

Dear Colleagues:

From the racially restrictive housing covenants of the past to the exclusionary zoning and lethargic fair housing enforcement of today, business and government, albeit at times unwittingly, continue to perpetuate a segregated and unequal Long Island. ERASE Racism recognizes that for fair housing to exist, business and government must implement changes in practices and policies that result in inequity.

The board and staff at ERASE Racism are committed to working with others to make fair housing enforcement a reality for Long Island. We believe that this report—*Long Island Fair Housing: A State Of Inequity*—provides valuable information and insight into the state of fair housing today; what works, what’s broken and how to fix it.

We ask that you read this report and not only give us your thoughts, but join us in our efforts to make fair housing a reality on Long Island. You can communicate with us online by completing and sending the Fair Housing Report response form found on our website, www.eraseracismny.org or calling the ERASE Racism offices at 516-921-4863. We look forward to hearing from you!

Long Island Fair Housing: A State Of Inequity would not be possible without the contributions of many individuals, too numerous to name here, including some past and present ERASE Racism staff, board and volunteers. By far, the person who deserves the most credit for bringing this study to a successful conclusion is ERASE Racism Project Manager Cathryn Harris. To Cathryn, completing this report was truly a labor of love and a reflection of her professionalism and commitment to justice. Thank you, Cathryn! And to the members of the ERASE Racism Fair Housing Task Force (listed on the following page) I also want to offer my sincere thanks for sharing your expertise and your commitment to see this project through. Finally, the following individuals from the ERASE Racism Board of Directors, the Fair Housing Task Force and sister organizations deserve special thanks for providing us with information, advice and technical assistance: John Logan, Professor of Sociology, Director of American Communities Project, Brown University; Ellen Israelson, Director, American Jewish Committee; Susan Lagville, Executive Director, Housing Help, Inc.; Deborah Post, Esq., Professor of Law, Touro College Jacob D. Fuchsberg Law Center; Craig Gurian, Esq., Executive Director, Anti-Discrimination Center of Metropolitan New York; Michelle Santantonio, Executive Director, Long Island Housing Services; Marge Rogatz, President, Community Advocates, Inc.; Howard Glickstein, Esq., former Dean, Touro College Jacob D. Fuchsberg Law Center; David McClean, Principal, David E. McClean & Associates; Edward J. Pruitt, President, Hauppauge Industrial Association; and Veronica Todaro, Senior Program Consultant, ERASE Racism.

ERASE Racism would like to acknowledge the following for providing information and materials that were essential to the creation of this report: the U.S. Department of Housing and Urban Development; the New York State Division of Human Rights; Suffolk County Attorney’s Office; Nassau County Attorney’s Office; the Suffolk County Human Rights Commission; and the Nassau Commission on Human Rights.

As Dr. Martin Luther King Jr. said in 1968, the duality of having two housing markets“...has brought about a great deal of injustice...”There is no excuse for continued inaction! It’s time for change.

V. Elaine Gross
President, ERASE Racism

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LONG ISLAND FAIR HOUSING: A STATE OF INEQUITY

INSTITUTIONAL AND STRUCTURAL RACISM IN HOUSING: THE STATUS OF CURRENT ENFORCEMENT SYSTEMS AND RECOMMENDATIONS FOR IMPROVEMENT

"I think in the past all too often we...talked of integration in romantic and esthetic terms and it ended up as merely adding color to a still predominantly white power structure... What is necessary now is to see integration in political terms where there is sharing of power...In every city, we have two economies. In every city, we have two housing markets. In every city, we have two school systems. This duality has brought about a great deal of injustice..."

—Martin Luther King Jr.

EXECUTIVE SUMMARY

ERASE Racism's mission is to undo institutional racism—the structures, policies and behaviors that create segregation and inequality in every aspect of daily living. ERASE Racism is dedicated to promoting racial equity through the development and implementation of policies and initiatives to end institutional and structural racism in housing, public school education, health care and economic development. Structural racism is a complex web of policies and practices rooted within the very fabric of our public and private institutions that perpetuate inequities.

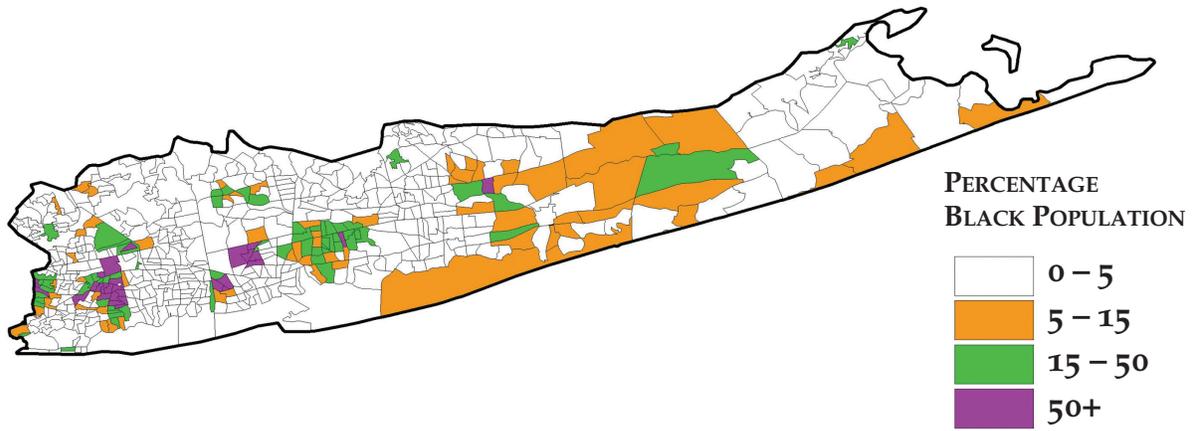
This study by ERASE Racism focuses specifically on the housing experience of the African Americans on Long Island. The study is a continuation of ERASE Racism's commitment to explore the continuum in racial hierarchy from the enslavement of African Americans to the origins and effects of present-day structural racism. ERASE Racism recognizes that residents of Long Island under all the protected classes including race, color, creed, disability, national origin, marital or familial status, sexual orientation, gender, age, military status and source of income experience discrimination in housing. The experiences of each community of color and protected class are deserving of an independent study. The experiences of other protected classes, however, are beyond the scope of this particular study.

After reviewing basic U.S. Census data confirming that Long Island is residentially segregated, ERASE Racism embarked on an initiative to determine whether this was a result of institutional and structural racism. A variety of tools were enlisted to help in the assessment of why Long Islanders live in predominately segregated communities. The first step was collecting and analyzing the literature on the history of housing and development on Long Island in relation to census data. As ERASE Racism considered a scope of work for the study, it convened a special committee, the Fair Housing Task Force, comprised of housing and civil rights experts to provide advice and consultation.

ERASE Racism focused the study on assessing discrimination in rental and sales of housing based on race. ERASE Racism investigated: 1) who is in charge of fair housing investigation and enforcement; 2) how the fair housing enforcement system works on Long Island; 3) how effective the enforcement system is at addressing fair housing violations; 4) what proactive strategies are in place to detect and stop discriminatory practices; 5) what, if any preventative actions are being taken to deter housing discrimination and to promote integrated housing; and 6) who is taking responsibility for the development of integrated housing and for implementing changes to ensure that fair housing laws are enforced. ERASE Racism also analyzed local realtor testing audits conducted by ACORN and Long Island Housing Services.¹

<p>integrated housing, deter housing discrimination, and effectively enforce fair housing. The major recommendations include:</p> <ol style="list-style-type: none"> 1. Government fair housing enforcement agencies at all levels must immediately take swift steps to overhaul the administrative complaints process by ensuring that complaints are investigated thoroughly; are processed expeditiously; and are subjected to the same standards, measures and procedures. The agencies must be held accountable for inexcusable delays in resolving cases. A transparent chain of command must be clearly articulated and those individuals in charge must be held accountable for underperformance and face penalties if they impede fair housing enforcement. The burden of shepherding complaints through the administrative process must be removed from the victim. 2. Systematic and regular auditing of fair housing and enforcement agencies must be implemented to monitor the effectiveness of fair housing enforcement and make recommendations for agency reform. 3. Housing discrimination must become cost-prohibitive to the realty community. Realtors and realty agents must face stiff penalties such as suspension, loss of realtor license and larger monetary fines, deterrents to participating in steering and other forms of housing discrimination. 4. Integrated complaint counting systems among agencies must be established to allow victims of discrimination to track case progression and make Long Island housing discrimination data easily accessible. The agencies should report the number of incidents of housing discrimination on Long Island. 5. Proactive enforcement activities must be engaged in by all government fair housing enforcement agencies. A strategic plan to seek out housing discrimination and follow through with effective enforcement activities should be implemented, rather 	<p>than relying solely on victims to come forward and file an administrative complaint.</p> <ol style="list-style-type: none"> 6. Local government should take a proactive role in educating the public by promoting the positive aspects of integrated housing on Long Island. This should include a plan to offer incentives to the public for purchasing homes in integrated communities, such as tax breaks or buy-back programs. A strategic plan aimed at removing impediments to fair housing, such as exclusionary zoning, unfair taxation systems, and predatory lending, should be effectively implemented. Local government should plan communities with integration as one of the main goals. 7. A non-partisan task force should be created to promote integrated housing and monitor integrated community development and fair housing efforts. <p>Pervasive structural and institutional racism, spanning centuries, remains omnipresent on Long Island. From the racially restrictive housing covenants of the past to the exclusionary zoning and lethargic government fair housing enforcement of today, government practices and policies leave the indelible mark of inequality on Long Island communities. The opportunity gap is further widened by unabashed racial steering by local realty agents. For fair housing to exist on Long Island, the public and private sectors must purge institutional racism from the mechanisms used to access societal benefits. This requires an unwavering commitment to the implementation of racially equitable business practices, government policies and effective fair housing enforcement systems.</p> <p>ERASE Racism urges that the recommendations in this study be used as a starting point to work toward open and effective fair housing enforcement and integration. Integrated communities create a strong society. The American Dream should be accessible to all residents of Long Island. Every resident should have equal access to housing and an equal opportunity</p>

**REPRESENTATION OF WHITE AND BLACK COMMUNITIES
BY PERCENTAGE ON LONG ISLAND**



Maps courtesy of Professor John Logan,
Professor of Sociology, Director of American Communities Project, Brown University

of housing discrimination faced by African American residents on Long Island and the affects these impediments have on the community as a whole. Predatory lending, which is part of fair housing, is only mentioned briefly in this study because it is beyond the scope of work ERASE Racism set forth to undertake.

ERASE Racism will actively seek opportunities to advocate and promote the recommendations; monitor fair housing on Long Island through issuing fair housing “report cards” for local government and enforcement agencies; and promote educational opportunities for fair housing and integrated housing. ERASE Racism welcomes responses and comments to the study. We invite members of the public, government and private organizations to contact ERASE Racism in writing or through our website at www.eraseracismny.org.

II. THE HISTORY OF RACIAL DISCRIMINATION IN HOUSING ON LONG ISLAND

One of the first housing developments in the United States marketed solely to African Americans was on Long Island. In 1927, Mr. Louis Fife, a white man, purchased a parcel of land in rural Suffolk County and started selling tracts of the farm land to working class African Americans from Harlem, Brooklyn and the Bronx. Mr. Fife named his company Gordon Heights Development and Building Corp. and the area became known as Gordon Heights.¹¹

Gordon Heights was deliberately constructed as a segregated community and foreshadowed the race-related obstacles to home ownership African Americans would face for decades to come. Many of its residents had difficulty obtaining bank loans for down payments because of their race, and services like running water and electricity were not available until the late 1940’s. Features common to most white communities, like street lights, did not exist in Gordon Heights until 1969. As a result of the difficulties in ob-

taining bank loans, the Gordon Heights community pulled together and started a credit union to facilitate access to down payments for homes, servicing primarily African American homebuyers. There were no government sponsored low-interest rate programs available to African American home seekers. Additionally, the residents of Gordon Heights created their own volunteer fire department and purchased two fire trucks in 1947 because they could not rely on the surrounding white communities for fire protection.¹² The residents of Gordon Heights were isolated from the neighboring communities solely based on their race.

The mid-Twentieth Century saw a tremendous boom in home development on Long Island, driven by a set of mutually supporting governmental and private practices that subsidized new home construction. The Federal Government participated in overt government sponsored race discrimination by explicitly ensuring that the neighborhoods created by this new construction where racially segregated.¹³ Notable among these policies were the federal home mortgage guarantee programs created by the Federal Government through the National Housing Act (NHA) of 1934, and administered through such programs as the Federal Housing Administration (FHA).¹⁴ From 1934 to 1949 the FHA required restrictive covenants in any subdivision that used FHA financing.¹⁵

A major thrust of these government programs was to promote uniform appraisal standards for the mortgage industry. A centerpiece of these standards was the racially discriminatory practice of “redlining.”¹⁶ Redlining involves the systematic undervaluation of neighborhoods of color, multi-racial neighborhoods, and white neighborhoods that are predicted to experience “racial transformation” in the future. Such neighborhoods were delineated on appraisal maps with a red line and were categorized as too risky for investment.¹⁷ The value of property was artificially determined by the racial composition of the neighborhood; the higher the concentration of African American homeowners in a neighborhood, the lower the property value.

Aspiring white homeowners were generally able to get financing in all-white neighborhoods and aspiring African American homeowners were generally denied financing entirely because their very presence in a neighborhood caused it to be redlined.¹⁸ These practices in turn were adopted by much of the private lending industry. The FHA also encouraged local municipalities to adopt exclusionary zoning ordinances and racially restrictive covenants.¹⁹ Between 1934 and 1962, the federal government backed \$120 billion in home loans; more than 98% went exclusively to white homeowners.²⁰

The impact of these policies exists today, evidenced by the overwhelming breadth and depth of racialized housing policies and practices. On Long Island, Levittown provides an illustration of this effect. Mass scale affordable housing was built in Levittown, consisting of 17,400 houses on 4000 acres, for whites only, as a result of the overtly racist FHA financing. The racially restrictive covenants stayed in place in Levittown until as late as 1962.²¹ As a result, not one of Levittown's 82,000 residents was African American in 1960. Levittown remains primarily white today.²²

Meanwhile, during the same era, between 1952 and 1954 two housing developments, Carver and Lincoln Park, were built in Wyandanch. These homes were designated as housing for African Americans by local government and realty agents, the opposite of Levittown. Advertisements were placed in African American newspapers in Harlem to ensure only African American home seekers would apply. The African American middle class were the first to invest in these homes; however, shortly thereafter the Department of Social Services commenced placing welfare families in the community." [B]y 1969, 68 percent of Wyandanch residents were on public assistance. And because few businesses chose to locate in this African-American community, the commercial tax base remains quite small, making Wyandanch property taxes today among the highest in Suffolk County."²³ This was a classic example of a strategically "planned suburban ghetto" by local government.²⁴

Today, Wyandanch's population remains primarily African American.

Interestingly, Levittown's and Wyandanch's ethnic compositions continue to echo the racial segregation desired by the towns' founders. According to the 2000 US Census, Levittown's population consists of 94.1% white and 0.5% African American residents; while Wyandanch's population is close to the mirror opposite, made up of 10.2% white and 77.7% African American residents.²⁵ The African American segregation index for the whole of Long Island is 74, with total apartheid at 100.²⁶

As the African American population increased on Long Island in the mid-twentieth century, segregation was enforced through a variety of other practices. Such practices included the use of racially restrictive covenants, exclusionary zoning, and real estate practices such as the steering of African Americans into African American neighborhoods and blockbusting.²⁷ As a result of these policies, newly arrived African Americans settled primarily in unincorporated areas with pre-existing African American populations.²⁸ Urban renewal also played a role in creating and maintaining residential segregation. Under the guise of redevelopment and slum clearance, such policies were used to destroy neighborhoods of color that were considered threats to white neighborhoods in areas such as Glen Cove, Long Beach, Freeport, Hempstead, Rockville Center, Inwood, Manhasset, and Port Washington.²⁹ While some are no longer legally viable, many of these exclusionary historical practices and policies remain in use on Long Island today. Moreover, the effects of these historic practices are still felt, as witnessed by continued segregation and disparity of community resources and opportunities.³⁰

THE IMPACT OF FRAGMENTATION IN GOVERNANCE

Segregation is further exacerbated due to the fragmentation of Long Island communities through local

the same income; much of this gap is due to home equity and family inheritance.⁴¹

- Housing has a direct effect on employment. Segregation creates separate information networks for white and African American communities. Individuals living in white communities receive information about skilled job vacancies that are not promoted in African American communities, while unskilled, low-paying positions are marketed in communities of color.⁴²
- “Segregation also causes employment disadvantages by creating and reinforcing stereotypes. Segregation causes dysfunctional characteristics like educational failure, joblessness, and welfare dependency. These ... [b]ecome associated with every black person ... [e]mployers can freely act on these stereotypes because of the widespread use of subjective evaluation systems for hiring.”⁴³

Data show that opportunities are significantly less available to people of color. Examples include:

- Nationally, 1999 data from the Department of Housing and Urban Development (HUD) show that only 47% of African American families and 45% of Hispanic families are homeowners, compared to 73% of white families.⁴⁴
- African Americans and Latinos face an increasingly difficult time purchasing homes on Long Island. Between 1999 and 2000, the rates at which conventional home loan applications were denied to African American applicants rose from 27.30% to 33.38% and from 20.67% to 26.61% for Latino home seekers.⁴⁵
- In 2000, the homeownership rate of African Americans on Long Island was 61.7% and 56.4% for non-white Hispanics, compared with 82.9% for whites. The overall homeowner rate for residents on Long Island, according to the 2000 Census data, was 80%.⁴⁶

“Segregation affects all of these areas of life opportunity not only immediately but into the future, as families [African American families] who own homes in segregated areas see depressed property values keep them from increasing their wealth through home ownership, and children in segregated schools tend to receive inferior educations that ill prepare them for higher education and high-paying jobs.”⁴⁷

THE ECONOMIC FACTOR

The economic suffering and lack of opportunities in segregated suburban areas are a direct result of decades of steering, blockbusting and “white flight.” White flight occurs when white residents sell their homes in an area because African American and Latino homebuyers are moving into the area. The white residents usually leave the neighborhood because they associate “the influx of minorities into a community with social and economic decline ... [a]nd conclude that minority residents somehow contribute less than whites to a community’s health and stability.”⁴⁸

In reality, as the wealth of the African American and Latino middle classes has increased, these families have left the cities to join the suburban life style. However, their objective of seeking increased opportunities for their families is frustrated when the white middle class leaves the neighborhoods. Shortly after the white families leave, the businesses follow, weakening the commercial tax base.⁴⁹ This drives up the property tax on homes in the area in order to pay for dwindling services. The African American and Latino middle classes are not large enough in numbers to absorb or prevent the economic loss that is the result of white flight. The value of homes drop and the community then declines into poverty, which translates into poor schools, inferior services, and decrease in family wealth. White flight creates suburban ghettos and poverty.⁵⁰

A prime example on Long Island is the Roosevelt community in the Town of Hempstead. In the 1960's African American middle class families moved into the suburban area. "Organized blockbusting and racial steering are responsible for the almost overnight transformation of the [c]ommunity ... from a racially integrated community into a predominantly African American neighborhood.⁵¹ These African American homebuyers watched their community transform from an integrated, prosperous suburban environment into a racially isolated community with rapidly declining services.⁵²

and is a direct result of housing discrimination, such as steering and blockbusting.

Nassau County's property taxation system was challenged in 1996 by the New York Civil Liberties Union (NYCLU), Nassau Chapter, as a result of 'racially neutral' factors that concluded in disparate treatment of African American and Latino homeowners.⁵⁵ Nassau County assessed residences for taxation purposes based on what it would have cost to build the dwelling in 1938, rather than on the basis of the current market value of the residence.⁵⁶ A homeowner who

TABLE # 1: NASSAU TAX ASSESSMENT CHART PRIOR TO REFORM ⁵⁹

	Tax Assessment	Market Value Based on Sales Price	Residential Assessment Ratio	County Tax Overpaid	County Tax Underpaid
GARDEN CITY	\$8,000	\$300,000	2.67%		\$271
	\$6,800	\$250,000	2.72%		\$207
	\$5,900	\$260,000	2.27%		\$380
ROOSEVELT	\$8,000	\$110,000	7.27%	\$610	
	\$6,800	\$140,000	4.86%	\$303	
	\$5,900	\$129,000	4.57%	\$226	

SEGREGATION AND TAXATION

Segregation on Long Island has resulted in the devaluation of African American owned homes and the imposition of a "segregation tax" on African American homeowners that does not exist in integrated communities. The "segregation tax" is calculated by determining home value per dollar of income for each race and then comparing the outcome.⁵³ The home value per dollar for white homeowners on Long Island is \$3.23 and \$2.76 for African American residents. This translates into African American homeowners being subjected to a 15% segregation tax.⁵⁴ The level of financial privileges through home equity on Long Island is determined by race, not by neutral factors. Again, this inequity affects wealth creation

purchased a large estate that was built at the turn of the 20th century in Nassau County would not pay taxes based on the millions of dollars the estate was currently worth; the homeowner paid taxes based on the building costs and land values in 1938. This system of taxation benefited the wealthiest residents of Nassau County who are predominantly white.⁵⁷

Table # 1 above gives an example of how this taxation system unfairly affected African American homeowners. The home with the \$8,000 assessment in the predominately white area of Garden City is under-assessed by approximately 20%, while the home with the \$8,000 assessment in the predominately African American area of Roosevelt is over-assessed by approximately 102%.⁵⁸

The Nassau system of taxation was so blatantly biased against African American homeowners that the Department of Justice stepped in and joined suit alongside the NYCLU against Nassau County. The lawsuit was initiated in 1997 and settled in March of 2000. After three years of hard fought litigation, Nassau County settled on the eve of trial in the face of overwhelming evidence of its discriminatory practices becoming public. On March 28, 2000, Nassau County entered into a Consent Decree and “the Court ordered a stipulation stating that Nassau County shall adopt a reevaluation system and tax assessment role that is fair, nondiscriminatory, scientific, and equitable and that is based on fair market value.”⁶⁰ Nassau County is still in the process of finalizing its new taxation scheme and addressing challenges by citizens whose taxes are being raised as part of the reevaluation process. The citizens who benefited from the discriminatory taxation system are the most vocal in attempts to implement a fair taxation system.

An interesting caveat into the changes within the taxation system occurred in June 2004, when Nassau County Assessor Harvey Levinson “unveiled an initiative that will reclassify any illegal multi-family dwelling from Class I (residential) to Class 4 (commercial) property for taxation purposes. On average, the commercial property tax rate is 2¹/₂ times higher than the residential rate.”⁶¹ It is yet to be seen if such an initiative will target the illegal apartments in wealthy neighborhoods, where a retired couple or new homeowners have converted a space above a garage into a separate apartment, or just in poorer neighborhoods where individuals working in the service and manufacturing industries live together due to the lack of affordable housing.

Both the “segregation tax” and Nassau County’s history of racially biased taxation have had a direct effect on the wealth creation prospects for African American residents on Long Island. It required three years of contentiously fought litigation, with the added pressure of the Department of Justice, for Nassau County

to commence efforts to correct the unfair and discriminatory taxation system.

IV. A BRIEF HISTORY OF U.S. HOUSING LAW

The Civil Rights Movement of the 1960s was the catalyst that reversed the Federal Government’s stance on discriminatory housing practices and policies in both the public and private sectors. Federal recognition of equal rights to housing opportunities for people of color was established through the creation and enforcement of fair housing laws. The Fair Housing Act (FHA), codified as part of Title VIII of the Civil Rights Act of 1968 (“Title VIII”), represented the culmination of years of congressional consideration of housing discrimination legislation. Its legislative history spanned the urban riots of 1967, the release of the Report of the National Advisory Commission on Civil Disorders (the “Kerner Commission Report”), and the assassination of Dr. Martin Luther King, Jr.⁶²

The FHA afforded three methods of enforcing these new laws: 1) the U.S. Department of Justice (DOJ) was granted authority to bring “pattern and practice” lawsuits against defendants who practiced widespread discrimination in housing that raised an issue of general public importance; 2) the Department of Housing and Urban Development (HUD) was given authority to administratively hear and resolve fair housing complaints; and 3) private plaintiffs were granted the right to proceed directly to court with charges of housing discrimination.⁶³

In June 1968, the U.S. Supreme Court rendered its decision in *Jones v. Alfred H. Mayer Co.*, giving the Civil Rights Act of 1866 (“the Act”) new life by finding that the Act banned race discrimination in housing.⁶⁴ *Jones* and FHA established the legal framework for challenging segregated housing nationally. These new laws, affirmed by the United States Congress and the United States Supreme Court, now broadly guaranteed property rights to all citizens regardless

of race by banning racial discrimination in housing in both the private and public sectors.

On September 13, 1988, President Reagan signed into law the Fair Housing Amendments Act, which was passed by overwhelming margins in the House and Senate during the summer of 1988. This amendment became effective March 12, 1989, making major changes to Title VIII, including: 1) extending legal protection from housing discrimination to people with disabilities and families with children; 2) requiring that DOJ, upon referral from HUD, represent individual victims of housing discrimination in court; 3) establishing a system of administrative law judges (“ALJ”) at HUD to decide fair housing complaints; and 4) granting ALJs the authority to impose actual damages, injunctive relief and civil penalties of up to \$50,000.⁶⁵

However, there was a clear split in the Reagan administration’s willingness to effectively enforce fair housing and that of Congress. In 1987, Congress created the Fair Housing Initiative Program (FHIP), to provide funding through grants to private fair housing agencies. The FHIP grants became a much needed and relied upon source of funding for these agencies that were often nonprofits. The Reagan administration, with the backing of the National Association of Realtors (NAR), attempted to thwart fair housing enforcement by seeking to bar grants to agencies that engaged in systemic testing. Testing is the most effective way of proving housing discrimination has occurred.⁶⁶ Congress rejected the Reagan-NAR guidelines.⁶⁷

Fair housing enforcement became a priority during the Clinton administration, which saw significant increases in: 1) the filing of complaints; 2) funding for private fair housing initiatives; 3) reaffirming commitment to the use of disparate impact theory under the Fair Housing Act; and 4) the expansion of the fair housing testing program under the leadership of the Justice Department.⁶⁸ Additionally, the Clinton

administration vigorously pursued enforcement of the fair lending laws under the FHA and the Equal Credit Opportunity Act of 1974, which outlawed discrimination in home mortgage lending, underwriting and predatory lending.⁶⁹

Under the current Bush administration there has been a steady decrease in the funding made available for civil rights enforcement agencies. In the first three years, the Bush administration’s requests for funding the civil rights enforcement agencies was less than those of the two previous administrations and amounted to a loss in spending power, after inflation, for HUD, among other agencies.⁷⁰ In late 2003, Bush signed the “American Dream Downpayment Act,”

which was supposed to make homeownership more accessible to low-income and minority families by providing grants for closing costs and downpayments.⁷¹ However, the President eliminated billions of dollars from rent assistance programs, such as Section 8, to fund this program.⁷² In the end, the success of the “A Home of Your Own” program was limited due to insufficient funding and an inability to relieve the chronic affordable housing shortage.⁷³ Similarly, President Bush has proposed merging 18 housing assistance programs into a single grant program administered by the U.S. Commerce Department. This includes the Community Development Block Grant programs, which fund many of the affordable housing projects nationwide. The President intends to slash the budget of the consolidated housing program by 33%.⁷⁵

On Long Island, a disturbing trend in new terminology is being used by local builders and elected

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officials regarding who will have access to the new affordable housing being built. There have been numerous references to “generational housing,” or “next generation housing”, which is defined as housing for “your children,” people who have grown up in the local neighborhood and attended local schools. The problem with this is that in areas such as Plainview, where some of the affordable housing is being built, the people who attended high school in the area are from predominantly white, middle to upper middle income families. “Generational housing” has arguably become the new code for white-only housing.⁷⁵ In fact, local officials have recently coined the term and, in at least one instance, have publicly corrected an individual who used the term “affordable housing.”⁷⁶

The concern of further segregated affordable housing was echoed in a New York Times article covering Ms. Dorothy Goosby, a councilwoman in the Town of Hempstead. She voiced concerns about the majority of affordable housing units being located in the predominantly African American district of Hempstead, rather than being spread throughout Nassau County communities in a balanced fashion that creates integration. Ms. Goosby also voiced concern that the affordable housing being proposed for Hempstead Village is designated for the college student population and not for local residents.⁷⁷ This appears to be a transparent attempt on the part of local officials to please their affluent white constituents by guaranteeing continued racial segregation in their communities, while pretending to address the issue of integration by only making an attempt to integrate poorer majority African American and Latino communities, as reported in this article describing the actions and statements of local prominent officials.⁷⁸

V. TYPES OF HOUSING DISCRIMINATION

While local, State, and Federal fair housing laws have their own specific legal definitions of housing discrimination, a general description is:

*The unlawful denial of housing and related real estate transactions due to a specified designation, such as race, color, creed, disability, national origin, marital or familial status. Fair housing laws consider these designations “protected classes.”*⁷⁹

Housing discrimination can take the form of:⁸⁰

- **Refusing to sell or rent:** Denying rental or sale of a property to a person of color, solely based on their race. For example, an African American who wants to rent an apartment is told it has already been rented. However, it is in fact still vacant and is rented to a white person soon thereafter.
- **Advertising:** To advertise or make any statement that indicates exclusion or preference of a renter or homebuyer based on race, color or national origin. For example, a landlord cannot put an ad in a newspaper advertising an apartment for rent to a white person only, nor could he/she leave a message on an answering machine stating that people of color need not apply for the rental home.
- **Steering:** When a realty agent selectively chooses to show a customer only houses for sale or apartments for rent in certain communities based on the customer’s race or ethnicity. For example, a realty agent shows an African American couple houses for sale in only African American neighborhoods, excluding all predominately white communities, rather than showing all homes that are for sale within the couple’s price range. This allows realty agents to control in which communities their customers buy or rent property. Steering can take place in advertising as well. Realty agents seeking African American clients for a specific neighborhood may place ads in newspapers that circulate in African American communities, but neglect to put them in newspapers that whites are likely to read.
- **Intimidation:** Harassment and violence by a neighbor or anyone in the community against an

African American family and anyone else who helped the family obtain housing, such as a realty agent is prohibited. For example, an African American family purchases a home in an all white community and a few days later a neighbor spray paints on the family's garage a racial epithet and a message telling the African American family to leave the neighborhood. Similarly, if the realty agent who sold the African American family the house had the window of his/her car smashed by a neighbor because of selling the house to the African American family, the realty agent would have a claim under the FHA, irrespective of the realty agent's race.

- **Retaliation:** An individual who files a housing discrimination complaint may be subject to retaliation by the party or parties who engaged in discriminatory practices, such as a homeowner, landlord, housing and mortgage provider, or real estate agents. For example, if an African American renter filed a race discrimination complaint against his landlord and then the landlord responded by serving the African American renter with eviction papers, cut off the renter's heat, or tried to raise the rent, the African American renter would be protected under FHA.
- **Blockbusting:** Realty agents create a "panic" sale of homes by white homeowners in white neighborhoods by informing them that the neighborhood is about to be "invaded" by minority homebuyers and that this will cause the current value of the homes to plummet. Realty agents use this technique to induce the white homeowners to sell their properties at cut-rate prices. Realty agents then turn around and sell the homes for a large profit to African American homebuyers.⁸¹
- **Mortgage Lending:** There are a number of different practices within mortgage lending that perpetuate racial discrimination within the housing market. These include:

—**Predatory Lending:** Predatory lending refers to fraudulent or abusive lending practices including 1) charging unnecessary or undisclosed fees; 2) not fully disclosing the loan terms; 3) steering an individual to a sub-prime lender when he/she qualifies for a prime rate loan; or 4) writing the terms in such a way that an unreasonable profit is ensured for the lender. Individuals may not be aware of being a target of predatory lending, as this type of discrimination can be subtly practiced by loan officers.

—**Sub-prime Debt Consolidation and Refinancing Loans:** Sub-prime lending refers to lending products geared toward people with low credit ratings and/or low incomes who do not qualify for conventional loans. In exchange for making these higher risk loans, sub-prime lenders charge a higher than conventional interest rate. Sub-prime lending is not illegal.⁸²

- **Homeowner Insurance – Discrimination and Manual Underwriting:** An important element of mortgage lending discrimination involves the level of assistance given to applicants. *United States vs. Decatur Federal Savings and Loan* found that whites with credit flaws were more likely to have loans approved than African Americans with the same credit flaws.⁸³ It has also been found that white applicants are more likely than African Americans to have received advice during the application process on how to lower their debt-to-income ratios.⁸⁴

- **Exclusionary Zoning:** Exclusionary zoning is the practice of municipalities using restrictions and zoning laws to prevent certain groups of individuals from living in an area. It is still a commonly used 'tool' to prevent the construction of affordable housing and housing desirable to African Americans, through the establishment of zoning requirements.

VI. FAIR HOUSING ENFORCEMENT ON LONG ISLAND

ERASE Racism contacted all of the federal, state and local government agencies that are responsible for fair housing enforcement on Long Island and conducted a series of telephone surveys, face-to-face meetings and data collection efforts to determine the prevalence of institutional racism as it relates to housing on Long Island. In addition, ERASE Racism collected information from Long Island Housing Services, Inc., a private nonprofit that competes for federal funds and is dedicated to helping victims of housing discrimination in Nassau and Suffolk Counties. The eight agencies that have some responsibility for enforcing fair housing in the region are:

- U.S. Department of Housing and Urban Development;
- U.S. Department of Justice;
- New York State Division of Human Rights;
- New York State Division of Housing and Community Renewal;
- New York State Office of the Attorney General;
- Nassau County Commission on Human Rights;
- Suffolk County Human Rights Commission; and
- Long Island Housing Services.

Federal government agencies are responsible for enforcing the federal fair housing laws, while the state enforces state fair housing laws and the county is charged with enforcing county fair housing laws. They are three separate sets of laws enforced by three

separate levels of government. However, if the state and/or county have fair housing laws that are substantially similar to the federal Fair Housing Act, then the state and/or county is eligible to receive federal fair housing enforcement money from HUD to aid in the investigation and resolution of fair housing complaints. It should be noted that Long Island Housing Services differs from the other agencies listed above because it is a private nonprofit, rather than a government agency that is mandated to enforce fair housing laws. However, Long Island Housing Services does receive government grants that require the nonprofit to provide a variety of fair housing services on Long Island that lead up to enforcement. Long Island Housing Services also provides informal conciliation services to settle fair housing disputes, via alternative dispute resolution methods.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The Department of Housing and Urban Development (HUD) is responsible for enforcement of the Federal Fair Housing Act (FHA) in addition to Civil Rights Related Program Requirements (CRRPRs), an array of laws, executive orders, and regulations, that prohibit housing discrimination on the basis of race, color, national origin, religion, sex, disability and familial status. The statutory exemptions under the FHA include: 1) owner-occupied buildings with no more than four units, with some exceptions; 2) single-family housing sold or rented without the use

TABLE #2: NUMBER OF HOUSING COMPLAINTS THROUGH HUD ON LONG ISLAND ⁸⁷

Fiscal Year Assessment	Number of Complaints Filed in Nassau County	Number of Complaints Filed in Suffolk County	Total Complaints Filed on Long Island
1999	24	13	37
2000	23	35	58
2001	43	44	87
2002	36	30	66
2003	33	53	86
Total	159	175	334

of a broker, with some exceptions; and 3) housing operated by organizations and private clubs that limit occupancy to members, provided that membership does not exclude individuals based on race.⁸⁵

Housing discrimination complaints may be filed with HUD but, due to a Memorandum of Understanding with New York State, the majority of fair housing complaints that HUD receives are referred to the New York State Division of Human Rights (NYSDHR). The complaint is monitored by HUD after it is referred. HUD only maintains sole jurisdiction over complaints that are not covered under New York State Human Rights Laws. HUD is also authorized to initiate its own litigation on behalf of a victim of housing discrimination, but rarely exercises this option.

Staffing: The New York regional office of HUD has a staff of 30 full time employees, including 15 investigators, and averages 30 cases per staff member. This office is responsible for addressing the fair housing issues for the entire population of the states of New York and New Jersey.

Budget: HUD's overall budget for 2005 is \$31.3 billion, with \$27 million earmarked for Fair Housing Assistance Program (FHAP), which funds government fair housing programs nationally in the areas of: 1) targeted education and enforcement follow-up; 2) Fair Housing Academy, which is formal fair housing training and certification for FHAP staff; and 3) case processing. HUD has reserved \$20.7 million for the Fair Housing Initiative Program (FHIP) nationwide, which funds a fair housing National Discrimination study that is focused on people with disabilities.⁸⁶ FHIP is the only funding directly available to private nonprofit fair housing groups. In order to receive FHAP funding, private fair housing groups must obtain state or local government grants or contracts.

Cases Filed: On Long Island, a total of 334 housing complaints were reported by HUD over a five year period from 1999 to 2003 (see Table #2). Information

on whether a complaint was filed based on racial discrimination was not available at the time of this report from HUD or NYSDHR.

Aging of Cases: Aging of cases at HUD has been a continual problem. "Aged cases" refers to cases that have taken longer than the 100 days, as stipulated in the federal Fair Housing Act, to go through the administrative complaints process. At the beginning of 2003, 30% of HUD's open case inventory and 44.7% of those cases funded through FHAP were aged more than 100 days. The average age of cases at HUD was 400 days and 317 days for FHAP cases. The slowness of the complaints process is attributed to funding and staffing issues.⁸⁸

U.S. DEPARTMENT OF JUSTICE

Under the Fair Housing Act, the Department of Justice (DOJ) may step in and commence a lawsuit where it has reason to believe that a person or entity is engaged in 1) a "pattern or practice" of discrimination; or 2) where a denial of rights to a group of persons raises an issue of general public importance. Through these lawsuits, DOJ can obtain both actual and punitive monetary damages for victims of discrimination, as well as injunctive relief, such as access to the housing or monitoring of landlord's business practices to prevent any future discriminatory conduct. The defendant may also be required to pay monetary penalties to the United States.⁸⁹

Cases Filed: In 2003, on the *national* level the Department of Justice received 35 housing discrimination complaints and charged in only six cases.

NEW YORK STATE DIVISION OF HUMAN RIGHTS

The New York State Division of Human Rights (NYSDHR) enforces New York State Human Rights Law. New York State Human Rights Law protects against discrimination based on age, race, creed, color, national origin, sexual orientation, military status, sex or marital status, as well as discrimination in housing on the

according to the attorney in charge of housing-related cases in New York State, these types of cases have not been prosecuted in many years and the office has no plans to do so in the future.⁹⁸

LONG ISLAND HOUSING SERVICES

Long Island Housing Services (LIHS) is a 501(c)(3) nonprofit organization and the only private fair housing agency serving Nassau and Suffolk Counties. The group’s mission is to eliminate “unlawful housing discrimination” and promote “decent and affordable housing through advocacy and education.”⁹⁹

LIHS provides the following fair housing advocacy services to community members who feel they have experienced some form of discrimination in housing:

- In some cases LIHS will file a complaint separately, in the agency’s name, with HUD, NYSDHR or Federal District Court when LIHS’ mission is diverted and/or frustrated due to discriminatory practices;
- Analyzing results of investigations and drafting HUD and/or NYSDHR complaints;
- Attempting to effect a conciliatory agreement between parties before engaging in the administrative process offered by HUD/NYSDHR;
- Securing pro bono or contingency legal support for the victim; and
- Acting as the victim’s representative or advocate throughout the process.

TABLE #3: ALLEGATIONS RECEIVED BY LIHS, 1999-2003¹⁰³

	1999	2000	2001	2002	2003	Total
Number of allegations received from individuals for investigation	121	60	40	92	74	387
Number of allegations initiated by LIHS	10	13	9	19	8	59
Number of allegations received by race/color	47	20	17	45	33	162
Number of allegations received by national origin	22	7	2	18	16	65
Total number of allegations received for investigation	131	73	49	111	82	446
Number of allegations conciliated by LIHS prior to investigation	7	5	4	8	6	30
Number of complaints investigated	124	68	45	103	76	416
Number of complaints filed with government enforcement agency (HUD or NYSDHR)	14	15	6	8	21	64

- Assisting the client in articulating the discrimination claim to highlight violations and provide supportive evidence of housing discrimination;
- Conducting preliminary investigations before complaints are filed with HUD or NYSDHR and then filing on behalf of (and sometimes with) individual victims;

Staffing: LIHS employs 7 full-time and 1 half-time staff member, including 3 investigators with an average of 25 cases per staff member.¹⁰⁰ LIHS does not provide direct legal services and has no lawyers on staff. LIHS has no enforcement ability, but helps clients shepherd their complaints through the administrative processes offered by HUD and NYSDHR, provides investigative and evidentiary

<p>discrimination in housing; 3) adding injunctive relief as a remedy; and 4) increasing penalties for violations from a \$500 minimum to a \$1000 maximum, payable to the victim, to a \$5,000 minimum to a \$10,000 maximum.¹⁰⁷ The increased penalties still are very low in comparison to fair housing settlements through HUD, NYSDHR and the court system.¹⁰⁸</p> <p>However, NCCHR has yet to bring an action, along with the Nassau County Attorney’s office, for fair housing violations. NCCHR has yet to accept complaints; instead they send victims of housing discrimination to NYSDHR to file a complaint with the State. NCCHR is unable to receive federal funding from HUD for Fair Housing enforcement or for investigation of complaints filed with NYSDHR because the local Human Rights Laws are not “substantially equivalent” to the protection provided under the federal Fair Housing Act. Under the Memorandum of Understanding between HUD and NYSDHR, the State is prohibited from allowing any local government that has less protective laws than those under the FHA from investigating fair housing complaints.</p> <p>SUFFOLK COUNTY HUMAN RIGHTS COMMISSION AND COUNTY LAW</p> <p>There are several serious problems with the Suffolk County Human Rights Law (SCHRL) as written regarding fair housing protection. First, the SCHRL fair housing law is most likely unenforceable because:</p> <ul style="list-style-type: none"> • Though it states that housing discrimination is illegal, the law provides no procedural process for enforcement; • There is no statute of limitations, a time period in which a victim must bring a case; • The penalties include possible jail time, which is a violation of the United State Constitution – imprisonment is a penalty usually reserved for criminal 	<p>acts under the penal code, not civil suits such as violations of fair housing laws; and</p> <ul style="list-style-type: none"> • There is no private right of action – nothing that states an individual can file a suit in County court to enforce the fair housing laws.¹⁰⁹ <p>Furthermore, while the SCHRL proscribes the enforcement mechanisms, it lacks the staff to fulfill the enforcement functions. For example, Administrative Law Judges (ALJ) are supposed to conduct the hearings; however, the County does not have ALJs in place for SCHRL housing discrimination hearings and has not committed to fund the positions required.¹¹⁰</p> <p>Due to a Memorandum of Understanding between HUD and NYSDHR, similar to the NCCHR, the SCHRC cannot investigate housing complaints for the State. This is because the fair housing laws in Suffolk County are not equivalent or substantially similar to the protections offered under the federal Fair Housing Act (FHA). Complaints that come to either office are referred to the NYSDHR.</p> <p>Though both Nassau and Suffolk counties claim to have funding problems for enforcement of fair housing, the counties limit their access to funds by not bringing their laws into line with the FHA.¹¹¹ For example, Suffolk County would need to amend its fair housing laws to cover the sale of vacant lots, in addition to already covered dwellings, in order to bring its laws into compliance with the FHA.¹¹² Such changes would allow Suffolk County access to funds for local enforcement and investigation from HUD and the State. Amending the county laws would not add new protections as a whole, since the FHA and NYSHR laws already substantially cover the same areas. Rather, amending the county laws would open the opportunity for Federal and State funded enforcement activity on a local level. The onus would be with the county governments to use such funds for effective fair housing enforcement activities.</p>

Table #4 displays the responses for each of the agencies studied related to the six categories explored in telephone interviews.¹²⁰

TABLE #4: COMPARISON OF AGENCIES

	Impose Penalties	Case Management Decisions	Evaluation of Effectiveness and Duplication	Agency Resources for Investigating	Prevention Activities	Record of Complaints Easily Available
HUD Regional Office in New York City	Yes	Senior Analyst decides whether to send cases to NYSDHR	No formal evaluation	30 full time employees; 30 cases per employee	Yes	No
NYSDHR	Yes	Investigators make recommendations to Director. Commissioner makes order	Evaluated by HUD annually	12 full time employees; 50 cases per employee	Yes	No
LIHS	No	Executive Director decides which individuals to help file complaints with NYSDHR	Formal evaluation when contracted by HUD	3 full time staff members; 25 cases per employee	Yes	No
NYSDHCR	No	Does not accept complaints Refers to NYSDHR	No formal evaluation	NA	Yes	No
Office of New York State Attorney General	Yes	Has not prosecuted complaints in years and does not intend to in the foreseeable future	No formal evaluation	NA	No	No
NCCHR	No	Will not accept complaints, refers to NYSDHR	No formal evaluation	NA	No	No
SCHRC	No	Will not accept complaints, refers to NYSDHR	No formal evaluation	NA	No	No

Note on imposition of penalties: Outside of the Federal and State court systems, only HUD, the New York State Attorney General, and the NYSDHR can impose penalties on those who are found guilty of housing discrimination. These agencies can convene formal administrative hearings and impose monetary and non-monetary penalties. Suffolk and Nassau counties are permitted to impose penalties under the counties' Human Rights Laws; however, neither county does.¹¹³ While the Long Island Housing Services can arrange conciliation agreements, it does not have statutory authority and cannot impose civil penalties.

B. OVERALL ANALYSIS OF FAIR HOUSING ENFORCEMENT AGENCIES

1. Disproportionate focus on individual complaints as a means of addressing racial discrimination in housing and no proactive plan to deter unlawful behavior.

One of the most disturbing findings for ERASE Racism is that fair housing agencies that service Long Island are not proactive in investigating the extent of racial discrimination in housing. All the agencies have a reactive approach to fair housing. They wait for victims of housing discrimination to come to them or a person or entity to request fair housing education. There is no preventative strategic plan in place to address fair housing issues and shape Long Island communities with an eye to the future.¹¹⁴

According to the National Fair Housing Alliance ("NFHA"), there were 1.8 million incidents of race discrimination in housing across the country in 2003. Nonetheless, nationally, there only were slightly more than 25,000 complaints filed in 2003, of which 29% were based on race. HUD received 2,745 complaints in 2003, of which 27% were based on race.¹¹⁵ Furthermore, a study conducted in 2002 by the Urban Institute for HUD, found that 83% who had experienced discrimination in housing did nothing about it. The most common reason for

non-action was that the individual felt that nothing would be accomplished by reporting the discrimination. In fact the study found that "almost two in five people [who believed they had been discriminated against] believed there was no point to responding, that it would not have solved the problem, or, in some instances, that it could have made the problem worse."¹¹⁶

According to LIHS, from 1999 to 2003, 334 complaints were filed with HUD and/or NYSDHR alleging housing discrimination on Long Island.¹¹⁷ During the same period, LIHS received 387 housing discrimination allegations from individuals, 162 were related to race.¹¹⁸

Federal and State laws allow HUD, NYSDHR and LIHS to file complaints in court on behalf of the agency (as does DOJ). This process allows the agencies to step into the shoes of the victim and assert the fair housing claims at issue in court as a named Plaintiff, along side or on behalf of the victim. While arguably one of the most effective ways to litigate fair housing complaints in the current climate, this avenue of enforcement is rarely utilized.¹¹⁹ Of the total number of cases managed by LIHS, 87% were filed as individual complaints with HUD and NYSDHR, many of which LIHS joined as a complainant, with the remaining 13% initiated by the organization.¹²¹

Government fair housing agencies need to acknowledge the low case numbers and develop more effective means of identifying individual complaints, as well as take the initiative to file complaints in court as plaintiffs in fair housing cases. This necessity is derived partially because government agencies are focused on closing or "dumping" cases to meet number requirements, rather than meting out justice for victims of housing discrimination.¹²² The agencies' mission statements to effectively enforce fair housing laws seem to get lost in the bureaucratic shuffle of paper work. Many individuals with housing discrimination claims fall through the cracks due to the focus on quotas and the aging of cases, which often lead to inefficient or rushed investigations.¹²³

Disparity in determinants of cases filed with HUD/NYSDHR. There is evidence to suggest that there is inconsistency in the determination of whether HUD, as the federal fair housing administrator of complaints, or NYSDHR, as the State administrator, retains “jurisdiction” over a complaint. Jurisdiction is the lawful power of an agency or court to hear and decide a case.¹²⁵ In numerous situations there is “concurrent jurisdiction” over a complaint, meaning the fair housing claims could be considered under either State or Federal fair housing laws.¹²⁶ Based on

These cases are then improperly dismissed for lack of jurisdiction.¹²⁸

In the case of the NYSDHR, investigators make recommendations to the Director as to whether NYSDHR or HUD has jurisdiction for complaints initially filed with NYSDHR. The Commissioner then makes an official order stating either: 1) NYSDHR has jurisdiction over the complaint, or concurrent jurisdiction, and therefore will retain and process the complaint; or 2) that only federal law applies

TABLE #5: OUTCOME OF ALLEGATIONS FILED WITH HUD/NYSDHR THROUGH LIHS, 1999-2003¹³³

	1999	2000	2001	2002	2003	Total	% of Total
Number of complaints filed with government enforcement agency (HUD or NYSDHR)	14	16	6	8	21	65	100.0
Of complaints filed, number resolved in settlement agreements	10	10	3	0	2	25	38.5
Of complaints filed, # dismissed for No Probable Cause	3	2	1	5	5	16	24.6
Of complaints filed, # dismissed for failure to locate complainants, respondents or witnesses	0	0	0	0	1	1	1.5
Of complaints filed, # administratively closed or withdrawn	1	1	0	2	0	4	6.2
Of complaints filed, # still in progress in 2004	0	2	2	1	14	19	29.2

which laws are applied, the complaint will be under the “jurisdiction” of the agency that administers the complaints. Jurisdiction is the determinant as to whether or not a case will be filed as a complaint with HUD or NYSDHR. A HUD senior analyst will refer a complaint to NYSDHR if: 1) he/she determines there is concurrent jurisdiction or the same authority for processing; or 2) HUD is overwhelmed with complaints. Once a complaint is referred to NYSDHR by HUD, the complaint is considered “dually filed” and HUD then assumes a monitoring role.¹²⁷ However, there have been instances where State law exempt cases are erroneously referred to NYSDHR by HUD.

and therefore the complaint will be referred to HUD on the basis of exclusive jurisdiction.¹³⁹

On a local level, both Nassau and Suffolk County Human Rights Commissions direct all race related fair housing complaints to NYSDHR,¹³⁰ while at LIHS, the Executive Director makes the determination whether a housing discrimination complaint will be filed with HUD or NYSDHR.¹³¹

The result is that there is no common standard as to: 1) whether a complaint will be filed; 2) which agency the complaint will be filed with; 3) which agency will

according to respondents in telephone interviews, there is a lack of internal evaluation by separate departments.¹³⁵

Minimal mechanisms for determining case progression. There is currently no easy way to follow complaints through the system.¹³⁶ As discussed, numbering systems differ between agencies and cases are not always handled by a regional or local office, which causes further confusion. Additionally, it is not uncommon for numerous case workers to work on one case. Cases get shuffled between case workers, which is inefficient, and makes tracking cases difficult at best.¹³⁷

Lack of integrated prevention initiatives. ERASE Racism inquired about each agency's role in the prevention of housing discrimination. ERASE Racism found that neither the Nassau County Commission on Human Rights or Suffolk County Human Rights Commission currently conducts housing discrimination prevention activities.¹³⁸ Those agencies that carry out prevention activities cited public educational outreach as their primary strategy, including seminars, conferences, or special visits that are requested by communities. For example: HUD conducts seminars for real estate brokers and banks; NYSDHR has a special outreach program for Asian-Americans (funded through HUD); and outside of LIHS's annual fair housing

TABLE # 6: CLOSED CASES ON LONG ISLAND FROM NYSDHR

	Long Island						New York State					
	1999	2000	2001	2002	2003	Total	1999	2000	2001	2002	2003	Total
AC: Failure to Cooperate					1	1			2		2	4
C: Unable to Locate					1	1					1	1
Lack of Jurisdiction	1	1	3	1	1	7	2	10	15	16	9	52
No Probable Cause	16	21	39	18	15	109	124	239	283	335	212	1193
Predetermination Conciliation	4	6	8	5	7	30	20	46	45	45	47	203
Probable Cause: Hearing Recommended	7	12	13	4	3	39	7	32	44	35	33	151
Withdrawn with Benefits			3	6	13	11	3	36	29	57		
Withdrawn without Benefits	2	1	2	2		7	10	9	18	15	20	72
AC: Other		1				1		3	1	3	1	8
AC: Unable to Locate Complaints								1		2		3
Untimely Determination								1	1			2
Annulment Determination									1		2	3
Probable Cause: Conciliated										1		1
Total	33	48	78	41	31	231	192	398	466	514	396	1966
AC: Parallel Proceedings	4					4	4					4
Order after Stipulation of Settlement	5	10	6	6	2	29	4	19	19	13	11	66
Order of Withdrawal/Discontinuance		2				2	2					2
AC: Other			2	3	2	7	2	2	2	8	3	17
Order after Hearing: Sustaining			1		2	3		2	2	2	4	10
Order after Hearing: Dismissing			2		1	3			4	1	2	7
Order of Withdrawal/Discontinuance			3	2	6	11		10	11	12	24	57
AC: Unable to Locate Complaints				5		5				3		3
AC: Failure to Cooperate					1	1		1		1	1	4
Total	9	12	14	16	14	65	12	34	38	41	45	170

conference, LIHS educates tenants, landlords, realty agents and professionals about fair housing law and fair lending practices. Though, LIHS participates in 40 to 60 fair housing educational outreach events a year, this is sorely inadequate to address the vastness and needs of the population on Long Island. Greater resources are needed to address public education.¹³⁹ Almost all of the fair housing education offered to the residents of Long Island was either: 1) initiated by a member of the public, rather than the agencies proactively seeking forums to discuss fair housing rights; or 2) required as part of a conciliatory agreement or court order.¹⁴⁰ Public education materials are published and distributed to the general

are not made aware of or given the option of utilizing a local fair housing advocate to aid them through the complex complaint process.

Only a small percentage of cases filed are determined to have reasonable/probable cause. In 2003 on the national level, fair housing organizations received over 25,000 claims of housing discrimination.¹⁴³ However only 10 cases were charged for race discrimination under the federal Fair Housing Act (FHA) by federal enforcement agencies: HUD charged four cases; and the U.S. Department of Justice (DOJ) filed only six cases.¹⁴⁴ This serves as an example of the federal fair housing enforcement

TABLE # 7: CASES CLOSED FOR LONG ISLAND 1999 – 2003

	Administrative Closure		Conciliation		Withdrawal/relief		No Reasonable Cause		Reasonable Cause		Total	
	Nassau	Suffolk	Nassau	Suffolk	Nassau	Suffolk	Nassau	Suffolk	Nassau	Suffolk	Nassau	Suffolk
1999	14	1	2	4	2	1	3	7	0	10	21	23
2000	2	2	6	6	3	6	7	14	5	3	23	31
2001	3	4	7	2	5	2	16	21	3	11	34	40
2002	4	3	5	5	9	0	26	28	4	2	44	38
2003	1	3	3	3	6	1	13	31	2	3	25	41
Total	24	13	23	20	25	10	65	101	14	29	147	173

public by the agencies on both fair housing rights and predatory lending. However, ERASE Racism found that it often was difficult to identify the correct contact person for obtaining educational materials or to know where to find the information on the websites, particularly at the county level.¹⁴¹

Furthermore, on a local level, as of the date of this report, none of the government agencies that serve Long Island refer inquirers to LIHS on their websites.¹⁴² Rather, the websites refer individuals directly to the NYSDHR and HUD complaints process and websites. The result is that victims of housing discrimination

agencies' trend to reducing the number of cases pursued under FHA on behalf of victims of race discrimination. Prior to 2003, HUD and DOJ filed 30 race discrimination cases in 2001 and 28 cases in 2002.¹⁴⁵

In New York State, HUD issued findings of reasonable cause to believe that discrimination had occurred 61 times from 2001 to 2003; this number incrementally decreased from 38 in 2001 to 16 in 2002 and 7 in 2003.¹⁴⁶ Of the housing discrimination cases that are subject to a hearing (referred to as "closed cases") reported by NYSDHR between 1999 and 2003, no probable cause was determined in 109 of the complaints.

discrimination complaints. For example, the NYS-DHR uses the terms “probable cause” and “no probable cause” and HUD uses “reasonable cause” and “no reasonable cause.” These terms have the same legal definition, but the term “probable cause” is normally applied to criminal law or Fourth Amendment search and seizure issues, which do not apply to fair housing discrimination complaints. Black’s Law Dictionary defines “probable cause” as follows:

“A reasonable ground to suspect that a person has committed a particular crime or that a place contains specific items connected with a crime; under the Fourth Amendment, ... amounts to more than a bare suspicion but less than legal evidence – must be shown before an arrest warrant or search warrant may be issued.”¹⁵⁴

NYS-DHR has failed, thus far, to explain what factors and threshold of standard of proof needs to be met for “probable cause” to be found.¹⁵⁵ This is one of the areas of lack of transparency that is currently being addressed by the Campaign to Reform the New York State Division of Human Rights coalition through Senate Bill 7300/Assembly Bill A11229.¹⁵⁶ Similarly, HUD’s standard of “reasonable cause” is not clearly defined to the public; however, it is the standard articulated in FHA and is the standard courts apply in most federal civil rights cases. It would be less confusing if NYS-DHR adopted the “reasonable cause” standard language and both agencies clearly articulated the threshold for meeting the standard.

Unlike in a court of law, administrative agencies are not legally bound by the precedent they set. The standards can be influenced and altered with each change of administration. The Director of HUD is appointed by each new President of the United States. When a fair housing case is litigated in Federal or State court, the participants know the standards they must meet based on case law for that jurisdiction. Though case law can be overturned, it is an arduous process that requires transparency regarding the rationale for determining why

current case law should not be followed. The administrative process does not provide this level of transparency. Thus, it is impossible to ensure that the same standards are being applied by HUD and NYS-DHR to determine if discrimination has occurred.

Complaints are counted differently. There is a disparity in how housing discrimination complaints are counted among agencies, leading to the inaccurate portrayal of unique cases on Long Island. For example, if there are multiple complainants, such as the alleged victim of discrimination and an advocacy agency representing the complainant, HUD and NYS-DHR may assign more than one number for a single case.¹⁵⁷ A single fair housing incident brought against a landlord, a building manager and a lending institution by a complainant and an advocacy agency could have as many as six case numbers. The agencies do this because even though there was one fair housing incident, there were numerous violations under the FHA and NYSHR laws. Both the complainant and the advocacy agency have separate individual rights of action against each of the defendants. It is possible that during the course of the investigation a determination will be made that only one of the defendants is legally accountable for the discrimination. In this case, HUD or NYS-DHR can dismiss the complaints against the two defendants and carry on with enforcement actions against the remaining defendant. In addition, due to the Memorandum of Understanding between HUD and NYS-DHR, there are incidents of double counting of complaints. Complaints filed with HUD may be

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AND/OR USELESS
RESOLUTIONS
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OF RACE
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<p>trative complaint. The data base also must track the number of incidents of discrimination rather HUD’s and NYSDHR’s current system of only tracking the number of legal actions. HUD’s and NYSDHR’s system inflates the amount of discrimination reported by counting each person involved in an incident as a separate action rather than counting the action as part of one incident. The system should be able to tabulate both methods of counting complaints.</p> <p>5. Assign unified cases numbers when more than one agency is involved in the same case. While LIHS assigns one case number to each case, HUD and NYSDHR may assign several case numbers to the same case based on the number of victims and defendants involved.</p> <p>6. Implement a targeted Racial Discrimination in Housing Campaign that has specific outcomes and measures of success. This campaign would join the disparate work of agencies in various towns and communities. It would specifically target those who are most inclined to engage in discriminatory behavior – stressing penalties and publicity.</p> <p>7. Encourage the Department of Justice and the New York State Office of the Attorney General to file more fair housing cases on behalf of victims of discrimination. These two offices are the highest civil law offices in the federal and state governments. They carry a higher level of authority than the other enforcement agencies, which permits them to more effectively monitor and ensure enforcement of settlement agreements and injunctive relief.</p> <p>8. Fund federal, state and local governments to realistically meet the staff and resource requirements to effectively further fair housing goals and integration on Long Island.</p> <p>9. Stabilize funding for private fair housing agencies like LIHS.</p>	<p>10. Amend fair housing laws to allow for greater penalties at the State and Federal levels.</p> <p>11. Encourage the New York State Office of the Attorney General to represent pattern & practice fair housing actions in State Court, and the Department of Justice to do likewise in Federal Court.</p> <p>12. Increase award amounts to victims of discrimination in the conciliation process and have an external review council to ensure that Administrative Law Judges are awarding equitable remedies.</p> <p>13. Reform the Advisory Committee that oversees NYSDHR to be comprised of professional individuals with substantial expertise in civil rights, law, and public policy. The Committee must be able to render binding decisions, recommendations, and plans of action to reform problems within NYSDHR.</p> <p>14. Identify specific individuals at HUD and NYSDHR who are accountable for fair housing enforcement.</p> <p>15. Require regional management of NYSDHR cases from Long Island. While many of the housing discrimination cases from Long Island are investigated and managed on Long Island or in the Bronx headquarters of NYSDHR, at times these offices report a lack of the human resource capacity needed to manage all Long Island cases. Thus, some Long Island cases are managed by other regional offices around the state. This process not only complicates the investigation by having long distance investigation of region-specific complaints but also makes the tracking of Long Island cases very challenging for victims, LIHS and other interested parties.</p> <p>16. Decrease the time for cases to move through the system, without compromising the integrity of the investigation and the thoroughness of the analyses, as well as appropriately addressing the allegations of housing discrimination. Currently,</p>

both HUD and NYDHR have come under sharp criticism for expediting cases by failing to conduct proper investigations and applying shoddy legal analyses with the goal of closing cases to satisfy number quotas. HUD and NYDHR need to refocus on their goal of eliminating and effectively addressing housing discrimination.

17. Streamline the HUD forms. The National Fair Housing Alliance (NFHA) has recently advocated that HUD streamline its system of collecting information from victims. Currently, victims must complete two forms in order to have their complaint processed. NFHA has recently requested HUD to eliminate the use of HUD Form 903.1 and solely use HUD Form 903.

18. Amend Suffolk and Nassau county laws to mirror the FHA's level of protection, allowing the counties the possibility of entering into MOUs with the NYSDHR and HUD, in addition to the ability to access federal and state funding for fair housing enforcement and investigation.

19. Amend Suffolk County Human Rights Law to explicitly state that an individual has a private right of action to bring a civil action in county court for fair housing violations under county law.

20. Suffolk County must amend Human Rights Law to: 1) include a functional procedural process for bringing a fair housing complaint; 2) remove the possibility of imprisonment as a penalty for fair housing violations; and 3) explicitly state the statute of limitations for bringing an action under county law.

IX. LOCAL GOVERNMENT ANALYSIS OF FAIR HOUSING PRACTICES: HIGHLIGHTS FROM THE ANALYSIS OF IMPEDIMENTS REPORTS

ERASE Racism determined that in addition to looking at the structure, policies, and practices of governmental and non-governmental fair housing enforcement agencies, it would be of significant value

to review the Analysis of Impediment Reports (AI) submitted to HUD by Long Island townships and counties. We obtained the AIs and action plans of entitlement communities for the towns of Islip, Huntington, Babylon, as well as the Nassau and Suffolk County Consortiums.

The AIs were put in place by HUD to help bring entitlement communities that receive Federal grants into compliance with Federal Fair Housing regulations and the Fair Housing Act. These procedures are required to earn an Affirmatively Further Fair Housing (AFFH) certificate. The AFFH certificate consists of the AI, the action plan by the entitlement community to eliminate impediments to fair housing, and the maintenance of records for the certificate.¹⁶⁵ This certificate is part of a larger consolidated plan that is used to apply for a Community Development Block Grant (CDBG), Home Investment Partnership (HOME), Emergency Shelter Grant (ESG), or Housing Opportunities for Persons with AIDS (HOPWA) grant.

The federal funds that are made available to communities that comply with writing an AI and receive the AFFH certificate are used for a variety of purposes, such as planting trees and erecting street lights, and not just housing related activities. The original concept was to ensure that municipalities that received federal funding through HUD were working towards integration and promoting the principals of racial equity within their communities. The AI reports were a tool for municipalities to identify racial inequity and remove those impediments.

Impediments to housing are considered laws, policies, or conditions that affect fair housing. This may include zoning laws, geography, banking practices, or discrimination and may consist of intentional and unintentional practices or actions.¹⁶⁶

Information for the AI comes from a variety of sources, such as government policies, laws, and data;

to be built in “racially impacted areas,” which were defined as the disproportionately minority, low-income areas around Huntington’s railroad station.¹⁷⁵

The Town’s lethargic attitude to taking action to correct impediments to fair housing based on race discrimination was so overt that a review by HUD in 1997 found it necessary to authorize sanctions and/or corrective action against the Town. In 1998 HUD again stated it had ‘significant concerns’ regarding fair housing in Huntington and, finally, in 1999 HUD notified the Town that it had referred a fair housing complaint to the Department of Justice based on the Town’s lack of willingness to correct its discriminatory affordable housing policies.¹⁷⁶

However, the Town of Huntington has continued to reject applications for multi-family affordable housing in white areas. This is evidenced by a current action brought in 2004 against the Town of Huntington in the United States District Court Eastern District of New York by the Fair Housing in Huntington Committee, the Huntington Branch NAACP and several named plaintiffs.¹⁷⁷ The case again alleges race discrimination on the part of the Town because of its refusal to build affordable multi-family homes.

Furthermore, the Town and the developer of the affluent 382-acre Greens project agreed to build affordable, multi-family housing in an area known as Ruland Road in order to be permitted to complete the Greens development. As a result, the developer submitted a development proposal to the Town for multi-family affordable housing for the Ruland Road site. On September 11, 2000, the proposal was revised to only include non-age restricted affordable one bedroom and studio rental apartments and was approved on November 21, 2000, by the Town. The current lawsuit alleges that the Town knew that one bedroom apartments were less likely to attract minorities, and therefore would keep the neighborhood predominately white. The Plaintiffs allege that the Town willfully and intention-

ally discriminated against people of color by only approving the one bedroom and studio apartment development plan.¹⁷⁸

The Huntington AI tellingly omits any mention of the litigation that preceded the 2000 AI Update, and seems to continue to impede the progression of integration, rather than encourage it. When put into this context, it is not surprising that the Huntington AI lacks a strategic action plan to further fair housing.

BABYLON IMPEDIMENT REPORT 1996

Similarly, the Town of Babylon’s AI shows a lack of genuine effort to report the true state of fair housing in the jurisdiction. Babylon states that since no complaints or orders have been charged by the HUD Secretary or suits filed by the Department of Justice, there is no problem with race discrimination in Babylon. This analysis is flawed on many levels. As previously discussed, DOJ rarely files fair housing actions, with only 35 filed in 2003 in the entire country. Babylon took no proactive investigative actions to detect if race discrimination in housing was occurring. Furthermore, as mentioned, just because someone does not file a complaint does not mean that race discrimination in housing is not occurring. The AI further lacks any discussion on segregated housing and, though it mentions testing conducted by LIHS, the AI fails to discuss any positive or negative results from testing. Finally, the AI makes no effort to substantively discuss strategic plans to remove impediments to fair housing. As written, the Babylon AI omits any concrete information that could be used as a community development tool or plan for future housing to encourage integration.¹⁷⁹

NASSAU COUNTY CONSORTIUM ANALYSIS OF IMPEDIMENTS REPORT (OCTOBER 1996)

The Nassau County Consortium AI used information provided in the Nassau County Consolidated Strategy and Plan—these communities include the three

<p>towns of Hempstead, North Hempstead, and Oyster Bay; the two cities of Long Beach and Glen Cove; and the villages of Freeport, Hempstead, and Rockville Center, and 20 smaller villages. The AI states, "... with the diversity of the county's population, housing discrimination in the sale, rental, lease, and financing of housing has become a problem for portions of the population."¹⁸⁰ Of the nine impediments listed, two directly related to fair housing enforcement: rental/sales discrimination and finance/mortgage lending assistance.</p> <p>The AI finds that race discrimination in the sale and rental of housing exists in Nassau County and was found and reported by LIHS. The AI states race based fair housing violation against African American and Hispanic households included: denial of leases; refusal to show apartments or homes by realty agents; and, in some cases where a tenant is already in place, tenants are harassed by landlords, forcing them to move. Illegal evictions were also identified as a problem.¹⁸¹</p> <p>The AI cited the following impediments to fair housing:</p> <ul style="list-style-type: none"> • Lack of funds for government and not-for-profit agencies - There are many government agencies and not-for-profits that provide important fair and affordable housing services. However, they must deal with small budgets and cannot keep up with the high demand for their services.¹⁸² • Discrimination - Housing discrimination based on race, family size, and disability are the forms of discrimination mentioned in the report.¹⁸³ However, the AI is void of statistics or data addressing the number of complaints or incidents and the resolution. Lastly, Nassau suffers from NIMBYism like many municipalities. The idea of affordable housing is hard to sell to local residents and it arouses stiff opposition from them.¹⁸⁴ • Unfair lending practices - Many people of color in Nassau County have been victims of housing 	<p>discrimination and unfair lending practices. African-Americans in Nassau County are 2.7 times more likely to be rejected for home mortgages. Latinos and African-Americans make up 15% of Nassau County's population, but only receive 8% of the mortgages.¹⁸⁵ The Long Island Housing Services reports that providers have not been approving mortgages and insurance applications below \$150,000 and the report suspects this may constitute redlining.¹⁸⁶</p> <p>The AI cites that "the portfolios of many of Long Island lenders do not reflect the diversity of the area's population, and Federal Fair Housing lending requirements are rarely invoked."¹⁸⁷</p> <p>Recommendations for addressing fair housing impediments include education and outreach, as well as monitoring and investigation or testing of real estate practices and enforcement.¹⁸⁸</p> <p>Additionally, the County states that it hopes to address fair housing impediments by education and outreach, paired testing, and more desegregated public housing.¹⁸⁹</p> <p>Nassau County and its not-for-profit grantees conduct a number of outreach and educational programs that cover issues such as affordable housing, fair housing and home mortgage counseling, and technical assistance for community groups. The grantees include LIHS and the Long Island Housing Partnership. LIHS conducts paired testing to prove housing discrimination. According to the report, better education and outreach about affordable housing is important in order to counter NIMBYism.¹⁹⁰</p> <p>The AI concludes, "It is important that the County and Urban County Consortium members ensure adequate access to fair housing, implementing enforcement remedies, and carry out education and outreach to needy populations. This will involve an on-going commitment of resources by the County, local communities, and housing organizations."¹⁹¹</p>

the Consortium funds LIHS to provide outreach and fair housing counseling and funds housing counseling programs operated by the Bellport, Hagerman, East Patchogue Alliance, and the North Fork Housing Alliance.²⁰⁰

The Suffolk County AI, like the Nassau County AI, lists some of the impediments to fair housing, including segregated housing and lack of data related to local fair housing complaints. However, again, Suffolk does not lay out a strategic plan to overcome these obstacles. Furthermore, the AI erroneously states that housing segregation is a product of minorities preferring to live together and earning lower incomes, as discussed at some length above. Alarming, this excuse was found in at least two of the AIs to explain segregation in housing. The reasoning is easily undone when looked at in the historical context of Long Island zoning laws and development.

The Suffolk County Human Rights Laws suffer similar deficiencies as Nassau County's, as discussed previously. The Suffolk AI fails to mention the unenforceability of the SCHRL for fair housing, or the inability to receive federal funds to enforce fair housing due to the laws failing to be substantially equivalent to the protections under FHA.

Once again, the Suffolk AI simply recites some of the impediments to fair housing but fails to contain the substantive content required to be a useful tool for planning future integrated development.

X. ANALYZING THE USE OF IMPEDIMENT REPORTS TO ASSESS LOCAL GOVERNMENT EFFORTS TO FURTHER FAIR HOUSING ON LONG ISLAND

Based on a review of the Analysis of Impediment reports and action plans of entitlement communities on Long Island (Islip, Huntington, Babylon, and the Nassau and Suffolk County Consortiums), ERASE Racism found:

A dependence on fair housing complaint data as an indicator of racial discrimination. The Analysis of Impediment (AI) reports for Babylon and Islip rely solely on the number of complaints filed with fair housing advocacy or enforcement agencies to determine if discrimination is of primary concern in their jurisdiction. This differs from the more accurate assessment in the Suffolk County report that the extent of this discrimination is difficult to monitor. As mentioned earlier in assessing enforcement agency effectiveness, the number of complaints filed cannot be viewed as an accurate measure of racial discrimination in housing on Long Island.

An assumption that no activity means no discrimination. The AIs make the assumption that the lack of noted acts of racial discrimination, be it as a formal complaint (as previously mentioned) or a town-created task force or watch-dog entity, equates to the lack of discrimination. Some AIs cite the inability to obtain a more complete picture of the issue, but do not specifically delineate actions to remedy the situation.

A need for more comprehensive fair housing enforcement data. The AIs from the Town of Islip and Suffolk County cite the need for more localized and complete data, in a format that is easy to review and analyze, as necessary to ensure accurate assessments of fair housing issues. This would include complaints filed with the respective enforcement agencies as well as lending data.

Education and outreach as the primary means of addressing racial discrimination. Education and outreach are cited in the AIs as being effective ways to address racial discrimination in housing, whether targeting realty agents, landlords, or community members. However, the mechanisms for implementation are varied, such as an Islip Anti-Bias Task Force sub-committee created to educate realty agents and the community on fair housing practices and to sponsor educational programs that teach tolerance, understanding, and diversity, conflict

resolution, and cooperative working relationships. The AIs provide no information or evidence of the effectiveness or measurable success of these education/outreach efforts.

Identification of fair housing enforcement, with no concrete action steps. While the AIs recite a need for fair housing enforcement, there is no discussion of the strategic action steps necessary to improve the current system.

Lack of an overarching vision/plan for addressing racial discrimination in housing. With the exception of the Suffolk AI, that states that the Consortium’s goal is “to foster racial and social harmony while increasing the housing opportunities for those whose economic status, race, color, religion, sex, and handicap or national origin might serve to deny them,” there is no overarching guiding concept within the other AIs.²⁰¹

XI. RECOMMENDATIONS FOR LOCAL GOVERNMENT UTILIZATION OF ANALYSIS OF IMPEDIMENT REPORTS FOR FAIR HOUSING ENFORCEMENT, DEVELOPMENT AND INTEGRATION

1. **Use AIs as a blue print for each municipality** to develop a strategy to create integration and diminish fair housing violations.
2. **Encourage HUD to clearly articulate the standards and measures for AIs** to meet the prerequisites for the “Affirmatively Furthering Fair Housing” certificate needed to obtain a host of federal funds for affordable housing. HUD must insist through monitoring that jurisdictions strictly apply the measures and standards to community development. HUD must ensure that jurisdictions without AIs do not receive federal funding for projects via compliant jurisdictions. There have been cases reported of States filtering federal funds to non-compliant towns, villages and cities. If a jurisdiction

fails to adhere to an integrated building plan, penalties should be imposed by HUD or funding revoked.

3. **Review of AIs by an official committee to be determined outside of the political structure.** This committee should consist of local housing experts with superior knowledge of civil rights laws; local housing history; administrative policies; affordable housing; community development; and finance.
4. **Collaborate and share best practices** across townships as well as learn from model programs in other parts of the state and the nation.
5. **Encourage HUD to include a mandatory section in the AI on gentrification** and its effects on communities of color. Additionally, establish a non-partisan council to monitor gentrification on Long Island and the relationship between local government practices, initiatives, interests; and the building and realty community. The council’s findings should be included in the AI or submitted to HUD in some forum.
6. **Encourage municipalities** to review their zoning laws and remove all exclusionary zoning policies. The Federal and State government should adopt a policy that restricts all forms of government funding to communities that enforce exclusionary policies or refuse to remove such laws from their books.

XII. REALTOR TESTING AS AN INDICATOR OF HOUSING DISCRIMINATION

In addition to housing complaints, realtor testing can serve as an indicator of residential discrimination. Realtor testing is used to identify housing discrimination by engaging two individuals, one from a protected class such as African Americans and one from a non-protected group. Each tester contacts the same realty agent regarding the same rental property or house for sale. A comparison is then made on how the realty

agent responded to each individual. The Supreme Court of the United States upheld the use of realtor testing as a valid and important form of evidence in housing discrimination cases in *Havens Realty Corp. v. Coleman*, 455 U.S. 363, (1982). There are general categories that are useful in assessing the actions of realty agents, such as:²⁰²

- **Availability** – Is the advertised unit/home available? Are similar units available? Are a number of units recommended?
- **Inspections** – Was the advertised unit/home available for inspection? Were similar units available for inspection? Were a number of units inspected?
- **Cost/Financing** - Was the rent advertised available? Were rental incentives offered? Was the security deposit the same? Was an application fee required? Was help with house financing offered? Were lenders recommended? Was a down payment discussed?
- **Encouragement** - Was there follow-up contact from the agent? Was the individual asked to complete an application? Were arrangements made for the future viewing of the property? Was the individual told that she/he was qualified to rent?
- **Steering** – Were units/homes recommended? Were homes inspected? Did agents editorialize about the unit, home, and neighborhood?

REALTOR TESTING ON LONG ISLAND

Long Island Housing Services has used testing of real estate agents to prove housing discrimination on Long Island since the 1970s. In the past 5 years,

TABLE #8: LIHS TESTS CONDUCTED, 1999-2003

	1999	2000	2001	2002	2003	Total
LIHS does testing. Number of LIHS testers:	36	31	67	44	32	210
Number of tests conducted	95	50	250	70	47	512

LIHS has conducted 512 tests, an average of 102.4 a year.²⁰³ Two thirds of the complaints successfully filed through HUD (250 cases) in the past 10 years were supported by testing evidence from LIHS.²⁰⁴

LIHS and the Association of Community Organizations for Reform Now (ACORN) both received recent grants from the Long Island Community Foundation to conduct realtor testing on Long Island. Both organizations came back with results that prove racial steering remains very prevalent on Long Island today. The findings support that racial segregation and isolation on Long Island are not the results of natural selection, free choice, economic factors or mere happenstance. The fair housing violations evidenced through the testing show that deliberate, purposeful discrimination occurs on Long Island almost daily and that the realty community feels no pressure to abide by the law.

ACORN REALTOR SITE TESTING SURVEY

METHODOLOGY

ACORN conducted its site testing survey of 16 realtors in Nassau County, Long Island in the summer and fall of 2004. ACORN testers made 164 visits to the realty

LOCAL GOVERNMENT ENTITIES ON LONG ISLAND FAIL TO SERIOUSLY ADDRESS RACIAL SEGREGATION AND WITH ALARMING FREQUENCY EXCUSE RACIAL ISOLATION BY PERPETUATING THE “MYTH” THAT AFRICAN AMERICANS CHOOSE TO LIVE IN SEGREGATED COMMUNITIES.

agencies, 85 by white testers and 79 by African American or Latino testers. Each tester was provided with training, instructions for their site test, a structured reporting questionnaire, and an open-ended narrative to summarize the sequence of events at each visit. The factors used in the selection of agencies were: 1) whether agencies offered rental listings; and 2) whether the agents were located in a predominately white neighborhood.²⁰⁵

Under ideal testing conditions, both pairs of testers should visit the same real estate office on the same day. Thirty-two pairs of testers went into the real estate offices on the same day; 23 of those offices tested positive for race discrimination. Twenty-five pairs of testers visited the same real estate office within eight days of each other. Ten of the African American and Latino testers experienced disparate treatment. The variables tested and results are represented in the chart below:

ACORN's major findings included:

- White testers were told that apartments were available 93% of the time, while African American and Latino testers were told that apartments were available in the area they were inquiring about only 53% of the time.
- White testers were invited to inspect apartments more than twice as often as African American and Latino testers.

- Approximately one third of African American and Latino testers were referred to a different, usually less affluent, neighborhood, while only 2% of white testers were referred to a different location.
- White testers were offered business cards approximately a third more often than African American and Latino testers.
- White testers were often treated more professionally and warmly than African American testers, revealing a disturbing two-tiered customer service system.²⁰⁷

Examples of discriminatory treatment experienced by some of the testers:

- Realtor in Garden City immediately interviewed the white tester and told the tester about several apartments that were available. The same real estate agent informed the African American tester that no apartments were available for rent.²⁰⁸
- A realtor told one of the African American testers that she "couldn't afford Garden City" and would have better luck in Franklin Square.
- A white tester and an African American tester with the same income were steered to different neighborhoods. Both walked in to the realty company to inquire about apartments. The African American tester was shown an apartment in the low-to-moderate income range in the predominately African

TABLE #9: ACORN TESTING RESULTS ²⁰⁶

Variable	White Testers	African American & Latino Testers
Agent offered to show apartment	74%	33%
Told of available apartments	93%	53%
Offered business card	93%	56%
Met with agent	92%	80%
Waited longer than a couple of minutes	18%	33%
Referred to different area	2%	28%

American neighborhood of Elmont. The apartment was below her price range. The white tester was shown apartments in the affluent, predominately white Garden City.²⁰⁹

The table below lists the location of the real estate agencies tested in ACORN's survey from most instances of discrimination to least. The following criteria were used to tabulate the average disparity for African American and Latino testers in comparison to white testers: 1) percentage who were told of available apartments; 2) percentage who met with an agent; and 3) percentage who were invited to inspect an apartment. The disparity between the minority testers and the white testers for each variable was tabulated and then an average of all three was calculated to determine the overall average disparity for each real estate agency. Then the results for the real estate agencies located in the same geographical area were averaged to produce the results represented in the chart below:²¹⁰

As a result of the findings, ACORN filed lawsuits against four Long Island real estate companies in early January 2005.²¹¹ Prior to filing the lawsuits, New York State Comptroller Alan Hevesi stated "ACORN's study exposed the often ugly and clearly discriminatory treatment given to people who were simply looking for a decent place to live and a good school for their children. This discrimination is illegal and must be stopped. I will refer these findings to the NYSDHR for further investigation and urge the New York State Secretary of State to immediately revoke any license for a real estate agency or agent found to engage in any kind of discrimination."²¹² The final outcome of the enforcement action by ACORN and the

effect of Mr. Hevesi's recommendations have yet to be determined.

LIHS REALTOR TESTING TELEPHONE SURVEY

METHODOLOGY

In conjunction with this ERASE Racism study, LIHS conducted 37 paired realtor telephone tests between February and August, 2004 in Oyster Bay, North Hempstead and Smithtown. Twenty-seven of the paired tests were for inquires about rentals and 10 of the paired tests were regarding homes for sale. Some additional tests took place; however, they were inconclusive and, as such, are not included in the data below.²¹³

LIHS used 17 testers to complete the survey. Each tester went through a three and a half hour training; role play and practice tests were conducted to ensure the quality of the tests. Testers were matched by age (within a 5-year range) and gender and assigned the similar familial characteristics, job and income. The African American testers were given a slightly higher income, but all testers had good credit. African American testers were screened by LIHS and selected based on consensus of assessment of voice characteristics as being racially identifiable. Some African American testers were also assigned names that would be readily associated with an African American individual.²¹⁵

Real estate agencies were selected through rental and sales ads placed in *Newsday*, *Pennysaver News*, *Yankee Trader*, *Shopper's Guide* and on the internet. However,

TABLE # 10: LIHS TELEPHONE TEST RESULTS ²¹⁶

Town	Discrimination in Rental	Discrimination in Sales
Oyster Bay	55.5%	100%
North Hempstead	46%	25%
Smithtown	20%	33%

and disseminates the information to clients who are trying to obtain housing. Ms. Lagville estimates that the agency serves approximately 600 clients per year, with 50-60% of the clientele being African American. Almost all of these clients have reported hearing of incidents of race discrimination in housing and at least 150 African American clients report experiencing housing discrimination to the agency annually. Ms. Lagville and the staff at Housing Help refer individual victims of discrimination to LIHS; however, many of the clients do not follow through because they need a roof over their head and they fear that any complaints will further impede the likelihood of obtaining housing. Ms. Lagville reports that if the potential tenant is receiving housing assistance through government subsidies such as Section 8 or is on unemployment assistance, the discrimination faced is two-fold and especially difficult for African American clients.²²³

XIII. ANALYZING THE USE OF REALTOR TESTING IN THE ENFORCEMENT OF FAIR HOUSING ON LONG ISLAND

Though realtor testing has occurred sporadically on Long Island, there has yet to be a systematic effort to conduct regular targeted testing. The majority of the testing was conducted by LIHS, in response to complaints of housing discrimination by individuals. Under these circumstances, testing is part of the investigative process, in reaction to the complaint, rather than a proactive effort to prevent discrimination from occurring. Without regular testing, the Long Island realty community will not stop discriminatory and illegal housing practices. The testing by ACORN and LIHS evidences how prevalent the unlawful practices are on Long Island, and that many realty agents knowingly and unabashedly break the fair housing laws with little thought of the possible consequences. Long Island is in dire need of a regular, targeted testing program that carries through and uses the information for educational purposes as well as enforcement. Through education, the goal is to change people’s minds and hearts; where that

fails, vigorous enforcement of fair housing laws can make housing discrimination an expensive business decision.

XIV. RECOMMENDATIONS FOR DETERRING REALTOR DISCRIMINATION ON LONG ISLAND

- 1. The real estate industry and banking/financial institutions need racially integrated working staff.** Real estate agencies should have a sufficient number of African Americans and realty agents of color working in predominately white neighborhoods and vice versa. Similarly, more people of color should be encouraged to work in the predominantly white banking and financial institutions/branches that provide home loans and mortgages throughout all communities. Visibility of people of color and representation is essential to breaking down the institutional racism that is entrenched in the predominantly white male banking, lending and mortgage industry.
- 2. Increase monitoring and evaluation mechanisms,** such as realtor testing, to investigate the extent and types of housing discrimination on Long Island. Testing must be followed up with enforcement actions and the results should be made public. Ideally press coverage revealing perpetrators of fair housing violations should be encouraged.
- 3. Strengthen penalties for realtors who discriminate** to include suspension and loss of real estate licenses. The monetary penalties through the courts and administrative enforcement systems should be increased to make realtor discrimination a cost prohibitive business practice.
- 4. Improve and increase realty agent education** which should be tailored specifically to make realty agents aware of the consequences of housing discrimination on a societal level.

XVI. CLOSING COMMENTS

Pervasive structural and institutional racism, spanning centuries, remains omnipresent on Long Island. From the racially restrictive housing covenants of the past to the exclusionary zoning and lethargic government fair housing enforcement of today, government practices and policies leave the indelible mark of inequality on Long Island communities. The opportunity gap is further widened by unabashed racial steering by local realty agents. For fair housing to exist on Long Island, the public and private sectors must purge institutional racism from the mechanisms used to access societal benefits. This requires an unwavering commitment to the implementation of racially equitable business practices, government policies and effective fair housing enforcement systems.

ERASE Racism hopes that the recommendations in this study will be used as a starting point to work towards honest, open and effective fair housing enforcement and integration. The American Dream should be accessible to all residents of Long Island. Every resident should have equal access to housing and an equal opportunity to build equity through homeownership without race being a factor. Integrated communities create a strong society.

MANY AFRICAN AMERICAN RESIDENTS ON LONG ISLAND SEE REPORTING INCIDENTS OF HOUSING DISCRIMINATION AS A TIME-CONSUMING EXERCISE IN FUTILITY SINCE COMPLAINTS RARELY ARE ADEQUATELY ADDRESSED. THIS PERCEPTION IS CONFIRMED BY ERASE RACISM’S INVESTIGATION INTO THE FAIR HOUSING ENFORCEMENT SYSTEM.

<p>6. Implement a targeted Racial Discrimination in Housing Campaign that has specific outcomes and measures of success. This campaign would join the disparate work of agencies in various towns and communities. It would specifically target those who are most inclined to engage in discriminatory behavior – stressing penalties and publicity.</p> <p>7. Encourage the Department of Justice and the New York State Office of the Attorney General to file more fair housing cases on behalf of victims of discrimination. These two offices are the highest civil law office in the federal and state governments. They carry a higher level of authority than the other enforcement agencies, which permits them to more effectively monitor and ensure enforcement of settlement agreements and injunctive relief.</p> <p>8. Fund federal, state and local governments to realistically meet the staff and resource requirements to effectively further fair housing goals and integration on Long Island.</p> <p>9. Stabilize funding for private fair housing agencies like LIHS.</p> <p>10. Amend fair housing laws to allow for greater penalties at the State and Federal levels.</p> <p>11. Encourage the New York State Office of the Attorney General to represent pattern & practice fair housing actions in state court and the Department of Justice to do likewise in federal court.</p> <p>12. Increase award amounts to victims of discrimination in the conciliation process and have an external review council to ensure that Administrative Law Judges are awarding equitable remedies.</p> <p>13. Reform the Advisory Committee that oversees NYSDHR to be comprised of professional individuals with substantial expertise in civil rights, law, and public policy. The Committee must be able to render</p>	<p>binding decisions, recommendations, and plans of action to reform problems within NYSDHR.</p> <p>14. Identify specific individuals at HUD and NYSDHR who are accountable for fair housing enforcement.</p> <p>15. Require regional management of NYSDHR cases from Long Island. While many of the housing discrimination cases from Long Island are investigated and managed on Long Island or in the Bronx headquarters of NYSDHR, at times these offices report a lack of the human resource capacity needed to manage all Long Island cases. Thus, some Long Island cases are managed by other regional offices around the state. This process not only complicates the investigation by having long distance investigation of region-specific complaints but also, makes the tracking of Long Island cases very challenging for victims, LIHS and other interested parties.</p> <p>16. Decrease the time for cases to move through the system, without compromising the integrity of the investigation and the thoroughness of the analyses, as well as appropriately addressing the allegations of housing discrimination. Currently, both HUD and NYDHR have come under sharp criticism for expediting cases by failing to conduct proper investigations and applying shoddy legal analyses with the goal of closing cases to satisfy number quotas. HUD and NYDHR need to refocus on their goal of eliminating and effectively addressing housing discrimination.</p> <p>17. Streamline the HUD forms. The National Fair Housing Alliance (NFHA) has recently advocated that HUD streamline its system of collecting information from victims. Currently, victims must complete two forms in order to have their complaint processed. NFHA has recently requested HUD to eliminate the use of HUD Form 903.1 and solely use HUD Form 903.</p>

<p>18. Amend Suffolk and Nassau county laws to mirror the FHA’s level of protection, allowing the counties the possibility of entering into MOUs with the NYSDHR and HUD, in addition to the ability to access federal and state funding for fair housing enforcement and investigation.</p> <p>19. Amend Suffolk County Human Rights Law to explicitly state that an individual has a private right of action to bring a civil action in county court for fair housing violations under county law.</p> <p>20. Suffolk County must amend Human Rights Law to: 1) include a functional procedural process for bringing a fair housing complaint; 2) remove the possibility of imprisonment as a penalty for fair housing violations; and 3) explicitly state the statute of limitations for bringing an action under county law.</p> <p>21. Use AIs as a blue print for each municipality to develop a strategy to create integration, eliminate fair housing violations, examine the pervasiveness of exclusionary zoning and encourage inclusionary zoning.</p> <p>22. Encourage HUD to clearly articulate the standards and measures for AIs to meet the prerequisites for the “Affirmatively Furthering Fair Housing” certificate needed to obtain a host of federal funds for affordable housing. HUD must insist through monitoring that jurisdictions strictly apply the measures and standards to community development. HUD must ensure that jurisdictions without AIs do not receive federal funding for projects via compliant jurisdictions. There have been cases reported of States filtering federal funds to non-compliant towns, villages and cities. If a jurisdiction fails to adhere to an integrated building plan, penalties should be imposed by HUD or funding revoked.</p> <p>23. Review of AIs by an official committee to be determined outside of the political structure. This committee should consist of local housing experts with superior knowledge of civil rights laws; local housing history; administrative policies; affordable housing; community development; and finance.</p>	<p>24. Collaborate and share best practices across townships as well as learn from model programs in other parts of the state and the nation.</p> <p>25. Encourage HUD to include a mandatory section in the AI on gentrification and its effects on the communities of color. Additionally, establish a non-partisan council to monitor gentrification on Long Island and the relationship between local government practices, initiatives, interests; and the building and realty community. The council’s findings should be included in the AI or submitted to HUD in some forum.</p> <p>26. The real estate industry and banking/financial institutions need racially integrated working staff. Real estate agencies should have a sufficient number of African Americans and realty agents of color working in predominately white neighborhoods and vice versa. Similarly, more people of color should be encouraged to work in the predominantly white banking and financial institutions/branches that provide home loans and mortgages throughout all communities. Visibility of people of color and representation is essential to breaking down the institutional racism that is entrenched in the predominantly white male banking, lending and mortgage industry.</p> <p>27. Increase monitoring and evaluation mechanisms, such as realtor testing, to investigate the extent and types of housing discrimination on Long Island. Testing must be followed up with enforcement actions and the results should be made public. Ideally press coverage revealing perpetrators of fair housing violations should be encouraged.</p> <p>28. Strengthen penalties for realtors who discriminate to include suspension and loss of real estate licenses. The monetary penalties through the courts and administrative enforcement systems should be increased to make realtor discrimination a cost prohibitive business practice.</p>

29. Improve and increase realty agent education which should be tailored specifically to make realty agents aware of the consequences of housing discrimination on a societal level.

2. OPTIONS TO ADDRESS HOUSING DISCRIMINATION

A victim of housing discrimination has a number of options. The individual has the option of either: 1) taking the administrative route by filing a complaint with HUD or NYSDHR; or 2) finding a lawyer and filing a lawsuit directly in Federal or State court. The individual can file a complaint with HUD or NYSDHR with or without the assistance of an advocate. The individual must decide whether to seek out the help of a fair housing advocate or lawyer.

The administrative route is at no cost to the victim of housing discrimination and in rare cases HUD or DOJ, at HUD's request, will represent the individual at no cost in Federal court if the discrimination is particularly egregious. The advantage of the administrative complaints system is that there are many opportunities for individuals to resolve the dispute without litigation, which is often protracted, invasive and expensive. Both agencies are mandated to conduct investigations into the discrimination at no cost to the victim. An individual can file a complaint with HUD or NYSDHR and later chose to abandon the process and file a case in court so long as there has not been an administrative hearing in front of an ALJ or a hearing in front of an examiner (NYSHRL §297.9).

TABLE #11: AMOUNT RECOVERED FROM ADMINISTRATIVE CASES FILED THROUGH LIHS, 1999-2003

Year	Number of Cases Filed	Dollare Amount Recovered
1999	14	\$78,500
2000	16	\$184,700
2001	6	\$7,475
2002	8	0
2003	21	\$110,000
Totals	65	\$380,675

It should be noted that finding an attorney willing to take a fair housing case can be difficult. Most clients will need to seek an attorney willing to work "pro-bono" (for free), or on a contingency basis, meaning that the attorney will collect a portion of the amount awarded to the victim of discrimination if the case succeeds at court. If the case loses, then the attorney does not get paid. For this reason, most civil rights attorneys only take cases they know they can win. Fair Housing cases are usually very expensive and most people cannot afford an hourly rate unless they are very wealthy.

Statute of Limitations: An individual has one year from the date of the discrimination to file a complaint with HUD or NYSDHR. Otherwise there is a 3-year statute of limitations to file a complaint of housing discrimination under the NYSHRL to file in New York State court and a 2-year statute of limitations under the FHA to file in Federal District Court. If the housing discrimination occurred more than a year ago and the individual has not filed a complaint with HUD, NYSDHR, the issues can no longer be addressed through the administrative complaint process.²²⁴

**ADMINISTRATIVE COMPLAINTS
PROCESS GENERALLY:**

Step 1—File a Complaint with HUD/NYS DHR:

The complainant should ideally compile and supply: 1) a list of the names, titles, addresses and phone numbers of all individuals who discriminated against the individual; 2) a list of all witnesses to the discrimination, including their phone numbers and addresses; 3) any documentation or evidence that the discrimination occurred; and 4) a detailed, written narrative account of all events relative to the discrimination.

Step 2—Investigative Procedure: HUD/NYS DHR will investigate: 1) determine jurisdiction; 2) notify respondent of allegation of discrimination; 3) dual file with HUD at complainant’s request if originally filed with NYSDHR; and 4) use written inquiry, field investigation and telephone conference methods to collect evidence. The agency will attempt to settle the matter through conciliation. If conciliation fails, then the agency will determine whether there is probable/ reasonable cause and will notify both complainant and respondent in writing.

Step 3a—No Probable Cause Found: Following Investigation, if NYSDHR finds no probable cause, then the complainant has 60 days to file an appeal to the State Supreme Court. If HUD finds no probable cause, then complainant can proceed to Federal District Court within the 2-year statute of limitations.²²⁵

Step 3b—Probable Cause Found: If probable cause is found, the regional office attempts conciliation by: 1) preparing proposed terms of conciliation; 2) then offering the terms to the respondent and, if the respondent accepts, the agency submits the agreement to the victim—NYSDHR allows the victim 15 days to accept or object to the proposed terms of the conciliation; and 3) if conciliation fails, the case is recommended to public hearing.

Step 4—Public Hearing: NYSDHR’s administrative hearing process is substantially similar to HUD’s: 1) an agency attorney will represent the victim of discrimination or an individual can seek outside counsel; 2) both sides receive a notice of Hearing at least one week in advance and the date of the Hearing will only be changed for good cause; 3) the Hearing can last more than one day and may not be heard on consecutive days by the ALJ; 4) a Proposed Order is prepared by the ALJ and is sent to both parties upon request for comments; 5) the Commissioner’s Order (NYSDHR) or Secretary’s Order (HUD) either dismisses the complaint or finds discrimination; 6) if discrimination is found, the Order can force the respondent to cease the discriminatory actions and impose injunctive and monetary relief; and 7) the Order may be appealed within 60 days of its issue to the State Supreme Court (NYSDHR) or United States Court of Appeals (HUD).²²⁶

As illustrated above, filing a complaint can be a lengthy process and involves a series of steps. There are a number of possible outcomes throughout the process and many chances for parties to make a conciliatory agreement or settlement. Complainants may receive monetary and/or non-monetary awards. Non-monetary benefits can include restoration of housing denied, renewed lease terms, and obtaining reasonable accommodations for persons with disabilities.

3. HUD/NYS DHR & LITIGATION REMEDIES

The awards given by Administrative Law Judges (“ALJ”) are often lower than those awarded in court. Tables 12 & 13 below illustrate this point. LIHS found that its clients who pursued litigation successfully between 1999 and 2003 received an average of \$86,250, while clients who pursued the administrative process received an average award of \$6,679.24²²⁷

Often fair housing attorneys prefer that victims of discrimination file an administrative complaint before the attorney will file in court. This allows the victim

TABLE #12: AMOUNT RECOVERED IN LAWSUITS SETTLED THROUGH LIHS, 1999-2003

Year	Number of Lawsuits Filed	DollarAmount Recovered	Number of Filed Lawsuits Pending as of 3/31/04
1999	4	\$316,000	1
2000	0	NA	NA
2001	1	--	1
2002	3	\$29,000	2
2003	0	NA	NA
Total	8	\$345,000	4

and attorney the benefit of the preliminary investigation by the agency at no cost and the possibility of settling the case without incurring the expense of litigation.

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ENDNOTES:

1. Questions regarding the methodology used by other organizations for analyzing data or conducting surveys should be directed to the specific organization cited in the study by ERASE Racism.
2. "Opportunity gap" means the difference in access to education, employment, wealth creation, health care and economic development between white and African American populations. The opportunity gap is created by obstacles faced by the African American community that do not exist for the white population; for example, the same access to loans and interest rates.
3. Maria Krysan, *The Residential Preferences of Blacks: Do They Explain Persistent Segregation?*, *Social Forces*, Vol.80, No. 3 (March, 2002), pp. 937-980.
4. Prof. John Logan, *Separate and Unequal: Sources of Neighborhood Inequality*, (available at http://browns4.dyndns.org/cen2000_s4/SepUneq/PublicSepDataPages/5380msaSepInc.htm)(accessed February 21, 2005); and see also Lewis Mumford Center for Comparative Urban and Regional Research, *Ethnic Diversity Grows, Neighborhood Integration Lags Behind* (December 18, 2001), pp 5-7.
5. John Powell, Institute on Race and Poverty, *Racism and the Opportunity Divide on Long Island* (Briefing paper prepared for ERASE Racism, 2002), pp. 5 (citing Institute on Race and Poverty, *Racism and Metropolitan Dynamics: The Civil Rights Challenge of the 21st Century* (Briefing paper prepared for the Ford Foundation, 2002) pp. 9-13); see also *Shelley v. Kraemer*, 334 US 1 (1948).
6. Prof. John Logan, *Separate and Unequal: Sources of Neighborhood Inequality*, (available at http://browns4.dyndns.org/cen2000_s4/SepUneq/PublicSepDataPages/5380msaSepInc.htm)(accessed February 21, 2005); see also Lewis Mumford Center for Comparative Urban and Regional Research, *Ethnic Diversity Grows, Neighborhood Integration Lags Behind* (December 18, 2001), pp 27.
7. *Ibid.*
8. John Powell, Institute on Race and Poverty, *Racism and the Opportunity Divide on Long Island* (Briefing paper prepared for ERASE Racism, 2002), pp. 11(citing Lewis Mumford Center for Comparative Urban and Regional Research, *Ethnic Diversity Grows, Neighborhood Integration Lags Behind* (December 18, 2001); Lewis Mumford Center for Comparative Urban and Regional Research, *The New Ethnic Enclaves in America's Suburbs* (July 9, 2001)).
9. Dr. Richard Koubek, *Patterns of Racial, Ethnic and Class Segregation on Long Island*, pp.3.
10. Testing audit made possible through a grant from the Long Island Community Foundation.
11. Molly McCarthy, *Gordon Heights, Built by Blacks, From the Ground Up*, *Newsday* (available at <http://www.lihistory.com/spectown/hist004h.htm>)(accessed August, 29, 2002).
12. *Ibid.*
13. John Powell, Institute on Race and Poverty, *Racism and the Opportunity Divide on Long Island* (Briefing paper prepared for ERASE Racism, 2002), pp. 5 (citing Institute on Race and Poverty, *Racism and Metropolitan Dynamics: The Civil Rights Challenge of the 21st Century* (Briefing paper prepared for the Ford Foundation, 2002) pp. 9-13).
14. *Ibid.*
15. The Honorable John O. Norquist, Mayor, City of Milwaukee, Speech, *Remarks at State of the Cities The Urban Recovery: Real or Imagined* (Washington, D.C., June 8, 1998)(copy of transcript on file with the Brookings Institute).
16. Institute on Race and Poverty, *Racism and the Opportunity Divide on Long Island*, p.5. The practice of 'redlining' is now illegal under the Federal Fair Housing Act of 1968.
17. *Ibid.*
18. *Ibid.*
19. *Ibid.* Exclusionary zoning is the practice of municipalities using restrictions and zoning laws to prevent certain groups of individuals from living in an area. It is still a commonly used 'tool' to prevent the construction of affordable housing and housing desirable to African Americans through the establishment of minimum zoning requirements. Restrictive covenants are covenants that were written into deeds that explicitly prohibited the home buyer from ever selling the home to an African American individual. Racially restrictive covenants were declared unconstitutional by the Supreme Court in 1948. See *Shelley v. Kraemer*, 334 US 1 (1948).
20. Leadership Conference on Civil Rights, *Building Healthy Communities, Community Reinvestment Act and the Financial Modernization Movement, Leadership Conference on Civil Rights/Leadership Conference Education Fund*, pp.36 (available at www.civilrights.org/publications/reports/cra_report/cra_report_chapters.pdf).
21. Norquist, Speech, *Remarks at State of the Cities The Urban Recovery: Real or Imagined*.
22. Michael H. Schill and Susan M. Wachter, "The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America," 143 Penn. L. Review 1285 (1995) (citing Dennis R. Judd, *The Politics of American Cities: Private Power and Public Policy* 281 (1979) (quoting FHA Underwriting Manual); see also ERASE Racism, *Brown v. Board of Education: The Unfinished Agenda* (March 2004) (Monograph on file at ERASE Racism, Syosset, NY) pp. 14.
23. Dr. Richard Koubek, *Patterns of Racial, Ethnic and Class Segregation on Long Island*, p.3 (citing Richard Koubek, PhD, *Wyandanch: A Political Profile on a Black Suburb*, Queens College, 1971).
24. *Ibid.*
25. US Census 2000 for Levittown (available at <http://censtats.census.gov/data/NY/1603642081.pdf>); and Wyandanch (available at <http://censtats.census.gov/data/NY/1603683294.pdf>).
26. David Rusk, Presentation, *Long Island's "Little Boxes" Must As One: Overcoming Urban Sprawl & Suburban Segregation*, (Long Island, NY, June 5, 2002)(copy on file with ERASE Racism)(citing US Census Data 2000).
27. Blockbusting is when a realtor approaches white homeowners

and informs them that the value of their homes is about to plummet because the neighborhood is about to become predominantly African American. This instigates a 'panic' sale of the homes by the White homeowners to the realtor at a reduced price. The realtor then turns around and sells the homes for a large profit to African American home buyers.

28. Andrew Wiese, "Racial Cleansing in the Suburbs: Suburban Government, Urban Renewal, and Segregation on Long Island, New York, 1945-1960," in *Contested Terrain: Power, Politics and Participation in Suburbia* (Greenwood Press, 1995).

29. *Ibid.*

30. John Powell, *Racism and the Opportunity Divide on Long Island*, pp. 6.

31. *Ibid.* at pp.8.

32. David Rusk, *Inside Game/Outside Game: Winning Strategies for Saving Urban America* (Brookings Institution Press, 1999), pp. 6.

33. Long Island's population is approximately 8.5% African American, however, 90% of African American residents live in only 20% of Long Island's communities, with one third of the communities on Long Island having no African American residents at all. Two-thirds of Long Island's cities, towns and villages have a population that contain less than 1% African American residents. *Separate and Unequal in N.Y.: A Town's Schools Struggle with Segregation's Toll*, Washington Post, April 21, 2002.

34. Millennial Housing Commission, *Report of the Bipartisan Millennial Housing Commission, Meeting Our Nation's Housing Challenges*, (May 30, 2002) pp. 13.

35. *Ibid.*

36. *Ibid.*

37. *Ibid.*

38. ERASE Racism, *Brown v. Board of Education: The Unfinished Agenda*, Monograph prepared by ERASE Racism, (on file at ERASE Racism Syosset, NY) (citation omitted) (March 2004) pp.17.

39. *Ibid.*

40. *Ibid.*

41. Larry Adelman, *REAL LIFE Affirmative Action for Whites The Houses that Racism Built*, San Francisco Chronicle, June 29, 2003 (available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2003/06/29/IN309191.DTL>).

42. Maurice E.R. Munroe, *Perspective: Unamerican Tail: Of Segregation and Multicultural Education*, 64 Alb. L. Rev. 241, 249-250 (2000).

43. *Ibid.* at 250.

44. US Census Bureau, *Housing Vacancies and Home Ownership Annual Statistics*, (2000) (available at <http://www.census.gov/hhes/www/housing/hvs/annual03/ann03t20.html>).

45. ACORN, *The Great Divide: An Analysis of Racial and Economic Disparities in Home Purchase Mortgage Lending Nationally and in Six Metropolitan Areas*, (ACORN October 2001), pp. 13.

46. Brown University: Spatial Structures in Social Sciences; American Communities Project, *Metropolitan Racial and Ethnic Change*

– *Census 2000* (available at http://browns4.dyndns.org/cen2000_s4/HomeOwner/HOSegdata/5380m)

47. John Powell, Institute on Race & Poverty, *Racism and the Opportunity Divide on Long Island*, pp. 7.

48. Brookings Institute, *Metro Patterns* (available at http://brookings.edu/dybdocroot/press/books/chapter_1/americanmetropolitcs.pdf) (accessed Jan. 20, 2005) pp.11.

49. *Ibid.*

50. *Ibid.* at p. 11-15.

51. John Powell, Institute on Race & Poverty, *Racism and the Opportunity Divide on Long Island*, pp.6 (citing Rosalyn Baxandall and Elizabeth Ewen, *Picture Windows: How the suburbs Happened* (Basic Books, 2000), pp. 182-85).

52. *Ibid.*

53. David Rusk, *The "Segregation Tax": The Cost of Racial Segregation to Black Homeowners*, prepared for The Brookings Institute, Center on Urban & Metropolitan Policy Survey Series (October 2001) (on file at the Brookings Institute, Washington, D.C.) pp.2. The actual calculation requires converting mean home value and mean household income into a standardized measure. For a detailed discussion on 'segregation tax' please refer to the fore mentioned source.

54. *Ibid.* at pp. 12.

55. *Coleman v. Seldin (O'Shea)*, Sup. Ct. Nassau Co., 97-030380, Stipulation 31600 (March 29, 2000).

56. New York Civil Liberties Union, *NYCLU: In the Courts, Coleman v. Seldin*, (available at <http://www.nyclu.org/docket.html>) (accessed January 21, 2005).

57. *Ibid.*

58. Leon Friedman, Reilly, Like, Tenety, Ambrosino & Vetri, *Letter Re: The Nassau Tax Assessment System*, to Nassau County Executive Thomas S. Gulotta, Members of the Board of Assessors, Nassau County, and Members of the Nassau County Legislature, (December 3, 1996) (available at <http://archive.aclu.org/community/newyork/nassautax.html>) (accessed on August 6, 2003). For further information on the taxation study see Nassau Citizens Budget Committee, *A Citizen's Guide to Assessment in Nassau County*, (1995) pp. 54, 55, 130.

59. *Ibid.*

60. New York Civil Liberties Union, *NYCLU: In the Courts, Coleman v. Seldin*, (available at <http://www.nyclu.org/docket.html>) (accessed January 21, 2005).

61. Jaime L. Tomeo, *Levittown Tribune, On-Line Edition Friday January 7, 2005; Stories That Made Headlines in 2004*; June, (available at <http://www.antonnews.com/levittowntribune/2005/01/07/news/>) pp. 5.

62. Civilrights.org, *Civil Rights 101, Part 2 Housing*, (available at http://www.civilrights.org/research_center/civilrights101/housing.html) (accessed January 7, 2005).

63. *Ibid.*

64. *Ibid.*; see also *Jones v. Mayer*, 392 US 409, (June 1968).

65. Civilrights.org, *Civil Rights 101, Part 2 Housing*, (available at http://www.civilrights.org/research_center/civilrights101/housing.html) (accessed January 7, 2005).

66. See Testing under definitions on pages 46 & 47.

67. Civilrights.org, *Civil Rights 101, Part 2 Housing*, (available at http://www.civilrights.org/research_center/civilrights101/housing.html) (accessed January 7, 2005).

68. *Ibid.*

69. *Ibid.*

70. U.S. Commission on Civil Rights, *Redefining Rights in America: the Civil Rights Record of the George W. Bush Administration, 2001-2004*, Draft Report for Commissioner's Review (September 2004)(on file at U.S. Commission on Civil Rights, Washington, DC) pp. vii.

71. Brian Sullivan, *Bush Signs American Dream Downpayment Act*, press release HUD No. 03-140 (December 16, 2003)(on file at HUD, Washington, D.C.).

72. Section 8 provides a rental subsidy to thousands of low income and working families nationwide to bridge the gap between low wages/income and high rents that exist particularly in heavily populated urban and suburban areas.

73. U.S. Commission on Civil Rights, *Redefining Rights in America: the Civil Rights Record of the George W. Bush Administration, 2001-2004*, pp. ix.

74. Robert Pear, *President Bush Proposes to Cut Housing Funding*, New York Times (February 4, 2005).

75. Richard Koubek, PhD, Coordinator of the Public Policy Education Network Catholic Charities, diocese of Rockville Centre, New York, *Interview Regarding Fair Housing on Long Island*, with Cathryn Harris, Project Manager, ERASE Racism (February 1, 2005). The definition for 'generation housing' was defined for Dr. Koubek by the builder hired by Charles Wang to construct housing in Plainview at a public meeting regarding the proposed housing.

76. See South Bay News Digital Edition, *Hearing on Rezoning Property* (Feb. 22, 2005)(available at http://www.southbaynews.com/news/2005/0222/Community_News...); and Interview with Richard Koubek, Ph.D., Public Policy Education Network Coordinator, Catholic Charities Diocese of Rockville Center, (February 4, 2005).

77. The New York Times, *Long Island; Smart Growth's Blind Spot*, New York Times (February 13, 2005).

78. *Ibid.*

79. Civilrights.org, *Civil Rights 101, Part 2 Housing*, (available at http://www.civilrights.org/research_center/civilrights101/housing.html).

80. Since this report focuses on housing discrimination faced by persons of color, all examples used will center around race as a protected class. Please note that the examples enumerated apply to all protected classes under Federal, State and local laws.

81. Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Harvard University Press, 1993), pp. 38-39.

82. These practices often include steering, which involves a banking officer denying an African American customer a prime loan, which offers preferable interest rates, when the African American customer meets all the criteria in actuality. The African American is then sent to a sub prime lender and ends up paying more interest than a white customer with the same or worse credit rating. This practice is illegal and protected by federal law. See Center for Responsible Lending, *Abusive Practices: Seven Signs of Predatory Lending* (March 2005)(available at <http://www.responsiblelending.org/abuses/abusive.cfm>).

83. Consent Agreement, United States v. Decatur Federal Savings and Loan Association, No. 1-91-CV-2198-CAM (N.D. GA, Sept. 17, 1992).

84. *Ibid.*

86. U.S. Department of Housing and Urban Development, *Fair Housing Equal Opportunity for All*, HUD-1686-FHEO, (January 2002)(available at <http://www.hud.gov/offices/fheo/FHLaws/your-rights.cfm>) pp 1-2.

85. The Department of Housing and Urban Development, *HUD Fiscal Year 2005 Budget Summary*, Report (2005)(available at <http://www.hud.gov/about/budget/fy05/budgetsummary.pdf>) pp. 18-19.

86. Source: Long Island Housing Services. Note: According to LIHS, the State and HUD count claims by numbers of individual complainants and respondents while LIHS had been counting/logging such a case/complaint as one (1).

87. U.S. Commission on Civil Rights, *Ten-Year Check-Up: have Federal Agencies Responded to Civil Rights Recommendations?* Vol. IV, (September 2004) (on file at U.S. Commission on Civil Rights, Washington, D.D.) pp.xi.

89. U.S. Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section, *Frequently Asked Questions: How Does the Department of Justice Enforce the Fair Housing Act?* (November 19, 2003) (available at <http://www.usdoj.gov/crt/housing/faq.htm#enforce>).

90. New York State Division of Human Rights, *Fair Housing Guide: Who's Protected; Who Must Follow The Law; and What's Protected*, (available at <http://www.nysdhr.com/fairhousing.html#INTRODUCTION>) (accessed February 22, 2005).

91. *Ibid.* at *What Housing Is Covered*.

92. New York State Division of Human Rights. *New York State Division of Human Rights Annual Report 2002*. (2002), p.8. Note that this remains the most current Annual Report available at the time of publication of ERASE Racism's Fair Housing Report.

93. *Ibid.*

94. Telephone Interview with Ed Watkins, Deputy Commissioner (August 3, 2004).

95. Campaign to Reform the New York State Division of Human Rights Coalition, *Civil Rights Groups Join Together with Assemblyman Joseph Morelli to Call for Reform of the New York State Division of Human Rights: Coalition Criticizes State's Performance in Enforcing Human Rights Law*, press release (May, 24, 2004)(on file with

<p>HUD, <i>Draft of U.S. Department of Housing & Urban Development FY 2003 – FY 2008 Strategic Plan</i>, pp.3; and National Fair Housing Alliance, <i>National Fair Housing Alliance 2004 Fair Housing Trends Report</i>, pp.10-11.</p> <p>133. Chart provided by Michelle Santantonio, Executive Director, Long Island Housing Services, Bohemia, NY (April, 2004)(on file at ERASE Racism, Syosset, NY).</p> <p>134. Based on ERASE Racism Telephone Surveys (August 2004 to December 2004)(on file with ERASE Racism, Syosset, NY); See Table #3., pp. 19.</p> <p>135. <i>Ibid.</i></p> <p>136. <i>Ibid.</i>; Telephone Interview with Michelle Santantonio, E.D., Long Island Housing Services (January 26, 2005); American Jewish Committee-New York State Advocacy Task Force & NOW-NY, S.1308/A.1519 <i>Background: Bill to Reform the NYS Division of Human Rights</i>.</p> <p>137. Telephone Interview with Michelle Santantonio, E.D., Long Island Housing Services (January 26, 2005)(notes on file at ERASE Racism, Syosset, NY).</p> <p>138. Based on ERASE Racism Telephone Surveys (August 2004 to December 2004)(on file with ERASE Racism, Syosset, NY).</p> <p>139. <i>Ibid.</i></p> <p>140. <i>Ibid.</i></p> <p>141. HUD's published educational materials on fair housing are the most easily accessed, and can be found through its website. HUD also has a link on its fair housing page to the website for the National Fair Housing Alliance, the nation's largest private fair housing advocacy group. See http://www.hud.gov/offices/fheo/index.cfm.</p> <p>142. Put in links to county website.</p> <p>143. National Fair Housing Alliance, <i>National Fair Housing Alliance 2004 Fair Housing Trends Report 2004</i> pp. 5. Note that these numbers include all protected classes, not just race.</p> <p>144. <i>Ibid.</i> at p. 8-9; <i>citing</i>: data provided to NFHA by Housing and Civil Enforcement Section, United States Department of Justice, March 24, 2004.</p> <p>145. <i>Ibid.</i> at p. 9.</p> <p>146. <i>Ibid.</i> at p. 10. These numbers reflect all protected classes, not just race discrimination cases.</p> <p>147. Data based on information supplied by HUD and NYSDRH for ERASE Racism's Fair Housing Survey (2004)(on file at ERASE Racism, Syosset, NY).</p> <p>148. <i>Ibid.</i>; and Telephone Interview with Ed Watkins, Deputy Commissioner, NYSDHR (August 3, 2004)(notes on file at ERASE Racism, Syosset, NY).</p> <p>149. Data based on information supplied by HUD and NYSDRH for ERASE Racism's Fair Housing Survey (2004)(on file at ERASE Racism, Syosset, NY); and Letter from Michelle Santantonio, E.D., Long Island Housing Services, <i>Enforcement Agency Statistical Survey: LIHS allegations and formal complaint information 1999-2003</i> (April 20, 2004)(on file with ERASE Racism, Syosset, NY).</p>	<p>150. <i>Ibid.</i></p> <p>151. ERASE Racism requested data from NYSDHR in August 2004 and again in December in 2004.</p> <p>152. Data based on information supplied by HUD and NYSDRH for ERASE Racism's Fair Housing Survey (2004)(on file at ERASE Racism, Syosset, NY); and Telephone Interview with Ed Watkins, Deputy Commissioner, NYSDHR (August 3 & 11, 2004)(notes on file at ERASE Racism, Syosset, NY).</p> <p>153. <i>Ibid.</i></p> <p>154. Garner, <i>Black's Law Dictionary, Pocket Edition</i>, pp. 503.</p> <p>155. Telephone Interview with Ellen Israelson, Director, American Jewish Committee – New York State Advocacy Task Force, (February 1, 2005). It is also noted the the New York Human Rights Law uses the term "probable cause" in the statute, but it remains confusing when HUD and NYSDHR are processing the same complaints yet use different terminology that neither agency adequately defines.</p> <p>156. New York Assembly 11229, 2004 Reg. Sess., (May 19, 2004).</p> <p>157. Letter from Michelle Santantonio, E.D., Long Island Housing Services, <i>Enforcement Agency Statistical Survey: LIHS allegations and formal complaint information 1999-2003</i> (April 20, 2004)(on file with ERASE Racism, Syosset, NY).</p> <p>158. <i>Ibid.</i></p> <p>159. Telephone Interview with Paulette Bartunek, E.D., Suffolk County Human Rights Commission (January 25, 2005); and Telephone Interview with Renaire Frierson, E.D., Nassau County Human Rights Commission (February 18, 2005).</p> <p>160. See Table #5, pp. 26.</p> <p>161. William R. Tisdale, <i>Cityscape: A Journal of Policy Development and Research, Volume 4, Number 3</i> (1999): <i>Fair Housing Strategies for the Future: A Balanced Approach</i>, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, pp.147.</p> <p>162. National Fair Housing Alliance, <i>National Fair Housing Alliance 2004 Fair Housing Trends Report</i>, pp. 14-15.</p> <p>163. Tisdale, <i>Cityscape: A Journal of Policy Development and Research, Volume 4, Number 3</i>(1999): <i>Fair Housing Strategies for the Future: A Balanced Approach</i>, pp.153.</p> <p>164. <i>Ibid.</i> at pp.152.</p> <p>165. Housing and Urban Development Office of Fair Housing and Equal Opportunity, <i>Fair Housing Guide Volume 1.</i> (1997), pp. 1-4, 1-5.</p> <p>166. <i>Id</i> at pp. 2-8.</p> <p>167. <i>Ibid.</i> at pp 2-9.</p> <p>168. <i>Ibid.</i> at pp.2-24.</p> <p>169. Tisdale, <i>Cityscape: A Journal of Policy Development and Research, Volume 4, Number 3</i> (1999): <i>Fair Housing Strategies for the Future: A Balanced Approach</i>, pp.152.</p> <p>170. Town of Islip Community Development Agency, <i>Analysis of Impediments Report</i>, (1996), pp. 4 & 39-48; Huntington Community Development Agency, <i>An Analysis of Impediments and Strategies to</i></p>

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include the time that it took to move through the administrative process. See 42 U.S.C. 3613 §813(a)(1)(B)(a).
226. See 42 USC 3613 §§ 800 – 820; and New York State Division of Human Rights, <http://nysdhr.com/complaints.html> (accessed May 17, 2004).
227. Charts and information provided by Michelle Santantonio, Executive Director, Long Island Housing Services, Bohemia, NY (on file at ERASE Racism, Syosset, NY).