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# Housing discrimination

Unfair treatment of prospective home buyers or renters based on their race, ethnicity, religion, age, or other characteristics.

The concept of fair, or open, housing is a relatively recent one in American society. Until well into the twentieth century the belief that property owners were free to discriminate against prospective buyers or tenants based on criteria such as race or religion was widely accepted in the United States. Real estate agents and landlords alike included statements like "White Only" in their advertising. Despite constitutional guarantees supposedly provided by the Fourteenth Amendment to the U.S. CONSTITUTION, recent foreign immigrants, AFRICAN AMERICANS, and other minorities found it difficult to break out of the ethnic ghettos in the cities. Even rural villages and small towns had areas where it was impossible for even the most affluent persons of color to purchase a house. Indeed, in the years following the CIVIL WAR, many municipalities in both the NORTHERN and SOUTHERN STATES passed laws making it illegal for African Americans merely to spend a night within their city limits, let alone reside there on a permanent basis.

By the turn of the century growing numbers of middle-class African Americans and other minorities had begun challenging municipal ordinances limiting the residential areas that were open to certain ethnic groups. As these challenges worked their way through the federal court system, it became clear that the federal government, despite its apparent support of SEGREGATION with the PLESSY V. FERGUSON decision legitimizing the SEPARATE-BUT-EQUAL PRINCIPLE, would not condone state or local governments openly violating the constitutional rights of minority citizens. Both the Fourteenth Amendment and the CIVIL RIGHTS ACT OF 1866 clearly gave African Americans the same rights to lease or purchase land that whites possessed. When, in 1910, the segregation ordinances for Louisville, Kentucky, were found to be unconstitutional, most local governments gave up trying explicitly to restrict housing for nonwhites. Although many of the ordinances remained on the books until the mid-twentieth century, most municipalities ceased to enforce them. Discrimination in housing instead passed to collective action by private individuals.

**Restrictive Covenants in Real Estate** The end of official municipal discrimination did not mean the end of housing discrimination. As cities grew, both from the arrival of foreign immigrants and from rural workers leaving farms for factory jobs, nervous property owners banded together to protect the status quo. White property owners seized upon the idea of RESTRICTIVE COVENANTS as a means to control who purchased property in their neighborhoods. Property owners devised covenants detailing what types of buyers would be acceptable in their

neighborhoods and which would not. A typical covenant might require homeowners to sell their properties only to white persons of the Protestant faith. Nonwhites, commonly referred to at that time as "Negroes" and "Mongolians," occasionally along with ROMAN CATHOLICS and JEWS, were explicitly barred. The details of restrictive covenants were included in clauses in real estate contracts when property changed ownership, thus binding new owners to them even though they had not been among the covenants' original devisers. Few people, including those adversely affected by housing discrimination, questioned an individual's right to enter into such contracts. Personal behavior in the management or sale of one's property was viewed as a matter of individual choice and not as a violation of other people's rights.

Although a specific restrictive covenant might have only a few signatories, by devising a series of overlapping restrictive covenants property owners could effectively prevent nonwhites from purchasing a house anywhere within a city. By the 1920's officials with the rapidly growing NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP) were eager to challenge the constitutionality of restrictive covenants and began to watch for cases to bring before the U.S. SUPREME COURT. Unfortunately, the first case to be heard by the Court regarding restrictive covenants, *Corrigan and Curtis v. Buckley*, did not go well. The 1926 case originated within the federal District of Columbia,Page [442] | Top of Article Page 443 | Top of Article and the justices decided it involved no constitutional issues.

During the following decade, a number of other challenges to restrictive covenants were mounted in various state courts. Both attorneys with the NAACP and those representing private persons tried several times to appeal cases to the Supreme Court, but with little success. The Court repeatedly declined to hear the cases, letting the judgments of the lower courts stand. It was not until 1940 that another restrictive covenant case reached the Supreme Court. That year the decision in *Hansberry v. Lee* represented a small triumph for civil rights in that the justices found that an African American man could occupy his new home; however, they based that judgment on Hansberry's having been inadequately represented in a prior lawsuit challenging a restrictive covenant. Once again the Court focused on procedural issues rather than examining larger constitutional questions.

NAACP lawyers, particularly Thurgood MARSHALL, were determined that the next challenge to restrictive covenants would be more successful. In 1944 Marshall assigned a young attorney, Spottswood Robinson, to prepare a thorough report on the subject of restrictive covenants. In addition, the NAACP sponsored meetings in Chicago and New York devoted to the topic of restrictive covenants and invited interested attorneys from around the country to participate. Marshall made it clear to conference participants that the NAACP was searching for cases that would allow strong challenges on constitutional grounds to covenants containing racial clauses. In 1947, while Marshall was following two cases in Michigan and the District of Columbia, an attorney from Missouri brought a third case to the Supreme Court. Marshall quickly arranged for his two cases to be heard simultaneously with SHELLEY V. KRAEMER.

The Court's decision in *Shelley v. Kraemer* struck a strong blow against the use of racially restrictive clauses. In essence, the Court found that while individuals could agree to participate in restrictive covenants, the state could not enforce such agreements. Any participation had to be voluntary, not coerced. The one question the decision left open, that of participants suing for

damages incurred by violations of such a covenant, was answered in 1953 with the Court's ruling in BARROWS V. JACKSON (1953) that racial clauses were in themselves unconstitutional. Although attempts were afterward made in various states to revive the use of racially restrictive covenants, passage of the federal Fair Housing Act of 1968 rendered all such efforts moot.

**Rental Housing** Protection against discrimination based on race or religion in rental housing took longer to achieve than the removal of racial clauses in real estate transactions. Following publication of the Committee on Civil Rights' report, TO SECURE THESE RIGHTS, which detailed the many instances of discrimination against African Americans and other minorities, the Democratic administration of President Harry S TRUMAN moved to eliminate discriminatory practices from federal programs. Federal agencies involved with housing programs, such as the Federal Housing Authority (FHA), gradually imposed sanctions on federally subsidized rental units that practiced racial segregation. Prior to the Truman administration, the FHA had always allowed developers in the local areas to determine residential patterns. If a locality was highly segregated, FHA-subsidized housing replicated that segregation in new construction. During the 1930's, for example, when the federal government built "model communities" from the ground up, separate communities were constructed for whites and nonwhites.

Meanwhile, owners of nonsubsidized rental housing remained free to discriminate however they chose in the selection of prospective tenants. This freedom to discriminate by private owners meant that the majority of rental housing units in the United States remained effectively segregated until the Johnson administration promoted passage of the Fair Housing Act of 1968.

**The Fair Housing Act of 1968** Civil rights organizations had been lobbying for fair housing legislation on the state and federal levels for many years before the passage of the Fair Housing Act. Civil rights demonstrations coupled with court decisions, such as BROWN V. BOARD OF EDUCATION (1954) and BARROWS V. JACKSON, heightened public awareness of the social consequences of discrimination, and many states had passed their own open housing acts in the 1950's and early 1960's. The provisions of these open housing laws varied from state to state. With passage of the federal Fair Housing Act the U.S. CONGRESS meant to ensure a uniform standard for open housing across the nation.

The Fair Housing Act did not, however, cover all housing. Rental complexes occupied by fewer than five families were exempted, as were owner occupied buildings. Further, penalties for violations of the act were relatively mild, with maximum fines of only one thousand dollars. After its original passage the act was amended several times to broaden its scope in order to protect more classes of citizens. In the 1980's, for example, studies of the HOMELESS indicated that one reason that poor families had difficulty finding housing was that many landlords refused to rent to families with children. People suffering from chronic illnesses or physical disabilities also had trouble finding rental housing. Thus, in addition to prohibiting the use of racial criteria in selling or renting real estate, the Fair Housing Act began prohibiting discrimination based on age or disability. This meant, for example, that landlords could not refuse to rent to families with young children or to persons in wheelchairs.

The act provided for exceptions in certain cases. For example, communities specifically designed to house senior citizens were exempted from the law's age clause, as were properties managed by

religious organizations for charitable purposes. For example, a church owning an apartment complex renting units at below-market rates to low-income people could discriminate in its criteria for who occupied the apartments. In addition, rental housing constructed prior to 1991 did not have to be handicapped-accessible, although the owners of any such rental housing had to allow tenants with disabilities to make any modifications their disabilities required. The landlords did not have to pay for such modifications, however, and the tenants were required to restore the property to its original condition when they moved out. Finally, penalties for violations of the act were increased to make the fines more effective deterrents to violations.

**Legal Discrimination** Although there has been a steady broadening of the classes of people against whom property owners must not discriminate, landlords and home owners have retained some discretionary power. Owner-occupied housing has remained exempted, as has housing occupied by members of the owners' immediate families. Landlords who could not refuse to rent to persons because they were Native Americans, in wheelchairs, or were Buddhists could still reject them if they were students, had poor credit records, or owned dogs. The long struggle to achieve equality of access to housing removed barriers based on inherent characteristics such as race, but it was never intended to strip property owners of their right to make rational economic decisions.

# SUGGESTED READINGS:


Berman, William C. *The Politics of Civil Rights in the Truman Administration*. Columbus: Ohio State University Press, 1970. Accessible history of the progress of civil rights in the years immediately following World War II.

Graham, Hugh Davis. *The Civil Rights Era: Origins and the Development of National Policy, 1960-1972*. New York: Oxford University Press, 1990. Examination of the most turbulent time period of the twentieth century.

Hepple, Bob, and Erika M. Szyszczak. *Discrimination: The Limits of the Law*. London: Mansell Publishing, 1992. Discussion of what legal reforms can and cannot achieve.

Krunholz, Norman, and John Forester. *Making Equity Planning Work: Leadership in the Public Sector*. Philadelphia, Pa.: Temple University Press, 1990. Looks at the urban planning process and what city leaders can do to combat segregated housing.

Lewis, Frederick P. *The Dilemma in the Congressional Power to Enforce the Fourteenth Amendment*. Washington, D.C.: University Press of America, 1980. Discussion of the limits of the Fourteenth Amendment.

Peach, Ceri, ed. *Urban Social Segregation*. London: Longman, 1975. Collection of essays examining patterns and problems of segregation around the world.

Tushnet, Mark V. *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961*. New York: Oxford University Press, 1994. Thorough history of Marshall's work with the NAACP. Solid scholarship with all sources documented but still accessible to the general reader.

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