

# ARLINGTON COUNTY

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## FAIR HOUSING RENTAL TESTING REPORT

Conducted by the Fair Housing Management Consultants

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## **INTRODUCTION**

Fair Housing Management Consultants (“FHMC”) entered into a contract with the Northern Virginia Regional Commission on June 27, 2018, to provide testing services to Arlington County. Oversight of the testing project was maintained by staff of Arlington County’s Office of Human Right Rights (“Staff”). The testing services are set forth in the Project Work Plan of the contract. One hundred (100) rental tests were conducted in accordance with the contract at apartment complexes located in Arlington County. 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) which 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 (“FHA”). 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 victims of housing discrimination. Further, in *Lundy v. Shirley Park Apartments, et al.*, Civil Action No. 85-976-A (E.D. Va. 1985) defendants were required to undertake remedial affirmative action that included establishing tenant selection criteria and employee training on fair housing laws. As such, Arlington County has a rich history of supporting fair housing.

## **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).

Housing testing is a method to determine whether home seekers are treated differently in 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 experiences 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 FHA prohibits discrimination in the rental, purchase, or finance of homes based on race, color, religion, national origin, and sex. The law was amended in 1988 to include familial status and handicap as protected classes.

The Virginia Fair Housing Law mirrors the federal law but also includes elderliness as an additional protected class. The United States Department of Housing and Urban Development ("HUD") is authorized to review local and state fair housing laws to determine whether these laws contain rights and remedies for alleged discriminatory housing practices that are

substantially equivalent to those provided by the federal law. Once a local or state enforcement agency is certified, HUD will refer housing discrimination complaints to the certified agency for investigation and resolution. HUD has determined that the Virginia Fair Housing Law is substantially equivalent to the federal law.

The Arlington County Human Rights Ordinance includes marital status, age, and sexual orientation as additional protected classes. The County ordinance does not provide the same remedial relief as provided under 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, based on 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 neutral policies, practices or procedures that adversely impacts members of a protected class.

### **DEVELOPMENT OF A COUNTY-WIDE TESTING EFFORT**

A total of one hundred (100) rental tests were conducted at apartment complexes located in Arlington County. All the complexes tested contained over 100 units. An aggregate of 29,946 units at the one hundred (100) complexes were tested. The rental test sites were chosen at random from the list of apartment complexes tested in the 2016 rental testing project and the online *Washington Post Apartment Showcase*.

Fifty (50) tests were conducted at apartment complexes based on race (Black/White testers) and fifty (50) tests were conducted at apartment complexes based on national origin (Hispanic/White testers). Some tester teams posed as single individuals without children who

sought one-bedroom apartments while other tester teams posed as single parents with two children who sought two-bedroom apartments.

The tester teams were developed in a manner to insure the control factors of race or national origin, depending on the test. By doing so, testing would demonstrate whether home seekers were impacted in the event housing providers considered bases prohibited under the Fair Housing Act.

A master testing schedule was developed, a tester pool was established, and training was provided to testers. Testers were also trained individually during testing as the need arose. Testing began on May 11<sup>th</sup> and concluded on June 11, 2019. The testing results are discussed in the Analysis section of this report.

### **Testing Site and Characteristics Assignments**

As previously discussed, the purpose of the testing project was to determine how Black and Hispanic testers were treated at apartment complexes located in the County. This was done by pairing two testers who were matched as equally as possible to each other except for the material factors of race and national origin. Characteristics related to the rental qualification processes were also matched as closely as possible for each tester. This included matching, for example, the income, employment background and prior housing history of the testers as it was important to minimize, as much as possible, variables that were extraneous to bases tested (race and national origin).

### **The Site Visitation Assignment Form**

Site Visitation Assignment Forms were developed for each of the 100 tests. This form indicates the type of housing testers sought (one or two-bedroom apartments and move-in dates for example). The form also indicates the tester characteristics required for the completion of the

test, such as 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 testers' protected status. Personal characteristics such as sex were also matched.

The testers were sent to the same apartment complex on the same day, usually one to two hours apart. Generally, the testers were instructed to have the protected class tester visit the rental office first followed by their teammates. The tester teams were instructed to express interest in renting the same type of apartment and to request the same move-in date. In some of the national origin tests, for example, both the Hispanic and White testers posed as single mothers with two children and stated that they were looking for two-bedroom apartments available on June 15, 2019.

### **Tester Training**

All testers were required to attend a training session. FHMC conducted a training session on May 8, 2019. Pretest training serves to enhance the credibility of the testing process and diminish the likelihood of deviation from controlled factors. Testers are also trained individually during the course of the testing, as the need arises. Tester training included instruction in the following areas: (a) brief discussion of federal, state, and local fair housing laws; (b) an explanation on the purpose of testing; (c) tester role-playing; (d) conducting the test and (e) the debriefing process. These were some of the critical components of the testers' preparation process.

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

## **Debriefing Process**

The testers were generally debriefed each day after completing their assigned tests by the contractor, FHMC. Each member of the tester team was debriefed separately. Debriefing each tester separately maintains the confidentiality and objectivity of the testing results.

The debriefing interview is a mechanism to ensure that the testing experience was 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 were made by the testers during the debriefing session.

## **ANALYSIS OF TEST RESULTS**

Each test was analyzed individually to ascertain if there were any differences in treatment accorded, for example, to Hispanic and White members of the tester team. Because the nature of housing discrimination is often subtle, efforts were made to ensure that matching tester teams looked the same in every material way except for the protected class tested.

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. Doing so ensured clarity of the variables and resulting conclusions.

Notably, rental tests did not include completion of actual rental applications or participation in subsequent qualification processes and only measured the experience testers had during their interactions with staff at leasing offices. The tests were designed to measure differences in treatment based on the availability of one or two-bedroom apartments requested and the corresponding treatment and/or responses testers received regarding the availability of the apartments requested. Thus, while this aspect of testing is critical in understanding how

persons are treated at the initial stage of the rental search, it may not reveal individuals' ultimate experiences. 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. Thus, initial experiences in ascertaining availability remain an important aspect of determining if housing bias is practiced.

### **Review of the Test Results**

At the one-hundred complexes tested (100), sixty-one (61) had apartment units available for rent for the dates requested by the testers and 39 complexes did not have apartment units available for rent. Forty-four (44) complexes offered rent specials and fifty-six (56) complexes did not.

A review of the rental tests in the most recent battery of testing showed that there were differences in treatment found in only one test based on national origin. This apartment complex was re-tested to determine if there were any subsequent problems. There were no differences in treatment found in the re-test. The testing results are reviewed below.

### **Test #2 (National Origin Test)**

This test was conducted on June 3, 2019. Both the Hispanic and White testers requested a two-bedroom apartment for June 15, 2019. Both testers were instructed to inquire about rent specials. The testers spoke to different leasing agents.

The Hispanic tester indicated that she was looking for a two-bedroom apartment for herself and two teenage boys with a move-in date of June 15, 2019. The agent told the tester that a two-bedroom apartment would be available on July 6, 2019. The agent offered to show the tester an apartment and shared the monthly rent. The agent also told the tester what the

application, security deposit and other fees were. The agent gave the tester a business card and other informational material and invited the tester to call back.

The White tester indicated that she was looking for a two-bedroom apartment for herself and two teenage daughters with the same move-in date of June 15, 2019. The White tester was told that a two-bedroom apartment would be available for the requested move-in date of June 15, 2019, with a similar monthly rent. The White tester was also told similar information regarding the rental application, security deposit and other fees. The agent offered to show the tester an apartment. The tester was given materials similar to those provided to the Hispanic tester and invited to call back.

This site was re-tested because the Hispanic tester was told a two-bedroom apartment would be available on July 6<sup>th</sup> while the White tester was told that a two-bedroom apartment would be available for the requested move-in date of June 15, 2019.

**Re-test #46 (Test #2)**

The re-test was conducted on June 11, 2019. Both testers spoke to the same agent that the White tester spoke to in the original test (Test # 2). Both testers were told that a two-bedroom apartment would be available for the move-in date requested, June 15, 2019. Both testers were told the same monthly rent and given similar information regarding the rental application, security deposit and other fees. Both testers received informational materials about the complex and were invited to call back. The re-test showed no differences in treatment.

**APPENDIX A**

**APARTMENT COMPLEXES TESTED IN ARLINGTON COUNTY**

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

## **Apartment Complexes Tested**

Zoso Flats

Tellus Apartments

Verde Point Apartments

The Reserve @Clarendon Center

Vista on Courthouse Apartments

19 Nineteen Clarendon

2201 Pershing Apartments

2001 Clarendon Blvd. Apartments

The Prime @Arlington Courthouse

The Latitude Apartments

The Palatine

Fort Strong Apartments

London Normandy House

The Beacon

Potomac Towers

## **Apartment Complexes Tested**

Rosslyn Heights Apartments

Park Georgetown Apartments

Gables 12 Twenty-One

Rosslyn Vue

Parc View Apartments

River House Apartments

Crystal City Lofts

Crystal Square Apartments

Crystal Plaza Apartments

The Lofts

The Buchanan Apartments

The Paramount

Lenox Club

Camden Potomac Yards

2121 Columbia Pike Apartments

Dorchester Apartments

The Wellington Apartments

The Whitmore Apartments

Dorchester Towers

Pike 3400

## **Apartment Complexes Tested**

Wildwood Towers

Columbia Crossing Apartments

The Dominion

Dominion Plaza

The View @ Liberty Center

Columbia Grove Apartments

Arbor Heights

Serrano Park

The Infinity

762 Flats

Union on Queen

Origin Apartments

Quincy Plaza

Ballston Place

Park Adams

Sheffield Court Apartments

The Clarendon

Washington & Lee Apartments

Richmond Square Apartments

The Madison at Ballston Station

Avalon Ballston Square

## **Apartment Complexes Tested**

Meridian @ Ballston Commons

Dominion Towers

Penrose Square on Columbia Pike

Myerton Apartments

Birchwood Apartments

In Strata Pentagon City

The Gramercy at Metropolitan Park

Crystal Towers

M Flats

Water Park Apartments

Liberty Towers

Randolph Towers

The Amelia

Maxwell Apartments

Virginia Square Plaza

Dolly Madison Apartments

Delancey @ Shirlington Village

Park Shirlington

Shirlington House

IO Piazza by Windsor

The Citizen

## **Apartment Complexes Tested**

The Alister @ Arlington Ridge

Park @ Arlington Ridge

Avalon @ Arlington Square

Twenty 400

The Millennium at Metropolitan Park

Park @ Pentagon Row

The Point @ Pentagon City

Aura @ Pentagon City

220 Twentieth Street

Lyon Place at Clarendon Center

Meridian @ Courthouse Commons

Courthouse Plaza

AVA @ Ballston

Courtland Towers

Wildwood Park Apartments

Bell Arlington Ridge Apartments

55 Hundred Apartments

Shelton Apartments

Garfield Park Apartments

Oakland Apartments