneven.* The entitlement programs, including the Supplemental Nutrition Assistance Program (SNAP -- Food Stamps), Medicaid, and Unemployment Insurance have responded robustly to the Great Recession -- as unemployment rose and incomes fell, eligibility and participation in the safety net increased. In contrast, other programs, such as Temporary Assistance for Needy Families (TANF) and federal housing assistance, have not responded as effectively to the depressed economic conditions. Although it is more difficult to achieve fiscal control of

entitlement programs that operate with mandatory spending, they have been the most responsive aspect of America's safety net since the unexpected hardships of the Great Recession began.

7. *While history is rife with examples of mismanagement and abuse of public funds used for a variety of government purposes, anti-poverty programs may be particularly vulnerable to being placed under the microscope, and perhaps subsequently at risk for budget cuts.* Media coverage about incidents of fraud and mismanagement of programs, coupled with budgetary concerns, may negatively affect the future funding of the safety net. Recent efforts to buttress asset tests in federal food assistance, remove millionaires from unemployment insurance, and add in provisions in the 2011 debt-ceiling agreement to reduce fraud and abuse (e.g., under Medicaid and Medicare) are all examples of efforts designed to stem waste, fraud, and abuse in public programs. While evidence indicates that administrative and other mismanagement problems play a larger role in erroneous spending than fraud by program recipients, if these concerns are not handled carefully, there is additional risk that elected officials will respond hastily with reforms of the safety net that may put low-income Americans at additional risk.

8. *The adverse effects of the Great Recession would have been much worse had recent policy initiatives not been enacted by Congress.* The Obama administration and the Congress have responded with several policy initiatives aimed specifically at protecting the well-being of low-income Americans. Among many actions, they include the 2009 federal stimulus package, which aimed approximately \$240 billion of the \$787 billion package at low-income populations; a permanent expansion of child health insurance for families with incomes between 133% and 300% of the poverty line; tax cuts designed to assist low-income workers; and a provision prohibiting states from curbing Medicaid access until the new health care reform law supports a large expansion of Medicaid in 2014. As bad as the Great Recession has been for low-income Americans, it would have been much worse without these recent policy actions.

9. *The Federal government's large yearly deficits are creating pressures for spending control that are likely to result in cutbacks of the safety net.* The federal government's deficit in fiscal year 2011 is estimated to be about \$1.6 trillion. As a result, the 2011 federal agreement to raise the debt ceiling requires two rounds of cuts in the growth of federal spending. The implementation of this agreement will directly and indirectly put low-income Americans at risk. There are key safeguards in the agreement that exempt federal entitlement programs and cash assistance from cuts. However, other programs in the safety net (e.g., federal housing assistance) are not exempted. If Congress sets aside the 2011 spending agreement on the grounds that national security spending deserves greater priority, then larger cuts in non-defense,

discretionary spending may be required. Under that scenario, the safety net for low-income Americans will be placed at even greater risk than it is under current policy.

10. *Due to fiscal pressures, states are already making cuts to the safety net, and more are likely in the next several years.* With the 2009 stimulus package expired and revenues to state governments recovering slowly this year (due to the sluggish recovery), many states (from Washington and California to Michigan and Florida) are making cuts to unemployment insurance, temporary cash assistance, Medicaid benefits, and other services for low-income Americans. The fiscal pressure on some states may worsen before it eases. The pressure to restrain federal spending may cause Congress to reduce federal fiscal relief for the states, which are already struggling to balance budgets in the face of rising Medicaid costs and depressed revenues. If the federal government places more fiscal pressure on the states, which are required to balance their budgets, then states are likely to consider additional cuts to cash assistance, Medicaid and other safety-net programs. States may also be compelled to reduce funding for tax and educational policies that primarily benefit low-income populations. More state cuts to the safety net should be expected unless the recovery – and the resulting growth rate of state revenues – accelerates.



The Indiana research was released at the same time as a new study by the research company GMI, reviewing executive firings and compensation. The title of their study is **Twenty-One U.S. CEOs with Golden Parachutes of More than \$100 Million**. The report's authors, Paul Hodgson and Greg Ruel, write, "These 21 CEOs walked away with almost \$4 billion in combined compensation. In total, \$1.7 billion in equity profits was realized by these CEOs, primarily on the exercise of time-vesting stock options and restricted stock." [2] 

[1] http://www.indiana.edu/~spea/pubs/white_paper_at_risk.pdf

[2] http://www.alternet.org/story/153800/america_has_woken_up_to_the_reality%3A_inequality_matters

Reasonable Accommodation Requests Under the Fair Housing Act: From Obstacles to Solutions

Melissa R. Allman

Since Community Legal Aid Society (CLASI) [1] published an article on our Fair Housing Program in this journal in the winter of 2010, [2] one thing has not changed. In that article, we reported that CLASI receives more complaints alleging discrimination based on disability than on the basis of any other class of individuals protected by the Fair Housing Act. Statistics released by the U.S. Department of Housing and Urban Development (HUD) show that this is a national trend. For five consecutive years, HUD and State Fair Housing enforcement agencies have received over 10,000 complaints of housing discrimination annually. [3] For at least the past four years, the greatest number of complaints has been on the basis of disability, reaching 48 percent in 2010. [4] This article explores why allegations of housing discrimination based on disability continue to be so pervasive and suggests approaches both housing providers and people with disabilities can take to keep many of these allegations from arising in the first place.

The Fair Housing Act and the People it Protects

Title VIII of the Civil Rights Act of 1968, as amended, is known as the Fair Housing Act. [5] The Federal Fair Housing Act makes it illegal to discriminate against people based on race, color, religion, national origin, gender, disability, and familial status [6] in the terms and conditions of housing transactions. [7] The Delaware Fair Housing Act designates protected classes above and beyond those covered by the Federal Fair Housing Act, including age (18 years old and above), creed, marital status, and sexual orientation. [8] Both the federal and state statutes prohibit discrimination in rentals, sales, mortgage lending, homeowner's insurance, and advertising to individuals based on their membership in a protected class.

The Definition of Disability Under the Fair Housing Act

In 1988, the Fair Housing Act was amended to include protections for people with disabilities against housing discrimination. Under both the State and Federal Fair Housing Acts, a person with a disability is defined as someone with a physical or mental impairment that substantially limits one or more major life activities. [9] What housing providers sometimes do not realize is that the standard for establishing disability under the Fair Housing Act is very different from establishing disability under, for example, the Social Security Act. A housing provider may assume a person does not have a disability because they visually do not appear to, or because they are not receiving disability benefits. However, once a person has shown that they have a mental or physical impairment of some kind, they need only show that it significantly

limits a major daily life activity to be protected under the Fair Housing Act.

Daily activities that can be very difficult for people with physical disabilities include walking, breathing, seeing, hearing, and speaking. Daily activities also include things such as keeping appointments, returning phone calls, going grocery shopping, cleaning house, and paying bills. People with severe cognitive impairments can struggle with making basic judgments that others take for granted, such as how to manage money so that rent gets paid or what behavior is appropriate in an apartment complex. At times, such activities can become very difficult for people whose mental health is severely compromised. These lists of daily activities are far from exhaustive. Nonetheless, a substantial limitation in one or more of these areas, caused by a physical or mental impairment, is enough for someone to be considered a person with a disability under the Fair Housing Act.

Disability Discrimination Under the Fair Housing Act

Disability discrimination in the housing context can take many forms, but one of the most common forms is the refusal of housing providers to make reasonable accommodations. A reasonable accommodation is a change or exception to existing rules, practices, policies or services that is necessary for a person with a disability to have full use and enjoyment of their dwelling. [10] For an accommodation to be necessary there must be a direct and clearly identifiable relationship between the person's disability and the accommodation being requested. Examples of requests for reasonable accommodations include, but are not limited to, waiver of no-pets policies because of a disability-related need for a service animal or emotional support animal; early lease terminations because of medical conditions that make it impossible for a person to continue living in the dwelling; creation of designated parking spots for people with mobility impairments who cannot walk long distances when a spot near their home is not available; transfers for people whose disabilities have caused them to need handicapped-accessible apartments; and repayment agreements for people who fall behind on their rent because their disability has affected their ability to pay on time. In many cases, CLASI has successfully prevented evictions and termination from housing programs with reasonable accommodations that allow tenants with disabilities to remain in and fully enjoy their homes.

Communication Breakdowns in Reasonable Accommodation Requests

One of the most common problems CLASI encounters with respect to requests for reasonable accommodations is a

complete breakdown in communication between the tenant or home seeker and the housing provider. The communication breakdowns occur for a number of reasons. In some cases a housing provider receives a request for a reasonable accommodation but lacks education about how to properly evaluate the request. The tenant or home seeker, on the other hand, is often uninformed about how to articulate the request, establish the need for the accommodation, and navigate the process of successfully obtaining the accommodation.

In some cases, tension arises between the requester and the housing provider simply due to the legal implications surrounding the accommodation request. The requester is faced with establishing certain elements to prove their need for the accommodation, while the housing provider has to consider the likelihood that refusal to grant the accommodation will result in allegations of discrimination. In other situations, the would-be requester is unaware of his or her right to request an accommodation, or the housing provider is unaware of its obligation to evaluate the request and grant it if it is reasonable.

The most important thing for both the housing provider and the requester of the reasonable accommodation to keep in mind is the need for an open, interactive, and civilized dialogue about the accommodation request. Usually, the requester has a great deal invested in receiving the accommodation because equal use and enjoyment of their home depends on it. It can become hard for the requester to see the accommodation request from the perspective of someone who does not need it themselves or has a number of business considerations to weigh. By the same token, it is easy for a housing provider to resist the accommodation request because it requires them to make an exception to established policies. In some instances, housing providers have been known to respond that they have to give everyone the same treatment, and that the Fair Housing Act itself requires that they do just that. However, housing providers need to remember that the Fair Housing Act requires them to treat tenants and home seekers equally regardless of their membership in a protected class, but that exceptions to policies may be necessary to afford a person with a disability the equal treatment the Fair Housing Act envisions.

Overcoming Barriers To Reasonable Accommodations

Despite the challenges presented with respect to reasonable accommodation requests, there are tools widely available to accommodation requesters and housing providers. Here, we focus on a joint statement published by HUD and the Department of Justice on reasonable accommodations [11] because it is an invaluable starting place for all parties involved in the process. It explains what types of disability discrimination are illegal under the Fair Housing Act where reasonable accommodations are concerned, as well as who is and is not

covered by the Act's reasonable accommodation provisions. [12] It provides instruction on how to make as well as how to evaluate a reasonable accommodation request, and encourages a meaningful and interactive dialogue between the requester and the evaluator of the request. [13] For the person requesting the accommodation, it makes clear that the individual is required to establish that they have a disability; describe the accommodation they are requesting; be clear about the connection between the disability and the accommodation requested; and state why the accommodation is necessary. [14] For the housing provider, the Joint Statement discusses the factors that must be considered when evaluating whether a request for an accommodation is reasonable. [15] Most importantly, the Joint Statement makes it clear that a person who has been wrongfully refused a reasonable accommodation can file a complaint of discrimination with HUD, in court, or with another agency. [16]

In many cases, complaints of discrimination under the Fair Housing Act can be avoided if housing providers and accommodation requesters engage in a meaningful dialogue and follow the basic principles outlined in the Joint Statement. However, there are unfortunately situations where reasonable accommodation requests are wrongfully denied, and enforcement actions are the only viable option. Delaware's Fair Housing Act is consistent with the Federal Fair Housing Act, but contains some additional protections. Therefore, if you believe your request for a reasonable accommodation has been wrongfully denied, you can also file a housing discrimination complaint with the Delaware Division of Human Relations, the enforcement agency for the Fair Housing Act in the State of Delaware. You can call the Division toll free at (877) 54-HUMAN or contact them online at <http://statehumanrelations.delaware.gov/contact.shtml>. If you believe you need legal representation concerning the denial of a request for a reasonable accommodation, you can contact CLASI's Fair Housing Program toll free at: (Wilmington) 1-800-292-7980, (Dover) 1-800-537-8383, and (Georgetown) 1-800-462-7070. 

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[1] Community Legal Aid Society, Inc. (CLASI) is a non-profit agency whose mission is to provide legal representation for low-income individuals, the elderly, people with disabilities, and vic-

tims of housing discrimination throughout the state of Delaware. For more information on CLASI's programs, see www.declasi.org.

[2] Melissa R. Allman, *CLASI Advocates for Fair Housing in Delaware*, *The Housing Journal* (Delaware Housing Coalition, Dover, DE), Winter 2010, at 8, available at http://www.housingforall.org/images/documents/hojo_win11.pdf.

[3] U.S. DEP'T OF HOUS. & URBAN DEV., ANNUAL REPORT ON FAIR HOUSING FY 2010, at 19 (2011), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=ANNUALREPORT2010.PDF>.

[4] *Id.* at 20.

[5] 42 U.S.C. §§ 3601-3619 (2006).

[6] The term "familial status" refers to discrimination based on the presence of children under 18 years of age or against pregnant women.

[7] Although sexual orientation is not a protected class under the Federal Fair Housing Act, HUD recently issued a press release announcing publication of a rule entitled *Equal Access to HUD Programs Regardless of Sexual Orientation and Gender Identity*. The rule requires entities receiving HUD funding to make housing available without regard to sexual orientation, gender identity, or marital status. The rule is expected to become effective on March 5, 2012. To review the press release, go to http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2012/HUDNo.12-014.

[8] 6 DEL. CODE ANN. §§ 4600-4619 (West 2012).

[9] 42 U.S.C. § 3602(h) et seq. (2006); 6 DEL. CODE ANN. § 4602(10) (West 2012).

[10] 42 U.S.C. § 3604(f)(3)(B) (2006); 6 DEL. CODE ANN. § 4603A(a)(2) (West 2012).

[11] DEP'T OF HOUS. & URBAN DEV. AND THE DEP'T OF JUSTICE, *REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT* (May 17, 2004) (hereinafter *Joint Statement*), available at www.hud.gov/offices/ftheo/library/huddojstatement.pdf.

[12] See *Joint Statement* at 2-4 (Questions 1, 2, 4, and 5).

[13] See *Joint Statement* at 7 for a discussion of the benefits of the interactive process (Question 7).

[14] See *Joint Statement* at 3, 6, 10, and 13 (Questions 3, 6, 12, and 18).

[15] See *Joint Statement* at 7-9 (Questions 7-9).

[16] See *Joint Statement* at 9 and 14 (Questions 10 and 19).

A Third Way Tenure Choices between Renting and Owning Jeffrey Lubell

I was discussing housing issues with members and staff of the Houston City Council when a council member asked, "Why isn't there an option in between renting and owning?" Many of the council member's constituents were renters who wanted the security of tenure, fixed monthly costs, control of their physical environment and ability to build equity offered by homeownership but couldn't afford the costs of buying a home at market levels.

The answer, as some already know, is that there are forms of tenure that fall on the spectrum between owning and renting, but they are not well known to the general public and not as widely available as they should be. Investing in these strategies, which are sometimes grouped together under the label "shared equity homeownership," would broaden the diversity of housing choices available to individual families and also represent a way to stretch scarce public subsidies further. Over a thirty-year period, we estimate that homeownership assistance provided through a shared equity model could serve two to three times as many families as comparable amounts of funding provided as down payment assistance.

The basic concept is fairly straightforward. A subsidy is used to reduce the price of a home to a level affordable to a low- or moderate-income family. The family purchases the home at an affordable level with a 30-year fixed rate mortgage. When the family sells the home, it does so at an affordable level to a qualifying buyer, ensuring that the initial investment in affordability is preserved over the long-term to help one generation of buyers after another. Well-designed resale formulas also provide an opportunity for buyers to share in any home price appreciation that may have occurred.

Here's an example. Let's say the price of a decent-quality market-rate home in a particular market is \$250,000, but using appropriate underwriting criteria a buyer at the target income level can only afford a 30-year fixed-rate mortgage of \$200,000 and a down payment of \$10,000. Under this model, a \$40,000 subsidy is provided, reducing the first mortgage amount to \$200,000.

The family sells the home seven years later. Different programs have different resale formulas, but let's say the program in our example calculates the resale price as the original price plus an increment tied to increases in the area median income. So if the area median income has gone up 20 percent in seven years, the family can sell the home for 20 percent more than the original \$200,000, or \$240,000. Because the increase in home price has tracked increases in income,

the home remains roughly affordable to the next buyer at the same income level (subject only to fluctuations in interest rates), while the original buyer earns \$40,000 on the sale, which is augmented by roughly \$24,000 in paydown of principal (assuming a mortgage at 5-percent interest). While the buyer's recovery is reduced by transaction costs, which will vary depending on the method of sale and the jurisdiction, the buyer nevertheless sees a very high rate of return on his/her initial \$10,000 investment.

The next buyer follows the same rules, as does the buyer after that, and so on.

So here you have a single public or philanthropic investment that helps multiple families over time both achieve stable, affordable housing and build assets. Sound too good to be true? Take a look at a recent Urban Institute study of seven shared-equity programs, which found that they did an excellent job of providing both long-term affordability and individual opportunities to build wealth, with returns on families' down payment investment generally exceeding the returns available through the stock market. Many families who purchased and then sold shared equity homes also went on to purchase market-rate homes without restrictions.

There's also evidence that shared equity homes have lower foreclosure rates than market-rate homes - due perhaps to a combination of families using safe and affordable mortgage products and the individual attention they receive from program sponsors. Another benefit is that homes are purchased well below market rates, so if the market stalls or even falls a bit, shared equity homeowners may still be able to realize a profit on sale or at least avoid a loss.

So there you have it - a tenure model well suited to today's marketplace. It smooths out the excesses of the market - you won't make a killing if prices spike, but you will also receive protection against modest market declines. Stability is further enhanced by ensuring that families purchase at an affordable price with a stable mortgage product. While useful in multiple contexts, the model is particularly important for preserving affordability in well-located areas near transit or job centers, where housing prices are expected to rise significantly over time.

There are several different forms of shared equity homeownership, including community land trusts, deed-restricted homeownership, and limited equity cooperatives and others. Here are some options for learning more. (There are also privately-funded loan products that use the term "shared equity" or "shared appreciation," but they are not the subject of this column.)

Just to be clear - I'm not suggesting that we drop efforts to help families purchase through more conventional homeownership programs. But I do think a marketplace in which shared equity homes constitute a small but appreciable share of the stock - let's say five percent or so - would provide families with more housing options than they have today and represent a smart long-term investment of housing funds.

Here are three things that could be done to promote greater use of this tool:

- Ensure continued strong funding for the HOME and CDBG programs that are the primary source of funding for these programs.
- Encourage communities that make large investments in affordable homeownership (say, \$30,000 or more per-unit) to invest those funds in shared-equity models that preserve long-term affordability, rather than models that only help the initial buyer.
- Ensure that homeownership units made affordable through inclusionary housing strategies (whether voluntary or mandatory) remain affordable over the long-term through shared equity mechanisms.

In a world of limited government funding, it's more important than ever to preserve scarce public subsidy. Shared equity homeownership represents a proven approach for helping more families without spending more, while expanding the housing options available to consumers. 

A third way - Tenure choices between renting and owning by Jeffrey Lubell originally appeared in the National Housing Conference Open House Blog, Nov. 9, 2011 - Vol 1, Issue 4, and was reprinted with permission of the author. Join the conversation by commenting on this post there. The original article can be found at <http://www.nhcopenhouse.org/2011/11/moving-forward-third-way-tenure-choices.html>



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MISSION

The mission of the Delaware Housing Coalition is to advocate for safe, decent and affordable housing throughout the state. Our goal is to affect, impact and shape the environment relating to housing. We are committed to fostering the growth and long-term flourishing of grass roots constituencies which develop their power; nurture their own problem-solvers and leaders; and work together to change the conditions which prevent them from obtaining safe, decent and affordable housing.



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