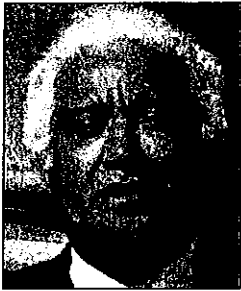


FOCUS ON HOUSING

## FAIR HOUSING LAW—THIRTY-FIVE YEARS LATER

by Chester C. McGuire, PhD



*Chester C. McGuire,  
CRE, PhD*

The year 2003 marks the thirty-fifth anniversary of the Federal Fair housing Law, which in retrospect is one of the most significant public policy measures affecting the American real estate industry. I make this statement based on my own personal involvement in the real estate industry and as a former government official responsible for administration of the law.

### THE FAIR HOUSING LAW

The Fair Housing Act of 1968 (Title VIII of the Civil Rights Act of 1968) prohibits discrimination in the buying, selling, renting, and financing of housing based on race, color, religion, national origin, sex, familial status, and disability. Although prior to 1968 some states and localities had ordinances and statutes against housing discrimination, the advent of federal legislation signaled fair housing as national public policy.

The civil rights laws enacted in the 1960s had as their aim eliminating the vestiges of historical discrimination in employment, education, public accommodations, voting, and housing. In housing the vestiges of discrimination were the pervasive urban ghettos, which were rigidly segregated and replete with devastating social problems. There are undoubtedly many profound reasons for the creation and development of today's segregated neighborhoods. However, some of the blame inevitably is conferred on the real estate industry.

During the years following World War II standard practices in the real estate industry included racial steering, outright refusal of service and blockbusting. Minority families seeking housing were steered away from white areas into black or changing neighborhoods. White families were steered away from racially integrated areas. Outright refusal of service to minority customers was the norm. This resulted in all white and all black real estate firms.

In some neighborhoods there was the practice of blockbusting. Real estate brokers used scare tactics on white families to get them to sell their houses at low prices to speculators. Then black families were sold these same houses at inflated prices. Minority neighborhoods were "redlined," so that conventional mortgage money and insurance were unavailable.

These pervasive activities in the real estate industry set the stage for the passage of the Fair Housing Act of 1968. Real estate brokers, landlords, property managers, lenders, and developers were clearly targets of the legislation. When the Fair Housing Act was enacted, the real estate industry was perceived as the clear villain, much in need of regulation.

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## **WHAT THE FAIR HOUSING ACT ENTAILED**

The Fair Housing Act as enacted in 1968 was not an especially strong piece of legislation in terms of enforcement. The Department of Housing and Urban Development could receive complaints and commence and investigation. If there was evidence of discrimination the matter could be brought to mediation. HUD had no enforcement power. At last resort the Department of Justice could intervene or the individual could file a civil suit. The 1988 amendments to the act provided HUD with more authority.

HUD receives about 10,000 complaints of discrimination each year. Approximately 43% are racially related, 35% for disability related matters, and 18% concerning familial status. The Office of Fair Housing and Equal Opportunity in HUD operates with a staff of less than 500 employees nationwide.

## **THE INDUSTRY RESPONSE**

Members of the real estate industry have never been fond of regulation of any kind. Hence there was much resentment of the Fair Housing Law and its implementation. However, the 1968 legislation included a provision that encouraged voluntary compliance with the law. A very small staff, less than ten people, administered the Voluntary Compliance Program. However, from this quite modest beginning, there developed an extremely useful and important tool for the ultimate implementation of fair housing.

The leadership of the real estate industry began to understand and appreciate the olive branch provided in the voluntary compliance provisions of the Fair Housing Act. A voluntary approach could help the real estate industry achieve two important objectives. First, by taking the initiative and responsibility through its own voluntary measures it might forestall the government's taking harsher measures or more regulation. Second, the real estate industry needed a way to escape from the stigma of negative publicity it received regarding racially discriminatory conduct of some of its members.

Although some members of the real estate industry profited from racially discriminatory practices, most people in the industry did not. Many of those who did not actively engage in racially motivated practices did not want to be associated with the stigma from those persons who did. In fact, it was enlightened self-interest that moved people in the industry toward embracing Voluntary Compliance for the goal of fair housing.

Racial discrimination and racial segregation were simply not good for business. Although some money could be made through discriminatory practices that benefited a few, more money could be made in an open market. The real estate market could be expanded with millions of minority households fairly competing for housing. Thus it was in the best interest of all parties to foster an open market rather than a market burdened with the baggage of discriminatory practices. At least this was the thinking of leaders in the real estate industry beginning in the 1970s.

Organizations such as the National Association of Realtors, National Association of Homebuilders, American Institute of Appraisers, and others, all signed voluntary compliance agreements with HUD. In the beginning these agreements pledged that the organizations would take voluntary steps such as education programs for its members to stress fair housing. Although the steps were quite modest in the beginning, they have certainly borne fruit.

## **ABOUT THE AUTHOR**

**Chester C. McGuire, CRE, PhD**, was Assistant Secretary for Fair Housing and Equal Opportunity during the Carter Administration (1977 to 1978). He was actively involved in working with the various components of the real estate industry in implementing the Fair Housing Law. He is currently a consultant working in Berkeley, California. (E-mail: [chetmcg@pacbell.net](mailto:chetmcg@pacbell.net))