

FAIR HOUSING MANAGEMENT CONSULTANTS

ARLINGTON COUNTY

FAIR HOUSING RENTAL TESTING REPORT

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1/15/15

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INTRODUCTION

Fair Housing Management Consultants (“FHMC”) entered into a contract with the Northern Virginia Regional Commission on July 25, 2014 to provide testing services to Arlington County. The testing services are set forth in the Project Work Plan of the contract. One hundred (100) rental tests were conducted in accordance with that contract at apartment complexes located in Arlington County. Oversight of the testing project was maintained by the staff of the Human Right Commission (“Staff”). Appendix A sets forth the testing sites. However, the test sites set forth in Appendix A are not listed in the actual order in which they were tested.

ARLINGTON COUNTY’S 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. In the spirit of *Bellwood*, Arlington County was the first local government in the South to participate in a lawsuit that resulted in a substantial judgment for the victims of housing discrimination. *Lundy v. Shirley Park Apartments, et al.*, Civil Action No. 85-976-A (E.D. Va 1985). The County in *Lundy* also required the defendants to undertake affirmative remedial action that included establishing tenant selection criteria and employee training in fair housing laws. From an historical perspective, Arlington County has a rich history of supporting fair housing and in keeping its community an open one.

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 are 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 management firms, rental agents, and others.

FEDERAL, STATE AND COUNTY 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 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 Arlington County fair housing ordinance contains the additional protected classes of marital status, age and sexual orientation. The County ordinance does not provide the same remedial relief as provided under both the federal and state Fair Housing Laws.

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 COUNTY-WIDE TESTING EFFORT

A total of one hundred rental tests were conducted at apartment complexes located in Arlington County. Fifty (50) tests were conducted at apartment complexes based on national origin (Hispanic/White testers) and fifty (50) tests were conducted at apartment complexes based on race (Black/White testers). Two additional re-tests were conducted based on national origin. All tester teams posed as being single with no children.

The tester teams were developed in this fashion to insure the control factors of race or national origin, depending on the test. By doing so, testing would demonstrate whether or not

home seekers were impacted in the event housing providers took into consideration reasons prohibited under the Fair Housing Act.

The rental test sites were chosen at random from the list of apartment complexes tested in the 2012 rental testing project and the *Washington Post Apartment Showcase Guide Book*, September, 2014.

A master testing schedule was developed, a tester pool was established and training was undertaken on December 1, 2014. Testing began on December 9, 2014 and concluded on January 8, 2015. The testing results are discussed in Analysis section of this report.

Testing Site and Characteristics Assignments

As previously discussed, the purpose of testing in the Arlington County testing project was to determine how Black and Hispanic testers were treated at apartment complexes located in the County. This is done by pairing two testers who are matched as equally as possible to each other except for the material factors of race and national origin. The characteristics that relate to the rental qualification processes were matched as closely as practical for each tester. This included matching, for example, the income, employment background and prior housing history of the testers.

It is important to minimize, as much as possible, variables that are extraneous to what is being tested (differences in treatment based on race and national origin). 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 100 tests. This form indicates the type of housing that the tester is looking for (one-bedroom apartment and the move-

in date 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. Slightly superior qualifications were assigned to the protected class testers (Black and Hispanic testers) to assist in determining whether differences were the result of the tester's status as a member of a protected class. Personal characteristics, for example, the sex of the testers were also matched.

The testers were sent to the same apartment complex on the same day, usually 1 to 2 hours apart. Generally, the testers were instructed to have the protected class tester visit the rental office first followed thereafter by their teammate. The tester teams were assigned to express interest in renting the same type of apartment. The tester teams were also instructed to indicate similar dates that they wished to rent an apartment.

In the race tests, for example, both the Black and White testers posed as being single with no children and stated that they were looking for a one-bedroom apartment for January 15, 2015.

Tester Training

All testers were required to attend a training session. FHMC conducted a training session on December 1, 2014. 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, for example, to the Hispanic and White 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 and national origin.

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 a rental application or participate in the subsequent qualification process at any of the apartment complexes tested, the tests could only measure the initial contact the testers experienced in the leasing office. The tests were designed to measure differences in treatment based on the availability of a one-bedroom apartment unit requested by the testers and the corresponding treatment concerning the issue of availability received by the testers. Thus, while this aspect of testing is critical in understanding how persons are treated at the initial stage of home seeking, it cannot tell the complete story of how individuals are processed and what their ultimate treatment will be. Notwithstanding, experience dictates that the initial contact with and treatment by a housing provider are often where most problems arise when it comes to housing bias. For example, if a home seeker is not given an application, measuring how the application process was undertaken can never be known. Moreover, application processing is commonly done off-site in many instances so the processors might never know the variables based on protected-class status. Thus, initial experiences in viewing and in ascertaining availability remain the most important aspect of determining if housing bias is practiced.

Review of the Test Results

A review of the rental tests in the most recent battery of testing showed that there were two differences in treatment found in the tests based on national origin. The re-tests of these two tests showed no differences in treatment. The testing results are reviewed below.

Test #31 (National Origin Test)

This test was conducted on December 9, 2014. Both the Hispanic and White testers requested a one-bedroom apartment for January 15, 2015. The testers spoke to different rental agents.

The Hispanic tester indicated that she was looking for a one-bedroom apartment for January 15, 2015. The agent told the tester that they would have an apartment available for that date. The agent offered to show the tester the model unit. The agent did not ask the tester to show ID in order to view the model unit. The agent told the tester that the rent was \$1695.00 a month. The agent also told the tester that the security deposit was \$250.00, the application fee was \$38.00 and the parking fee was \$25.00. The agent gave the tester floor plans, a business card and other informational material. The tester told the agent that she would call back.

The White tester was told that a one-bedroom apartment would be available for January 15, 2015 (with a similar monthly rent). The tester was also told about a rent special which was one month's rent free. The tester was also told that if she moved into the apartment by December 31, 2014, that the application and move-in fees would be waived and that she would be given a \$500.00 gift card. The tester was also shown an apartment. The tester was not asked to show any ID prior to viewing the apartment. The tester was given the same materials that the Hispanic tester was given. This site was re-tested because the Hispanic tester was not told about the rent special and other incentives.

Re-test #20

The re-test was conducted on December 20, 2014. The Hispanic and White testers spoke to different agents. The Hispanic tester spoke to the same agent the Hispanic tester spoke to in the original test (Test #31). Both testers were told that a one-bedroom apartment would be

available for the occupancy date requested, January 15, 2015. Both testers were told about the same rent specials. Both testers were given a price sheet, a rental application and other materials about the complex. Neither tester was told to call to make an appointment. The re-test showed no differences in treatment.

Test # 47 (National Origin Test)

This test was conducted on December 13, 2014. Both the Hispanic and White testers requested a one-bedroom apartment for January 15, 2015. The testers spoke to different rental agents.

The Hispanic tester indicated that she was looking for a one-bedroom apartment for January 15, 2015. The agent informed the tester that they would have apartments available for that date. The agent offered to show the tester the apartment. The agent told the tester that a Government ID was required to view an apartment. The tester was told that the rent was \$2125.00 a month and that there was an application fee of \$50.00 and an amenity fee of \$500.00. The agent told the tester that the rent special was that the application fee would be waived. The agent told the tester that the floor plans were available on line. The agent also gave the tester the one bedroom unit information sheet.

The White tester was told that a one-bedroom apartment would be available for January 15, 2015 (with a similar monthly rent). The tester was told about a rent special. The rent special varied by unit (between 1 month and 1 1/2 months free rent), no move-in fees and an amenity fee of \$99.00 (vs. \$500.00). The agent told the tester that the application fee would be added to the 1st month rent. The tester was also shown an apartment. The tester was asked to show a government ID prior to viewing the apartment. The tester was given floor plans and a map of the area. This site was re-tested because the Hispanic tester was not told the same rent special.

Re-Test #102

The re-test was conducted on January 5, 2015. The Hispanic and White testers spoke to different agents. The agents involved in the re-test were not involved in the original test (Test #47). Both testers were told that a one-bedroom apartment would be available for the occupancy date requested, January 15, 2015. Both testers were told the about the same rent specials. Both testers were given floor plans and a business card. The re-test showed no differences in treatment.

Identification Requirement to View an Apartment at Complexes Tested

The policy of many apartment complexes located in the County is to require a prospective tenant to show identification prior to viewing an apartment. The tests conducted in this testing project were devised to ascertain how identification policies put in place by an apartment complex are implemented by rental staff.

When asked for identification in order to view an apartment, the Black and Hispanic testers were instructed to say that they didn't have their drivers' license with them and ask what other form of identification was acceptable. Likewise, the White testers were instructed to say that they left their drivers' license in their car and also ask what other form of identification was acceptable. The testers were instructed to record their responses on the Tester Report Form.

In forty-eight of the one hundred tests the testers were asked to show identification prior to viewing an apartment. Generally, because the testers indicated not having their drivers' license with them, a picture ID was acceptable. Alternative picture ID's that were acceptable were mostly government issued forms of identification including a passport, military ID, Fairfax County School crossing guard ID, hairdresser license and Visa and Sam's Club cards with

pictures. Identification that was not acceptable included bank debit and BJ cards without pictures.

At twenty-five apartment complexes the testers were not required or asked to produce identification prior to viewing an apartment unit. Also, identification was not an issue at twenty-nine of the complexes tested because either there were no available units or the testers were not offered to view an apartment.

APPENDIX A

APARTMENT COMPLEXES TESTED IN ARLINGTON COUNTY

(Sites are not listed in the order that they were tested)

Apartment Complexes

Columbia Park

The Buchanan

Patrick Henry Apartments

Westmont Gardens

Dorchester Towers

Dominion Plaza

Lenox Club

Columbia Grove

Arbor Heights

Serrano Park

2121 Columbia Pike

Dorchester Apts.

The Wellington

Camden Potomac Yards

The Lofts

The Amelia

The Paramount

London Normandy House

Crystal Square

Crystal Plaza

Crescent Apts.

Fillmore Gardens
Spectrum Apts.
Barcroft Apts.
Io Piazza
Fort Strong Apts.
Vista at Courthouse
Meyerton
North Tract Lofts
Sheffield Court
The Halstead Arlington
River House Apts.
Wildwood Towers
The Beacon
19 Nineteen Clarendon
The Point at Arlington Park
Maxwell
Wildwood Park Apartments
Virginia Square Plaza
Residence at Market Common
Birchwood
Richmond Square
Barton House
The Point

Berkley Apts.
Van Meter Park Georgetown
The Reserve at Clarendon Center
Gables 1221
Monterey Apts.
Dolly Madison
220 Twentieth St.
Washington & Lee
The Clarendon
Quincy Plaza
2201 Pershing Apts.
Liberty Tower
Waverly Village
Park Adams
Meridian at Courthouse Commons
Dominion Towers
Courtland Towers
Potomac Towers
The Gramercy at Metropolitan Park
Twenty 400
Delancey at Shirlington Village
Park Shirlington
Shirlington House

Windsor at Shirlington Village
Penrose Square on Columbia Pike
The Millennium at Metropolitan Park
Archstone Pentagon City
Meridian at Pentagon City
The Madison at Ballston Station
In Strata Pentagon City
Archstone Crystal Towers
Concord
Avalon Ballston Square
Sienna Park
Lyon Place at Clarendon Center
Rosslyn Heights
Meridian at Ballston Commons
Parc Rosslyn
Oakland Apts.
Archstone Courthouse Plaza
Birchwood Apts.
Country Club Towers
Park at Arlington Ridge
AVA at Ballston
Randolph Towers
The Palatine

2001 Clarendon Apts.

Sedona/Slate

Bennett Park

View at Liberty Center

Water Park Towers