



Joint Recommendations of ERASE Racism and the Fair Housing Justice Center (FHJC)

Presented at a Joint Hearing of the New York State Senate's Committee on Housing, Construction and Community Development; Committee on Investigations and Government Operations, and Committee on Consumer Protection

December 12, 2019

INTRODUCTION

ERASE Racism, a regional civil rights organization based on Long Island that promotes racial equity in housing, schools, and community development, and the **Fair Housing Justice Center (FHJC)**, a regional fair housing organization based in New York City commend *Newsday*, its owner, and all the reporters, researchers, editors, and testers who contributed to the three-year investigation of real estate sales practices that culminated in "*Long Island Divided*." This groundbreaking report has increased public awareness about racial equity and fair housing issues. *Newsday* conducted the largest and most exhaustive investigation into real estate sales practices ever conducted by a media outlet in the nation. It did so by using teams of paired testers to determine whether homebuyers are receiving the same information, service, and treatment without regard to race or ethnicity. In so doing, it powerfully demonstrated how good journalists can shine a bright light on an issue that has been less visible, neglected, or largely misunderstood for decades. The profoundly disturbing, though not surprising, results provide compelling evidence that the conduct of some real estate agents on Long Island does not comply with the requirements of fair housing laws. We believe it is long overdue that government officials, industry leaders, and other stakeholders devote their collective intellectual and financial resources to addressing the issue of discrimination in housing and residential racial segregation.

Our two organizations worked together to prepare this written testimony and offer joint recommendations because of our longstanding focus on housing discrimination. ERASE Racism and the FHJC collaborated on a joint investigation on Long Island, on a far smaller scale than *Newsday's* but with similar results, starting in 2012. That investigation led to successful litigation and court-ordered settlements from landlords in both Nassau and Suffolk counties. *Newsday's* investigation demonstrated that the practice was far more widespread than our resources could show – thus making a major contribution to public understanding of this issue.

The problem of racial discrimination in housing is systemic. The problem is not limited to the sales market or the real estate industry. The problem is not limited to Long Island. The stark patterns of residential racial segregation in our metropolitan regions were created by the intentional and coordinated actions of the housing industry, government, and other institutions over many decades and this segregation has been sustained to this day by the same institutions. Our nation has never fully and vigorously enforced the federal Fair Housing Act (FHA) and all levels of government have largely failed to comply with their statutory duty to “affirmatively further fair housing” (AFFH) as required by the FHA. The AFFH provision of the FHA was intended to ensure that, going forward, all housing and community development policies and practices would expand housing choice, reduce residential racial segregation, and repair the harm caused by nearly a century of policies and practices that erected the architecture of segregation that endures to this day.

Residential racial segregation on Long Island, throughout the larger New York City region, and in many parts of the State of New York creates a vicious cycle of inequality that continues to inflict serious harm on people and communities of color by locking African American people and other populations out of many opportunities. Racial discrimination in housing not only presents a formidable barrier to renting an apartment or buying a home and accumulating wealth from that investment, but it can also limit access to high-performing schools, employment opportunities, health care, parks and recreational resources, safe neighborhoods, and even healthy foods. Where one lives has health consequences and impacts life expectancy.

Residential racial segregation reinforced by discriminatory housing practices has profound, and often perilous and lasting intergenerational consequences for the populations that are excluded and for the communities that are subsequently divided. Any remedies proposed to address the racial discrimination documented by the *Newsday* report should be comprehensive in nature and extend well beyond the discriminatory and odious practices of some real estate agents on Long Island.

ERASE Racism and the FHJC have developed a five-point plan and list of specific recommendations in response to the *Newsday* investigation. We submit these joint recommendations to state legislators holding the New York Senate hearing scheduled for December 12, 2019 in Nassau County:

1. FULLY UTILIZE THE LICENSING POWER OF THE STATE TO BETTER REGULATE REAL ESTATE LICENSEES

Recommendations:

- *The New York Department of State Division of Licensing Services (DLS) should immediately review the results of the 34 tests that indicated possible disparate treatment by real estate licensees in the Newsday investigation to determine if any of the licensees engaged in conduct that warrants disciplinary action including possible suspension or revocation of licenses.*
- *The DLS must investigate allegations regarding possible discriminatory conduct by a real estate licensee without first requiring a finding by the New York State Division of Human Rights (NYSDHR) or a court of law, thereby ending a practice or custom that is not mandated in DOS regulations or the law.*

- *The DLS must carefully screen the qualifications of trainers and the content of curriculums developed to provide instruction that meaningfully satisfies the continuing education credits in fair housing that real estate licensees are currently required to complete.*
- *The DLS must eliminate the current exemption for real estate brokers licensed prior to 2008 who have been operating for 15 or more consecutive years from the requirement of completing continuing education credits in fair housing instruction.*

Narrative:

States possess the authority to regulate the behavior of licensed businesses and individuals. We urge the State of New York to more effectively exercise its authority to regulate the real estate industry. At one time, the DLS had its own testing capability, conducted investigations, and sanctioned real estate licensees it found to be engaged in unlawful housing discrimination. Now, the DLS requires a judgment from a court or a referral from the NYSDHR before it will initiate an investigation or take any disciplinary action. The DLS should agree to investigate any allegations of untrustworthy, deceptive, or discriminatory conduct by a real estate licensee without requiring the complaining party to file a lawsuit or administrative complaint with NYSDHR. We further recommend that the DLS review the recordings from the tests conducted by *Newsday* to determine if any licensee conduct merits disciplinary action including, but not limited to, the suspension or revocation of a license.

We recommend the DLS make two changes to ensure that all real estate licensees receive quality instruction about their responsibilities under local, state, and federal fair housing laws. First, real estate brokers licensed prior to 2008 for a consecutive period of 15 years or more are exempted from having to obtain the required three continuing education credits in fair housing. This exemption makes absolutely no sense and should be eliminated. Second, the *Newsday* story revealed that some of the DLS authorized training is quite poor and does not always provide accurate or relevant information about fair housing laws. The DLS needs to better scrutinize the qualifications of the instructors and the content of curricula that are being offered to licensees to meet the required three continuing education credits in fair housing.

2. CREATE A WELL-RESOURCED, PROACTIVE, AND BETTER COORDINATED FAIR HOUSING ENFORCEMENT STRATEGY

Recommendations:

- *The public enforcement agencies charged with enforcing local, state, and federal fair housing should coordinate efforts to immediately review the results of the 34 tests that indicated possible disparate treatment by real estate agents in the *Newsday* investigation to determine if any warrant enforcement action to obtain compliance with fair housing laws.*
- *Private and public fair housing enforcement organizations/agencies should place a greater emphasis on conducting proactive investigations aimed at documenting systemic housing discrimination with a strong emphasis on investigations into race, national origin, and other systemic forms of housing discrimination.*

- *Local, state, and federal funding should be substantially increased to private non-profit organizations that demonstrate the expertise and capacity to design and conduct targeted systemic testing investigations of housing market practices to aid with the enforcement of fair housing laws.*
- *New York State should increase licensing and renewal fees for real estate licensees to generate the financial resources needed to conduct systemic testing across the State of New York so that housing market practices are routinely monitored, and fair housing laws are effectively enforced.*
- *Convene meetings at least twice a year of private and public enforcement organizations/agencies to better coordinate enforcement activity, share investigative strategies and outcomes, and ensure that testing and enforcement resources are being used in the most strategic, efficient, and effective manner possible to identify and eliminate systemic housing discrimination.*
- *The U.S. Department of Housing and Urban Development (HUD) should immediately rescind efforts to change the 2013 “disparate impact” rule so that private and public enforcement agencies have this legal tool available to challenge subtle or unintentional discriminatory housing policies and practices.*

Narrative:

The nature of housing discrimination has changed over time. Prior to the passage of fair housing laws, discrimination was quite overt. Housing consumers of color were frequently met with slammed doors and racial epithets. Today, that image of housing discrimination as a “slammed door” has been replaced with a “revolving door” where people are often politely and courteously escorted in, out of, and away from the desired housing. It all happens in such a subtle manner that the victimized person is usually unaware that discrimination occurred. This reality calls into question the complaint-responsive approach that most public agencies have adopted to enforce fair housing laws.

It is quite simple. If victims of discrimination are unaware that discrimination is occurring, no complaints will be filed. If no complaints are filed, no enforcement action results. If no enforcement action is taken, the illegal discrimination continues. While complaints of discrimination must be thoroughly and expeditiously investigated, our entire fair housing enforcement paradigm needs to shift to one that places a greater emphasis on pro-active enforcement and the use of testing to ferret out subtle and systemic forms of housing discrimination. The burden for enforcing our fair housing laws should not rest entirely on the shoulders of those who continue to be victimized, or on a media outlet.

Testing is a tool used primarily by private fair housing organizations to investigate housing market practices. Testing can and should be used as often as possible to investigate housing discrimination complaints, because testing evidence often enables victims of discrimination to meet their burden of proof and prevail on their complaint. But testing must also be used to conduct proactive investigations into systemic discrimination in the housing market. We believe testing should be the centerpiece of any balanced fair housing enforcement program.

Most public fair housing enforcement agencies lack both the expertise and resources to implement and sustain an internal testing capability. Government hiring policies often make it impossible to hire and retain a large diverse pool of part-time testers for this purpose. Procurement policies and limited budgets can make it difficult to acquire the equipment, tools, and resources needed to operate an effective testing program. Finally, as *Newsday* would likely attest, test coordination is extremely hard work and finding people who are experienced or proficient in test coordination is challenging.

There are six non-profit organizations in New York that currently operate full-service fair housing programs and have existing testing capabilities. They include Buffalo HOME, the Fair Housing Enforcement Project of Legal Assistance of Western New York (LAWNY), Central New York Fair Housing (Syracuse), Westchester Residential Opportunities, Long Island Housing Services, and the FHJC. These organizations are grossly underfunded and lack the resources to conduct large-scale testing investigations like the one conducted by *Newsday*. HUD, through its Fair Housing Initiatives Program (FHIP) provides, on a competitive basis, a one-size-fits-all \$300,000 annual grant to conduct testing. Rather than increase funding based on cost of living increases or greater need, HUD has decreased the amount of all FHIP grants over the past ten years.

The State of New York currently makes no funding available and provides no financial support to any fair housing organization in the state. At a time when federal resources are being reduced, we believe that New York State should provide direct funding, like FHIP, to support systemic testing investigations in local housing markets throughout the State. Further, we recommend that the financial resources needed to support such testing should be generated by increasing the amount of fees that real estate licensees pay for their licenses and renewals.

In order to ensure the most strategic, efficient, and effective use of public funds for testing and fair housing enforcement, we recommend that public and private fair housing enforcement organizations/agencies in each region of the state periodically meet to coordinate enforcement activities and share investigative techniques and outcomes.

Finally, fair housing agencies must have a full array of tools available to combat housing discrimination. Disparate impact is one powerful legal tool that has been effectively used by fair housing and civil rights organizations to combat facially neutral policies that adversely affect populations protected by fair housing laws. Currently, HUD is attempting to rewrite and weaken its 2013 disparate impact rule to undermine fair housing enforcement. We urge HUD not to rescind the 2013 rule so that private and public enforcement agencies continue to have this vital legal tool available to challenge subtle or unintentional discriminatory housing policies and practices.

3. THE REAL ESTATE INDUSTRY SHOULD TAKE AFFIRMATIVE STEPS TO ENSURE COMPLIANCE WITH FAIR HOUSING LAWS

Recommendations:

- *The Long Island Board of Realtors (LIBOR) should immediately review the results of the 34 tests that indicated possible disparate treatment by real estate licensees in the Newsday*

investigation to determine if any of the licensees engaged in conduct that violates the Code of Ethics of the National Association of Realtors (NAR) and warrants disciplinary action.

- *Real estate companies should adopt affirmative hiring practices to create more diverse sales forces. In that regard, the real estate industry, through its trade association, should create and promote outreach programs that interest, incentivize, and encourage African American and Hispanic young people to consider careers in real estate. This could include educational programs in schools, scholarships, internships, mentoring opportunities, and placement programs.*
- *The real estate industry, through its trade association, should provide model fair housing policy statements to member real estate firms detailing best practices in non-discriminatory real estate sales and marketing. Real estate companies should adopt and communicate clear fair housing policy statements to all their agents and explain the consequences of non-compliance.*

Narrative:

From 1924-1950, Article 34 of the Code of Ethics for the National Association of Real Estate Boards (the previous name for the National Association of Realtors) stated:

“A Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality or individuals whose presence will clearly be detrimental to property values in that neighborhood.”

It was the ethical duty of Realtors to discriminate based on race and national origin. Not only did local and state Boards of Realtors sanction and expel Realtors who violated this article, but the General Counsel for the NAREB sent out a model licensing agreement to States to encourage its adoption so that states could discipline or revoke licenses for licensees who might violate the code of ethics. Thirty-two states adopted this agreement.

Today, the Code of Ethics for the National Association of Realtors (NAR) states in Article 10:

“REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.”

We are asking that the NAR as well as state and local realty boards show the same zeal they did when they sought to sanction and oust Realtors and other licensees who refused to discriminate now that its code requires non-discrimination.

The real estate industry is still very racially segregated, and steps should be taken to integrate the sales staff of many real estate companies. Again, Article 10 of the NAR Code of Ethics states:

“REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.”

We recommend that the industry, through its trade associations, take strong affirmative steps to assist real estate companies to create more employment opportunities and a more racially inclusive work force.

In 1927, the NAREB developed and circulated a model race restrictive covenant for distribution to its local boards and members. One provision of the model agreement that was widely circulated stated:

“1. The restriction that no part of said premises shall in any manner be used or occupied directly or indirectly by any negro or negroes, provided that this restriction shall not prevent the occupation, during the period of their employment, of janitors’ or chauffeurs’ quarters in the basement or in a barn or garage in the rear, or of servants’ quarters by negro janitors, chauffeurs or house servants, respectively, actually employed as such for service in and about the premises by the rightful owner or occupant of said premises.”

The industry was so successful in proliferating these race restrictive covenants that, by 1928, half of all homes owned or occupied by whites had deeds with racial restrictions, restrictions that were enforceable in most state courts. By 1948, 85% of all new residential developments in the United States were racially restricted. The industry was a potent force in helping to create the racial segregation in our metropolitan regions.

Now it is time for the industry to be equally resolute about ensuring that its members are complying with fair housing laws and promoting inclusive communities. We recommend that the NAR create and distribute a model fair housing policy detailing best practices for providing non-discriminatory service. This model policy should cover all aspects of providing real estate services, everything from prospecting or “farming” for listings, to marketing and advertising practices, sales practices, and other types of services.

4. AFFIRMATIVELY FURTHER FAIR HOUSING IN ALL HOUSING AND COMMUNITY DEVELOPMENT ACTIVITIES

Recommendations:

- *HUD should immediately restore the Assessment of Fair Housing (AFH) rule promulgated in 2015 and repost the “assessment tool” to aid recipients of HUD funds with meeting their legal obligation to affirmatively further fair housing in all housing and community development activities.*
- *New York State should amend its Human Rights Law (HRL) in two significant ways. First, the HRL should explicitly prohibit discriminatory action by local public agencies that operate housing programs, control land-use and zoning decisions, or engage in other housing and community development activities to ensure that these programs and activities are not perpetuating segregation by making housing unavailable based on race, national origin,*

etc. Second, similar to what the State of California did in 2018, the HRL should require state agencies and departments, local jurisdictions, public housing authorities and other public entities receiving state or federal funds for housing and community development to “affirmatively further fair housing” and take no action that is materially inconsistent with this obligation.

Narrative:

When the FHA was passed in 1968, its sponsors were aware that government had played a critical role in creating residential racial segregation throughout the nation. Beyond establishing prohibitions against housing discrimination, the FHA contained an equally important provision requiring HUD and recipients of federal funds to administer all housing and community development activities in a manner to affirmatively further the purposes of the law.

Edward Brooke, the late Republican Senator from Massachusetts and one of the primary sponsors of the FHA, believed that the prime carrier of galloping segregation had been the government. He stated, “First it built the ghettos; then it locked the gates; now it appears to be fumbling for the key. Nearly everything the Government touches turns to segregation, and the Government touches nearly everything.” Another sponsor of the FHA, Walter Mondale, a then-freshman Democratic Senator from Minnesota, declared that he wanted the reach of the new law to be able to replace residential racial segregation with “truly integrated and balanced living patterns.” Senators Brooke and Mondale intended this “affirmatively furthering fair housing” provision of the FHA to be viewed as a mandate for HUD and recipients of federal funds to undo the historic patterns of segregation and repair the harm caused by past discrimination.

This AFFH provision of the FHA was largely ignored by state and local governments until HUD promulgated the Assessment of Fair Housing (AFH) rule in 2015. The rule provided recipients of federal funds with an “assessment tool” that could be used to promote a data-driven analysis of barriers to housing choice, an examination of residential housing patterns, and an extensive community engagement process so that local communities and housing authorities could develop and implement a meaningful action program to affirmatively further fair housing. But that only lasted a few years.

In 2018, HUD removed the AFFH assessment tool from its website and instructed recipients not to follow the guidance in the AFH rule, while it promulgates a new rule. This is yet another example of HUD attempting to weaken enforcement of the FHA. We have asked HUD to restore the 2015 rule and repost the assessment tool for use by local public agencies.

In 2018, and in response to the action by HUD, the State of California passed its own “Affirmatively Furthering Fair Housing” law:

“Affirmatively furthering fair housing” means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of

poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to a public agency's activities and programs relating to housing and community development."

New York State should enact a similar law to make clear that local jurisdictions, housing authorities, and other public agencies engaged in housing and community development activities, have a legal duty to affirmatively further fair housing.

The current New York HRL delineates specific prohibited practices for real estate professionals, private housing providers, and managers of publicly assisted housing. What is missing from the state law is any section prohibiting public entities that operate housing programs or engage in land-use, zoning or community development activities from discriminating based on any of the protected characteristics. In our view, it is time to close this gap in coverage and ensure that all who are engaged in housing-related activities are covered by the HRL.

5. NEW YORK STATE SHOULD IMPLEMENT FAIR HOUSING LEGISLATIVE INITIATIVES, POLICY CHANGES, AND SUPPORT FOR PROGRAMS THAT EXPAND ACCESS TO HOUSING OPPORTUNITIES IN ALL NEIGHBORHOODS.

Recommendations:

- *New York State should allocate funding for regional mobility assistance programs that assist families with rental subsidies to access housing opportunities in low-poverty neighborhoods with well-resourced schools.*
- *New York State should enact and enforce a strong "co-op disclosure law" to promote more transparency and fairness by requiring co-op boards to disclose the reason or reasons buyers are rejected.*
- *New York State should enact a state-wide "Equitable Share" housing plan and establish a minimum affordable housing goal for every community. This proposed legislation would mandate that every community work to ensure that a minimum percentage of its existing housing stock is affordable and reaches populations with households with income at or below 60% of the Area Median Income (AMI) for rentals and 80% AMI for homeownership.*
- *New York State should create a Statewide Zoning Appeals Board (SZAB). The SZAB would have the authority to 1) override local zoning decisions when it appears a decision is effectively limiting or excluding viable affordable housing proposals from being developed; and 2) fast-track viable affordable housing proposals that have zoning as-of-right but meet with costly or unreasonable delays, often fueled by local opposition.*

Narrative:

There are some more steps that could be taken to remove barriers to housing choice and promote more inclusive communities on Long Island and throughout the region.

Lower-income families of color with rental subsidies have tremendous difficulty locating suitable rental housing in low-poverty neighborhoods that often have well-resourced and high-performing schools. There is a need for a Regional Housing Mobility Program, like the highly successful programs operating in Chicago, Dallas, and Baltimore, that could offer direct assistance to families to locate housing. Our organizations worked in coalition with over 112 organizations state-wide to add source of income protections to the HRL to prohibit discrimination against subsidy holders. Removing this discriminatory barrier was the first step, but mobility programs can offer additional assistance frequently needed to aid families with what can often be challenging moves to unfamiliar neighborhoods.

Discrimination in housing cooperatives remains a very serious problem throughout the State. In New York City alone, there are more than 7,000 housing co-ops that control access to over 300,000 housing units. Many of these co-op boards operate as secret societies summarily rejecting buyers and providing no reasons for the rejections. A carefully crafted co-op disclosure law would at least provide rejected applicants with a reason or reasons for their rejection. More transparency is needed if we hope to eliminate discrimination in this sector of the housing market.

Our organizations participated in a year-long effort with thirty other groups in a Regional Affordable and Fair Housing Roundtable. The group produced a shared policy agenda entitled “Closing the Divide: Creating Equitable, Inclusive, and Affordable Communities.” One of the policy areas we focused on was “Removing Exclusionary Zoning and Other Land-Use Barriers to Promote Accessible, Integrated, and Affordable Housing.”

Two recommendations contained in the report deal with this issue. First, we recommended that the State develop an “Equitable Share” housing plan and establish a minimum affordable housing goal for every community. The State should incentivize local communities to use inclusionary zoning to encourage the development of more affordable housing. Second, we recommended that the State establish a state-wide Zoning Appeals Board that could 1) override local zoning decisions when it appears a decision is effectively limiting or excluding viable affordable housing proposals from being developed; and 2) fast-track viable affordable housing proposals that have zoning as-of-right but meet with costly or unreasonable delays, often fueled by local opposition. Local land-use and zoning decisions continue to exclude affordable family housing opportunities from many communities. Whether their decisions are based on racial bias as in the *MHANY et al. v. Village of Garden City et al.* case or whether it is for other discriminatory reasons, these are barriers to housing choice that need to be removed.

CONCLUSION:

Many public officials, enforcement agencies, and real estate industry representatives have issued statements following *Newsday’s* release of *Long Island Divided* on November 17, 2019. Most express shock and outrage at the results of the *Newsday* investigation of real estate sales practices. Many officials pledge to “look into” the findings of the report and call for stronger enforcement of fair housing laws. Too many of these proclamations lack specificity or substance.

We have seen this play out before. A news story reveals egregious racial discrimination and politicians rush to “react” and condemn the discriminatory conduct. Some seek to narrowly confine their “investigation” and policy solutions to a specific incident or set of bad actors and fail to acknowledge or

address the systemic and ongoing nature of the problem. Some go further and propose policy solutions that later turn out to be “smoke and mirrors” or a passing “political stunt.” **The persistent and pervasive problem of racial discrimination in housing and residential racial segregation is much too serious to be addressed in a narrow, frivolous, or fleeting manner.**

We should remember that housing discrimination and segregation continue to inflict serious harm on entire populations and communities. Albert Einstein once said, “the world is a dangerous place, not because of those who do evil, but because of those who look on and do nothing.” We can ill afford to look on and do nothing or pretend we are going to wait for hearts and minds to change. We need to muster the courage to act now. We implore policymakers to demonstrate real leadership on this issue. The late Dr. Martin Luther King, Jr., when speaking about the need for civil rights laws and their enforcement, would often say, “It may be true that the law cannot change the heart, but it can restrain the heartless.”

Newsday made a major contribution by shining a spotlight on one of the most hidden, enduring, and virulent forms of bias: housing discrimination. Now, it is up to all of us to do what we can to restrain the heartless and create more open, equitable, and inclusive communities on Long Island and throughout the State of New York.

ADDENDUM

RECOMMENDATIONS FOR NEW YORK STATE

- *The New York Department of State Division of Licensing Services (DLS) should immediately review the results of the 34 tests that indicated possible disparate treatment by real estate licensees in the Newsday investigation to determine if any of the licensees engaged in conduct that warrants disciplinary action including possible suspension or revocation of licenses.*
- *The DLS must investigate allegations regarding possible discriminatory conduct by a real estate licensee without first requiring a finding by the New York State Division of Human Rights (NYSDHR) or a court of law, thereby ending a practice or custom that is not mandated in DOS regulations or the law.*
- *The DLS must carefully screen the qualifications of trainers and the content of curriculums developed to provide instruction that meaningfully satisfies the continuing education credits in fair housing that real estate licensees are currently required to complete.*
- *The DLS must eliminate the current exemption for real estate brokers licensed prior to 2008 who have been operating for 15 or more consecutive years from the requirement of completing continuing education credits in fair housing instruction.*
- *New York State should increase licensing and renewal fees for real estate licensees to generate the financial resources needed to conduct systemic testing across the State of New York so that housing market practices are routinely monitored, and fair housing laws are effectively enforced.*
- *New York State should amend its Human Rights Law (HRL) in two significant ways. First, the HRL should explicitly prohibit discriminatory action by local public agencies that operate housing programs, control land-use and zoning decisions, or engage in other housing and community development activities to ensure that these programs and activities are not perpetuating segregation by making housing unavailable based on race, national origin, etc. Second, similar to what the State of California did in 2018, the HRL should require state agencies and departments, local jurisdictions, public housing authorities and other public entities receiving state or federal funds for housing and community development to “affirmatively further fair housing” and take no action that is materially inconsistent with this obligation.*
- *New York State should allocate funding for regional mobility assistance programs that assist families with rental subsidies to access housing opportunities in low-poverty neighborhoods with well-resourced schools.*
- *New York State should enact and enforce a strong “co-op disclosure law” to promote more transparency and fairness by requiring co-op boards to disclose the reason or reasons buyers are rejected.*

- *New York State should enact a state-wide “Equitable Share” housing plan and establish a minimum affordable housing goal for every community. This proposed legislation would mandate that every community work to ensure that a minimum percentage of its existing housing stock is affordable and reaches populations with households with income at or below 60% of the Area Median Income (AMI) for rentals and 80% AMI for homeownership.*
- *New York State should create a Statewide Zoning Appeals Board (SZAB). The SZAB would have the authority to 1) override local zoning decisions when it appears a decision is effectively limiting or excluding viable affordable housing proposals from being developed; and 2) fast-track viable affordable housing proposals that have zoning as-of-right but meet with costly or unreasonable delays, often fueled by local opposition.*

RECOMMENDATIONS FOR LOCAL, STATE, AND FEDERAL FAIR HOUSING ENFORCEMENT AGENCIES

- *The public enforcement agencies charged with enforcing local, state, and federal fair housing should coordinate efforts to immediately review the results of the 34 tests that indicated possible disparate treatment by real estate agents in the Newsday investigation to determine if any warrant enforcement action to obtain compliance with fair housing laws.*
- *Private and public fair housing enforcement organizations/agencies should place a greater emphasis on conducting proactive investigations aimed at documenting systemic housing discrimination with a strong emphasis on investigations into race, national origin, and other systemic forms of housing discrimination.*
- *Local, state, and federal funding should be substantially increased to private non-profit organizations that demonstrate the expertise and capacity to design and conduct targeted systemic testing investigations of housing market practices to aid with the enforcement of fair housing laws.*
- *Convene meetings at least twice a year of private and public enforcement organizations/agencies to better coordinate enforcement activity, share investigative strategies and outcomes, and ensure that testing and enforcement resources are being used in the most strategic, efficient, and effective manner possible to identify and eliminate systemic housing discrimination.*

RECOMMENDATIONS FOR HUD

- *The U.S. Department of Housing and Urban Development (HUD) should immediately rescind efforts to change the 2013 “disparate impact” rule so that private and public enforcement agencies have this legal tool available to challenge subtle or unintentional discriminatory housing policies and practices.*
- *HUD should immediately restore the Assessment of Fair Housing (AFH) rule promulgated in 2015 and repost the “assessment tool” to aid recipients of HUD funds with meeting their legal obligation to affirmatively further fair housing in all housing and community development activities.*

RECOMMENDATIONS FOR THE REAL ESTATE INDUSTRY

- *The Long Island Board of Realtors (LIBOR) should immediately review the results of the 34 tests that indicated possible disparate treatment by real estate licensees in the Newsday investigation to determine if any of the licensees engaged in conduct that violates the Code of Ethics of the National Association of Realtors (NAR) and warrants disciplinary action.*
- *Real estate companies should adopt affirmative hiring practices to create more diverse sales forces. In that regard, the real estate industry, through its trade association, should create and promote outreach programs that interest, incentivize, and encourage African American and Hispanic young people to consider careers in real estate. This could include educational programs in schools, scholarships, internships, mentoring opportunities, and placement programs.*
- *The real estate industry, through its trade association, should provide model fair housing policy statements to member real estate firms detailing best practices in non-discriminatory real estate sales and marketing. Real estate companies should adopt and communicate clear fair housing policy statements to all their agents and explain the consequences of non-compliance.*