

THE RACIAL EQUITY REPORT CARD: FAIR HOUSING ON LONG ISLAND

A REPORT FROM

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
I. Protected Classes Under Federal, State and Local Laws	ii
II. Highlights of Recommendations	iii
THE RACIAL EQUITY REPORT CARD: FAIR HOUSING ON LONG	1
I. Introduction	1
II. History and Context	1
III. ERASE Racism’s 2005 Report	2
THE REPORT CARD	3
I. What People Tell Us About Fair Housing on Long Island	3
II. The Role of New York State Division of Human Rights	5
III. U.S. Department of Housing and Urban Development	11
IV. Long Island Municipalities and HUD	13
V. New Fair Housing Laws	16
VI. Real Estate Professionals	17
VII. United States Department of Justice	18
VIII. New York State Attorney General	20
IX. Cutting-Edge Fair Housing Litigation Regarding the Analysis of Impediments	21
CONCLUSIONS & RECOMMENDATIONS	23
COMPLETE LIST OF ERASE RACISM’S FINDINGS	24
APPENDIX	
A. The History of ERASE Racism	27
B. ERASE Racism’s Housing Project Achievements April 2005 to December 2007	28
C. New York State Division of Human Rights Analysis of Fair Housing Complaint Locations on Long Island	31
D. Long Island Fair Housing: A State of Inequity 2005 Findings	33
E. Predatory Lending	34
F. Nassau & Suffolk General Statistics and Information From NYSDHR Data	39
G. The Number and Type of Fair Housing Allegations LIHS Received 2005 to 2007	45
H. Race-Based Statistics for Long Island from NYSDHR 1999 to 2007	46
I. Results of ERASE Racism’s 2007 Survey of Municipal Planning and Community Development Departments	49
J. Long Island Litigation by U.S. Department of Justice	51
K. Real Estate Professionals	54
NOTES	56

RACIAL EQUITY REPORT CARD: FAIR HOUSING ON LONG ISLAND

EXECUTIVE SUMMARY

ERASE Racism promotes policies and programs to increase racial equity in public school education, housing, and healthcare. *ERASE Racism's Housing Project* analyzes the practices and policies of both public and private institutions whose work affects fair housing. It advocates for changes in those practices and policies that are impediments to racial equity.

Housing segregation is a remnant of racial discrimination and inequities ultimately traceable to the heritage of slavery. Like the “peculiar institution” from which it derives, there is general agreement today that racial discrimination is immoral, harmful and, of course, illegal. Since it was launched in June 2001 as a special initiative of the Long Island Community Foundation, *ERASE Racism* and those working with us have shown that progress can be made and that there is hope that ultimately housing segregation and discriminatory practices can be eradicated. But much more remains to be done.

Long Island has a long history of government-sanctioned, and, it might be said, government-sponsored, housing segregation. In the modern period, that history began with the National Housing Act of 1934, which established a federal mortgage guarantee program administered through the Federal Housing Administration (FHA). FHA loans were used to create the first suburbs for white veterans returning from World War II. The best known, Long Island’s own Levittown, originally consisted of 17,400 houses on 4,000 acres. Those houses were solely for white, non-Latino families, as the program explicitly reserved them for “the race for which they are intended,” and the Levittown deeds forbade occupancy by “any person other than members of the Caucasian race.”¹ Despite the Supreme Court’s 1949 ruling finding the FHA restrictive covenants unconstitutional, private restrictions remained in effect until the Civil Rights Act of 1968. As recently as 1960, not one of Levittown’s 82,000 residents was African-American. The impact of the FHA’s restrictions on the racial composition of Long Island communities can be still seen today: 94.1% of Levittown’s residents are white, non-Latino and 0.5% are African-American.² Much of the rest of Long Island

is as segregated as Levittown, and in many places homeownership for blacks and Latinos is still not an option.

Contemporary planning and community development policies on Long Island are not as explicitly racist as those initially used by the FHA, but some of those policies lead to the same result. Not all African-Americans and Latinos seeking housing on Long Island are poor, but even those who are prosperous find that they cannot in fact rent or purchase homes at any price in some Long Island communities solely because of their racial or ethnic identity. There are problems with laws, with their enforcement (or lack of enforcement), with the policies and practices of government agencies (federal, state and local) and the practices of real estate and other businesses. The lack of fair housing practices perpetuates segregation in communities at all income levels. For example, in many Long Island communities there is exclusionary zoning—severe restrictions on the number of units per acre—which makes construction of affordable and multifamily housing financially infeasible. In other Long Island communities, access to new, affordable, housing is restricted to those who already live or work in a particular community. If, for example, Levittown were to build affordable housing with a significant set-aside for people who are already residents, nearly all of that housing would be for white, non-Latino families.

There are similar conditions elsewhere in the country, but residential segregation on Long Island is unusually severe. The majority of fair housing cases prosecuted by the U.S. Department of Justice (DOJ) in all of New York State between 1999 and 2005 originated on Long Island. Fifty-six percent of fair housing cases prosecuted by DOJ on Long Island involve discrimination against African-Americans. The levels and kinds of illegal discrimination are very similar in both Nassau and Suffolk County.

Segregation on Long Island, originating in prejudice, law and governmental policy, is perpetuated by the lack of effective channels for redress. In theory, when

discrimination is thought to have occurred, victims can turn to the New York State Division of Human Rights (NYSDHR), which is contracted by the U. S. Department of Housing and Urban Development (HUD) to carry out the majority of its fair housing enforcement. Unfortunately, NYSDHR has a very low rate of meeting the statutory deadlines for all aspects of investigations and prosecution of complaints in regard to fair housing laws and a lack of documented attempts to conciliate. This in itself discourages Long Islanders from filing complaints with the Division.

The U. S. Department of Housing and Urban Development itself is also at fault. For example, it has failed to ensure that Long Island municipalities receiving federal funding through HUD administered programs meet the requirements and standards set forth by the federal law and the federal Fair Housing Act to protect against the inequities of racial segregation. While only four out of the more than 100 Long Island municipalities and two county consortia have completed the required, publicly available, plans and policies to reduce segregation in their jurisdictions, HUD has not acted to enforce its own regulations. The lack of enforcement by HUD and the deficiencies of planning by municipalities perpetuate residential racial segregation on Long Island and often regulations for use of federal monies, such as Community Development Block Grant funds, are not followed, while racial inequities continue in our communities.

In addition to these failures by governmental entities at all levels, residential segregation on Long Island is *actively maintained* by some real estate professionals. This is illustrated by the fact that real estate professionals

were defendants in 73% of all race-based complaints filed with NYSDHR between 1999 and 2007 in which an African-American alleged housing discrimination on Long Island. Some Long Island real estate professionals commit illegal housing discrimination violations as a matter of routine business practice. Many are fully aware of the fact that they are breaking the law and even announce that fact to some prospective clients. It is important that the New York State Division of Licensing become more active in revoking and suspending real estate professionals' licenses for violating the code of ethics and terms of licensing that relate to fair housing.

As enforcement of fair housing laws is fundamental to equity in housing on Long Island, we are pleased to have progress to report. There are new Nassau and Suffolk County fair housing laws and enforcement systems and *ERASE Racism* hopes that they will operate in an effective and efficient manner, encourage more of those suffering from housing discrimination to come forward to be heard, and that the systems will then render justice for all victims of housing discrimination in a timely and effective manner.

Progress is not as evident at the State level, especially in regard to NYSDHR. The lack of progress in the enforcement of fair housing laws continue the centuries-old pattern of discrimination against African-Americans. Members of other protected groups—Latinos, people with disabilities, and others—are also victimized. As long as some Long Islanders are discriminated against in this way, we are all simultaneously implicated and suffer a diminution in the quality of our lives.

PROTECTED CLASSES UNDER FEDERAL, STATE AND LOCAL LAWS

Federal Fair Housing Act: race, color, national origin, religion, sex, familial status, and disability.

New York State Human Rights Law: race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, and familial status.

Nassau County Human Rights Law: race, creed, color, national origin, ethnicity, gender, religion, source of income, sexual orientation, age, marital status, familial status and disability.

Suffolk County Human Rights Law: race, creed, color, national origin, ethnicity, gender, religion, sexual orientation, age, marital status, familial status and disability.

RACIAL EQUITY REPORT CARD: FAIR HOUSING ON LONG ISLAND

HIGHLIGHTS OF RECOMMENDATIONS

- **LONG ISLAND RESIDENTS** must hold their towns, villages, cities and hamlets responsible for implementing development plans that create economically sustainable communities where all people have access to housing.
- **ALL LEVELS OF GOVERNMENT** should incorporate racial integration into their community development plans and evaluate the racial implications of policies and practices before their implementation.
- **LOCAL MUNICIPALITIES** should have action plans to remove racial inequities in housing.
- It is essential to increase the number of **FAIR HOUSING ADVOCATES** on Long Island, who are trained to effectively help victims of housing discrimination navigate the different options for obtaining redress. These new and existing fair housing advocates must then reach out in an effective way to the general public and members of protected classes.
- A new approach to educating **REAL ESTATE PROFESSIONALS** must be devised that incorporates racial equity training into their regular continuing education requirements and prohibits training that focuses on how to avoid accountability for discriminatory acts.
- **GOVERNMENT AGENCIES, CIVIL RIGHTS AND FAIR HOUSING ORGANIZATIONS** should implement aggressive testing programs across Long Island.
- **THE NEW YORK STATE DIVISION OF LICENSING** should become more active in revoking and suspending real estate professionals' licenses for violating the code of ethics and terms of licensing that relate to fair housing.
- **THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT** should review the Analysis of Impediments for each community and withhold public money from those jurisdictions that fail to fulfill the requirements or blatantly violate fair housing laws.
- **HUD'S AND NYSDHR'S** enforcement systems should be reformed so as to ensure that all victims of housing discrimination are dealt with in a just and timely fashion.
- **HUD, NYSDHR, NASSAU COMMISSION ON HUMAN RIGHTS, SUFFOLK HUMAN RIGHTS COMMISSION AND THE COURTS** should ensure that they grant relief and/or negotiate settlements that compensate victims for the harm they have endured and award significant civil penalties that act as an effective deterrent to potential violators.

RACIAL EQUITY REPORT CARD: FAIR HOUSING ON LONG ISLAND

INTRODUCTION

Housing segregation is a remnant of racial discrimination and inequities ultimately traceable to the heritage of slavery. Like the “peculiar institution” from which it derives, there is general agreement today that racial discrimination is immoral, harmful and, of course, illegal. *ERASE Racism* (Education Research Advocacy Support to Eliminate Racism) promotes policies and programs to increase racial equity in public school education, housing, and healthcare. *ERASE Racism* publishes in-depth reports on housing issues and ensures that race and housing remain under public discussion. Since it was launched in June 2001 as a special initiative of the Long Island Community Foundation, *ERASE Racism* and those working with it have shown that progress can be made in the struggle against discrimination and that there is hope that ultimately housing segregation and discriminatory practices on Long Island can be eradicated. But much remains to be done before that is achieved. Toward that end, in 2002, *ERASE Racism* sponsored research and held a conference, which revealed that both Nassau and Suffolk Counties are highly segregated by race. Indeed, the 2000 U.S. Census data demonstrates that Long Island is the third most segregated suburban region in the United States when measuring black-white residential segregation.

Where people live directly affects their access to opportunity by, for example, dictating which schools their children attend and by determining access to those social networks that may lead to career advancement opportunities. Those people who live in segregated African-American neighborhoods often receive lower quality public services, are served by lower quality schools and have less access to key social networks. The Nassau County Legislature addresses the negative effects of segregation in its policy on Open Housing:

Many persons have been compelled to live under substandard unhealthful, unsanitary, and crowded living conditions because of discrimination and segregation in housing. The Legislature also finds that housing segregation creates economic in-

stability by limiting access to quality education, health care and job opportunities for professionals and skilled workers. It creates pockets of poverty and increases the cost of housing in all neighborhoods. It limits the availability of housing for enterprises whose workforces reflect the efficiencies of diversity, and this limitation reduces the County’s capacity for economic development, to the social and economic detriment of the entire County. (Title C-1, Chapter 272, *Nassau County Administrative Code*).

ERASE Racism’s Housing Project analyzes federal, State and local government practices and policies concerning community development, fair housing laws and enforcement, housing grant awards by government, and zoning. It tracks and investigates policies and practices in the private real estate industry that create racial inequity in access to housing. *ERASE Racism* works with real estate firms, agents and associations to develop tools to prevent race discrimination in housing and to assure that fair housing laws are obeyed. The Housing Project regularly collaborates with other civil rights experts and organizations that focus on housing to bring about change. Based on its findings, recommendations are issued by *ERASE Racism* and strategies are developed to achieve implementation of those recommendations.

HISTORY AND CONTEXT

Long Island has a long history of implementing government-sanctioned policies that either explicitly exclude people of color from neighborhoods or have a disparate impact that creates segregated communities. These forms of institutional racism were included in some provisions of the federal National Housing Act of 1934 that provided a federal mortgage guarantee program, administered through the Federal Housing Administration (FHA). From the inception, the program explicitly barred people “other than those for whom the loans were intended” from access to federally subsidized home loans. Furthermore, it mandated that the deeds of all homes bought using

funds from the federal program contain racially restrictive covenants banning any future sale to people of color.³ This practice was in place until 1949 when the Supreme Court found that the FHA's program involving public funding for homeownership violated the United States Constitution by permitting the federal government to discriminate against people based on race. However, the Court's ruling did not prohibit private banks, mortgage lenders, real estate professionals, neighborhood associations or homeowners from using restrictive covenants.⁴ It was not until the Civil Rights Act of 1968 that racially restrictive covenants and other forms of discrimination in housing became illegal for private and public entities alike.⁵

FHA program loans were used to create suburbs for veterans returning from World War II. Long Island was one of the first suburbs in the country to have communities like Levittown built using federally subsidized loans. The affordable housing built in Levittown included 17,400 houses on 4,000 acres, all of which carried covenants under FHA restricting them for white, non-Latinos only. As a result, in 1960 not one of Levittown's 82,000 residents was African-American. Those racially restrictive covenants were enforced in Levittown as late as 1962. The lasting effect of these policies was evident in the 2000 U.S. Census, which reported that Levittown's residents were 94.1% white and 0.5% African-American.⁶

Contemporary planning and community development policies are not as explicitly racist as were the original FHA provisions; however, some of today's policies have a racially disparate impact leading to the same result. In many communities, for example, there is exclusionary zoning—severe restrictions on the number of units per acre—which makes affordable and multifamily housing financially infeasible in those communities. Efforts to increase the amount of affordable housing in middle class communities sometimes utilize assistance from government programs. Access to this new affordable housing, however, is often restricted

to individuals who already work or reside in the community. If a community like Levittown, for example, were to build affordable housing with a significant set-aside for people who are already residents in the community, the vast majority, if not all, of the housing would be occupied by white, non-Latinos, since they represent 94.1% of Levittown's population.

ERASE RACISM'S 2005 REPORT

Following the initial deliberations of an *ERASE Racism* Study Action Group and with subsequent assistance from a Fair Housing Task Force, also convened by *ERASE Racism*, it conducted an in-depth investigation to determine if institutional and structural racism continue to play a role in these patterns of racial segregation on Long Island. *ERASE Racism* studied the agencies responsible for fair housing enforcement on Long Island and local governments' analysis of fair housing practices and it tested the practices of real estate professionals for housing discrimination. The result of these studies and tests were published in *ERASE Racism's* April, 2005 report "*Long Island Fair Housing: A State of Inequity*," which had the following major findings:

1. There is a lack of leadership, accountability and inter-governmental communication;
2. Housing discrimination is not deterred by the current enforcement systems;
3. Real estate professionals are perpetuating segregation by "steering" and other forms of discrimination;
4. No accurate numbers exist of housing discrimination incidents on Long Island;
5. Government agencies mandated to ensure fair housing often impede the development of integrated housing and the enforcement of fair housing laws.

The report also included recommendations for improving fair housing enforcement, creating racially equitable planning policies, implementing local data collection and formulating strong deterrents for breaking the fair housing laws. (*See Appendix D for the highlighted findings and recommendations.*)

THE REPORT CARD

The ultimate goal of *ERASE Racism's* Housing Project is to reduce the inequities caused by racially segregated housing on Long Island by ensuring that:

- Community planning, zoning and housing policies do not have a racially disparate impact;
- Agencies charged with fair housing enforcement effectively investigate and prosecute fair housing complaints;
- All Long Islanders are aware of the fair housing laws and the consequences of violating those laws;
- Local data are available on fair housing violations;
- Real estate professionals are effectively deterred from racial steering;
- Local governments have the tools to develop strategic plans to combat segregation and are encouraged to implement such plans;
- Inter-governmental discussions and sharing of information are encouraged among agencies that

- are responsible for fair housing enforcement or licensing for real estate agents and brokers;
- The negative affects of segregation on all communities become common knowledge;
- Racial equity in housing is in the public discourse, and
- The public will gain confidence in the fair housing enforcement systems.

Reaching and sustaining racial equity in housing is an indication of a healthy community and requires ongoing attention. The Housing Project has made strides in all of the areas listed above over the past years with help from other organizations and individuals. However, the work is far from complete and will take continued collaboration, cooperation and action on the part of government, the real estate community, the business community, the legal community, non-profits and Long Island residents.

WHAT PEOPLE TELL US ABOUT FAIR HOUSING ON LONG ISLAND

Most fair housing cases prosecuted by the U.S. Department of Justice (DOJ) in New York State between 1999 and 2005 originated on Long Island. Fifty-six percent of fair housing cases prosecuted by DOJ on Long Island involved discrimination against African-Americans. The levels and kinds of illegal discrimination were very similar in Nassau and Suffolk counties. *ERASE Racism* has used a number of approaches to uncover public attitudes and experiences in relation to Fair Housing on Long Island. *ERASE Racism* has taken its own survey, it has worked with other non-governmental organizations, and it has used public sources of information.

1) The *ERASE Racism* Housing Project has conducted an informal public survey in collaboration with agencies throughout Nassau and Suffolk counties. The purpose of the survey was to find out whether individuals had

experienced difficulty in obtaining housing and if so, what kind of difficulties they had experienced; whether they had experienced housing discrimination, and if so, on what basis and whether they had sought help or would like help in regard to fair housing rights.

More than 540 survey forms were returned between June 2006 and April 2008.

Only 13% of those surveyed were interested in learning about their fair housing rights, many stated that they did not think it would make a difference. The vast majority of those who reported experiencing discrimination had not sought help to address the issues. Again, the most frequently stated reason for this was that they did not think that the issue would be taken seriously or addressed properly. This, too, is consistent with national reports.*

* Urban Institute, "Do We Know More Now?: Trends in Public Knowledge, Support and Use of Fair Housing Law (Washington 2006).

In addition, analysis of the NYSDHR cases between 2000 and 2007 showed that fair housing violations occurred across nearly all Long Island communities (see Appendix C). The five municipalities where alleged housing discrimination most occurred were East Patchogue, Hempstead, Long Beach, Lynbrook, Roosevelt, and Valley Stream. (This is consistent with the national picture: fair housing violations occur most frequently in communities with a higher percentage of rentals.)⁷ Nearly all those returning surveys who identified themselves as African-Americans indicated that they had experienced housing discrimination.

2) **Long Island Housing Services (LIHS)** is a private nonprofit on Long Island that helps individuals enforce their fair housing rights and advocates for changes to eliminate discrimination in housing. LIHS investigates complaints, assists clients with administrative and court processes, and acts as plaintiff in some cases. Additionally, it provides testing services and counseling on predatory lending and tenant/landlord rights. LIHS provided the Housing Project with its statistics for the number of fair housing allegations received in 2005, 2006 and 2007 that originated on Long Island (see Appendix G).⁸ The following statistics reflect the majority of Long Island residents who sought a fair housing advocate. (Please note that some of the LIHS cases may be included among the NYSDHR data.)

The number of allegations of housing discrimination received by Long Island Housing Services in 2006 increased by 62% over those received in 2005 and remained at the same level in 2007. In 2005, the majority of cases had involved rentals, at 32%, followed by advertising and retaliation at 30%. This shifted significantly in 2006 with 57% involving rental properties and only 16% involving advertising and retaliation. The allegations received in 2007 followed the previous year's pattern with 54% involving rentals and a further decrease, to 6.5%, involving advertising. The major difference in the type of discrimination between 2006 and 2007 was a 13.8% increase in lending and appraisal cases and a 13.1% decrease in allegations of predatory lending. (see the discussion on Predatory Lending, Appendix E.)

The percentage of allegations made to LIHS by members of protected classes* remained more or less the same from 2005 to 2006. Disability discrimination made up the majority of the allegations, followed by discrimination on the basis of race or color. In 2007, there was nearly a tripling of national origin complaints from 11.5% to 32.5%. Again, the majority of allegations received by LIHS involved rentals, and the most common protected bases were disability and race.** The majority of fair housing allegations LIHS received also involved rental properties.

* See page ii for a list of protected classes.

** LIHS has continued to conduct individual testing and testing audits and to file cases in administrative enforcement agencies, State and Federal District Court as a named plaintiff. Most importantly, in 2007, LIHS secured a \$270,417 grant from HUD for the next three years totaling \$811,251 for fair housing enforcement activities, including testing and public education. The Housing Project anticipates continued information exchange and collaboration with LIHS toward eradicating housing discrimination on Long Island.

THE ROLE OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (NYSDHR)

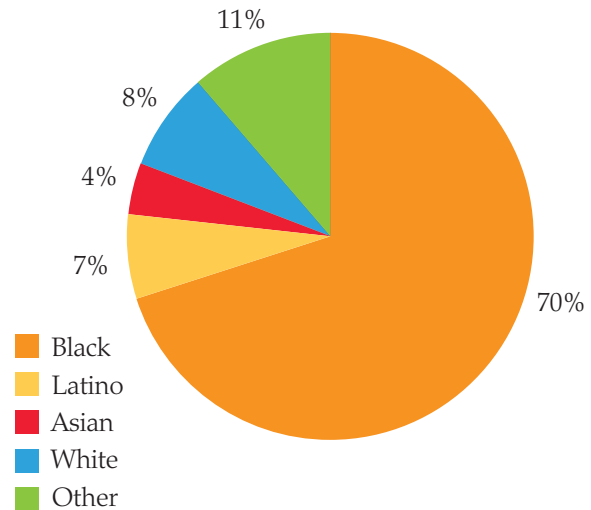
Segregation on Long Island, originating in prejudice, law and governmental policy, is perpetuated by the lack of effective channels for redress. In theory, when discrimination is thought to have occurred, victims can turn to the New York State Division of Human Rights (NYSDHR), which is contracted by the U. S. Department of Housing and Urban Development (HUD) to carry out most of the Department's fair housing enforcement.* Unfortunately, NYSDHR has a very low rate of meeting the statutory deadlines for all aspects of investigations and prosecution of complaints in regard to fair housing laws and a lack of documented attempts to conciliate. As indicated by *ERASE Racism's* surveys, this in itself discourages Long Islanders from filing complaints with the Division.

Housing discrimination is an island-wide problem with almost every community having generated at least one fair housing complaint between 2000 and 2007.** The majority of Long Island fair housing complaints involve rental properties, as opposed to home purchases, and originate in communities with significantly higher numbers of renters than homeowners.⁹ Nassau and Suffolk counties have similar fair housing problems and have almost the same number of inquiries made to NYSDHR, complaints filed and investigations performed, and they show similar outcomes from 2000 to 2007 (see Appendix F).¹⁰

The vast majority (70%) of race-based fair housing inquiries to the New York State Division of Human Rights from Long Island in the period 1999 to 2007 were made by African-Americans. The next largest group was white, at 8%, followed by 7% Latino, 4% Asian and 11% "Other."¹¹ The number of inquiries

by race correlates nearly exactly with the number of complaints filed.¹² African-Americans, however, are the least likely group to have an advocate when filing fair housing race-based complaints.¹³ We believe that this shows an obvious need for fair housing education for African-Americans on Long Island. An advocate helps a victim to navigate through the fair housing enforcement systems and to choose the appropriate avenues for redress and helps reduce some of the stress related to dealing with large bureaucracies.[†]

NUMBER OF INITIAL RACE DISCRIMINATION
Inquiries Made to NYSDHR from 1999 to 2007

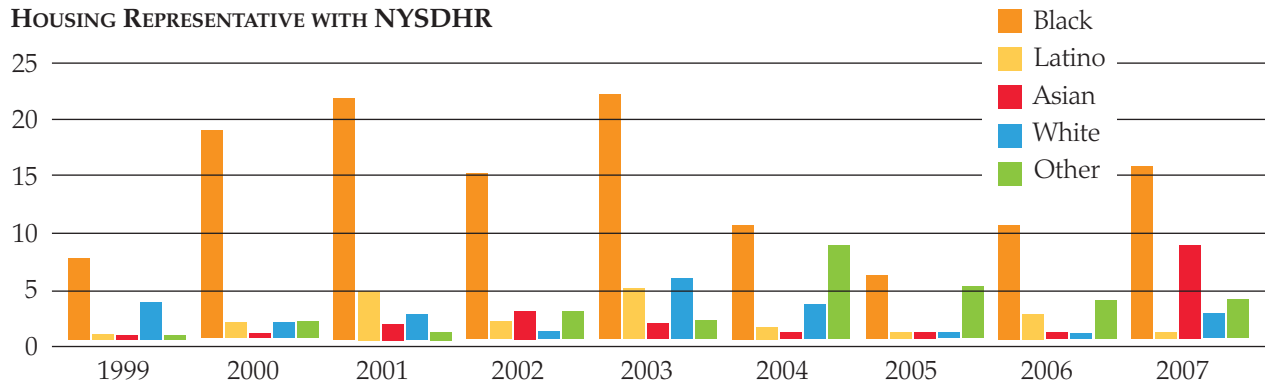


* New York State's Human Rights Law prohibits discrimination in housing based on age, race, national origin, gender, sexual orientation, marital status, disability, military status, familial status. The New York State Division of Human Rights (NYSDHR) is mandated to enforce this law. People believing that they have been discriminated against in violation of the law may make inquiries and/or file complaints with NYSDHR.

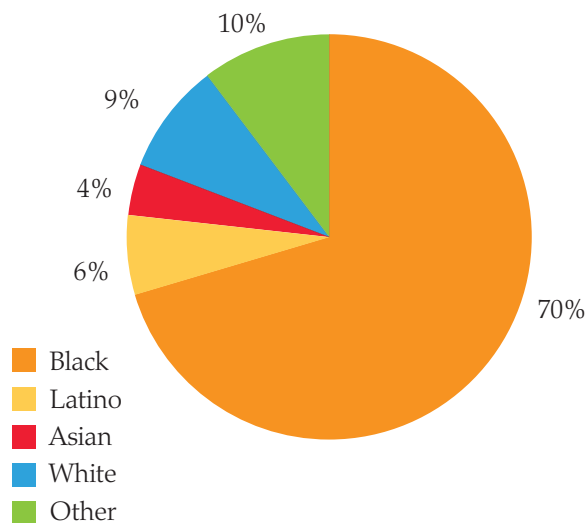
** See Appendix C.

† This report does not discuss the statistics provided by HUD as they are incorporated into NYSDHR data. In general, HUD only retains sole jurisdiction over complaints that are filed against the State or municipalities, certain cases that involve design and construction in relation to people with disabilities and zoning cases.

NUMBER OF INITIAL RACE COMPLAINTS FILED WITHOUT AN ADVOCATE, ATTORNEY OR HOUSING REPRESENTATIVE WITH NYSDHR



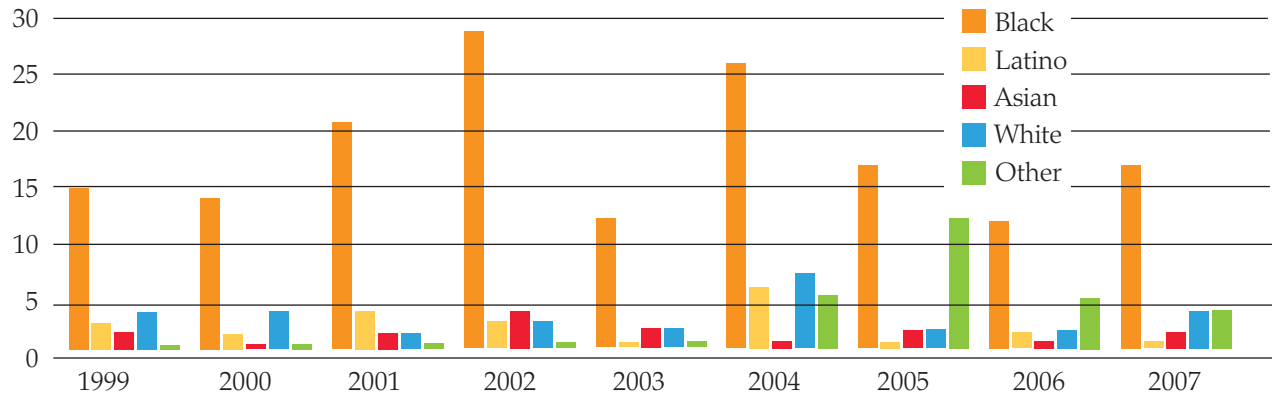
NUMBER OF RACE DISCRIMINATION COMPLAINTS FILED WITH NYSDHR from 1999 to 2007



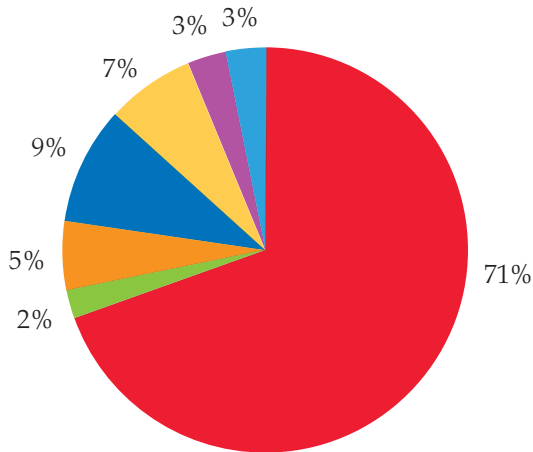
As might be expected, most Long Island cases based on race *investigated* by NYSDHR involve African-Americans.¹⁴ Therefore, the quality of investigations by the NYSDHR on Long Island has the greatest effect on the African-American community, as compared with other racial groups. Unfortunately, during the 1999-2007 period, only 10% of the complaints filed with NYSDHR resulted in “probable cause” findings on Long Island. The majority of race-based complaints filed with NYSDHR were closed due to a *no probable cause* finding, at a rate of 71%.¹⁵ Only 42 complaints out of 513 went before a NYSDHR Administrative Law Judge.

The statistics for 2007 show a very small increase in the number of probable cause determinations; however, the vast majority of cases continued to result in a “no probable cause” finding. Only 10% of the cases were found to have probable cause.¹⁶ The number of “no probable cause” determinations is alarming for such a segregated region. Based on *ERASE Racism’s* review of NYSDHR’s files, there is evidence that this unsatisfactory outcome of cases is heavily affected by decisions by the regional directors and Administrative Law Judges (ALJs) that appear to be contrary to the law, in some cases, and reflect investigations that are both superficial and over-lengthy.¹⁷

NUMBER OF RACE COMPLAINTS INVESTIGATED BY NYSDHR



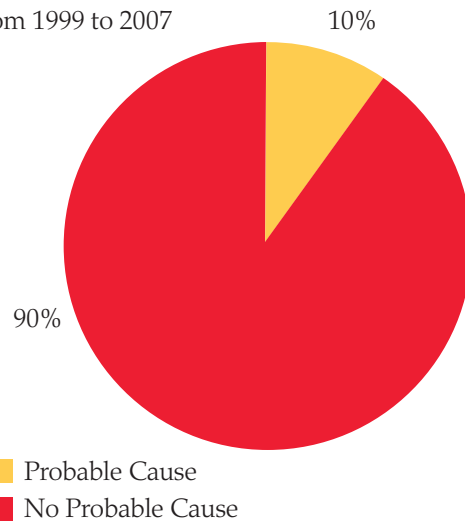
CASE CLOSURES FOR RACE DISCRIMINATION COMPLAINTS FILED WITH NYSDHR from 1999 to 2007



- Lack of Jurisdiction
- Withdrawn with Benefits
- Predetermination Conciliation
- Withdrawn without Benefits
- No Probable Cause
- Victim Filed in Court
- Administrative

The low proportion of probable cause findings was the catalyst for the *ERASE Racism* Housing Project to file a Freedom of Information Law (FOIL) request to NYSDHR for the records pertaining to Long Island cases. The findings were discouraging. There was a clear pattern of deficient investigations. For example, regional directors routinely made “no probable cause” determinations, without further investigation, if another person of the same protected class resided on the property.¹⁸ This is quite inappropriate.

NUMBER OF PROBABLE CAUSE FINDINGS FOR RACE DISCRIMINATION COMPLAINTS FILED WITH NYSDHR from 1999 to 2007



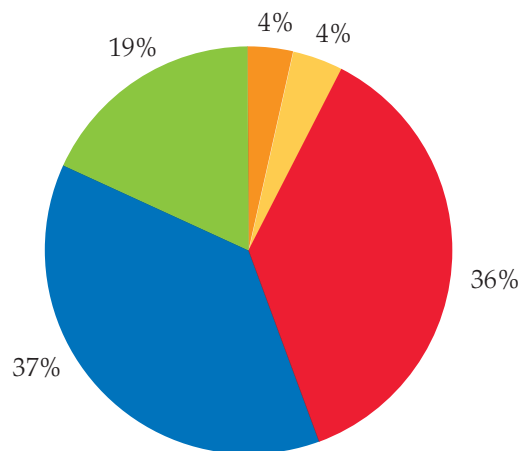
- Probable Cause
- No Probable Cause

In one community, during the six-year period reviewed, several African-American tenants made housing discrimination complaints based on race. They contended that African-American tenants were being systematically moved out and replaced by Latinos. All the tenants making the complaints, according to the records provided, were long-term tenants who had been in good standing regarding payment of rent, etc.; some had lived in their current apartments for as long as fifteen years. The tenants did not file together or around the same time. There appeared to be a connection between only two of the tenants who filed complaints.¹⁹ NYSDHR's then-regional director determined there was no probable cause for these complaints because other African-Americans continued to live in the apartment buildings in question.²⁰ To use this logic, the apartment complex would have to evict all of the African-American tenants at once for NYSDHR to consider a probable cause finding. As long as the management at the apartment complex evicted the African-American tenants over time, rather than all at once, the management would not have to fear punishment from NYSDHR for violating fair housing laws. On the other hand, a responsible reaction from NYSDHR would have entailed a visit to the site (which did not take place) and some further investigation to determine the motives of the management company for evicting long-term African-American tenants and to determine if in fact only Latinos were being offered apartments.

In the cases, between 1999 and 2007, where NYSDHR did find probable cause, only 8% went to an ALJ and resulted in an Order by the Commissioner. There was an even distribution between monetary relief and equitable relief (at a rate of 4%) for each kind of relief in the Commissioner's Orders.²¹ In some cases, the Commissioner's Orders included both kinds of relief.* It is not necessarily a negative finding that only 8% of probable cause findings resulted in a Commissioner's Order for

monetary and/or equitable relief, as 36% of the probable cause cases resulted in a settlement by NYSDHR.²² The question is whether the settlements by NYSDHR "make the victim whole" (that is, that put the victim in the place that s/he would have been if the discrimination had not occurred) and act as an effective deterrent for the defendant and potential violators. As discussed above, there are serious questions about the quality of investigations and reasoning used by NYSDHR in determining what is equitable. Unfortunately, the data *ERASE Racism* received from NYSDHR contained only a few settlements and lacked information about conciliation efforts in the vast majority of cases. For this reason, it is impossible for the Housing Project to make an accurate evaluation of settlements procured by NYSDHR.

OUTCOMES OF CASES WHERE NYSDHR FOUND PROBABLE CAUSE IN RACE DISCRIMINATION COMPLAINTS from 1999 to 2007



- Commissioner Orders Monetary Awards
- Commissioner Orders Equitable Relief
- Settlement by NYSDHR
- Complaint Withdrawn from NYSDHR
- Victim to File in Court

* *Monetary relief* is an order from the Commissioner to the defendant to pay the victim a sum of money. *Equitable relief* is an order from the Commissioner requiring the defendant to do or give something other than money to the victim. For example, the Commissioner may order the defendant to allow the victim to rent one of the defendant's apartments on the same terms as other tenants or have equal access to facilities.

Some of the settlements, however, that were provided are a cause for concern. Many of those did not act as a deterrent, offering little or no monetary relief to the victims of housing discrimination. Often when there was monetary relief, a settlement amounted to nothing more than a slap on the wrist, and could easily be viewed as the cost of doing business for real estate professionals, management companies and landlords, rather than providing a strong incentive to abide by the law. For example, in one case where a real estate company discriminated against potential renters based on race, the real estate company was made to pay only \$2,000 to the victim and was required to attend fair housing training.²³ In another rental race discrimination case against a real estate company, the case took twelve years to resolve and resulted in a \$500 settlement.²⁴ In both cases, there was strong evidence to support the allegations of discrimination.²⁵ Such low settlements are ineffective as deterrents.

Looking at cases with equitable relief, a similar pattern occurs. In one disability case, NYSDHR drafted a settlement that gave a disabled tenant permission to use any available handicap parking spot, which she had a legal right to do with or without an agreement.²⁶ In another reasonable accommodation case, NYSDHR drafted an agreement that gave a disabled tenant a reserved parking spot to accommodate for her disability. However, the next clause in the agreement reserved the right of the property management company to revoke the tenant's right to the reserved parking spot for any reason at any time. The clause further stated that if the management company revokes the disabled tenant's spot, the tenant could re-file a claim with NYSDHR but the management's act of revoking the spot would not be deemed a violation of the agreement.²⁷ Such an agreement heavily favors the property management company and fails to provide a protected right to the disabled tenant.

There were a high percentage of victims (37%) who withdrew their cases after a finding of probable cause. (Those who withdrew their cases often had reached private settlements or filed in court without going

through NYSDHR.)²⁸ NYSDHR must approve all settlement offers agreed upon by both parties to ensure that the terms of the agreement are fair to both parties.

The Housing Project intends to obtain more of NYSDHR's settlement agreements in order to get a clear picture of what kinds of relief and deterrents are considered equitable by NYSDHR. The Housing Project will also use this information to compare the differences in court awards versus NYSDHR settlement offers, weighed against out of pocket expenses, expediency of resolving cases and convenience of forum for victims.

Equally egregious decisions have been reported regarding some of the Administrative Law Judge (ALJ) decisions for NYSDHR. For example, NYSDHR faced a lawsuit in 2006 for delaying the review of a clear race discrimination case in Glen Cove, on Long Island, filed in 2002. An African-American woman had sought to rent an apartment. When the landlord saw that she was African-American, she told the potential tenant that she was holding the apartment for a woman named "Amy." At the hearing before the ALJ, which was held in October 2004, the landlord was not able to provide "Amy's" last name, or a phone number for "Amy," admitted that she had never met "Amy," had not rented the apartment to "Amy" and did not produce "Amy" at the hearing. The ALJ ignored all evidence of race discrimination and took the landlord's unsupported story at face value. The ALJ took over a year to come back with a decision and then it was in favor of the landlord.²⁹ (Richard Bellman, the former Legal Director of the Anti-Discrimination Center of Metro New York described the ALJ's decision as "more contrary to law and fact than any other decision" that he was familiar with in more than 30 years of anti-discrimination practice.)³⁰ NYSDHR then sought to hold up the review process of the decision by the ALJ, which further delayed the complainant from being able to file the case in court for review.³¹ NYSDHR finally re-opened the case and reviewed the evidence that was presented and decided in favor of the Plaintiff. The Respondent has now filed an appeal in New York

State Court, which probably would not have happened if NYSDHR had handled the case appropriately. Six years after the initial filing the case has not been concluded.

Similar examples of incompetence and delay by NYSDHR are firmly supported in the findings of the New York State Office of the State Comptroller published on August 10, 2006, concerning the functioning of NYSDHR. Some of the Comptroller's findings included:

- The Regional Office took more than 180 days to investigate 73% of the cases it closed.
- Two-thirds of the cases that went to the hearing stage were processed late; for nearly all of the late-processed cases, the Central Office took between five and ten years to reach a resolution (a complaint is supposed to be resolved within 465 days from the date of filing, according to NYSDHR regulations).
- Investigations at Regional Offices average 533 days, with the majority of cases not being assigned an investigator until 218 days after the filing date (a determination of probable cause is supposed to be made 180 days after filing).
- The investigations in 64% of late-processed cases took one to four years to complete.
- The number of cases closed by Regional Directors with a "no probable cause" finding significantly rose from 50% in 2000 to 71% in 2004.
- The internal computer system known as CMS that management uses to monitor the progression of cases can easily be overridden by staff.³²

The Comptroller's report also articulated the danger of lengthy delays in resolving a case. The Housing Project's review of the documents found cases that had been delayed for many years with no reason given. One clear race discrimination case was filed in 1995 and probable cause was determined in 2003.³³ At that point, the victim could not be located, because he had gone through a divorce and moved to another state. As a result, the landlord succeeded in violating the law and the system failed to provide justice for the victim. In another case that involved race discrimination, the complaint was filed in 1991 and the determination

of probable cause was made the same year, but the case was not resolved until 2002.³⁴ The Comptroller's report cites a similar case found in its audit:

When lengthy delays occur, case witnesses can forget important details or move away; in some cases, witnesses or complainants may even die before the case is closed. For example, in one of our sampled cases, the respondent was served with the complaint on October 16, 1996. However, the regional office did not reach a determination of probable cause until October 26, 1998, and the pre-hearing conference was not scheduled until July 8, 2003.³⁵

These findings again point to the need for a strong local enforcement system that equitably renders the law in a just and timely fashion.

The Housing Project does not believe that the proportion of probable cause findings rendered by NYSDHR accurately reflect the levels of discrimination occurring in housing on Long Island. Rather, the Housing Project views the probable cause statistics as a benchmark to work from in future monitoring of NYSDHR and its determinations.

FINDINGS

- African-Americans were the vast majority of individuals who made inquiries and filed fair housing complaints based on race on Long Island.
- African-American complainants were the least likely to have an advocate, attorney or fair housing representative aid them in the complaints process compared to any other group by race.
- The most frequent reason stated for closure of a race-based fair housing complaint by NYSDHR was a finding of “no probable cause.”
- Between 1999 and 2007, 90% of the race-based fair housing complaints generated from Long Island were determined to have a no probable cause finding.
- Of the 10% of race-based complaints where probable cause was found, the majority resulted in the complaint being withdrawn from NYSDHR or in a settlement by NYSDHR. Only 8% went before an ALJ.
- NYSDHR continues to fail to meet the statutory deadlines for prosecuting complaints and there has been no improvement seen in the quality of investigations.
- NYSDHR failed to provide *ERASE Racism* with the majority of settlements entered into from 2000 to 2007, thereby frustrating *ERASE Racism’s* ability to evaluate the effectiveness of redress offered to victims.

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

The mission of the U. S. Department of Housing and Urban Development (HUD) is to “increase homeownership, support community development and increase access to affordable housing free from discrimination.” HUD funds state Fair Housing Assistance Programs (FHAP), such as NYSDHR, which are agencies for fair housing enforcement. In order for an agency to become a participant in the FHAP program, the state’s fair housing laws must be certified as substantially equivalent to the federal Fair Housing Act. FHAP agencies are contracted by HUD to prosecute fair housing complaints that fall under the jurisdiction of state law. The state FHAP agencies receive payment for each case completed.* All FHAP agencies have an administrative enforcement system, which, theoretically, is more expeditious for those experiencing discrimination than going to court.

HUD is supposed to monitor cases handled by FHAP agencies through a computer program called the Title Eight Automated Paperless Tracking Office System

(TEAPOTS). FHAP agencies are supposed to enter all viable Title VIII fair housing complaints into the TEAPOTS system with dates of contact and all case details including attempts at conciliation.³⁶ The U. S. Government Accounting Office (GAO) recently surveyed ten Fair Housing Equal Opportunity (FHEO) offices, which are departments within HUD, and 36 state Fair Housing Assistance Programs, including NYSDHR. The GAO’s major findings included:

- Test calls and analysis of log data raised questions about the thoroughness of the intake process and effectiveness of oversight controls.
- Case files and TEAPOTS lacked evidence that investigations met the required standards or followed recommended procedures enumerated in the federal code of regulations and HUD guidelines.
- Evidence indicated a lack of consistent efforts to conciliate complaints.
- Complainants were dissatisfied with the fair housing complaint process, outcomes and certain aspects of intake and investigation.³⁷

* HUD only funds cases for FHAP agencies that fall under the protected classes enumerated in the federal Fair Housing Act.

The GAO statistics are a cause for concern. During the 6-month test period in the later half of 2004:

- 30% of complainants had difficulty reaching a person (rather than a recording) the first time they called a FHEO or FHAP agency; five locations never responded to test calls placed by the GAO;
- 34% of complainants had difficulty reaching staff after the initial contact;
- Only 32% of complaints with viable Title VIII claims were entered into the TEAPOTS (631 out of 2,000);
- 69% of FHEO and FHAP intake staff did not attempt to prevent the loss of a housing opportunity when asked to do so;
- 62% of the complaint files did not contain detailed investigative plans that HUD guidance strongly encourages;
- One-third of complainants believed their complaint was not thoroughly investigated;
- 28% of case files did not include evidence of interviews with respondents;
- 73% showed no evidence of on-site visits;
- 36% of case files contained no evidence that the complainant was contacted to attempt conciliation;
- Only 42% of complainants surveyed were offered conciliation, however, nearly 90% of complainants offered conciliation took it;
- Only 5% of the 9,500 cases filed in 2004 had a reasonable cause finding;
- 98% of all cases closed for other than reasonable cause took more than the hundred-day benchmark in the HUD regulations;
- 59% of complainants whose cases were terminated by an administrative closure were not told about options they might have for pursuing the complaint in another forum.³⁸

The GAO's findings support the concerns *ERASE Racism* voiced in its fair housing report in April 2005.

HUD, FHEO and FHAP agencies consistently fail to follow statutory and regulatory guidelines for prosecuting fair housing cases. The inefficiency of the agencies is exacerbated by lack of effective oversight by HUD, which results in complaints being ineffectively

prosecuted. Many victims of housing discrimination are subjected to an unjustifiably lengthy review and resolution process. Most alarming is the lack of confidence complainants had in fair housing enforcement. Nearly 60% of complainants reported dissatisfaction with the outcome of their case and the fair housing complaint process. Almost 40% stated they would not file a fair housing complaint again.³⁹

It is not surprising that the HUD-funded Urban Institute report of February 2006 *"Do We Know More Now?: Trends in Public Knowledge, Support and Use of Fair Housing Law,"* a follow-up study on the 2000 report about the public's perception of the fair housing laws and enforcement system, showed that the public remained skeptical about using the fair housing enforcement systems.* The findings of the report showed that 80% of people who had a plausible basis for believing they had been discriminated against did nothing and only 4% either sought help from a fair housing agency, lawyer or filed a complaint with a government agency.⁴⁰ The most common reason that 49% did not pursue a complaint or another course of action was that "it was not worth it," which seems to have a direct correlation with the ineffective and inefficient fair housing enforcement systems, as illustrated in the GAO's report.⁴¹

The Urban Institute report also stated that race is the most common reason for perceived discrimination, at 58% among all the protected classes.⁴² Further, the perception of discrimination is most prevalent among African-Americans, at 20%, with 6% of Latinos reporting having perceived housing discrimination based on race.⁴³ Of those surveyed who perceived discrimination, 70% said the incident involved a rental, while 26% reported it was when they tried to purchase a home.⁴⁴ This correlates with the Long Island Housing Service (LIHS) data for fair housing allegations received for Long Island through its agency in 2005. When looking at sales and rentals only (not including other forms of discrimination), 64% of the allegations involved rentals and 46%, the sale of homes (*see* Appendix G).⁴⁵

* The research and reports for 2000 and 2006 were produced by the Urban Institute.

Again, the lack of effective and efficient federal enforcement of the fair housing laws supports the need for local fair housing enforcement systems, which took effect in January 2007 on Long Island.* The other issue raised by these studies is the need for public education so that the public will regain confidence in the fair housing laws and enforcement systems. What is required is not only

advertisements and outreach, but publication of cases where significant penalties have been rendered against those who violated the fair housing laws. This will act as a deterrent to potential violators and encourage those who have been victims to come forward. Those who prosecute fair housing cases and the media have the prime responsibility for disseminating such information.

FINDINGS

- HUD fails to provide adequate oversight of the fair housing enforcement functions of FHAP agencies.
- HUD and FHAP agencies are directly responsible for the public’s lack of confidence in the federal and State fair housing enforcement systems.
- FHAP agencies, like NYSDHR, mishandle fair housing cases more often than not by not responding to complaints, ineffective investigations, incomplete paperwork and missing statutory deadlines.

LONG ISLAND MUNICIPALITIES AND HUD

An example of a racially discriminatory practice by a local government on Long Island is alleged in the class action complaint filed against the town of Smithtown on December 13, 2007.⁴⁶ The case involves the Smithtown Section 8 program, which is a federally funded housing program that provides housing subsidies in the form of vouchers for low to moderate income families.** The voucher usually pays up to two-thirds of the rent to the landlord and the tenant is responsible for the other one-third. Since the inception of the Section 8 program in Smithtown, it has required that a person must live or work in Smithtown to be eligible to receive a Section 8 voucher. It seems that not until all of the Smithtown residents on the waitlist have been placed, will they consider anyone else for a voucher. This resident preference became a requirement in practice, when Smithtown sent a number of letters to people on the Section 8 waiting list informing them that even though their name was at the top of the list for a voucher they would be disqualified if they did not live or work in Smithtown. Smithtown had placed most of its residents and re-opened the waiting list, against its own written policy, when the majority of the Smithtown residents had received vouchers and the number of people of color out-numbered whites

on the waiting list. This policy has a racially disparate impact since 93% of the population of Smithtown is white.⁴⁷ The residency requirement is strictly prohibited by HUD regulation 24 CFR § 982.207(b)(1)(i) that forbids residency requirements in Section 8 waitlists.

In 1997, HUD wrote Smithtown a letter recommending that they cease enforcing the residency preference because of its “racially exclusionary effect.”⁴⁸ Smithtown chose to ignore the recommendation. The Class Action Complaint goes on to describe in detail different aspects of Smithtown’s own policies that it broke, evidently to avoid housing people of color with vouchers. Most disturbing are the list of blatantly racist comments made by public officials, such as town councilmen over the past decades at public meetings where affordable housing was discussed. These comments indicated, for example, that only people of color need affordable housing and those people are not welcome in this community.⁴⁹

The complaint also illuminates the violence residents of color who live in Smithtown have faced from cross burnings on lawns, to physical violence and intimidation tactics perpetrated by white individuals mostly against African-American victims.⁵⁰

* See Appendix B and see the Library at: www.eraseracismny.org for the new Nassau and Suffolk County fair housing laws.

** The plaintiffs in the case are represented by the Lawyers’ Committee on Civil Rights Under Law.

The case has not concluded, but the information brought forth in the complaint is very disturbing. It has taken well over a decade for Smithtown to be challenged on the use of public money to fund a housing program that allegedly knowingly operates under racially discriminatory policies and procedures.

The U. S. Department of Housing and Urban Development should be held accountable for poor performance of contracted agencies. HUD is also at fault for not ensuring that Long Island municipalities receiving federal funding through HUD-administered programs adhere to the requirements and standards set forth by the federal law and regulations and the federal Fair Housing Act to protect against the inequities of racial segregation. In spite of the fact that only four out of the more than 100 Long Island municipalities and two county consortia that responded have completed the required, publicly available, plans and policies to reduce segregation in their jurisdictions, HUD has not acted to enforce its own regulations. The lack of enforcement by HUD and the deficiencies of planning by municipalities perpetuate residential racial segregation on Long Island and often regulations for the use of federal monies, such as Community Development Block Grant funds, are not followed, while racial inequity continues in our communities.

ERASE Racism is dedicated to working with local governments to ensure that the policies or practices they enforce do not unintentionally have a disparate impact on communities of color. For this purpose, the Housing Project embarked on an initiative to provide aid to any municipality that requested its expertise. *ERASE Racism* disseminated a template for conducting an Analysis of Impediments to all of the mayors, town supervisors and city managers on Long Island. *ERASE Racism* also contacted all the municipalities in Nassau and Suffolk Counties, extending an offer to review their Analysis of Impediments (AI) or any such planning documents to assist them in accurately identifying and addressing pockets of segregation in their community.* *ERASE Racism* sent a letter to all

the mayors, town supervisors and city managers asking for specific information regarding zoning, planning and integration in the community through the Community Development and Planning Survey and enclosed a tool for evaluating fair housing and segregation in their communities. The Housing Project has met with staff at the Suffolk County Planning Commission to discuss plans for evaluating patterns of segregation and strategies for integration. *ERASE Racism* will continue to review a variety of strategies that have the potential to engage municipalities in effectively addressing segregation in their communities.**

The initial offer for consultation regarding the Analysis of Impediments and the Community Development and Planning Survey received a very limited response. As a result, in September 2007, *ERASE Racism* sent out a second Community Development and Planning Survey to the municipalities. The goal of the survey was to determine which municipalities were receiving federal funding through HUD and if they were fulfilling the requirements regarding “Affirmatively Furthering Fair Housing” and the drafting of an Analysis of Impediments.

In the early fall of 2007, *ERASE Racism* sent its Community Development and Planning Survey to 116 towns, cities and villages on Long Island. *ERASE Racism* received a minimal response so it re-contacted the municipalities by fax and phone. Only five out of twelve towns, 24 out of 101 villages and one of the two Long Island cities chose to respond to the survey.⁵¹ This lack of response from the municipalities mirrors *ERASE Racism* experience when it sent its first Community Development Survey in September, 2005.

Sixteen of the municipalities responding had received federal funding through the Department of Housing and Urban Development for any combination of years from 2002 to 2007. Examples of HUD programs

*The AI is an analyses of the fair housing issues which are present in their jurisdiction.

** See Section *Cutting Edge Fair Housing Litigation Regarding Analysis of Impediments*, starting on page 21.

include Community Development Block Grants (CDBG), HOME Program (homeownership programs/loans for low income people), Emergency Shelter Grants (ESG) and Housing Opportunities for People with AIDS (HOPWA). Sixteen of those municipalities receiving federal funds were granted Community Development Block Grants (CDBG) and four received HOME funds.⁵² When the municipalities that received federal funds were asked if they had certified that they were “Affirmatively Furthering Fair Housing”—a requirement to receive the federal funding – only five of the sixteen confirmed that they had fulfilled this requirement.

Similarly only three of sixteen municipalities reported that they conducted an Analysis of Impediments to Fair Housing. This is another requirement to receive federal funding through HUD. The AI identifies areas of concentrated poverty, racial segregation, residential isolation for people with disabilities and other protected classes amongst other demographics. The AI is required to contain a plan to dissolve the identified barriers and take measurable steps toward creating

FINDINGS

- HUD has failed to ensure that municipalities that receive federal funding through HUD administered programs meet the requirements and standards set forth by the federal government that protect against and cure the inequities of racial segregation;
- The lack of enforcement and community planning perpetuate residential racial segregation on Long Island and further propel racial inequity in all sectors of life regionally;

integrated and sustainable communities within the municipality. Out of the thirteen municipalities that responded that they were receiving federal funding from HUD and not conducting an AI, only one had conducted a study on patterns of racial segregation.

All of the responding municipalities that do not receive federal funding reported that they have never conducted a study of patterns of racial segregation in their communities. Such a study is essential to ensure that the principles of racial equity for all community members exist and for sustaining an economically healthy community.

Municipalities surveyed that do not receive federal funding from HUD uniformly report that they do not have plans or policies in place to reduce racial segregation.* Overall just four out of the thirty municipalities that responded have plans or policies to reduce racial segregation. It is clear that most Long Island municipalities are not yet taking their responsibilities under fair housing law seriously.

- HUD has knowingly continued to use taxpayers’ money to fund segregational policies implemented through a township’s Section 8 Program where HUD itself, warned the township against the continuation of such policies because of the racially exclusionary effect;
- Since *ERASE Racism’s* first report on the level of segregation on Long Island in 2005, the municipalities have failed as a whole to take any significant steps towards drafting and implementing community development plans that address the inequities caused by racial residential segregation.

* See Appendix I.

NEW FAIR HOUSING LAWS

Nassau County and Suffolk County enacted new fair housing laws and administrative enforcement systems that became effective in January 2007.* This was a significant step by both County Executives and County Legislatures to strengthen the protections for the people of Long Island.

Nassau County launched the new fair housing laws by putting on a forum at the Nassau County Bar Association in late January 2007, with over 250 attendees. Community outreach and presentations on the new fair housing laws continued throughout 2007. Nassau County's Chief Deputy Attorney for Special Projects and *ERASE Racism* teamed up and conducted approximately 80 fair housing seminars, presentations and outreaches across Nassau County to educate individuals about the new laws and how to access the enforcement system.

The Nassau County Attorney's Office has submitted the new fair housing laws to HUD in order to achieve substantial equivalence with the federal Fair Housing Act. If deemed substantially equivalent the Nassau County Commission on Human Rights (NCCHR) will receive federal funding for equipment, training and cases that are completed that involve the protected class enumerated in the federal Fair Housing Act.** The Nassau County Attorney's Office remains in negotiations with HUD regarding substantial equivalence at the time of publication. Nassau County has determined that NCCHR will process complaints and enforce the new law immediately and irrespective of HUD's determination of substantial equivalence.

There have been some inquiries and complaints made to the NCCHR, however, it is too early to evaluate the effectiveness of its enforcement. The NCCHR adopted

procedures in early 2007 for the enforcement system and hired an administrative law judge to come and adjudicate cases when required. The Nassau County Executive and Legislature also took steps and replaced the majority of the Commissioners on the NCCHR, with a view to revitalize the Commission. *ERASE Racism* will analyze the data from the fair housing complaints made to the NCCHR in its next Housing Report Card.

The steps NCCHR should take to help the public to access redress for fair housing violations includes; an overhaul of its outreach materials, updating its website, and take over the responsibility of conducting fair housing outreach on a consistent basis. The NCCHR must ensure that all of its investigators are thoroughly trained and that there is strong leadership in place to oversee staff and the progression of cases.

Suffolk County Human Rights Commission (SCHRC) adopted procedures for its new enforcement system in early 2007. However, SCHRC lags behind in community outreach on its new fair housing laws and enforcement system. The SCHRC conducted one formal fair housing seminar in February 2007. The forum was held at the Suffolk County Bar Association with approximately 40 attendees. The Executive Director of SCHRC responded that it would not be conducting outreach until it knew whether or not its law was substantially equivalent with the federal law according to HUD.† Unlike Nassau County, it appears that the Suffolk County Executive has made enforcement of the new law contingent upon obtaining substantial equivalence with HUD. This process can take years.†† SCHRC stated in Spring 2008 that it had not received one fair housing inquiry. It is possible that this is due to the lack of community outreach.

* Further information available in Appendix B.

** See page ii for list of protected classes.

† Substantial equivalency would allow SCHRC to access federal funding to help it function. The NCCHR has applied for substantial equivalence also but has been engaging in outreach to have victims of housing discrimination come forward.

†† The Maryland Human Rights Commission reported that it applied for substantial equivalence in 1988 and received it only after three years of negotiations in 1991.

The steps SCHRC should take include to start an aggressive fair housing outreach campaign and apply the new law and enforcement system now rather than make the implementation of the law contingent upon HUD's determination of sub-

stantial equivalence. The Commissioners and staff should collaborate with others to aggressively advocate and press for the immediate need for proactive fair housing education and the activation of Suffolk County's enforcement system.

REAL ESTATE PROFESSIONALS

In addition to these failures by governmental entities at all levels, residential segregation on Long Island is actively maintained by some real estate professionals. Real estate professionals were defendants in 73% of all race-based complaints filed with NYSDHR where an African-American alleged housing discrimination on Long Island.⁵³ (The other respondents are landlords, homeowner associations, co-op boards, property managers, financial institutions, neighbors, etc.) The data support the continuing theme that African-Americans are more likely to suffer from housing discrimination on Long Island than any other race.* Some Long Island real estate professionals commit illegal housing discrimination violations as a matter of routine business practice. Many are fully aware of the fact that they are breaking the law and even announce that fact to some prospective clients.

HUD, LIHS and the National Fair Housing Alliance (NFHA) joined forces to conduct some testing of Long Island real estate professionals. The testing resulted in two complaints filed against Julia Steven Realty for blatant steering of home buyers and renters based on race and anti-Semitism. NFHA's report states:

African-American homebuyers were marketed homes and schools in the very areas that whites were told to avoid. Equally disturbing, real estate agents made negative comments about Jews to both white and African-American homebuyers. Agents repeatedly discouraged non-Jewish white homebuyers from considering neighborhoods with significant Jewish populations... In fact, one agent told a white homebuyer before they went

to look at homes in the area, that the agent took the liberty of choosing houses for the homebuyer to see by school district. The agent said that she was not supposed to do that.⁵⁴

As a result of the testing, Long Island Housing Services and the NFHA filed two complaints with HUD. The complaints are still pending within HUD's administrative enforcement system.⁵⁵

Historically, some real estate professionals have used the "quality" of school districts as a euphemism for the level of integration in the neighborhood. For example, the whiter the residents the better the school district and vice versa. Usually this unsolicited information is offered to the prospective white clients where as prospective clients of color are not offered information about the schools and are shown homes in areas the white clients are told are undesirable. The homes are selected to show each client based on their race and irrespective of income and ability to purchase, with the "quality" of schools used as one of the tools to get white clients to buy homes in predominantly white neighborhoods.

More needs to be done to curb real estate professionals from violating the fair housing laws. The Housing Project has received many reports from individuals in the real estate business and private citizens regarding experiences with real estate professionals who blatantly ignore the fair housing laws and actually discuss the fact that they are violating the law. Education about the laws is not the answer to altering the illegal behavior of such individuals, as they are already aware of the laws. When such behavior is this rampant, it is essential

* See Appendix K.

that strong deterrents are in place and that penalties do not amount solely to a cost of doing business.*

In addition, it is essential that the New York State Division of Licensing become more active in revoking and suspending real estate professionals' licenses for violating the code of ethics and terms of licensing that relate to fair housing. A system of communication between New York State Division of Licensing (NYS DL) and the New York Division of Human Rights (NYSDHR) regarding filing of complaints based on fair housing violations would be beneficial and would serve as a further deterrent to real estate professionals who violate fair housing laws.

FINDINGS

- Real estate professionals were the defendants in nearly three-quarters of fair housing complaints filed from Long Island;
- Real estate professionals made up 37% of the defendants in race-based discrimination complaints filed with NYSDHR;
- Real estate professionals were defendants in 73% of all race-based complaints where an African-American alleged housing discrimination on Long Island;

The Division of Licensing, however, must make its own determination as to whether a real estate professional has violated the code of ethics and/or terms of licensing rather than relying on the NYSDHR's determination as to whether the fair housing law was violated. It is possible that a real estate professional's actions violate the code of ethics and terms of his/her licensing but do not match the standard required to violate the New York State Human Rights Law. Only the Division of Licensing has the power and authority to revoke or suspend a real estate professional's license in New York State. The real threat of losing the license to practice real estate would act as a strong deterrent for real estate professionals who currently engage in illegal housing discrimination.

- Some real estate professionals continue to brazenly commit illegal housing discrimination violations as a matter of business practice on Long Island;
- Some real estate professionals are fully aware of the fact that they are breaking the law and even announce that fact to some prospective clients;
- NYSDL should take a more active role in punishing real estate professionals for illegal housing discrimination by more frequently revoking and suspending real estate licenses.

UNITED STATES DEPARTMENT OF JUSTICE**

Long Island fair housing cases were 33% of all the fair housing cases the Department of Justice (DOJ) represented for the State of New York.⁵⁶ This is a significant number considering the size and population of Long Island compared to the rest of the State of New York. NYSDHR also reported that the majority of the fair housing cases it received and investigated were from Long Island.

DOJ prosecuted a significantly higher percentage of cases from Suffolk than from Nassau County. DOJ prosecuted six cases in Suffolk County where the victim elected that DOJ prosecute the case after HUD made a determination of reasonable cause and one case where prompt judicial action, such as a restraining order, was sought. In Nassau County, DOJ prosecuted three pattern and practice cases and one election case.⁵⁷

* In addition, a useful educational component to accompany strong penalties is a seminar/training on the effect of the illegal behavior on society and how it affects all communities.

** The following information was provided to ERASE Racism by the Department of Justice (DOJ) regarding the number of Long Island fair housing cases it prosecuted between 1999 and 2005. DOJ also provided comparison data for New York State. In addition, during this time period DOJ independently conducted twelve fair housing investigations in New York State. Three of the twelve investigations were in Suffolk County and none were in Nassau County. None of these investigations resulted in the filing of a lawsuit. The information in this section represents cases that were initiated by outside agencies or victims and brought to DOJ to prosecute (see Appendix J).

The majority of cases prosecuted by DOJ were on behalf of African-Americans. This is the overwhelming theme throughout all fair housing enforcement statistics for Long Island. African-Americans as a protected class represent 56% of the victims of discrimination, families with children are second at 25%, people with disabilities next at 13%, and Latinos at 6%.⁵⁸

Consent Decrees represent the vast majority of outcomes for cases pursued by DOJ both on Long Island and in New York State.⁵⁹ A Consent Decree is an agreement that is entered with the court that all parties agree to. In Suffolk County, all of the cases resulted in a Consent Decree.⁶⁰ In Nassau County, all cases but one that resulted in a judgment were Consent Decrees. Nassau still has one pattern and practice case pending.⁶¹

The majority of fair housing cases brought by DOJ from Long Island and New York State are based on the victim electing to have DOJ represent him/her in federal court after HUD has determined reasonable cause exists to believe discrimination has occurred.* The second most frequent type of case DOJ took was pattern and practice cases.⁶² These cases often wind up in court due to their complex nature and the level of public harm. Recidivism is a cause for stronger penalties, which are more likely to be meted out by a court since the true focus of the administrative enforcement system is supposed to be conciliation. DOJ also steps in when a HUD Order is violated by the defendant.⁶³ For example, if after a hearing before an ALJ, HUD issues an order for the defendant to pay the victim \$5,000 and the defendant fails to comply, DOJ will go before the federal court to have the order enforced against the defendant.

Compensatory damages represented the largest category of money damages during the period covered here (except for one large award in a disability related pattern and practice case in Nassau County, which is classified as “Other Relief.”)⁶⁴ No civil penalties were awarded for cases from Long Island and in only two cases during this time frame for the entire State of New York (totaling \$5,500).⁶⁵ Punitive damages of \$14,000 were awarded in one pattern and practice case in Nassau County during this period.⁶⁶ None of the other 33 cases in New York State included punitive damages as part of the relief.⁶⁷

The lack of punitive damages and civil penalties, along with relatively small compensatory damage awards, makes housing discrimination an affordable “cost of doing business” for many perpetrators. *ERASE Racism* encourages the judiciary to send a message to violators of the fair housing law in the form of strong penalties that effectively act as a deterrent. It also encourages DOJ to negotiate tough penalties in the Consent Decrees they put forward for parties and the courts to consider.

*The most prevalent type of relief granted in cases prosecuted by DOJ were compensatory damages, which is the amount of money that will make the victim whole, placing the victim where s/he would be if the discrimination had not occurred. For example, if the victim lost housing because of discrimination, the cost of staying at a motel while seeking new housing would be a compensatory damage. Punitive damages are monetary damages that are meant to punish the perpetrator of the discrimination. Punitive damages are usually awarded when the defendant acted willfully with the full knowledge that what s/he was doing is illegal or when s/he is a repeat offender. Civil penalties do not go to the victim but to the government for purposes such as education about fair housing, etc. Civil penalties are viewed as damages that are put toward repairing the damage the defendant afflicted on the public. DOJ also reports that it obtained injunctive relief in all or virtually all of the cases that resulted in Consent Decrees. Injunctive relief is a court action commanding or preventing an action. For example, injunctive relief could include a restraining order that prevents the defendant from renting or selling a property while the case is proceeding.

FINDINGS

- The majority of fair housing cases prosecuted by DOJ in New York State between 1999 and 2005 originated on Long Island;
- The majority of fair housing cases on Long Island that DOJ prosecuted were brought as a result of the victim electing to have DOJ represent her/him in federal court after a reasonable cause finding by HUD;
- The majority of fair housing cases DOJ prosecuted on Long Island originated in Suffolk County;
- Of fair housing cases prosecuted by DOJ on Long Island, 56% involved discrimination against African-Americans;
- The outcomes for Long Island cases prosecuted by DOJ mirrored the cases for New York State with the majority resulting in consent decrees;
- The most common form of relief granted to victims when the case was prosecuted by DOJ were compensatory damages and some form of injunctive relief;
- Civil penalties were never granted in Long Island fair housing cases brought by DOJ from 1999 and 2005.

NEW YORK STATE ATTORNEY GENERAL

The New York State Attorney General (AG) resolved three significant cases regarding fair housing since the publication of the 2005 report, although none on Long Island. Two cases were race discrimination cases involving apartment complexes that originated in Westchester and in West Seneca, New York. The third and most significant case affected Long Island, and involved banking practices that had a national impact.⁶⁸

In that third case, the AG attempted to halt four national banks from discriminating based on race in mortgage lending, which violates both federal and State fair housing laws. The New York State Attorney General filed a complaint along with Attorney Generals from 33 other states against Citibank, Wells Fargo, HSBC and JP Morgan Chase alleging that the banks charged higher interest rates to people of color who sought mortgages, solely based on their race.⁶⁹ Numerous advocacy groups, including Long Island Housing Services, filed briefs in support of the Attorney General's position, including the National Association of Realtors and the New York Association of Realtors.⁷⁰

Unfortunately, the case did not succeed, as the federal Office of the Comptroller of Currency (OCC), along with a private association of leading commercial banks,

successfully obtained a court order preventing the Attorney General from investigating the alleged violations of federal and state anti-discrimination laws. The OCC successfully argued to the court that even though the State anti-discrimination laws are not preempted by federal law and apply to national banks that operate within that state, the OCC has sole jurisdiction to investigate national banks and therefore the state attorneys general may not investigate national banking practices even when they violate state law.⁷¹ This court decision was a devastating blow to the power of a state to protect its citizens from illegal banking practices that limit individuals' abilities to create personal wealth and it has devastating effects on communities of color. It is highly unlikely that the OCC will conduct an investigation into discriminatory practices of national banks. The repercussions of predatory lending are currently reverberating nationally through the lending industry, creating instability in homeownership and financial markets via a drastic increase in foreclosures. In effect, the decision of the Court in this case prevented the states from protecting their citizens from predatory lending practices and facilitated national banks to continue to engage in unfettered predatory lending. (*see* Appendix E for more in-depth discussion.)

FINDINGS

- The New York State Attorney General has not pursued fair housing cases on Long Island;
- Efforts to curb predatory lending were thwarted by the United States Second Circuit Court.

CUTTING-EDGE FAIR HOUSING LITIGATION REGARDING ANALYSIS OF IMPEDIMENTS

In April 2005, *ERASE Racism's* report "*Long Island Fair Housing: A State of Inequity*" questioned the thoroughness of all of the Analysis of Impediments (AI) to Fair Housing submitted by local government entities across Long Island to the Department of Housing and Urban Development (HUD).*

The AI is a prerequisite that must be executed in order for a jurisdiction to receive funds from HUD through programs such as Community Development Block Grant ("CDBG"), Home Investment Partnership ("HOME"), Emergency Shelter Grant ("ESG") and Housing Opportunities for Persons with AIDS ("HOPWA"). The AI is supposed to identify areas in the jurisdiction where there are pockets of poverty, racial segregation and high concentrations of other demographic categories that are found in the US Census data and provide a plan to overcome these obstacles. The jurisdiction must certify that it is "Affirmatively Furthering Fair Housing."

HUD has failed for decades to ensure that jurisdictions across the United States submit sufficient AIs and/or take any steps toward curing the identified impediments. HUD has not even been auditing jurisdictions it funds or ensuring compliance with this requirement. As a result, jurisdictions continue to receive federal funds from HUD even though they fail to address racial segregation and, in some cases, have policies that actually promote racial segregation, such as overly restrictive zoning laws. This is evidenced on Long Island by the results of the Community Development and Planning survey and the facts of the Smithtown law suit. Fair housing organizations such as the National Fair Housing Alliance have tried to get HUD to seriously address the AI, with little success.

The Anti-Discrimination Center of Metro New York (ADC) responded to HUD's failure to ensure that municipalities receiving federal money from HUD were complying with the fair housing requirements by bringing a suit under the federal False Claims Act. The lawsuit was brought against Westchester County for failure to "affirmatively further fair housing."

The County had certified that it was "Affirmatively Furthering Fair Housing" through acting on steps outlined in its AI. The ADC claims that Westchester County was doing no such thing and that the certification was fraudulent. The County received at least \$45 million in federal community development funds from HUD between 2000 and 2005 as a result of the alleged false certification. The ADC filed suit employing the seldom-used federal False Claims Act to challenge the alleged false certification. The lawsuit seeks to have Westchester County return the \$45 million to the federal government because it gave funds to municipalities that failed to abide by the federal Fair Housing Act. Westchester County unsuccessfully moved to have the case dismissed from U.S. Federal District Court.⁷²

The complaint accuses Westchester County "of doing too little to promote new affordable housing and of failing to reduce existing segregation."⁷³ It says the County accepted \$45 million in federal grants for developing such housing, but since units are not being built "and communities are as segregated as ever" the money should be returned.⁷⁴

* See preceding section on Long Island Municipalities and HUD, page 13 and Appendix I for more information on the Analysis of Impediments.

In an unprecedented decision, U.S. Federal District Court Judge Denise Cote held in July 2007 that an advocacy group, such as ADC, can use the federal False Claims Act to challenge a local government's certification that it has affirmatively furthered fair housing. The Court found that in identifying impediments to fair housing, a grant recipient must identify impediments caused by race discrimination and take steps to eliminate those impediments. The court stated, "In the face of the clear legislative purpose of the Fair Housing Act... an interpretation of 'affirmatively further fair housing' that excludes consideration of race would be an absurd result."⁷⁵

The case will now proceed and, if ADC is successful, there is a potential of treble damages, the majority of which would be returned to the federal government.

However, the intent of the suit is to bring Westchester County into compliance with the federal Fair Housing Act and regulations for Affirmatively Furthering Fair Housing.

Although the case has a long way to go and neither side is assured victory, the case is being closely watched by all local governments that certify that they are "Affirmatively Furthering Fair Housing." If ADC is successful, the results are bound to have a ripple effect that will hopefully motivate other similar jurisdictions receiving funds to proactively eliminate the obstacles to fair housing choice and reduce racial segregation in their communities. Irrespective of the outcome, the premise of the lawsuit highlights governments' continual failure to seriously embrace and ensure racial inclusiveness in housing.

CONCLUSION & RECOMMENDATIONS

As enforcement of fair housing laws is fundamental to equity in housing on Long Island, we are pleased to have progress to report. There are new **Nassau and Suffolk fair housing laws** and enforcement systems and *ERASE Racism* hopes that they will operate in an effective and efficient manner, encourage more of those suffering from housing discrimination to come forward to be heard and that the systems will then render justice for all victims of housing discrimination in a timely and effective manner.

Unfortunately, progress is not as evident at the State level, especially in regard to **NYSDHR**. African-Americans remain the most common group of individuals by race to suffer illegal housing discrimination on Long Island. The lack of progress in the enforcement of fair housing laws, policies and patterns of implementation continue the centuries-old pattern of discrimination against African-Americans. Members of other protected groups—Latinos, people with disabilities, and others—are also victimized. Housing discrimination occurs in almost all municipalities on Long Island and affects all socioeconomic groups. The effects can be devastating to the individuals involved and to all residents of those communities.

Municipalities must take an active role in developing strategic plans to address segregation in their communities. All levels of government should incorporate racial integration into their community development plans and evaluate the racial implications of policies and practices before implementation. Long Island residents must be vocal about holding their towns, villages, cities and hamlets responsible for implementing development plans that create economically sustainable communities where all people have access to opportunities and advancement without encountering additional obstacles impeding their way because of their race or ethnicity.

HUD must seriously review the Analysis of Impediments for each community and start to withhold public money from those jurisdictions that fail to fulfill the requirements. HUD should not be providing public funding to communities that blatantly violate fair housing laws. This is tantamount to state-supported race discrimination.* HUD, as guardian of the taxpayers' money designated for housing and community development projects, should take strong corrective action against any municipality that implements policies and practices that create racial inequities.

NYSDHR and HUD enforcement systems continue to be ineffective and inefficient. On Long Island, this had the greatest impact on African-American complainants because they file the majority of race-based complaints and are subjected to the flawed federal and state enforcement systems. African-Americans are the least likely to have an advocate helping them through the enforcement process for race-based complaints. For this reason, it is essential that fair housing advocates reach out in an effective way to African-American communities, informing them how to access help with filing complaints and ensuring that they know their rights.

Inter-governmental communication among enforcement agencies must occur to facilitate identifying repeat offenders and prevent the duplication of some aspects of investigations. It is essential that the New York State Division of Licensing become more active in revoking and suspending real estate professionals' licenses for violating the code of ethics and terms of licensing that relate to fair housing. A system of communication between NYSDHR and the New York Division of Licensing regarding filing of complaints based on fair housing violations would be beneficial and would serve as a further deterrent to real estate professionals who violate fair housing laws.

* This is illustrated by the Smithtown litigation where a municipality ignores the directive of HUD to cease and desist from implementing a policy that is prohibited by federal regulations and has the potential to have a racially disparate impact.

HUD's and NYSDHR's enforcement systems should be overhauled and reformed. *ERASE Racism* equally encourages HUD to effectively address the serious flaws that have been identified with its enforcement system to ensure that all victims of housing discrimination are dealt with in a just and timely fashion.

HUD, NYSDHR, DOJ and the courts should ensure that they grant relief and/or settlement agreements that both compensate victims for the harm they endured and act as an **effective deterrent** to potential violators. Civil penalties should be granted more frequently. Stiff penalties should be published in the media to enhance deterrence.

Testing programs should be expanded and take place regularly. They should at a minimum target localities identified as generating frequent fair housing complaints.

Public Information: Government and private groups that conduct fair housing education need to create or

find forums to educate renters, apartment complex owners and managers about the fair housing laws. A new approach to educating real estate professionals must be devised that not only informs about the law but also about the devastating effects of housing discrimination and segregation on entire communities. Such education should also help identify and explore the consequences of unintentional discrimination.

ERASE Racism believes that a local solution for fair housing issues has the potential to most rapidly benefit local communities and will help keep fair housing in the public discourse. *ERASE Racism* therefore hopes that the **new Nassau and Suffolk fair housing laws and enforcement systems** will operate in an effective and efficient manner and render effective and timely justice for all victims of housing discrimination. The Housing Project looks forward to analyzing the new local fair housing data generated by the new laws.

COMPLETE LIST OF *ERASE RACISM'S* FINDINGS

RACE-BASED FAIR HOUSING FINDINGS FOR LONG ISLAND FROM NYSDHR DATA

- African-Americans were the vast majority of individuals who made inquiries and filed fair housing complaints based on race on Long Island.
- African-American complainants were the least likely to have an advocate, attorney or fair housing representative aid them in the complaints process compared to any other group by race.
- The most frequent reason stated for closure of a race-based fair housing complaint by NYSDHR was a finding of "no probable cause."
- Between 1999 and 2007, 90% of the race-based fair housing complaints generated from Long Island were determined to have a no probable cause finding.
- Of the 10% of race-based complaints where probable cause was found, the majority resulted in the complaint being withdrawn from NYSDHR or in a settlement by NYSDHR. Only 8% went before an ALJ.
- NYSDHR continues to fail to meet the statutory deadlines for prosecuting complaints and there have been no improvements seen in the quality of investigations.
- NYSDHR failed to provide *ERASE Racism* with the majority of settlements entered into from 2000 to 2007, thereby frustrating *ERASE Racism's* ability to evaluate the effectiveness of redress offered to victims.

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

- HUD fails to provide adequate oversight of the fair housing enforcement functions of FHAP agencies.
- FHAP agencies, like NYSDHR, mishandle fair housing cases more often than not by not responding to complaints, ineffective investigations, incomplete paperwork and missing statutory deadlines.
- HUD and FHAP agencies are directly responsible for the public's lack of confidence in the federal and State fair housing enforcement systems.

LONG ISLAND MUNICIPALITIES AND HUD

- HUD has failed to ensure that municipalities that receive federal funding through HUD administered programs meet the requirements and standards set forth by the federal government that protect against and cure the inequities of racial segregation;
- The lack of enforcement and community planning perpetuate residential racial segregation on Long Island and further propel racial inequity in all sectors of life regionally;
- HUD has knowingly continued to use taxpayers' money to fund segregational policies implemented through a township's Section 8 Program where HUD itself, warned the township against the continuation of such policies because of the racially exclusionary effect;
- Since *ERASE Racism's* first report on the level of segregation on Long Island in 2005, the municipalities have failed as a whole to take any significant steps towards drafting and implementing community development plans that address the inequities caused by racial residential segregation.

LONG ISLAND REAL ESTATE PROFESSIONALS

- Real estate professionals were the defendants in nearly three-quarters of fair housing complaints filed from Long Island;
- Real estate professionals made up 37% of the defendants in race-based discrimination complaints filed with NYSDHR;
- Real estate professionals were defendants in 73% of all race-based complaints where an African-American alleged housing discrimination on Long Island;
- Some real estate professionals continue to brazenly commit illegal housing discrimination violations as a matter of business practice on Long Island;
- Some real estate professionals are fully aware of the fact that they are breaking the law and even announce that fact to some prospective clients;
- NYSDL should take a more active role in punishing real estate professionals for illegal housing discrimination by more frequently revoking and suspending real estate licenses.

U.S. DEPARTMENT OF JUSTICE'S FAIR HOUSING ENFORCEMENT

- The majority of fair housing cases prosecuted by DOJ in New York State between 1999 and 2005 originated on Long Island;
- The majority of fair housing cases on Long Island that DOJ prosecuted were brought as a result of the victim electing to have DOJ represent her/him in federal court after a reasonable cause finding by HUD;
- The majority of fair housing cases DOJ prosecuted on Long Island originated in Suffolk County;
- Of fair housing cases prosecuted by DOJ on Long Island, 56% involved discrimination against African-Americans;
- The outcomes for Long Island cases prosecuted by DOJ mirrored the cases for New York State with the majority resulting in consent decrees;
- The most common form of relief granted to victims when the case was prosecuted by DOJ were compensatory damages and some form of injunctive relief;
- Civil penalties were never granted in Long Island fair housing cases brought by DOJ from 1999 and 2005.

NEW YORK STATE ATTORNEY GENERAL

- The New York State Attorney General has not pursued fair housing cases on Long Island;
- Efforts to curb predatory lending were thwarted by the United States Second Circuit Court.

A. THE HISTORY OF *ERASE RACISM*

ERASE Racism was launched in June 2001 as a special initiative of the Long Island Community Foundation (LICF), the then 24-year old division of the New York Community Trust, one of the largest community foundations in the country. The LICF board and staff had long recognized racism as a critical issue affecting Long Island. Nevertheless, there were few funding requests from organizations seeking to directly address this issue. In 1999, LICF began convening a diverse group of individuals interested in racism, social equity, human rights and related issues to listen to invited speakers and share their ideas, experiences, and concerns. In March 2001, Elaine Gross was invited to attend one of the forums. Her comments following the meeting challenged the LICF to move beyond discussion into action. Subsequently, Ms. Gross was hired as a consultant to help determine what action might be undertaken. Her recommendation was to focus LICF's work on identifying and addressing institutional and structural racism. The LICF donors, board members and staff all agreed. With funding from participants in the donor forums, board members and others who shared an interest, the *ERASE Racism* initiative was launched in June 2001.

ERASE Racism was designed to foster public discourse about the need to dismantle institutional and structural racism in Nassau and Suffolk Counties and to implement activities to advance this mission. "Race" is not a scientific term and "races" do not scientifically exist. When *ERASE Racism* uses the terms "racism" and "race," it does so knowing that "race" is a social construct. And yet, a socially constructed concept can have very real and tangible consequences for all of us. Wishing or pretending that the United States is a "color-blind" society fails to address the real disparities that have resulted from this pseudo-scientific concept, disparities that are perpetuated by structural racism.

Institutional and structural racism result in persistent, significant inequity between people who are white and people of African descent, in particular, and other people of color. Historically, embedded racism results

from racially discriminatory acts and policies, which may even be illegal. Frequently, however unintentional, unnoticed policies and practices of large and small public and private institutions and broader systems provide advantages or privileges to whites, while at the same time, discriminate against and put people of color at a disadvantage; this is institutional and structural racism. In keeping with LICF's initial intent, in 2004 *ERASE Racism* separated from LICF, incorporated, obtained IRS tax-exempt status and began functioning as an independent not-for-profit organization.

MISSION:

ERASE Racism is a regional organization that leads public policy advocacy campaigns and related programmatic initiatives to promote racial equity in fields such as housing, public school education and health-care. It engages in a variety of research, education and consulting activities to identify and address institutional and structural racism, primarily on Long Island.

STRATEGIES:

- To identify and address institutional and structural racism in government and civil society and promote racial equity.
- To build the capacity of organizations to identify and address institutional racism within their own organization and to promote racial equity in issue areas within their purview.
- To build a growing constituency and set of inter-agency relationships to advance the work.
- To deliver seminars/trainings, staff development and organizational assessments to help people individually and collectively to increase racial equity in their daily lives. This is achieved through our Unraveling Racism Trainings, Race and Racism Dialogues, the Partnership in Racial Equity, and individually tailored workshops and assessments.

For more information on *ERASE Racism* and the impact of institutional and structural racism on Long Island, visit our website at www.eraseracismny.org.

B. ERASE RACISM'S HOUSING PROJECT ACHIEVEMENTS

APRIL 2005 TO DECEMBER 2007

The *ERASE Racism's* Housing Project made significant progress in implementing its recommendations and furthering the public discourse around fair housing since the publication of the 2005 report.

NEW FAIR HOUSING LAWS

ERASE Racism recruited the Anti-Discrimination Center of Metro New York as a partner in negotiations with Nassau and Suffolk Counties, to provide technical assistance to the Counties as they drafted the new laws and the local enforcement systems. The legislation was initially conceived as a bi-county law but, in the end, Nassau and Suffolk enacted different but similar laws. The Nassau County law was passed unanimously by the County Legislature and became effective on January 1, 2007. The Suffolk County law passed 16 to 2 and became effective January 29, 2007.

The new laws provide stronger fair housing protections for Long Islanders, civil penalties of up to \$50,000, and local enforcement. The new enforcement systems will allow the County Human Rights Commissions to investigate and determine whether there is probable cause of discrimination. If probable cause is determined, then victims have a chance to have their cases heard by a local Administrative Law Judge.⁷⁶ (The new laws and further details of the protections provided are available at www.eraseracismny.org).

A major significance of the new laws is that they allow for investigation on the local level, which theoretically should be quicker and more efficient than going

through the New York State Division of Human Rights (NYSDHR) complaint process. Local enforcements will also create local fair housing statistics. Local governments on all levels, including municipalities, have community development function and responsibility to seriously resolve issues of racial inequities in housing by ensuring: 1) strong deterrents for those who might violate the fair housing laws; 2) that victims of discrimination receive justice; and 3) that proactive integration strategies are developed and implemented.

Both Counties have submitted their new fair housing laws to the Department of Housing and Urban Development (HUD) for determination of whether the new laws are substantial equivalent to the federal Fair Housing Act.* If HUD determines the laws are substantial equivalent, then the Counties can access federal funds for all the fair housing cases the County Human Rights Commissions handle, as well as funds for training and equipment.⁷⁷

ERASE Racism will remain available to aid the Counties with public education pertaining to the new fair housing laws and with all aspects of their implementation. The Housing Project intends to monitor the effectiveness of the new laws and enforcement systems over time. It is too early to determine how effective the Nassau County Commission on the Human Rights and Suffolk County Human Rights Commission will be at prosecuting complaints as the laws have not been in place for sufficient time.

* Substantial equivalence is not required for either county to enforce its fair housing laws.

FEDERAL AND STATE ENFORCEMENT AGENCIES

HUD AND NYSDHR

As a result of the fair housing report, *ERASE Racism* met with the then Acting Regional Director for HUD for New York State and the then Deputy Commissioner of NYSDHR to discuss *ERASE Racism's* findings and recommendations. *ERASE Racism* requested further information using FOIA and FOIL requests with HUD and NYSDHR. Most of the information for NYSDHR was received by the end of 2006 and is included in this report. *ERASE Racism* asked for statistics and case determinations from 2000 to 2007. HUD has given *ERASE Racism* the statistics from 2000 to 2006 but none of its final investigative reports for Long Island cases or statistics for 2007. *ERASE Racism* is using the collected information to determine how cases are being handled; what forms of discrimination are most common on Long Island; who are the repeat offenders; which protected classes are most frequently victims of discrimination; and which geographic locations generate the most complaints.* In 2007 *ERASE Racism* contacted the NYSDHR regarding the Housing Project's recommendations for reforming NYSDHR and remains available to work with NYSDHR.

NEW YORK STATE DEPARTMENT, DIVISION OF LICENSING

ERASE Racism submitted a list of recommendations to the Secretary of State of New York, Division of Licensing regarding the licensing of real estate professionals who violate the fair housing laws. As a result, in 2006, the Deputy Secretary of State for Business & Licensing and the Deputy Secretary of State Counsel came with staff to meet with *ERASE Racism* to discuss the recommendations put forward by the Housing Project. *ERASE Racism* will continue the discussion with the new administration.

One of the main goals of the Housing Project is to encourage NYSDHR and the Division of Licensing to exchange information regarding fair housing investigations involving real estate professionals.

ERASE Racism learned that the Division of Licensing once had a fair housing testing program where it tested real estate professionals for discrimination. The program ended in the mid-1990's. The Housing Project encouraged the Division of Licensing to recommence a testing program where, at a minimum, it tests real estate professionals who have ethics complaints filed against them based on fair housing violations.

The Housing Project also encouraged the Division of Licensing to make its own determination as to whether a real estate professional has violated the code of ethics and/or terms of licensing rather than relying on the NYSDHR's determination as to whether the fair housing law was violated. It is possible that a real estate professional's actions violate the code of ethics and terms of his/her licensing but do not match the standard required to violate the New York State Human Rights Law. It is also possible that a violation of a fair housing law involving a realtor is not a violation of the code of ethics. Only the Division of Licensing has the power and authority to revoke or suspend a real estate professional's license in New York State. Similarly, NYSDHR is the State Division with the authority to determine if a fair housing violation has occurred under New York State law outside of the courts.

LONG ISLAND MUNICIPALITIES

ERASE Racism's actions regarding the lack of strategic planning by municipalities to reduce segregation and create racial equity commenced with extensive and continuous educational outreach. *ERASE Racism's* Housing Project has been active in addressing the importance of considering race in community development plans. Some significant work *ERASE Racism's* Housing Project has undertaken regarding municipalities includes:

- Invited speaker at a public hearing held by the Long Island Regional Planning Council that addressed affordable housing;

* Please refer to Appendices C, F and H.

- Offered information, references to communities where integration has been successful, and the reasons why segregation is expensive for all communities;
- Put forth an analysis addressing an affordable housing allocation strategy implemented in some Long Island communities that involves a set-aside for individuals who are already members of the community. By default, this approach limits access and choice of neighborhood for people of color who seek affordable housing. Since the majority of communities on Long Island are highly segregated by race, this strategy has a high probability of having a racially disparate impact against people of color who seek to live in predominantly white neighborhoods;
- Raised the above issues with local government officials, at public hearings before the County Legislatures, at hearings before County commissions and committees, with nonprofits and civil rights groups;
- Raised issues about housing and race in a meeting held by a member of Governor Eliot Spitzer's Transition Team regarding housing needs on Long Island; and
- Developed and presented a workshop at the Suffolk County Planning Federation seminar in 2007 that addressed the necessity of racial inclusionary practices and policies in community development plans to an audience of municipal planners.

ERASE Racism and its Housing Project will continue to participate in the government and public discourse on community planning and housing policies that affect Long Island.

FAIR HOUSING ENFORCEMENT DATA

Since the April 2005 release of *ERASE Racism's* report "Long Island Fair Housing: A State of Inequity" the Housing Project successfully obtained data from NYSDHR, including some case determination reports, which will be the main focus of this report. It took two years and multiple requests to receive the information. Review of the information reinforces the argument that NYSDHR needs to undergo major reform. Included in this report are the findings of an audit conducted by the New York State Office of the State Comptroller

released on August 10, 2006, that found deficiencies with the way NYSDHR functions. Although the Comptroller's report does not separate employment discrimination cases from housing cases, *ERASE Racism's* review of the material received from NYSDHR shows that the findings are applicable to Long Island fair housing cases filed with NYSDHR. The findings in this report point to the need for the new local fair housing laws and enforcement systems in Nassau and Suffolk Counties if complaints are to be investigated and prosecuted in an efficient and just manner.

This report does not discuss the statistics provided by HUD as they are incorporated into NYSDHR data. In general, HUD only retains sole jurisdiction over complaints that are filed against the State or municipalities, certain cases that involve design and construction in relation to people with disabilities and zoning cases. The number of cases for Long Island that fall into this category is negligible (only a couple of cases per year for Nassau and Suffolk County from 2000 to 2003). However, the report briefly discusses the findings of the audit conducted by the United State Government Accountability Office (GAO) and released in October 2005, regarding HUD's deficiencies in prosecuting complaints and the public's lack of confidence in the federal enforcement system. NYSDHR was one of the agencies tested in this audit since it handles the vast majority of HUD cases originating in New York State. Though the report does not break down the information by location of agency, it gives the reader a good sense of the systematic problems with the fair housing enforcement systems at the federal and State levels and the lack of federal oversight of State prosecuted complaints.

**C. NEW YORK STATE DIVISION OF HUMAN RIGHTS (NYS DHR) ANALYSIS OF
FAIR HOUSING COMPLAINT LOCATIONS ON LONG ISLAND**

The following statistics are based on the information *ERASE Racism* received from 2000 to 2007 and are specific to Long Island. Information regarding geographic locations for origination of complaints was derived from reviewing case files received from NYSDHR.⁷⁸

Complaints most frequently originate from the areas of Nassau and Suffolk Counties represented in the tables below. It is important to note that all of these areas have a high number of rental units compared to the county ratio between renter and homeowner represented in the chart above. This correlates with both national and local findings that fair housing discrimination complaints involving rentals exceed home purchases.

According to 2000 U.S. Census data, Nassau County had 80.3% homeowners and 19.7% renters; Suffolk County had 79.8% homeowners and 20.2% renters.

LONG ISLAND

Area	Number of Complaints Received by NYSDHR 2000–2007	Total % of Homeowners in County	Total % of Renters in County
Nassau County	261	80.3%	19.7%
Suffolk County	263	79.8%	20.2%

NASSAU COUNTY JURISDICTIONS WITH THE LARGEST NUMBER OF COMPLAINTS

Area	Number of Complaints Received by NYSDHR 2000–2007	Total % of Homeowners in Municipality	Total % of Renters in Municipality
Hempstead Village	29	43.2%	56.8%
Great Neck Village	17	73.8%	26.2%
Freeport	16	65.2%	34.8%
Long Beach	16	53.4%	46.6%

SUFFOLK COUNTY JURISDICTIONS WITH THE LARGEST NUMBER OF COMPLAINTS

Area	Number of Complaints Received by NYSDHR 2000–2007	Total % of Homeowners in Municipality	Total % of Renters in Municipality
Brentwood	13	78.7%	21.3%
Patchogue Village	10	48.6%	51.4%
Bay Shore	9	59.7%	40.3%
Coram	9	69%	31%

The locations represented in the lists below are the geographic point of origination of at least one fair

housing complaint on Long Island between 2000 and 2007.⁷⁹

NASSAU COUNTY FAIR HOUSING COMPLAINTS

Location of Origination

Baldwin	Garden City	Long Beach	Port Washington
Bellmore	Glen Cove	Lynbrook	Rockville Center
Bethpage	Glen Head	Manhasset	Roosevelt
Cedarhurst	Glen Head Landing	Massapequa	Sea Cliff
East Meadow	Great Neck	Massapequa Park	South Farmingdale
East Rockaway	Hempstead	Mineola	Syosset
Elmont	Hewlett	Muttontown	Uniondale
Far Rockaway	Hicksville	New Hyde Park	Valley Stream
Farmingdale	Inwood	North Merrick	West Hempstead
Floral Park	Lawrence	Oceanside	Westbury
Franklin Square	Levittown	Oyster Bay	Woodmere
Freeport	Lido Beach	Plainview	

SUFFOLK COUNTY FAIR HOUSING COMPLAINTS

Location of Origination

Amityville	Farmingville	Mastic	Sag Harbor
Babylon	Greenlawn	Medford	Selden
Bay Shore	Greenport	Melville	Shirley
Brentwood	Hauppauge	Middle Island	Smithtown
Bridgehampton	Holbrook	Moriches	Sound Beach
Brookhaven	Holtsville	Nesconset	Speonk
Calverton	Huntington	Northport	West Babylon
Centereach	Huntington Station	Oakdale	West Hampton Beach
Central Islip	Islandia	Patchogue	Wyandanch
Commack	Islip Terrace	Ridge	Yaphank
Deer Park	Jamesport	Riverhead	
East Hampton	Lake Ronkonkoma	Rocky Point	
East Patchogue	Lindenhurst	Ronkonkoma	

Housing discrimination affects almost all communities on Long Island, as represented by the location of discrimination complaints above. Housing discrimination occurs in all geographic areas that have moderately-

priced homes and rentals, as well as in some of the wealthier communities. This further illustrates that housing discrimination is an island-wide problem.

D. LONG ISLAND FAIR HOUSING: A STATE OF INEQUITY
2005 FINDINGS

After analysis of some of the public policies that created Long Island communities and the completion of the investigation into fair housing enforcement and private real estate practices, *ERASE Racism* published the findings in its report “*Long Island Fair Housing: A State of Inequity*,” released at a press conference on April 19, 2005. The six major findings included:

THE FAIR HOUSING ENFORCEMENT SYSTEM IS INEFFICIENT AND LETHARGIC. It fails to provide victims of housing discrimination with timely resolution of fair housing complaints because of inefficient investigations, the bureaucratic nature of the government enforcement agencies, and the placement of the burden for follow-through on the victims themselves.

HOUSING DISCRIMINATION IS NOT DETERRED BY THE CURRENT ENFORCEMENT SYSTEM because it is designed to be reactive, not preventative, and it relies solely on victims of housing discrimination to initiate the arduous complaint process.

REAL ESTATE PROFESSIONALS ARE PERPETUATING SEGREGATION BY STEERING AND OTHER FORMS OF DISCRIMINATION without fear of reprisal due to the lack of serious fair housing enforcement and the weakness of penalties.

NO ACCURATE NUMBERS EXIST OF HOUSING DISCRIMINATION INCIDENTS ON LONG ISLAND because enforcement agencies do not use the same criteria for counting fair housing complaints; some agencies do not track complaints in a way that tabulates incidents solely on Long Island; and no method is used for counting any incident that does not result in a formal administrative complaint or lawsuit.

GOVERNMENT AGENCIES MANDATED TO ENSURE FAIR HOUSING OFTEN IMPEDE THE DEVELOPMENT OF INTEGRATED HOUSING AND THE ENFORCEMENT OF FAIR HOUSING LAWS by encouraging restrictive zoning; implementing unequal taxation policies; funding municipalities that neglect to ensure their policies do not result in discrimination against African-American residents and other protected classes; and failing to support or engage in enforcement activities.* The government agencies do not hold themselves accountable for their failures to promote and ensure fair housing enforcement and the integration of communities.

THERE IS A LACK OF LEADERSHIP AND ACCOUNTABILITY for promoting integration; implementing preventative strategies; actively dispelling myths and fears about affordable housing; and creating proactive community education about the societal benefits of integrated housing.

ERASE Racism has made significant progress to remedy some of the above-listed issues (see *Achievements Section*, Appendix B). The Housing Project will reconnect with the new administrators at NYSDHR and NYSDL. Since *ERASE Racism's* preliminary meetings both State agencies have undergone significant staff and leadership changes. This has impeded the progress with the discussions on the implementation of changes and recommendations.

* See page ii for a list of protected classes.

E. PREDATORY LENDING

As with the *ERASE Racism's* 2005 Fair Housing Report, this report does not include an in-depth section on predatory lending. The rationale for this is based on the complexity and breadth of information required to adequately address predatory lending, which merits its own study. The reader should note, however, that predatory lending is illegal under the federal Fair Housing Act, the New York State Human Rights Law and both Nassau and Suffolk fair housing laws.

The nationwide practice of predatory lending, from large financial institutions to small financiers, are a part of the mortgage foreclosure disaster that has been in the news since 2006. The intense instability in financial markets worldwide and the near collapse of a long revered American financial institution on Wall Street in early 2008 are only part of the story. Millions of Americans face foreclosure and possible homelessness. Some Americans were railroaded into subprime loans because they were members of a protected class, even though they had credit that should have qualified them for a prime rate loan. The vast majority of those taken advantage of were people of color, the elderly and single women with children. It is essential that people facing foreclosure due to allegedly fraudulent or unaffordable mortgages have a sound understanding of predatory lending to ensure that they get help if they believe they were victims. Due to the vast number of foreclosure actions occurring across the nation and the urgent need for public education, *ERASE Racism* has included the following synopsis of the problems surrounding high cost loans and predatory lending.

PREDATORY LENDING is illegal under the fair housing laws. How can you identify a predatory loan? The National Community Reinvestment Coalition (NCRC) defines a predatory loan as "an unsuitable loan designed to exploit vulnerable and unsophisticated borrowers. Predatory Loans are a subset of subprime and non-traditional prime loans."⁸⁰ A predatory loan may:

- 1) charge more in interest and fees than is required to cover the added risk of lending to borrowers with credit imperfections;
- 2) contain abusive terms and conditions that trap borrowers and lead to increased indebtedness;
- 3) not take into account the borrower's ability to repay the loan; and
- 4) violate fair lending laws targeting women, minorities and communities of color.⁸¹

Predatory lending occurs when a lending institution, mortgage broker or real estate professional steers an individual towards a subprime (high cost) loan when the borrower qualifies for a prime rate loan because of their race or membership in another protected class. The most frequent targets of this illegal practice are African-Americans, Latinos, other people of color, and the elderly. Predatory lending occurs in all forms of lending including reverse mortgages and refinancing.

SUBPRIME LOANS are legal and offer individuals with less than stellar credit the opportunity to purchase a home when they do not qualify for a prime rate loan through a traditional lender. A subprime loan has a much higher rate of interest and is therefore much more expensive than a prime rate loan. They often contain oppressive terms that sink borrowers into deeper debt if they are late on a payment, and exorbitant pre-payment penalties if they try to refinance into a cheaper loan or pay off the entire debit early. A common theme among subprime loans is a low "teaser" interest rate that explodes after the initial period and usually at least doubles the original monthly payment amount. Most borrowers cannot afford the adjusted rates and should have never qualified for the loan. The result is many borrowers lose their homes to foreclosure.

A plethora of articles have appeared in the national news reporting the devastating affects of predatory lending on homeownership, home equity building, rates of foreclosures and the threat of destabilization of the U.S. financial markets by the collapse of high-risk exotic loans.⁸² In August 2007, the destabilization of the subprime mortgage industry in the U.S. had a

significant negative affect on financial markets in Europe, Australia and Japan, virtually eliminating confidence in some hedge funds and other stock.⁸³ Congress and some state legislatures are debating passing measures to protect families from foreclosures and to stabilize financial markets.⁸⁴ Senator Charles Schumer stated that with the soaring foreclosure rate due to subprime lending on Long Island, 8,378 families in Nassau and 10,476 in Suffolk will be at risk of losing their homes by the end of 2008.⁸⁵

The United States Congress vigorously debated the kind of relief that is required to save homeowners and if Congress should act to aid homeowners who face foreclosure. As a result, Congress passed bill HR 3221, the Housing and Economic Recovery Act of 2008, that was signed into law by President Bush on July 30, 2008.

The new law creates a housing trust fund, establishes a single regulator to oversee the embattled Government Sponsored Enterprises Freddie Mac and Fannie Mae, creates a new refinancing program within the Federal Housing Administration (FHA) to help homeowners faced with foreclosure and creates an Administration-proposed plan to aid the financially distressed Freddie Mac and Fannie Mae.⁸⁶

The section of the bill that deals directly with aiding the actual homeowners has been criticized as too little too late. The National Community Reinvestment Coalition (NCRC) stated that the new law “will likely have little effect on the foreclosure crisis gripping the financial markets and economy.”⁸⁷ One concern is that this program does not take effect until October 1, 2008 and it will take some time for the Federal Housing Administration (FHA) to get the new program up and running. It is unlikely that the program will function fully until some time in 2009.⁸⁸ The NCRC estimates that “at best 400,000 families will be assisted with the new legislation. While that is a welcome measure, it will not have a pervasive impact on the economy or on lenders portfolios, considering that as many as 2.5 million households will experience foreclosure this year alone.”⁸⁹

The Center for Responsible Lending (CRL) stated in its report “*Losing Ground: Foreclosures in the Subprime Market*

and Their Cost to Homeowners” issued in December 2006: ... [f]oreclosure rates will increase significantly in many markets as housing appreciation slows or reverses. As a result, we project that 2.2 million borrowers [nationwide] will lose their homes and up to \$164 billion of wealth in the process ... many of the features of typical subprime loans substantially increase the risk of foreclosures, regardless of the borrower’s credit history.⁹⁰

The African-American community, followed by the Latino community, receives a disproportionate share of subprime loans regardless of income and creditworthiness. These populations will bear the brunt of subprime foreclosures on Long Island. NCRC published in its July 2007 report “*Income is No Shield Against Racial Differences in Lending*” that African-Americans of all income levels were twice as likely or more than twice as likely to receive high-cost loans as whites in 171 metropolitan statistical areas (MSAs) during 2005.⁹¹

NCRC published the following statistics for the Nassau-Suffolk County area, based on the 2005 mortgage data available, for all members of each community, for low to moderate income (LMI) members, and for middle to upper income (MUI) members within each community⁹²:

	All	LMI	MUI
% of High-Cost Loans to African-Americans:	47.5%	40.9%	52.4%
% of High-Cost Loans to Latinos:	44.1%	33.6%	49.1%
% of High-Cost Loans to Whites:	22.5%	21.5%	23.9%

NCRC’s study strongly supports the fact that African-Americans on Long Island are more that twice as a likely to receive a subprime loan. This directly affects the ability of African-American families to build individual wealth. A subprime loan usually costs the borrower between \$50,000 and \$100,000 more than a prime rate mortgage over 30 years. This can directly affect whether a family can afford to send a child to college.⁹³

In March 2008, the Empire Justice Center released its report *“Curbing the Mortgage Meltdown: the Impact of Foreclosures on New York’s Economy and on Upstate and Long Island Communities.”* The report focused on affects of foreclosures on the State as a whole as well as on an individual county level. The information that follows about Long Island is derived from that report.

The statistics derived from the data supplied to the Empire Justice Center, from the Federal Reserve Bank, are a great cause for concern for Nassau and Suffolk County. Nassau and Suffolk County together contain:

- 28% of all subprime loans issued in New York State;
- 33% of all subprime loans in foreclosure in New York State;
- 30% of all subprime loans that are 30 day or more delinquent in New York State; and
- 30% of all subprime loans scheduled to reset before Oct. 1, 2009.⁹⁴

Nassau and Suffolk County, when ranked separately compared to all counties in New York State, rate as follows:

- *Subprime foreclosures*; Suffolk County takes first place (2,878) and Nassau County is number four (1,649).
- *Subprime loans 30 or more days delinquent*; Suffolk County takes first place (5,177) and Nassau County third place (3,232).
- *Subprime loans scheduled to reset before Oct. 1, 2009*; Suffolk County takes first place (5,130) and Nassau County third place (3,948).⁹⁵

The affects of foreclosures on Long Island will likely be greater than in most other counties in New

York due to the disproportionate number of houses in jeopardy on Long Island. Wells Fargo has compiled a list identifying hundreds of counties across the nation as “distressed” or “severely distressed.” Suffolk and Nassau Counties are the only two counties in New York State that appear on the distressed list.⁹⁶ This means that Long Island borrowers looking to qualify for a home-ownership mortgage will be required to have next to perfect good credit and larger down payments.

The affects of foreclosure, however, go far beyond homeowners losing their houses and tighter credit requirements. Negative repercussions will be felt by all New Yorkers. The Empire Justice Center states that if foreclosures are not curtailed, by Oct. 2009:

- 125,000 homes in New York State alone will go into foreclosure, which will result in a \$65 billion tax base decline – this will likely impact most public services, and State and local government budgets.
- 3.5 million neighborhoods in New York State will be affected by a drop in property values; more than one foreclosure in a neighborhood results in an average decline of \$18,000 in property values in the immediate neighborhood.⁹⁷
- New York State will lose \$760 million in property, transfer and sales tax revenue in 2008.
- New York State will lose nearly \$13 billion in gross metropolitan product in 2008.⁹⁸

Furthermore, seven out of ten of the areas with the highest foreclosure rates and delinquencies of 30 days or more, for all of New York State, are in Suffolk and Nassau County:⁹⁹

Number Ranked in New York State For Most Affected by Mortgage Crisis	Town/City/Village	County	Percent of Homes in Foreclosure or Over 30 days Delinquent	Total Number of Subprime Loans in Town/City/Village
1	Wyandanch	Suffolk County	43.3%	out of 581
2	Mastic Beach	Suffolk County	43%	out of 532
3	Ridge	Suffolk County	40.8%	out of 201
5	Farmingville	Suffolk County	39.4%	out of 287
8	Mastic	Suffolk County	38.4%	out of 557
9	Shirley	Suffolk County	38.4%	out of 813
10	Freeport	Nassau County	38.1%	out of 1,094

When race is taken into consideration the affects of the mortgage crisis created by subprime loans and unscrupulous lenders is even more devastating. African-Americans in Suffolk County are three times more likely than white homeowners to live in the most impacted jurisdictions.¹⁰⁰ In Nassau County, African-Americans are four times more likely than white homeowners to live in areas most impacted by foreclosures.¹⁰¹ African-American homeowners will most likely bear the brunt of losses in home equity and losses in tax bases for neighborhoods, which can result in the reduction of tax-based services like public school education, and the decline in growth of personal wealth creation.

The three most impacted neighborhoods in Nassau County and Suffolk County contain the largest concentrations of African-American homeowners.

NASSAU COUNTY

The top three communities in Nassau County with the highest rates of foreclosure and at-risk housing:

- **HEMPSTEAD:** 475 homes in foreclosure – 18% of Nassau County’s African-American homeowners reside here.
- **FREEPORT:** 417 homes in foreclosure – 12% of Nassau County’s African-American homeowners reside here.
- **ELMONT:** 399 homes in foreclosure – 12% of Nassau County’s African-American homeowners reside here.¹⁰²

Further analysis of at-risk homes by zip code compared with racial demographics supports the conclusion that African-American homeowners live in concentrated areas, created through segregation, and will be most heavily impacted by foreclosure in Nassau County compared to white homeowners.

- 60% of at-risk housing is concentrated in 10 out of 67 zip codes county-wide.
- 85% of Nassau County’s African-American homeowners live in these 10 zip codes.
- 20% of all white homeowners live in these 10 zip codes.
- 42% of Nassau County African-American homeowners live in the three neighborhoods most impacted by foreclosures.¹⁰³

SUFFOLK COUNTY

The top three communities in Suffolk County with the highest rates of foreclosure and at-risk housing:

- **AMITYVILLE:** 623 homes in foreclosure – 11% of Suffolk County’s African-American homeowners reside here.
- **BRENTWOOD:** 526 homes in foreclosure – 8% of Suffolk County’s African-American homeowners reside here.
- **CENTRAL ISLIP:** 433 homes in foreclosure – 11% of Suffolk County’s African-American homeowners reside here.¹⁰⁴

Further analysis of at-risk homes by zip code compared with racial demographics supports the conclusion that African-American homeowners live in concentrated areas, created through segregation, and will be most heavily impacted by foreclosure in Suffolk County compared to white homeowners.

- 42% of at-risk housing is concentrated in 10 out of 102 zip codes county-wide.
- 66% of Suffolk County’s African-American homeowners live in these 10 zip codes.
- 20% of all white homeowners live in these 10 zip codes.¹⁰⁵

When coupled with predatory lending practices, subprime loans have a catastrophic affect on the rate at which African-American families amass personal wealth when compared to similarly situated white families. As a result, the borrower receives a much more expensive loan for which s/he qualifies, with oppressive terms. This has a direct affect on borrowers’ ability to build equity in their home and create personal wealth.

Predatory lending can be reported to any of the private or public fair housing enforcement agencies. On Long Island, Long Island Housing Services (LIHS) has implemented an initiative focused on predatory lending and has brought cases in court for clients. The New York State Division of Human Rights (NYS DHR) has also started to focus on predatory lending since the change in administration in January 2007. The New York State Department of Banking (NYSDB) commenced a public campaign called HALT

(Halt Abusive Lending Transactions) at the beginning of 2007 to reach out to housing advocates, agencies and private individuals who are affected by subprime mortgage loans and are at risk of foreclosure. Part of the education offered addresses predatory lending.¹⁰⁶ NYSDB reported that it is working with NYSDHR when predatory lending is

suspected or uncovered. It is clear that Congress and state legislatures must enact strong anti-predatory and fair lending legislation and federal and state regulatory agencies must vigorously enforce the law against perpetrators. Without proper enforcement against predatory lending both home-owners and investors remain at risk.

**F. NASSAU & SUFFOLK GENERAL STATISTICS AND INFORMATION
FROM NYSDHR DATA**

Below is a chart with some general case information for all fair housing complaints, incorporating all protected classes filed with the NYSDHR between 2000 and 2007 in Nassau and Suffolk Counties.¹⁰⁷ The difference between case and basis is as follows: the “case” number represents the actual number of cases, while the “basis” represents the number of complaints filed for protected

classes. For example, one case could involve more than one protected class. An African-American mother could file a complaint based on being discriminated against because of her race and for having children (familial status). In this example, there would be one case but two bases for the discrimination statistics, hence the total basis number will always be higher than the total case number.

DATA BASED ON NYSDHR 2000 TO 2006 & 2007 FOR ALL PROTECTED CLASSES CONT.

Report Name	Nassau 2000/2006	Nassau 2007	Suffolk 2000/2006	Suffolk 2007
Number of initial inquiries				
Case	257	42	256	37
Basis	406	73	401	55
Number of complaints filed				
Case	237	39	234	35
Basis	381	70	369	51
Filed without an advocate				
Case	188	36	177	32
Basis	303	64	296	48
Filed with help of advocate				
Case	49	3	57	3
Basis	78	6	73	3
Number of complaints investigated				
Case	236	40	241	31
Basis	392	70	385	49
Number of Probable Cause findings				
Case	27	10	24	7
Basis	41	15	30	11
Plaintiff to file in Court				
Case	6	1	4	4
Basis	10	3	6	8
Number of No Probable Cause findings				
Case	131	16	131	14
Basis	244	32	234	27

CONT. ON NEXT PAGE

DATA BASED ON NYSDHR 2000 TO 2006 & 2007 FOR ALL PROTECTED CLASSES CONT.

Report Name	Nassau 2000/2006	Nassau 2007	Suffolk 2000/2006	Suffolk 2007
Number of Administrative closures				
A. Failure to cooperate	1	1	2	0
Case	2	1	3	0
Basis				
B. Unable to locate complainant				
Case	1	1	4	0
Basis	3	2	4	0
C. Unable to locate respondent				
Case	0	0	0	0
Basis	0	0	0	0
Predetermination Conciliation				
Case	19	2	23	2
Basis	24	2	29	2
Complaints withdrawn w/benefits				
Case	35	4	22	2
Basis	52	7	34	3
Withdrawn w/o benefits				
Case	11	1	13	4
Basis	15	1	23	4
Lack of Jurisdiction				
Case	4	3	11	1
Basis	4	5	16	1
Untimely Determination				
Case	2	1	0	0
Basis	2	2	0	0
Cases went before Administrative Law Judge				
Case	19	10	23	7
Basis	26	15	27	11
Cases settled pre-hearing				
Case	2	not provided	0	not provided
Basis	2	not provided	0	not provided

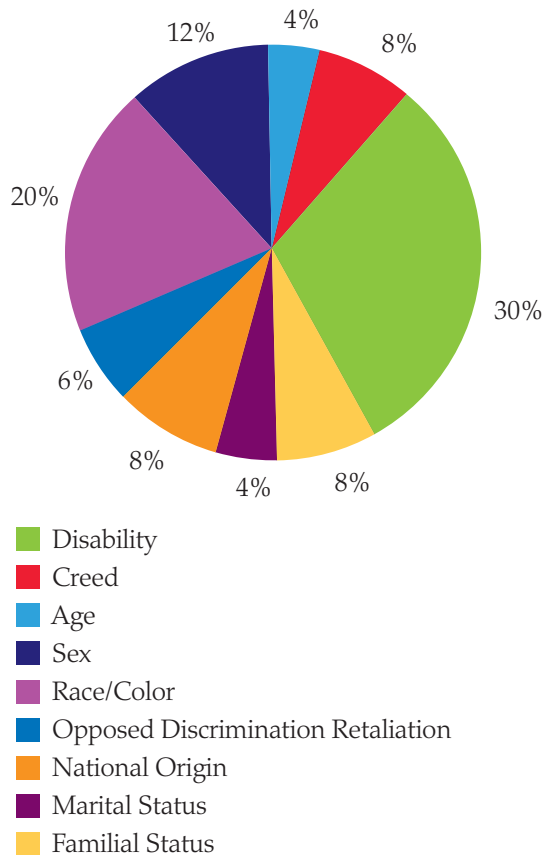
DATA BASED ON NYSDHR 2000 TO 2006 & 2007 FOR ALL PROTECTED CLASSES CONT.

Report Name	Nassau 2000/2006	Nassau 2007	Suffolk 2000/2006	Suffolk 2007
Complaints resulted in Order After Stipulation				
Case	19	1	13	1
Basis	19	1	18	1
Complaints filed against licensed realtors and realty Agencies/Brokerages				
Case	170	29	166	27
Basis	276	54	267	39

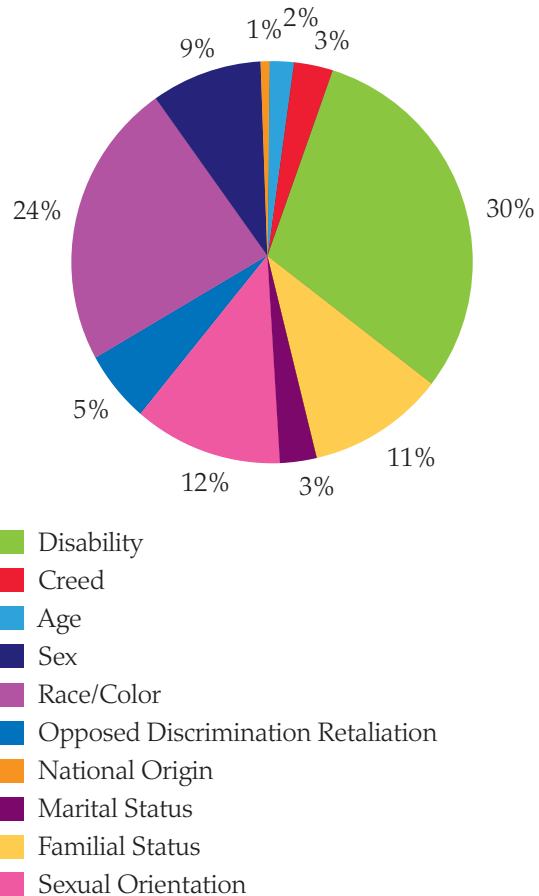
DATA

The first four charts illustrate the percent of cases in Nassau and Suffolk Counties by protected class received by NYSDHR.¹⁰⁸

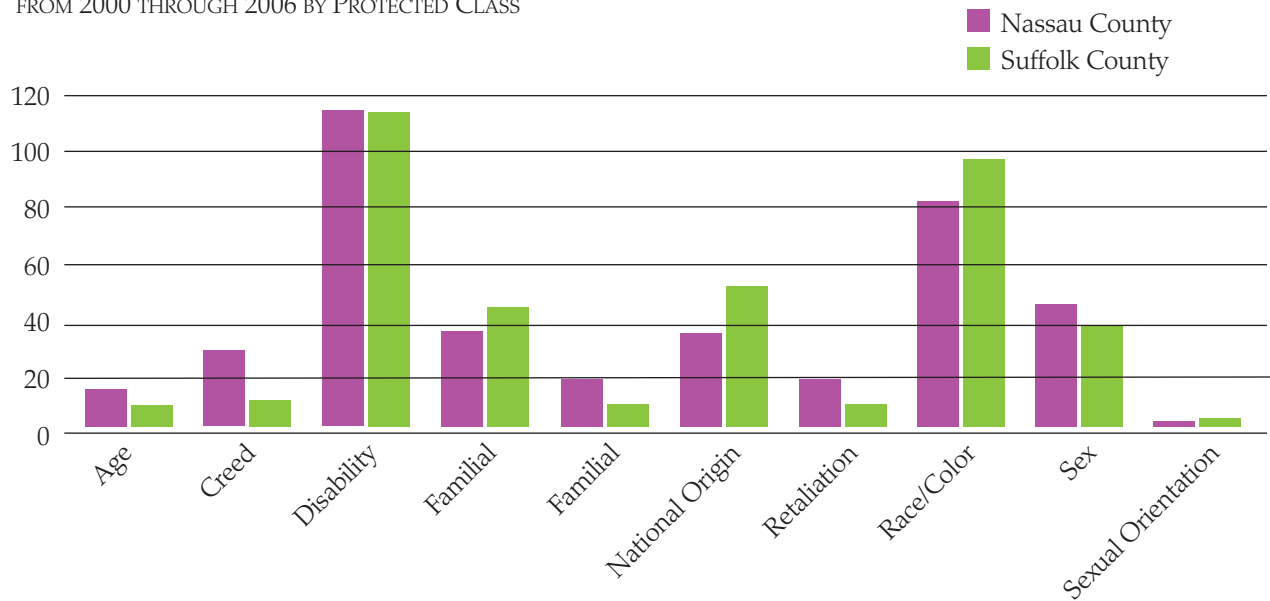
NASSAU COUNTY GENERAL STATISTICS REGARDING INQUIRIES BY PROTECTED CATEGORY
from 2000 to 2007



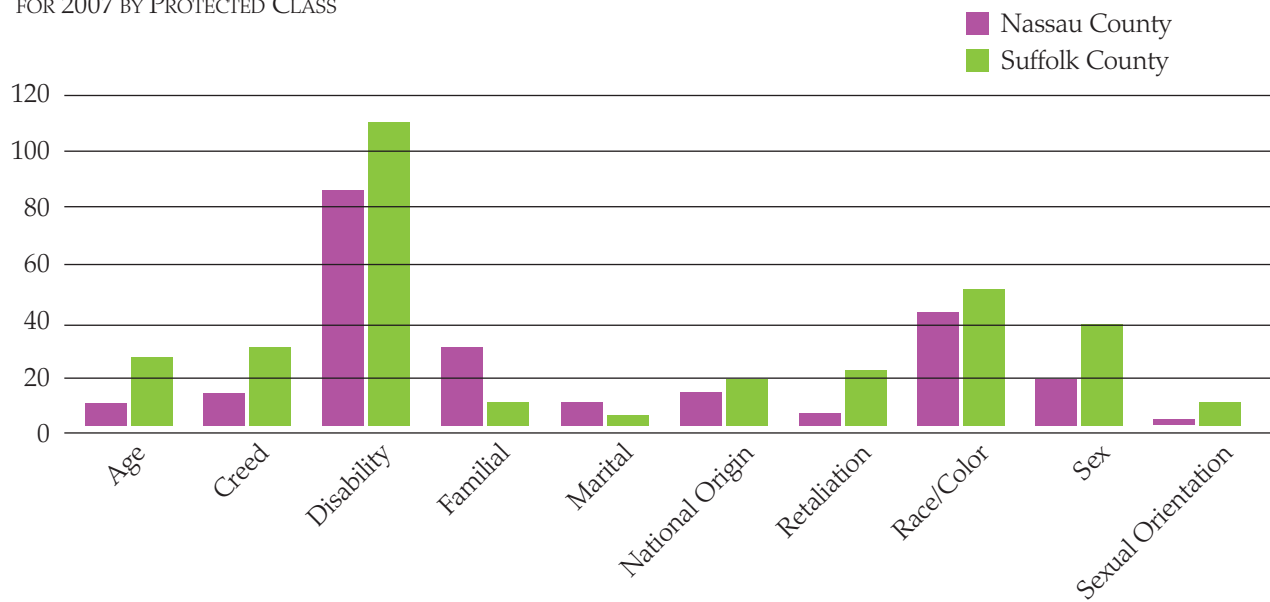
SUFFOLK COUNTY GENERAL STATISTICS REGARDING INQUIRIES BY PROTECTED CATEGORY
from 2000 to 2007



NUMBER OF NASSAU AND SUFFOLK COUNTY INQUIRIES
FROM 2000 THROUGH 2006 BY PROTECTED CLASS



NUMBER OF NASSAU AND SUFFOLK COUNTY INQUIRIES
FOR 2007 BY PROTECTED CLASS



The main observations to be derived from these charts are that levels of discrimination by protected class are very similar in both counties and that race and disability are the most common basis of complaints. Many of the disability complaints involve service animals, accessibility and assigned parking. There were very few housing complaints filed regarding sexual orientation or age with the NYSDHR that generated from Long Island.¹⁰⁹

The 2007 statistics for Nassau and Suffolk Counties show that the protected classes affected by perceived housing discrimination have not varied significantly when compared to the 2000 to 2006 statistics. It is worth mentioning that the largest increases in inquiries by protected class for Nassau County were based on disability, and creed, followed by age. The largest decreases for Nassau County were familial status and race. For Suffolk County, the biggest increases were for disability and familial status and the largest decreases were for race and national origin.

One significant observation is that 2007 is the first year when there were no inquiries about housing discrimination by Latinos on Long Island according to the NYSDHR statistics. The decrease in inquiries for race and national origin for both Nassau and Suffolk County may be explained by the hostile environment towards Latino individuals and families that has been frequently reported locally and nationally. This hostility intensified with the documented ICE raids in Hempstead by the federal immigration service and similar practices and

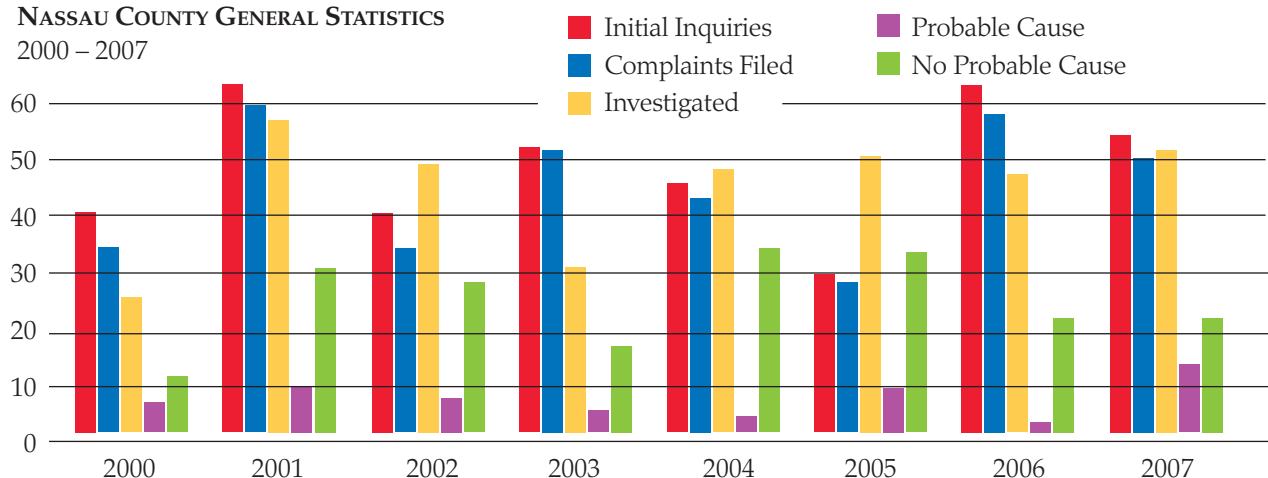
policies conducted in Suffolk County. Anecdotally, the Housing Project has been informed that many Latino families are afraid to come forward right now because of the strong anti-Latino sentiment on Long Island.

Completed Cases:

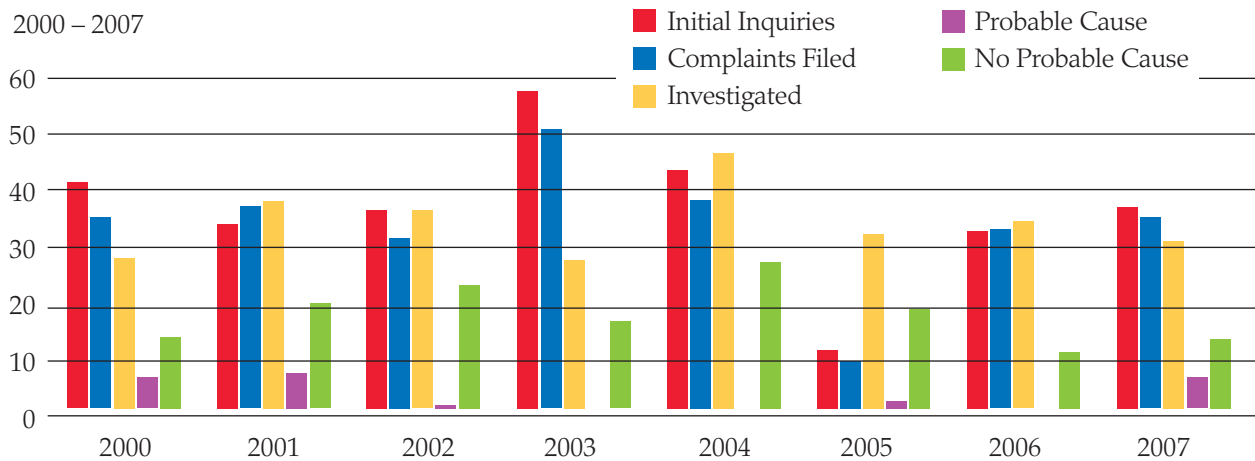
- Nassau and Suffolk County have a similar number of fair housing complaints filed annually with NYSDHR and have similar outcomes.
- NYSDHR has a very low rate of probable cause findings, which is a cause for concern considering review of NYSDHR's files revealed a lack of thorough investigations and questionable reasoning.
- Serious delays in resolving complaints and lack of documented attempts to conciliate still exist at NYSDHR.
- NYSDHR judgment in applying the fair housing laws to complaints at the hearing level has been called into question.
- The levels of discrimination by protected class are very similar in both Nassau and Suffolk County with race and disability being the most common targets for housing discrimination.
- The number of inquiries made, complaints filed and complaints investigated are very similar in Nassau and Suffolk County.
- The outcomes of complaints are almost identical in Nassau and Suffolk County.

The following charts illustrate the number of cases completed at each stage of the complaint process and the determinations.¹¹⁰

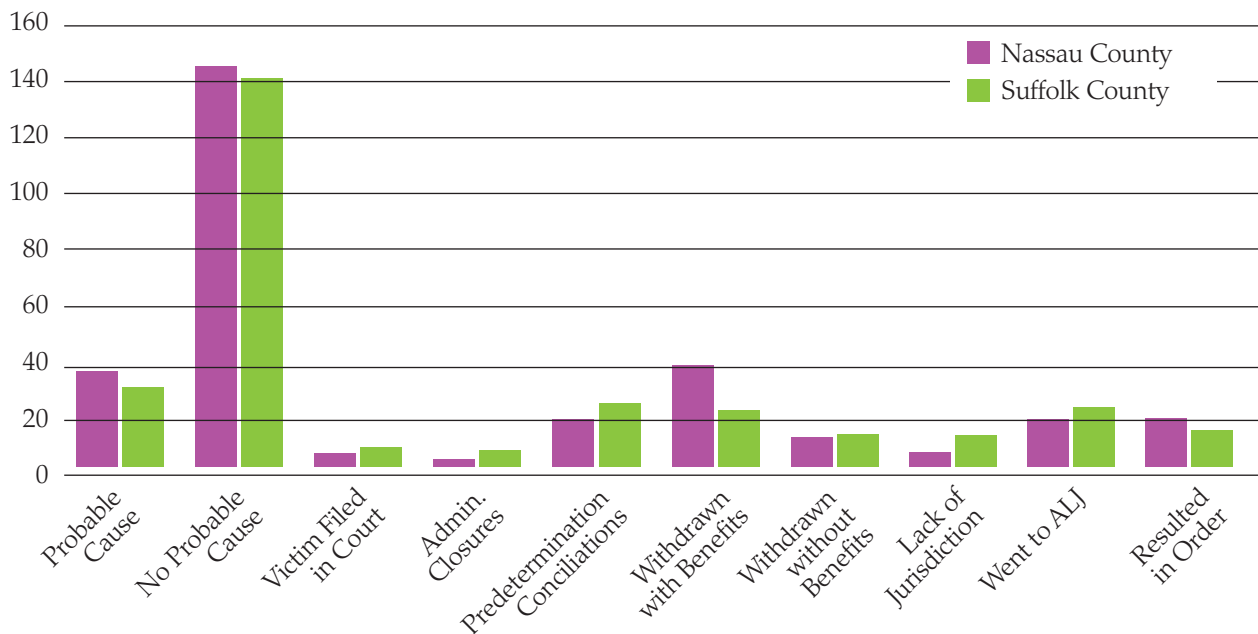
NASSAU COUNTY GENERAL STATISTICS
2000 – 2007



SUFFOLK COUNTY GENERAL STATISTICS
2000 – 2007



NASSAU AND SUFFOLK COUNTY CASE OUTCOMES
2000 – 2007



The charts illustrate that the number of inquiries made, complaints filed and complaints investigated do not fluctuate greatly between cases in Nassau and Suffolk Counties.¹¹¹ The determinations of probable cause and no probable cause are very similar. From 2000 to 2006, there were less than 10 probable cause findings per year in either County. Not until 2007 were there more than a handful of probable cause findings found for Long Island cases when Nassau County cases generated exactly 10 probable cause

finds. No probable cause findings significantly outweighed any other form of case closure. Again, this is a concern of the Housing Project since NYSDHR's quality of investigations and reasoning behind determinations has been called into question. *ERASE Racism* will continue to monitor the outcomes of cases and reasoning behind determinations to the best of its ability through documentation obtained from NYSDHR.

G. THE NUMBER AND TYPE OF FAIR HOUSING ALLEGATIONS LIHS RECEIVED

2005 THROUGH 2007

2005

Protected Class	Rental	Sales	Lending/ Appraisal	Insurance	Harassment	Other**	Total
Race/Color	5	9	3	0	1	0	18
Disability	8	1	2	1	0	19	31
Familial Status	9	0	0	0	0	4	13
Sex	0	0	0	0	0	0	0
National Origin	1	4	4	0	1	0	10
Religion	0	0	0	0	0	0	0
Other*	2	2	0	0	0	0	4
Total	25	16	9	1	2	23	76

2006

Protected Class	Rental	Sales	Lending/ Appraisal	Preditory Lending	Insurance	Harassment	Other**	Total
Race/Color	13	3	1	10	0	1	1	29
Disability	44	3	1	0	0	3	0	51
Familial Status	4	0	0	0	0	0	16	20
Sex	1	0	0	0	0	0	0	1
National Origin	4	1	1	7	0	0	1	14
Religion	0	0	0	0	0	1	0	1
Other*	3	0	0	0	0	1	2	6
Total	69	7	3	17	0	6	20	122

2007

Protected Class	Rental	Sales	Lending/ Appraisal	Preditory Lending	Insurance	Harassment	Other**	Total
Race/Color	15	1	1	0	0	0	2	19
Disability	32	1	0	1	0	2	1	37
Familial Status	6	0	0	0	0	0	2	8
Sex	5	3	0	0	0	0	0	8
National Origin	5	1	16	0	12	3	3	40
Religion	1	4	2	0	0	0	0	7
Other*	3	0	1	0	0	0	0	4
Total	67	10	20	1	12	5	8	123

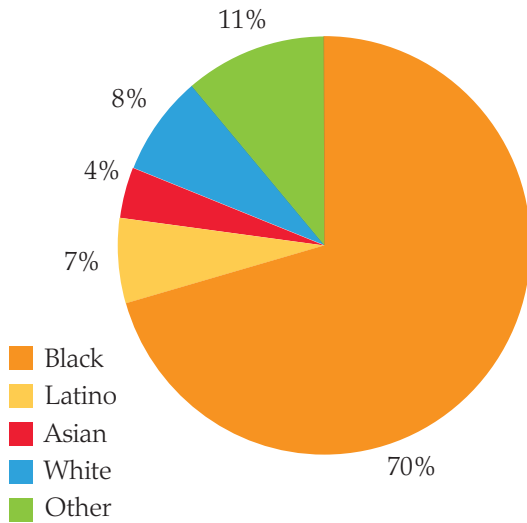
* Other protected classes include marital status, sexual orientation, age and source of income.

** Other forms of discrimination included retaliation and advertising.

H. RACE-BASED STATISTICS FOR LONG ISLAND FROM NYSDHR 1999 TO 2007

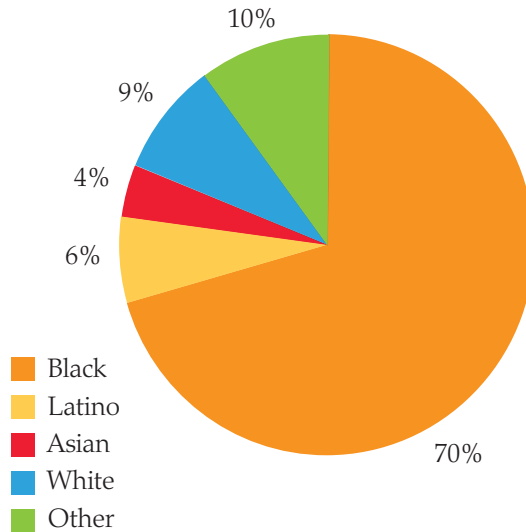
The vast majority of race-based fair housing inquiries on Long Island were by African-Americans, at 70%. The next largest identifiable group is white, at 8%, followed by 7% Latino, 4% Asian and 11% "Other."¹¹²

NUMBER OF INITIAL RACE DISCRIMINATION INQUIRIES MADE TO NYSDHR
from 1999 to 2007

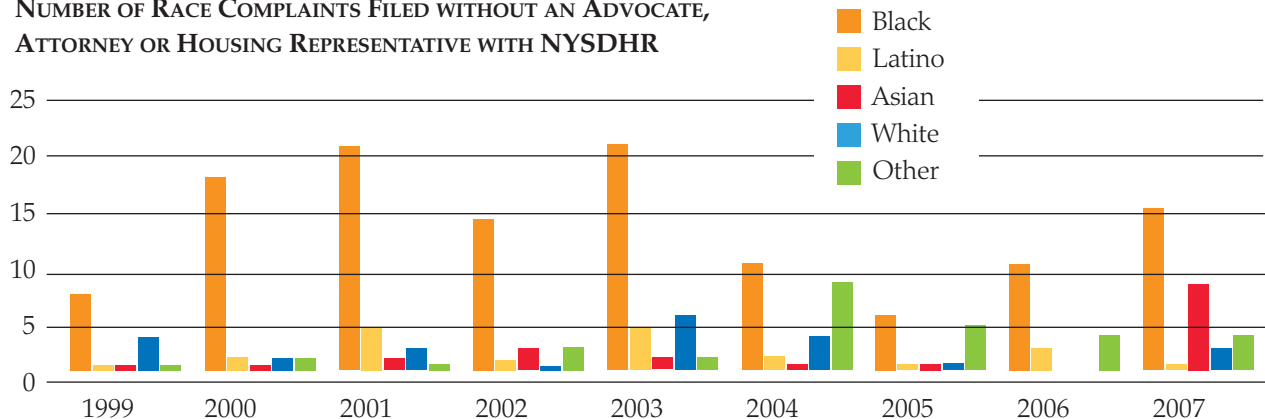


The number of inquiries by race correlates directly to the number of complaints filed. African-Americans filed 70% of the fair housing complaints on Long Island. The next largest identifiable group is white, at 9%, followed by Latino, at 6%, and Asian at 4%, with 10% filed as "Other."¹¹³

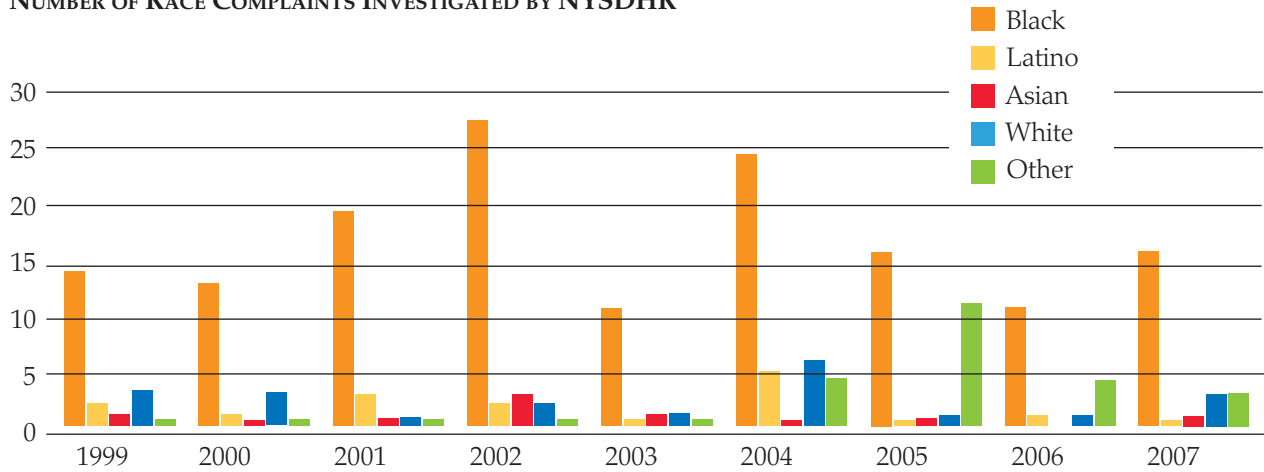
NUMBER OF RACE DISCRIMINATION COMPLAINTS FILED WITH NYSDHR
from 1999 to 2007



NUMBER OF RACE COMPLAINTS FILED WITHOUT AN ADVOCATE, ATTORNEY OR HOUSING REPRESENTATIVE WITH NYSDHR



NUMBER OF RACE COMPLAINTS INVESTIGATED BY NYSDHR

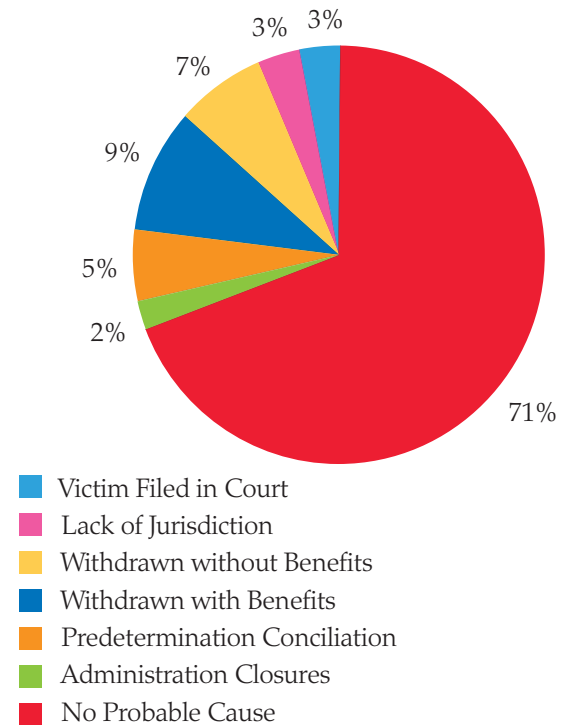


The majority of African-American complainants consistently do not have the help of a fair housing advocate, attorney or housing representative.¹¹⁴ This emphasizes the need for targeted fair housing education to the African-American community on Long Island. Having an advocate helps a victim navigate through the fair housing enforcement system and helps reduce some of the stress related to dealing with large bureaucracies.

The majority of cases based on race investigated by NYSDHR involve African-Americans on Long Island.¹¹⁵ This is clearly because the majority of complaints are filed by African-Americans.¹¹⁶ Therefore, the quality of investigations by the NYSDHR on Long Island has the largest impact on the African-American community when compared with other racial groups.

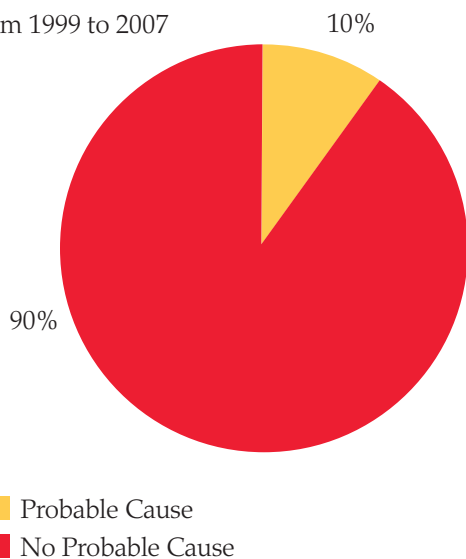
The majority of race complaints filed with NYSDHR are closed due to a no probable cause finding at a rate of 71%. This significantly outweighs the number of cases closed by conciliation; 5% for predetermination conciliations and 9% for withdrawal of case with benefits (usually a form of private settlement).¹¹⁷ With the GAO's report stating that 90% of complainants offered conciliation took it, the number for conciliation should be higher.¹¹⁸ The Housing Project will seek to monitor how frequently NYSDHR offers conciliation to complainants and respondents over time and see how it corresponds to closure rates.

CASE CLOSURES FOR RACE DISCRIMINATION COMPLAINTS FILED WITH NYSDHR from 1999 to 2007

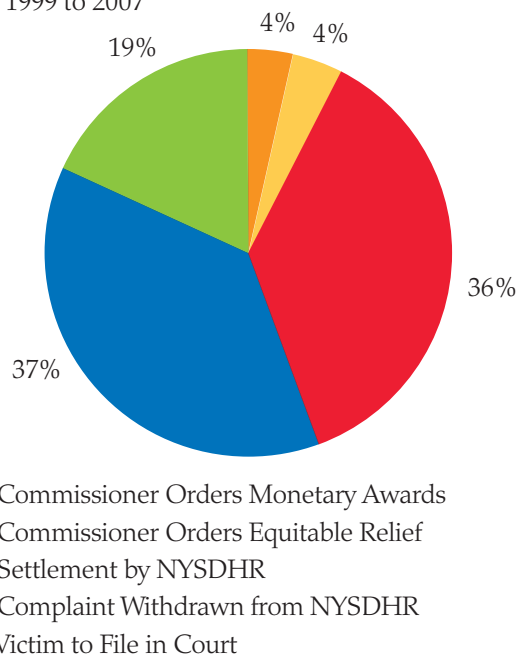


The number of no probable cause findings regarding race cases by NYSDHR is a cause for alarm. Only 10% of the cases were found to have probable cause.¹¹⁹ Based on the findings of the New York State Comptroller and *ERASE Racism's* review of NYSDHR's files discussed above, there is evidence that the outcome of cases is heavily affected by decisions by the regional directors and ALJs that appear to be contrary to the law and reflect superficial, over-lengthy investigations.

NUMBER OF PROBABLE CAUSE FINDINGS FOR RACE DISCRIMINATION COMPLAINTS FILED WITH NYSDHR
from 1999 to 2007



OUTCOMES OF CASES WHERE NYSDHR FOUND PROBABLE CAUSE IN RACE DISCRIMINATION COMPLAINTS
from 1999 to 2007



In the cases where NYSDHR found probable cause between 1999 and 2005, only 8% went to an ALJ and resulted in an Order by the Commissioner. There was an even distribution between monetary relief and equitable relief at a rate of 4% for each kind of relief in the Commissioner's Orders.¹²⁰

I. RESULTS OF *ERASE RACISM'S* 2007 SURVEY OF MUNICIPAL PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENTS

In the early fall of 2007, *ERASE Racism* sent the Community Development and Planning Survey it developed to 116 towns, cities and villages on Long Island. *ERASE Racism* received a minimal response so it re-contacted the municipalities by fax and phone. As a result, only 28% of the municipalities chose to respond to the survey: 5 out of 12 towns; 24 out of 101 villages and one of the 2 cities.¹²¹ The lack of response from the municipalities mirrors *ERASE Racism's* experience when it sent its first Community Development Survey in September, 2005.

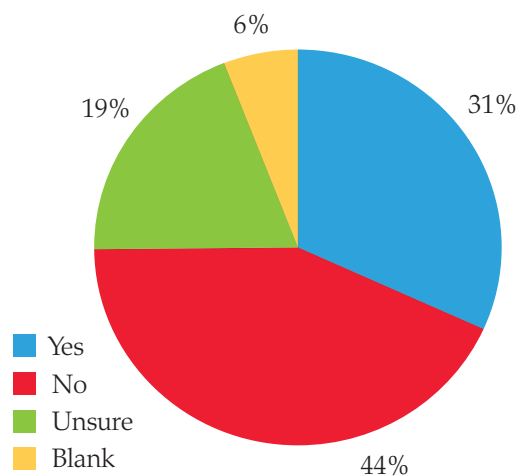
Out of the 30 returned surveys *ERASE Racism* received, 16 of the municipalities received federal funding through the Department of Housing and Urban Development for any combination of years from 2002 to 2007. Examples of HUD federal funding programs include Community Development Block Grants (CDBG), HOME Program (homeownership programs/loans for low income people), Emergency Shelter Grants (ESG) and Housing Opportunities for People with AIDS (HOPWA). All of those municipalities

receiving federal funds sixteen were granted Community Development Block Grants (CDBG) and four received HOME funds.¹²²

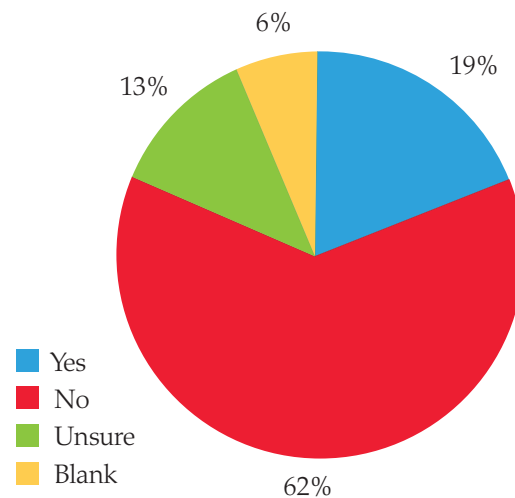
When the municipalities that receive federal funds were asked if they had certified that they were "Affirmatively Furthering Fair Housing" – a requirement to receive the federal funding – only five of the sixteen confirmed that they had fulfilled this requirement.

Similarly only three out of sixteen of the municipalities reported that they conducted an Analysis of Impediments to Fair Housing. This is another requirement to receive federal funding through HUD. The AI identifies areas of concentrated poverty, racial segregation, residential isolation for people with disabilities and other protected classes amongst other demographics. The AI is required to contain a plan to dissolve the identified barriers and take measurable steps toward creating integrated and sustainable communities within the municipality.

MUNICIPALITIES' RESPONSE TO AFFIRMATIVELY FURTHERING FAIR HOUSING CERTIFICATION REQUIREMENT



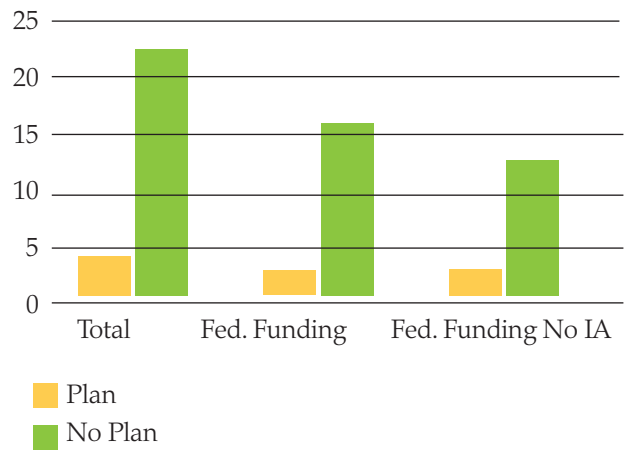
MUNICIPALITIES' RESPONSE TO CONDUCTING AN ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING



All of the responding municipalities that do not receive federal funding reported that they have never conducted a study of patterns of racial segregation in their communities. Such a study is essential to ensuring that the principals of racial equity for all community members exists and in sustaining an economically health community. Out of the thirteen municipalities that responded that they are receiving federal funding from HUD and are not conducting an AI, only one has done a study on patterns of racial segregation.

Overall four out of the thirty municipalities that responded have plans or policies to reduce racial segregation. Municipalities surveyed that do not receive federal funding from HUD uniformly report that they do not have plans or policies in place to reduce racial segregation.

COMPARISON OF SURVEY RESPONSES FROM ALL MUNICIPALITIES

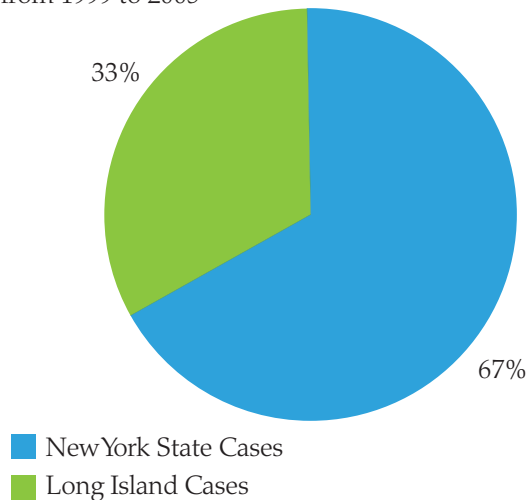


J. LONG ISLAND LITIGATION BY U.S. DEPARTMENT OF JUSTICE

A. DEPARTMENT OF JUSTICE (DOJ)

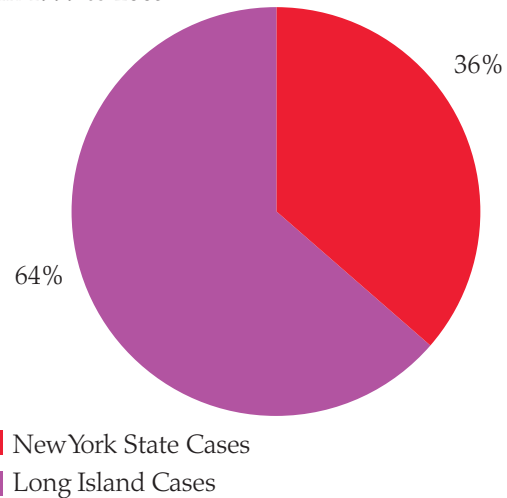
The following information was provided to *ERASE Racism* by the Department of Justice (DOJ) regarding the number of Long Island fair housing cases it prosecuted between 1999 and 2005. DOJ also provided comparison data for New York State. In addition, during this time period DOJ independently conducted twelve fair housing investigations in New York State. Three of the twelve investigations were in Suffolk County and none were in Nassau County. None of these investigations resulted in the filing of a lawsuit.¹²³ The information below represents cases that were initiated by outside agencies or victims and brought to DOJ to prosecute.

PERCENTAGE OF LONG ISLAND CASES PROSECUTED BY DOJ COMPARE TO THE REST OF NEW YORK STATE from 1999 to 2005



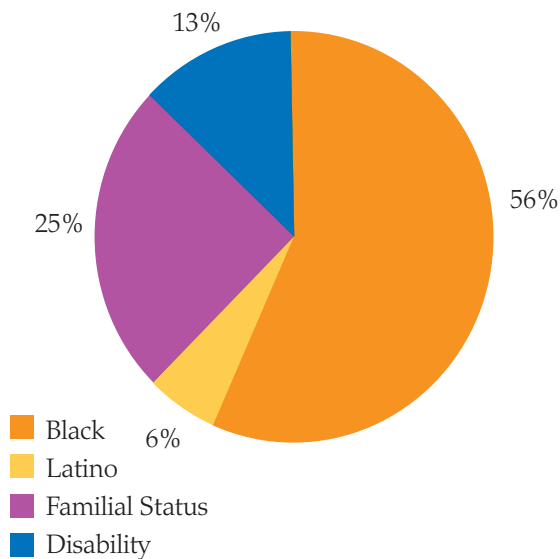
Long Island fair housing cases represented 33% of all the fair housing cases DOJ represented for the State of New York. This is a significant number considering the size and population of Long Island compared to the rest of the State of New York. NYS DHR also reported that the majority of the fair housing cases it received and investigated were from Long Island.¹²⁴

PERCENTAGE OF CASES PROSECUTED BY DOJ IN NASSAU & SUFFOLK COUNTIES from 1999 to 2005



When comparing Nassau to Suffolk County, DOJ prosecuted a significantly higher percentage of cases from Suffolk County. DOJ prosecuted six cases in Suffolk County where the victim elected that DOJ prosecute the case after HUD made a determination of reasonable cause and one case where prompt judicial action, such as a restraining order, was sought. In Nassau County, DOJ prosecuted three pattern and practice cases and one election case.¹²⁵

**LONG ISLAND CASES PROSECUTED BY DOJ
BY PROTECTED CLASS**
from 1999 to 2005



The majority of cases prosecuted by DOJ were on behalf of African-Americans. This is the overwhelming theme throughout all fair housing enforcement statistics for Long Island. African-Americans as a protected class represent 56% of the victims of discrimination, families with children are second at 25%, people with disabilities next at 13%, and then Latinos at 6%.¹²⁶

Consent Decrees represent the vast majority of outcomes for cases pursued by DOJ both on Long Island and in New York State.¹²⁷ A Consent Decree is an agreement that is entered with the court that all parties agree to. In Suffolk County, all of the cases resulted in a Consent Decree.¹²⁸ In Nassau County, all cases but one that resulted in a judgment were Consent Decrees. Nassau still has one pattern and practice case pending.¹²⁹

The most prevalent type of relief granted in cases prosecuted by DOJ were compensatory damages, which is the amount of money that will make the victim whole, placing the victim where s/he would be if the discrimination had not occurred.¹³⁰ For example, if

the victim lost housing because of discrimination, the cost of staying at a motel while seeking new housing would be a compensatory damage. Punitive damages are monetary damages that are meant to punish the perpetrator of the discrimination. Punitive damages are usually awarded when the defendant acted willfully with the full knowledge that what s/he was doing is illegal or when s/he is a repeat offender. Civil penalties do not go to the victim but to the government for purposes such as education about fair housing, etc. Civil penalties are viewed as damages that are put toward repairing the damage the defendant afflicted on the public. DOJ also reports that it obtained injunctive relief in all or virtually all of the cases that resulted in Consent Decrees.¹³¹ Injunctive relief is a court action commanding or preventing an action. For example, injunctive relief could include a restraining order that prevents the defendant from renting or selling a property.

The majority of fair housing cases brought by DOJ from Long Island and New York State are based on the victim electing to have DOJ represent him/her in federal court after HUD has determined reasonable cause exists to believe discrimination has occurred. The second most frequent type of case DOJ took was pattern and practice cases.¹³² These cases often wind up in court due to the complex nature and the level of public harm. Recidivism is a cause for stronger penalties, which are more likely to be meted out by a court since the true focus of the administrative enforcement system is supposed to be conciliation. DOJ also steps in when a HUD Order is violated by the defendant.¹³³ For example, if after a hearing before an ALJ, HUD issues an order for the defendant to pay the victim \$5,000 and the defendant fails to comply, DOJ will go before the federal court to have the order enforced against the defendant.

The majority of the monetary relief during this period came in the form of "Other Relief." It should be noted that this is because of one large award in a single

disability related pattern and practice case in Nassau County.¹³⁴ If that single case was removed, compensatory damages would represent the largest category of money damages. For this reason, the Housing Project expects that in future analysis, compensatory damages will be the largest category for monetary awards. No civil penalties were awarded for cases from Long Island and in only two cases during this time frame for the entire State of New York totaling \$5,500.¹³⁵ Punitive damages were awarded in one pattern and practice case in Nassau County totaling \$14,000 during this period.¹³⁶ No other case in New York State included

punitive damages as part of the relief – this translates to one in 33 cases.¹³⁷ The lack of punitive damages and civil penalties, along with relatively small compensatory damage awards, makes housing discrimination an affordable “cost of doing business” for many perpetrators. The Housing Project encourages the judiciary to send a message to violators of the fair housing law in the form of strong penalties that effectively act as a deterrent. We also encourage DOJ to negotiate tough penalties in the Consent Decrees they put forward for parties and the courts to consider.

K. REAL ESTATE PROFESSIONALS

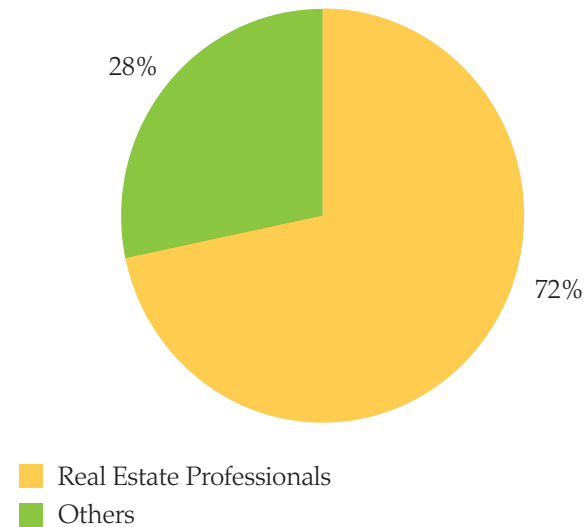
HUD, LIHS and the National Fair Housing Alliance (NFHA) joined forces and conducted some testing of Long Island real estate professionals. The testing resulted in two complaints filed against Julia Steven Realty for blatant steering of home buyers and renters based on race and anti-Semitism. NFHA's report states:

African-American homebuyers were marketed homes and schools in the very areas that whites were told to avoid. Equally disturbing, real estate agents made negative comments about Jews to both white and African-American homebuyers. Agents repeatedly discouraged non-Jewish white homebuyers from considering neighborhoods with significant Jewish populations ... In fact, one agent told a white homebuyer before they went to look at homes in the area, that the agent took the liberty of choosing houses for the homebuyer to see by school district. The agent said that she was not supposed to do that.¹³⁸

As a result of the testing, Long Island Housing Services and the NFHA filed two complaints with HUD. The complaints are still pending within HUD's administrative enforcement system.¹³⁹

The Housing Project repeatedly receives reports from individuals in the real estate business and private citizens regarding experiences with real estate professionals who blatantly ignore the fair housing laws and actually discuss the fact that they are violating the law. When such behavior is rampant, it is essential that strong deterrents are in place and that penalties do not amount solely to the cost of doing business. With such individuals, education about the laws is not the answer to altering their illegal behavior, as they are already aware of the laws. A useful educational component to accompany strong penalties could be a seminar on the impact of the illegal behavior on society and how it affects all communities.

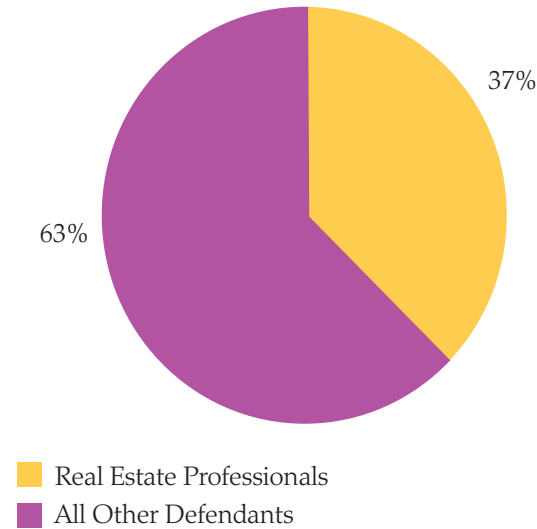
THE PERCENTAGE OF CASES FILED AGAINST REAL ESTATE PROFESSIONALS FOR ALL PROTECTED CLASSES ACROSS LONG ISLAND
from 2000 to 2007



The information received from NYSDHR supports the fact that real estate professionals remain the majority of respondents to fair housing complaints. Real estate professionals represent an overwhelmingly 72% of all respondents for all fair housing cases filed from Long Island.¹⁴⁰ The other 28% of respondents includes landlords, homeowner associations, co-op boards, property managers, financial institutions, neighbors, etc. More needs to be done to curb real estate professionals from violating the fair housing laws.

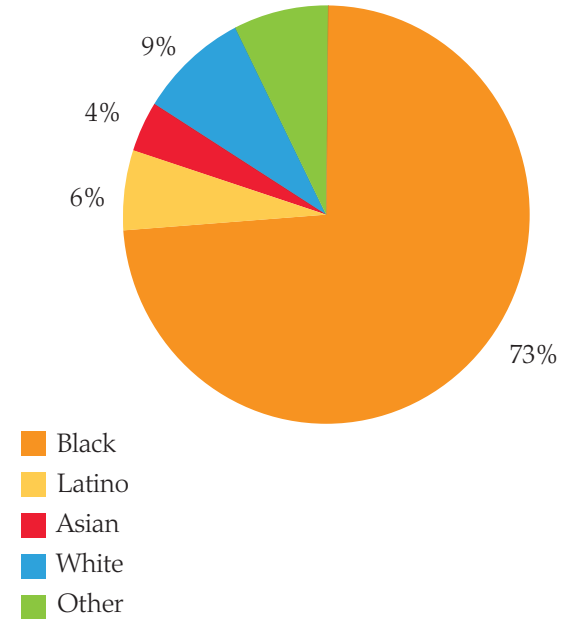
RACE-BASED COMPLAINTS AGAINST REAL ESTATE PROFESSIONALS

THE PERCENTAGE OF RACE DISCRIMINATION COMPLAINTS FILED AGAINST REAL ESTATE PROFESSIONALS WITH NYSDHR FROM 1999 TO 2007



When looking solely at cases that involve race on Long Island from 1999 to 2007, real estate professionals represented 37% of the respondents.¹⁴¹

BREAKDOWN OF RACE DISCRIMINATION COMPLAINTS FILED AGAINST REAL ESTATE PROFESSIONALS WITH NYSDHR FROM 1999 TO 2007



However, when real estate professionals discriminated based on race, the most frequent target was African-American individuals. The data received from NYSDHR based on race complaints filed from Long Island shows that real estate professionals were alleged to discriminate against African-Americans in 73% of all race-based complaints against real estate professionals.¹⁴² The data support the continuing theme that African-Americans are more likely to suffer from housing discrimination on Long Island than any other race.

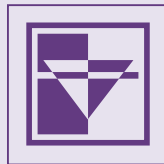
NOTES

1. 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).
2. ERASE Racism, *Long Island Fair Housing: A State of Inequity* (March 2005) pp.7-8; see also 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).
3. 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).
4. Shelley v. Kraemer, 334 US 1 (1948).
5. Title VIII of the Civil Rights Act of 1968, 42 USC 3061.
6. ERASE Racism, *Long Island Fair Housing: A State of Inequity* (March 2005) pp.7-8; see also 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).
7. Report by the Urban Institute, for the Department of Housing and Urban Development, "Do We Know More Know?: Trends in Public Knowledge, Support and Use of Fair Housing Law" (Washington, 2006) pp. 32.
8. Information provided by LIHS on Long Island allegations received for 2005 (on file at ERASE Racism) (Syosset, NY).
9. See Appendix C.
10. See Appendix F.
11. Statistics provided by NYSDHR for Long Island cases from 1999 to 2007 (on file at ERASE Racism) (Syosset, NY).
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. Information provided by NYSDHR on Long Island cases closed between 2000 & 2007 (on file at ERASE Racism)(Syosset, NY).
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. Press Release by Anti-Discrimination Center Metro New York, *Human Rights Division Still A Disaster Area for Housing Bias Victims: Agency Sued for Delaying Review of Open-And-Shut Race Bias Case that Division Botched* (Sept. 26, 2006)(on file at ERASE Racism)(Syosset, NY); see also <<http://www.antibiaslaw.com/millerojections.pdf>>; and <<http://www.antibiaslaw.com/sdhrlawsuit.pdf>>.
30. *Id.*
31. *Id.*
32. Report by New York State Office of the State Comptroller, *New York State Division of Human Rights: Timeliness of Processing Discrimination Complaints 2004-S-45* (Aug. 10, 2006), pp.4, 20-21 &29. Although the Comptroller's report does not separate employment discrimination cases from housing cases, ERASE Racism's review of the material received from NYSDHR shows that the findings are applicable to Long Island fair housing cases filed with NYSDHR.
33. Case provided by NYSDHR on file at ERASE Racism (Syosset, NY).
34. *Id.*
35. Report by New York State Office of the State Comptroller, pp.26.
36. Report by United States Government Accountability Office, to Congressional Requesters, *Fair Housing: HUD Needs Better Assurances That Intake and Investigation Processes Are Consistently Thorough* (Oct. 2005) pp. 4-8.
37. *Id.*, pp. 70-72.
38. *Id.*, pp. 11, 15-16, 25, 35, 38, 40, 42-44, 48-50 & 64-66.
39. *Id.*, pp.56
40. Report by the Urban Institute, for the Department of Housing and Urban Development, "Do We Know More Know?: Trends in Public Knowledge, Support and Use of Fair Housing Law" (Washington, 2006) pp. 36.
41. *Id.* pp. 37
42. *Id.* pp. 34
43. *Id.* pp. 35
44. *Id.* pp. 32
45. Information provided by LIHS on Long Island allegations received for 2005, on file at ERASE Racism (Syosset, NY).
46. Vargas v. Town of Smithtown, E.D.N.Y. (Dec. 13, 2007)
47. *Id.*
48. *Id.*
49. *Id.* For detailed list of comments see complaint.
50. *Id.*

51. *ERASE Racism* acknowledges that both Nassau and Suffolk Counties have consortiums that are comprised of a number of municipalities that put forth a consolidated proposal to the Department of Housing and Urban Development to receive federal funding through grants such as CDBG, HOME, ESG and HOPWA. *ERASE Racism* did not request the consortiums put forth their information as a whole as it was analyzed in *ERASE Racism's* previous housing monograph *Long Island Fair Housing: A State of Inequity* in April 2005. The consortiums have not updated their information since the publication. However, *ERASE Racism* did ask in its survey whether the municipality was a member of a consortium. Either way, the municipality is responsible for fulfilling the requirements set forth by HUD to receive federal funding through HUD's grants and programs.
52. Certainly municipalities within Nassau and Suffolk Counties receive Emergency Shelter Grants and HOPWA funds. The statistics illustrated here only represent the responses of the municipalities that chose to reply to *ERASE Racism's* survey.
53. Statistics provided by NYSDHR for Long Island cases from 2000 to 2007 (on file at *ERASE Racism*) (Syosset, NY).
54. Report by National Fair Housing Alliance, *Housing Segregation Background Report: Long Island, New York* (June 21, 2006)(on file at *ERASE Racism*) pp.7.
55. Information obtained from Michelle Santantonio, Exec.Dir, LIHS by Cathryn Harris, Prgm. Mgr., *ERASE Racism* (December 2006)(Syosset, NY); see also Marshall, Randi R., *Newsday, Agency Denies Racial Steering*, (June 22, 2006)(available at <<http://www.lifairhousing.org>>)..
56. Statistics provided by U. S. Department of Justice from 1999 to 2005, on file at *ERASE Racism* (Syosset, NY).
57. *Id.*
58. *Id.*
59. Letter from Elizabeth A. Singer, Dir., U.S. Attys' Fair Hous. Prgm., to Pamela K. Chen, Asst. US Atty., *Data Request from ERASE Racism* (Jan. 12, 2006)(on file at *ERASE Racism*)(Syosset, NY).
60. Information provided by DOJ covering Long island cases between 1999 and 2005 (on file at *ERASE Racism*) (Syosset, NY) .
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.*
66. *Id.*
67. *Id.*
68. Press Release from the Office of New York State Attorney General, *Westchester Real Estate Brokers to End Racial Discrimination* (Sept. 21, 2005)(copy on file at *ERASE Racism*)(also available at: <http://oag.state.ny.us/press/2005/sep/sep21a_05.html>)(accessed May 1, 2006); Press Release from the Office of New York State Attorney General, *West Seneca Apartments Named In Discrimination Suit* (Oct. 18, 2005) (copy on file at *ERASE Racism*) (also available at: (http://oag.state.ny.us/press/2005/oct/oct18b_05.html>) (accessed May 1, 2006); and Press Release from the Office of New York State Attorney General, *Statement by Attorney General Eliot Spitzer Regarding the Investigation of Racial Disparities in Mortgage Lending* (June, 17, 2005) (copy on file at *ERASE Racism*)(also available at: <http://oag.state.ny.us/press/2005/jun/jun17a_05.html>)(accessed May 1, 2006).
69. Press Release from the Office of New York State Attorney General, *FED Study Confirms Racial Lending Disparities* (Sept.14, 2005)(copy on file at *ERASE Racism*) (also available at: <http://oag.state.ny.us/press/2005/sep/sep14a_05.html>) (accessed May 1, 2006)
70. Press Release from the Office of New York State Attorney General, *Broad Coalition Joins Spitzer in Opposition to Effort to Shield Banks from Scrutiny* (Aug. 8, 2005)(copy on file at *ERASE Racism*)(also available at: <http://oag.state.ny.us/press/2005/aug/aug08a_05.html>) (accessed May 1, 2006).
71. *Id.*; see also *Clearing House Assoc. v. Spitzer*, 394 F.Supp. 2d 620 (2005); and *Office of the Comptroller of the Currency v. Spitzer*, 396 F.Supp. 2d 383 (2005).
72. *U.S. ex. Rel. Anti-Discrimination Center of Metro NY v. Westchester County*, Unpub. Decn., 06-CV-2860 (DLC) S.D.N.Y (July 12, 2007).; also at <http://www.antibiaslaw.com/MotionDenied.pdf>.
73. *U.S. ex. Rel. Anti-Discrimination Center of Metro NY v. Westchester County*, Compl. 06-CV-2860 (DLC) S.D.N.Y, (April 12, 2006); also at <http://www.antibiaslaw.com/falseclaimscomplaint.pdf>.
74. *Id.*
75. *U.S. ex. Rel. Anti-Discrimination Center of Metro NY v. Westchester County*, Unpub. Decn., 06-CV-2860 (DLC) S.D.N.Y (July 12, 2007).; also at <http://www.antibiaslaw.com/MotionDenied.pdf>.
76. *Nassau County Administrative Code, Human Rights Law*, Chpt. 21, Title C-1 (January 1, 2007); Suffolk County Code §89-12 (January 29, 2007).
77. Department of Housing and Urban Development, *Federal Register Part VII*, 24 CFR Parts 111 and 115, (September 6, 1996).
78. Statistics provided by NYSDHR for Long Island cases from 2000 to 2007 (on file at *ERASE Racism*) (Syosset, NY).
79. Information provided by NYSDHR on Long Island cases closed between 2000 & 2007 (on file at *ERASE Racism*)(Syosset, NY).
80. National Community Reinvestment Coalition, *Income is No Shield Against Racial Differences in Lending: A Comparison of High-Cost Lending in America's Metropolitan Areas* (July 2007) pp.7.
81. *Id.*
82. Vikas Bajaj & Julie Creswell, *Mortgages give Wall St. New Worries*, N.Y. Times C0 (June 19, 2007); Julie Creswell, *Shaky Markets Prompt Rumors of Who's in Trouble*, N.Y. Times C0 (Aug. 10, 2007).
83. Jeremy W. Peters & Wayne Arnold, *U.S. Stock Down at Open After Global Markets Drop*, N.Y. Times (Aug. 10, 2007).
84. National Community Reinvestment Coalition, pp. 6.
85. Sid Cassese, *Plans to Stem Foreclosures: Schumer Working on Laws to Protect Against Predatory Lending*, *Newsday* A47 (April 2, 2007).
86. National Housing Trust Fund Campaign, *President Signs Landmark Housing Bill Into Law, Creating National Housing Trust Fund, Memo To Member: The National Low Income Housing Coalition Newsletter*, Vol.13, Issue No. 31 (Aug. 2008).

<p>87. National Community Reinvestment Coalition, <i>Financial Markets and Economy Cannot Wait Until 2009 for a Real Foreclosure Fix</i>, Press Release, (http://www.ncrc.org/index.php?option=com_content&task=view&id=316&Itemid=1)(July 25, 2008).</p> <p>88. <i>Id.</i></p> <p>89. <i>Id.</i></p> <p>90. The Center for Responsible Lending, <i>Losing Grounds: Foreclosures in the Subprime Market and Their Cost to Homeowners</i> (December 2006) pp.2.</p> <p>91. National Community Reinvestment Coalition, pp.5.</p> <p>92. <i>Id.</i>, Appendix, Tables 1-7 & 9-11.</p> <p>93. <i>Id.</i>, pp. 7 & 8.</p> <p>94. Maker, Ruh. <i>Curbing the Mortgage Meltdown: the Impact of foreclosures on New York's Economy and on Upstate and Long Island Communities</i>, Empire Justice Center (March 2008), pg.18.</p> <p>95. <i>Id.</i>, at pg. 15-17.</p> <p>96. <i>Id.</i>, at pg. 40.</p> <p>97. <i>Id.</i>, at pg. 20 quoting: http://www.responsiblelending.org/pdfs/new-york-state-info-with-fc-starts.</p> <p>98. <i>Id.</i>, at pg. 21 quoting: <i>U.S. Metro Economics: the Mortgage Crisis</i>, Prepared for the United States Conference of Mayors and the Council for the New American City, Global Insight, Inc. (November 2007).</p> <p>99. Maker at pg. 14.</p> <p>100. <i>Id.</i> at pg. 30.</p> <p>101. <i>Id.</i> at pg. 37.</p> <p>102. <i>Id.</i> at pg. 38.</p> <p>103. <i>Id.</i> at pg. 37.</p> <p>104. <i>Id.</i> at pg. 31.</p> <p>105. <i>Id.</i> at pg. 30.</p> <p>106. Homeowners who are experiencing difficulties with their mortgage in Nassau County can call the Default Counseling Prevention Hotline at (516) 571-4663 to speak with certified counselors to review options. The program is run by Nassau County and is free of charge. Homeowners in Suffolk County can contact Long Island Housing Partnership to receive similar services and counseling free of cost by calling (631) 435-4710.</p> <p>107. Statistics provided by NYS DHR for Long Island cases from 2000 to 2007, on file at <i>ERASE Racism</i> (Syosset, NY).</p> <p>108. <i>Id.</i></p> <p>109. <i>Id.</i></p> <p>110. <i>Id.</i></p> <p>111. <i>Id.</i></p> <p>112. <i>Id.</i></p> <p>113. <i>Id.</i></p> <p>114. <i>Id.</i></p> <p>115. <i>Id.</i></p> <p>116. <i>Id.</i></p> <p>117. <i>Id.</i></p> <p>118. <i>Id.</i></p> <p>119. <i>Id.</i></p> <p>120. <i>Id.</i></p>	<p>121. <i>ERASE Racism</i> acknowledges that both Nassau and Suffolk Counties have consortiums that are comprised of a number of municipalities that put forth a consolidated proposal to the Department of Housing and Urban Development to receive federal funding through grants such as CDBG, HOME, ESG and HOPWA. <i>ERASE Racism</i> did not request the consortiums put forth their information as a whole as it was analyzed in <i>ERASE Racism's</i> previous housing monograph Long Island Fair Housing: A State of Inequity in April 2005. The consortiums have not updated their information since the publication. However, <i>ERASE Racism</i> did ask in its survey whether the municipality was a member of a consortium. Either way, the municipality is responsible for fulfilling the requirements set forth by HUD to receive federal funding through HUD's grants and programs.</p> <p>122. Certainly municipalities within Nassau and Suffolk Counties receive Emergency Shelter Grants and HOPWA funds. The statistics illustrated here only represent the responses of the municipalities that chose to reply to <i>ERASE Racism's</i> survey.</p> <p>123. Information provided by DOJ covering Long Island cases between 1999 and 2005, on file at <i>ERASE Racism</i> (Syosset, NY).</p> <p>124. <i>Id.</i></p> <p>125. <i>Id.</i></p> <p>126. <i>Id.</i></p> <p>127. Letter from Elizabeth A. Singer, Dir., U.S. Attys' Fair Hous. Prgm., to Pamela K. Chen, Asst. US Atty., <i>Data Request from ERASE Racism</i> (Jan. 12, 2006), on file at <i>ERASE Racism</i> (Syosset, NY).</p> <p>128. Information provided by DOJ covering Long island cases between 1999 and 2005, on file at <i>ERASE Racism</i> (Syosset, NY).</p> <p>129. <i>Id.</i></p> <p>130. <i>Id.</i></p> <p>131. <i>Id.</i></p> <p>132. <i>Id.</i></p> <p>133. <i>Id.</i></p> <p>134. <i>Id.</i></p> <p>135. <i>Id.</i></p> <p>136. <i>Id.</i></p> <p>137. <i>Id.</i></p> <p>138. Report by National Fair Housing Alliance, <i>Housing Segregation Background Report: Long Island, New York</i> (June 21,2006, on file at <i>ERASE Racism</i> (Syosset, NY), pp.7.</p> <p>139. Information obtained from Michelle Santantonio, Exec.Dir, LIHS by Cathryn Harris, Prgm. Mgr., <i>ERASE Racism</i> (December 2006)(Syosset, NY); see also Marshall, Randi R., <i>Newsday</i>, <i>Agency Denies Racial Steering</i>, (June 22, 2006)(available at <http://www.lifairhousing.org>)..</p> <p>140. Statistics provided by NYS DHR for Long Island cases from 2000 to 2007, on file at <i>ERASE Racism</i> (Syosset, NY).</p> <p>141. <i>Id.</i></p> <p>142. <i>Id.</i></p>

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