

FAIR HOUSING MANAGEMENT CONSULTANTS

CITY OF FALLS CHURCH HOUSING AND HUMAN SERVICES DIVISION

FAIR HOUSING RENTAL TESTING REORT

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INTRODUCTION

Fair Housing Management Consultants (“FHMC”) entered into a contract with the Northern Virginia Regional Commission in 2017 to provide testing services to Northern Virginia jurisdictions. FHMC conducted ten rental tests in accordance with that contract at apartment complexes located in the City of Falls Church. The testing services are set forth in the Work Plan of the contract. The City of Falls Church provided the testing sites. Oversight of the testing project was maintained by the staff of the Housing and Human Services Division (“Staff”). Appendix A sets forth the testing sites.

THE CITY’S LEGAL ROLE IN CHALLENGING HOUSING BIAS

The legal authority for a local government’s role in challenging discriminatory housing practices was established by the United States Supreme Court’s decision in *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). This decision affirmed that a local government has standing to challenge racially discriminatory housing practices under Title VIII of the Civil Rights Act of 1968, the Fair Housing Act.

FAIR HOUSING TESTING

Tester corroboration has become an accepted investigative tool used by administrative agencies at all levels to enforce fair housing laws. In 1982, the United States Supreme Court stated that, under certain circumstances, testers have the right to sue under the federal Fair Housing Act. *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

Testing is a method to determine whether or not a home seeker is treated differently in his or her search for housing. A person’s race or national origin, for example, would be impermissible factors in denying an opportunity to rent an apartment. Testers in housing discrimination cases have been defined as “individuals who, without an intent to rent or purchase

a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful discriminatory housing practices.” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982). The experience of testers is used to compare the treatment of one home seeker (protected class) to another (non-protected class). In this context, testing measures the difference in treatment afforded a home seeker as determined by the information and services provided by property managers, rental agents and others.

FEDERAL, STATE AND CITY FAIR HOUSING LAWS

The federal Fair Housing Act outlaws discrimination in renting or purchasing a home or financing a home mortgage based on race, color, religion, national origin and sex. The federal law was amended in 1988 to include familial status and handicap as protected classes.

The federal law defines handicap with respect to a person as meaning “(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.” 42 U.S.C. Sections 3602(h). The federal law permits a disabled tenant, for example, to make reasonable modifications to the inside of a unit located in an apartment complex as well as to the common/public use areas of the building. The modifications are undertaken at the tenant’s expense. Further, a tenant is permitted to request a reasonable accommodation of the management policies, practices and procedures in order to make the building accessible for the tenant.

The federal law also requires design and construction requirements of covered multifamily dwellings that were first occupied on March 13, 1991 (30 months after the date of the enactment of the Fair Housing Act Amendments on September 13, 1988). Covered

multifamily dwellings are defined as “buildings consisting of four or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of four or more units.” 42 U.S.C. Sections 3604(f)(7)(A) and (B).

The federal law states in part that discrimination includes a failure to design and construct multifamily dwellings in such a manner that, for example, doorways into an apartment unit are sufficiently wide to allow passage by disabled persons in wheelchairs. Also, for example, kitchens and bathrooms must be usable for a disabled person in a wheelchair to maneuver about the space. 42 U.S.C. Section 3604(f)(3)(C).

The Virginia Statewide Building Code (USBC) contains the 2009 Virginia Construction Code (Code) as one of its three sections. The Code sets forth the type of accessible dwelling units building structures, for example, an apartment complex, must construct. Under the Code certain types of dwelling units designed for accessibility must be constructed consistent with the design and construction requirements of the federal Fair Housing Act. The Code incorporates the accessibility requirements of the federal law.

The Virginia Fair Housing Law mirrors the federal law and contains the additional protected class of elderliness. The United States Department of Housing and Urban Development (“HUD”) is authorized to review local and state fair housing laws to make a determination of whether these laws contain rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the federal law. Once a local or state enforcement agency has been certified, HUD will refer complaints of housing discrimination to the certified agency for investigation and resolution. HUD has made a determination that the Virginia Fair Housing Law is substantially equivalent to the federal law.

The City of Falls Church has a Fair Housing Ordinance that mirrors the federal Fair Housing Act by including housing transactions and services on the same bases covered by the federal law.

LEGAL PRECEDENTS ESTABLISHING HOUSING BIAS

The courts have established two ways of proving housing discrimination. Discriminatory housing practices are defined below.

- * Disparate (Unequal) Treatment - Evidence of disparate treatment occurs when a housing provider treats home seekers differently, for example, on the basis of their race. Fair housing testing is designed to uncover disparate treatment. This is the most common evidence uncovered by fair housing testing.
- * Adverse Impact - Evidence of adverse impact occurs when housing providers have policies, practices or procedures that, for example, disproportionately limit the ability of protected class members to obtain housing. If the effect of such a policy, practice or procedure adversely impacts members of a protected class, it would violate the fair housing laws.

DEVELOPMENT OF A CITY-WIDE TESTING EFFORT

Ten rental tests were conducted at apartment complexes located in the City. The breakdown of the ten tests conducted at apartment complexes were as follows: (1) 4 tests were based on race (Black/White testers); (2) 3 tests were based on national origin (Hispanic/White testers); and (3) 3 tests were based on disability (White/White testers).

A master testing schedule was developed, a tester pool was established and training was undertaken on June 2, 2018. The testing began on June 7th and concluded on June 9th, 2018. The results of the rental testing are discussed in the Analysis section of the report.

Testing Site and Characteristics Assignments

The purpose of the rental testing was to determine how Black, Hispanic and disabled testers seeking to rent apartments were treated at apartment complex leasing offices located in the City. This is done by pairing two testers who are matched as equally as possible to

each other except for the material factors of race, national origin and disability. The characteristics that relate to the rental qualification process were matched as closely as practical for each tester. This included matching, for example, the income, employment background and prior housing of the testers. Personal characteristics such as marital status were also matched where appropriate for the rental tests. The race tests, for example, were designed to have both the Black and White testers pose as being single and looking for a one bedroom apartment.

The disability tests, for example, had both members of the team pose as being married and looking for a one-bedroom apartment. The disability tests utilized one member of the tester team making reasonable modification/accommodation requests based on mobility impairment. The tester was instructed to make reasonable accommodation and modification requests for her husband, for example, the presence of a service animal and a handicapped parking space.

It is important to minimize, as much as possible, variables that are extraneous to what is being tested (differences in treatment based on the protected classes being tested, race, national origin and disability). Generally, it is necessary for testers to assume characteristics other than their own. Testers are, in fact, playing a role during the test.

The Site Visitation Assignment Form

Site Visitation Assignment Forms were developed for each of the ten tests. This form indicates the type of housing that the tester is looking for, a one bedroom apartment with parking, for example. The form also indicates the tester characteristics that are required for the completion of the test, for example, income and prior housing history. The testers were instructed to express an interest in renting a one bedroom apartment for July 1, 2018.

Tester Training

Generally, all testers were required to attend a training session. FHMC conducted a training session on June 2, 2018. Pretest training serves to enhance the credibility of the testing process and diminish the likelihood of deviation from controlled factors. Testers are oriented as to what is expected of them when conducting a test. Tester training included instruction in the following areas: (a) brief discussion of federal, state and local fair housing laws; (b) what testing is; (c) playing the role of a tester; (d) conducting the test and (e) the debriefing process. These, of course, were not the only components of the training, but were critical to the process of preparing the testers.

The training also provided an opportunity to thoroughly familiarize the testers with all of the testing forms. The training also emphasized the importance of timeliness in the completion of the forms in order to insure the validity of the testing process.

Debriefing Process

The testers were generally debriefed each day after completing their assigned tests by the contractor, FHMC. The debriefing interview is a mechanism to ensure that the testing experience is being reported accurately and objectively. During the debriefing interview FHMC carefully reviewed the Tester Report Form with each tester. Particular attention was given to the narrative portion of the form. Any corrections and additions to the report form are made by the testers during the debriefing session. Each member of the tester team was debriefed separately. Debriefing each tester separately maintains the confidentiality and objectivity of the testing results.

ANALYSIS OF TEST RESULTS

Each test was analyzed individually to ascertain if there were any differences in treatment accorded to the protected and non-protected class members of the tester team. The tester teams were assembled based on the protected class sought to be tested along with a visibly matched team apparent to the housing provider upon meeting each team member. Because the nature of housing discrimination is often subtle, care was given to insure that the matching tester teams looked to the provider as the same in every material way except for the protected-class status being tested, race, national origin and disability.

Rather than categorizing one aspect of the test as showing a difference in treatment, the tests were analyzed as a whole to put the totality of treatment afforded to each tester in context. By doing so, the variables looked for would be clear and, if no variation in treatment existed, such conclusions would be equally clear.

It is important to note that because the rental tests did not include having the testers complete an application to rent an apartment and participate in the subsequent qualification process at the apartment complexes tested, the tests could only measure the initial contact the testers experienced at the leasing office. The tests were designed to measure differences in treatment based on the availability, for example, of a one bedroom apartment unit requested by the testers and the corresponding treatment concerning the issue of availability received by the testers. The disability tests were designed to measure any issues regarding the reasonable accommodation and modification requests made by the tester.

Review of the Test Results

A review of the rental tests showed that no differences in treatment were found based on race, national origin or disability. The agents at the leasing offices tested generally provided both

testers of each tester team with similar information about the availability of an apartment, rent prices, leasing requirements and amenities. In the disability tests, there were no issues with the reasonable accommodation and modification requests made by the tester. Also, no accessibility issues were observed by the tester conducting the disability test. FHMC provided Staff with a detailed analysis of each rental test conducted in the City.

CONCLUSION

The City of Falls Church has been proactive in providing education and outreach programs to housing providers in the City. The City, coordinated through the Housing and Human Services Division, provided a comprehensive fair housing training program with training materials open to housing providers on April 28, 2017. The training program was a follow-up to the City-wide rental testing project completed in May, 2016. Part of that training program focused on the 2016 City-wide rental testing program.

With the commitment the City of Falls Church has to eliminate housing discrimination from the marketplace, examining how home seekers in the City are treated is the best means of seeing whether the mission of a bias-free market place exists. It is well recognized that housing providers can violate fair housing laws even though unintended. *Betsey v. Turtle Creek Associates*, 736 F.2d 983, 986 (4th Cir. 1984); *Williams v. 5300 Columbia Pike Corp.*, 891 F. Supp. 1169, 1178 (E.D. Va. 1985). By carefully analyzing testing data, the City can determine if providers are meeting their obligations to it by complying with City's fair housing laws, but all federal laws which impact on housing choice.

Testing is a critical tool in monitoring housing stock in the City to ascertain if unlawful housing practices occur and constitutes a strong commitment to further fair housing. Testing has been effectively utilized in measuring if the comprehensive efforts of the City have been

validated. Those efforts maximized measuring fair housing compliance. Dispatched matched home seekers throughout the City served as a critical means of examining whether home seekers were being treated fairly in the search for housing. The results of this program confirmed significant value in measuring the extent to which fair housing legal obligations have been met. The assumption of characteristics in the testing process were predicated on the careful formulation of test objectives by minimizing variables so that a true exposition of rental housing search experiences within the City could be determined.

APPENDIX A

TEST SITES LOCATED IN THE CITY OF FALLS CHURCH

Columbia West (Race)

Roosevelt Towers (Race)

Pearson Square (Race)

Broad Falls (Race)

Read Bldg. (National Origin/Hispanic/White testers)

Merrill House (National Origin/Hispanic/White testers)

Fields of Falls Church (National Origin/Hispanic/White testers)

West Broad Residences (Disability)

Northgate Apartments (Disability)

Lincoln @ Tinner Hill (Disability)