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Link to publisher version (DOI)
https://doi.org/10.15779/Z38MD4F

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FAIR HOUSING AND LATINOS

Herminia L. Cubillos*

National attention has recently focused on problems associated with homelessness resulting in emergency measures, blue-ribbon panels and other responses. However, insufficient attention and analysis has been directed to the critical status of Latinos regarding housing and housing discrimination. This article focuses on the housing conditions of Latinos in the United States and how fair housing policies affect the Latino community.

Part I is a review of the data demonstrating the economic and living conditions of Latinos. Part II examines the impact of discrimination in the sale and rental of housing to Latinos. Part III surveys the federal legislation designed to counteract the socio-economic and discriminatory factors affecting the availability and adequacy of housing. Part IV examines the shortcoming of current federal fair housing laws and how they are enforced. Finally, Part V offers recommendations to ensure fair and adequate housing for Latinos.

I. LATINO HOUSING STATUS AND PROBLEMS

To understand the importance of comprehensive and effective fair housing legislation, a review of the severe housing problems facing Latinos is essential. The Latino population is one of the fastest growing groups in the country. A recently released report from the Bureau of the Census showed that between 1980 and 1987 the Latino population grew from 14.5 million to 18.8 million. In 1987, Latinos accounted for 7.9% of the population, compared with 6.4% in 1980. A study by Cushing N. Dolbeare for the National Council of La Raza demonstrated that in 1983 more than three-quarters (78%) of Latino households lived in metropolitan areas and 83% lived in areas classified as "urban" by the Census Bureau. About 41% of Latinos lived in the West compared with

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2. Id. at 8.
3. Id. at 9.
32% in the South, 19% in the Northeast, and 8% in the Midwest. 4

Latinos suffer from lower incomes and from higher poverty rates than non-Latinos. In 1986, 27.3% of Latino families lived below the poverty level, compared with 11% of white families and 31.1% of black families. Median Latino family income was only 65% that of whites.

The most recent comprehensive data on Latino housing status comes from the 1983 Annual Housing Survey. The survey found that Latinos were less likely than either whites or blacks to be homeowners; 57% of Latinos were renters and 43% were homeowners. 5 In comparison, 69% of whites and 45% of blacks were homeowners. In 1983, about 79% of all Latino households lived in housing that was built before 1970. 6

Housing conditions for much of the Latino community are inadequate. 7 An unpublished Housing and Urban Development (HUD) study showed that approximately one-third of all Latino households live in physically inadequate or overcrowded housing, compared with only one-tenth of white households. 8

The affordability of housing is a more critical problem for Latinos than housing quality. According to the National Council of La Raza study, low income households typically spend over half their incomes for shelter, including utilities. 9 This leaves insufficient resources for other necessities such as food or clothing.

In 1983, the median income of all Latino households was below the poverty level and the income of one household in ten was less than half the poverty level. As a result, more than one Latino household in ten paid more than 70% of their income for housing, and two in five spent more than 30%. 10

One factor which contributes to Latino housing problems is the lack of adequate rental housing for families with children and large families. In 1986, 26.6% of Latino families had five or more members, compared with 13.9% of non-Latino families. 11 The 1985 Current Population Survey shows that over 75% of Latino families had three or more persons compared with less than 60% of non-Latino families. 12

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5. Id. at 5.
6. Id.
8. Id. at 6.
10. Id. at 8.
12. Fair Housing Amendments Act of 1987: Hearings on S. 558 Before the Subcomm. on the
A 1980 HUD study found that 25.5% of all rental units in the United States did not allow children. Another 50% had policies which restricted the ability of families with children to rent. Restrictions included limits on the number of units in an apartment complex where families with children could reside, limits on the age of child occupants, and prohibitions on children of the opposite sex sharing the same bedroom. The housing problems faced by Latinos correlate directly to family size.

II. HOUSING DISCRIMINATION AGAINST LATINOS

A. Overview

Latinos are both disproportionally poor and inadequately housed, but low income alone cannot fully explain poor housing conditions. According to a 1983 internal HUD study:

When common factors contributing to housing deprivation are taken into account, differences in housing conditions among Whites, Blacks, and Hispanics are narrowed somewhat, but sizeable differences still remain... Blacks and Hispanics are twice as likely as whites to be either inadequately housed or overcrowded, even when they have similar financial resources.

It is clear that factors other than income are partially responsible for poor Latino housing conditions. One of these factors is housing discrimination. While there has been considerably less research on the nature and extent of housing discrimination against Latinos than discrimination against blacks, the available data shows that housing discrimination against Latinos is pervasive. The following subsections describe research findings on housing discrimination and Latinos in selected urban areas.

B. Dallas

Most studies of housing discrimination have focused on the housing experiences of blacks. Far less is known about the nature and extent of housing discrimination against other minorities. A 1979 HUD “audit” in Dallas was the first HUD research to focus on the extent of housing discrimination against Latinos. It had often been assumed that Latinos

15. Office of Policy Development and Research, U.S. Dep’t of Housing and Urban Develop-
would suffer less than blacks from housing discrimination for two reasons: (1) Latinos were a smaller population, and (2) the income of Latino renters was substantially greater than that of black renters. The HUD audit showed otherwise.

The Dallas study found that 42% of dark-skinned Mexican-Americans and 16% of light-skinned Mexican-Americans were given false information on the availability of rental units. The chance of dark-skinned Mexican-Americans experiencing at least one instance of discrimination in a typical housing search was 96%. The probability of light-skinned Mexican-Americans experiencing similar discrimination was about 65%. The incidence of discriminatory treatment against dark-skinned Mexican-Americans was far greater than that against either blacks or light-skinned Mexican-Americans. Discriminatory treatment against dark-skinned Mexican-Americans regarding the availability of a unit was two and one-half times as great as that against either blacks or light-skinned Mexican-Americans. Furthermore, discriminatory treatment against dark-skinned Mexican-Americans on terms and conditions of the rental contract was also far greater.

C. Denver

A 1982 HUD funded study in Denver also found evidence of housing discrimination against Latinos. When teams of white, black and Latino auditors were sent to homes that were advertised for sale, the white auditors received considerably more information than black or Latino auditors. One in three Latino auditors were told there were no homes available which were similar to the advertised home in the same general area, compared with one in five white auditors. Furthermore, 60% of Latino auditors were told of no similar homes in other areas, compared with 31% of white auditors. These differences in the degree to which Latino and white auditors were informed of housing alternatives were sizeable and statistically significant.
D. Boston

In a 1981 Boston HUD funded study, a telephone survey was done of selected realtors who were advertising units for rent. The test teams consisted of three persons: one that would normally be identified by voice as white, one as black, and one as Latino. In all tests, the white surveyors were invited to come to the office to be shown a unit, while the black and Latino surveyors were informed that no units were available 31 times.

Site visits were carried out on 17 firms including those that were already covered by the telephone survey and continued to advertise units for rent. In 23 of 47 test visits, only white testers were shown units. Black and Latino testers were told nothing was available.22

E. Other Studies

A 1986 HUD funded study in Phoenix found evidence of discriminatory rental practices against both blacks and Latinos. In 13% of the audits, blacks and Latinos were asked to pay higher rents and deposits while whites were given a variety of rental inducements.23

Surveys in Houston and San Jose found evidence of housing discrimination. In both surveys, blacks encountered more discrimination than Latinos. In 1973, the Houston survey found that at "white-occupied" apartment complexes, black surveyors encountered at least one form of discriminatory treatment in 42% of their visits, compared with 10% of Latino surveyors.24 The 1978 San Jose study found that black surveyors encountered some form of discriminatory treatment in 58% of their visits, compared with 20% of Latino surveyors.

III.
FAIR HOUSING LAWS

A. History of Fair Housing Legislation

Before 1962, there were no federal laws or policies prohibiting housing discrimination. For the most part, local elected officials and influential members of the housing industry dictated housing policies.25 As blacks migrated to urban centers, some cities adopted zoning laws designed to prohibit blacks from purchasing or occupying property in a

22. Id. at 25.
manner that would destroy the "racial purity" of a given area.26

In urban centers which did not adopt such zoning laws and in other cities where zoning laws were eventually struck down as unconstitutional, racially restrictive covenants27 and other tactics of the real estate industry were used to achieve the same results.28

"Racial redlining" and "racial steering" maintained rigidly segregated neighborhoods in many areas. Originally, "racial redlining" referred to a practice used by lenders to delineate areas of a city or town in which they would not extend credit because of the racial make-up.29 Insurance companies began to follow the same practice.30 If a neighborhood was all minority, appraisers often considered it to be "unstable" or otherwise a poor financial risk.31 The result was an appraisal below the fair market value, which led to a denial of the mortgage request.32

Another common technique used to promote segregated housing was "steering" in which homeseekers were shown homes only in certain parts of town where persons of their race or ethnicity were in the majority.33

Another technique used to promote segregated housing was "blockbusting." This occurred when a real estate broker went into a white community and sold a house to a minority family and then advised the neighbors that they should sell their homes before the area became "undesirable."34 This often led to panic selling and re-segregation, as a neighborhood quickly became all minority.

During the Great Depression, the federal government entered the

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27. See Shelley v. Kraemer, 334 U.S. 1, 20 (1948). Under Shelley, while a private agreement restricting the sale of property only to persons of "the Caucasian race" does not violate the Fourteenth Amendment, state court enforcement of such a racially restrictive covenant violates the Equal Protection Clause of the Fourteenth Amendment.
29. See Laufman v. Oakley Bldg. and Loan Co., 408 F. Supp. 489 (S.D. Ohio 1976). The Laufman court rejected plaintiff’s claim that when a lender views a racially integrated neighborhood as per se, a declining neighborhood, and therefore a bad credit risk, it is unconstitutional "redlining" in the absence of "legitimate business criteria" such as credit worthiness, marketability of the security property, and diversity of the lender’s assets. Id. at 501.
30. See, e.g., Dunn v. Midwestern Indemnity, 472 F. Supp. 1106 (S.D. Ohio 1979). Plaintiff was a black homeowner and successfully brought an action to prevent defendant from denying renewal of his homeowner’s policy. Defendant’s had not renewed an entire portfolio of policies because a significant portion of them were issued to persons living in predominantly black neighborhoods.
31. See note 29.
33. Chicago Real Estate Board v. City of Chicago, Ill. 2d 530, 536, 224 N.E.2d 793, 798 (1967). "[I]t has been the practice of the [real estate] industry for many years not to lease to Negro families in certain areas of Chicago."
housing arena to prevent the collapse of the housing industry and to protect the investments of homeowners. Federal housing entities like the Federal Housing Administration (FHA), the Federal Home Loan Bank Board (FHLBB), and the Federal National Mortgage Association (FNMA) were created to help safeguard and facilitate home ownership but did not address the problems faced by minorities in securing decent housing. Public housing projects were the only programs which recognized the right of participation by minorities—and only by segregating blacks from whites. Federal housing policy at the time largely mirrored the assumptions of local governments and the housing industry regarding the desirability of racially dual markets. Federal policy continued to support segregated public housing and discriminatory practices in FHA and Veterans Administration (VA) programs even after the 1948 Supreme Court decision of Shelley v. Kraemer, which outlawed the enforcement of racially restrictive covenants.

After World War II, the federal government began taking an active role in aiding the housing industry to meet the demand for new homes. The Housing Act of 1949 established a series of programs designed to promote growth in the housing industry. The federal government underwrote the development of large subdivisions of single-family homes in areas outside the central cities by insuring home mortgages of middle-income home buyers and guaranteeing mortgages for veterans under the G.I. Bill of Rights. Yet federal policy did nothing to ensure that minorities would share in the new housing boom.

While the suburbs developed as white and middle class, the cities remained a patchwork of minority and white neighborhoods. Ghettos and barrios—largely segregated neighborhoods in which minorities lived—expanded into white neighborhoods, which experienced "blockbusting" caused by unscrupulous real estate brokers. Often minorities paid prices above market value for their housing, yet were denied the benefits of the low- or no-down payment mortgage loans that lenders made when federal insurance was available. Discrimination and segregation in housing continued through the decade of the 1950's often with the support of the federal government.

36. Id.
37. Id.
38. Id.
41. Id.
Discrimination in federally-subsidized housing emerged as a public issue during the 1960 presidential campaign. John F. Kennedy stated that, if elected, he would issue an executive order to eliminate this injustice with "a stroke of a pen." On November 20, 1962, Executive Order 11063 on Equal Opportunity in Housing was signed by President Kennedy. Although the Executive Order represented the first national policy supporting equal housing opportunity, it was narrowly constructed to cover only prospective federally assisted housing. Severe sanctions were imposed upon violators, including cutting off funding and barring housing developers and realtors from future participation in federal housing programs. However, the inadequacy of the Order soon became apparent. Discrimination was barred in federally subsidized housing, but the law did not cover the private market.

Generally, the private housing industry did not adopt non-discriminatory policies. In fact, many in the private sales and rental industry believed that adopting such a policy would place them at a competitive disadvantage.

In 1965, fair housing legislation was introduced by President Lyndon Johnson. A far-reaching fair housing bill was approved in the House of Representatives the following year, but a Senate filibuster killed it.

In 1968, three major developments changed the political landscape of the fair housing issue. First, responding to the grief and anger caused by the assassination of the Reverend Martin Luther King, Congress enacted Title VIII of the Civil Rights Act of 1968 which broadly prohibited discrimination in both private and public housing markets based on race, color, religion, sex, or national origin. Title VIII was passed only after extensive and bitter debate culminated in legislative compromises which limited the bill's enforcement provisions.

Second, through Jones v. Mayer, the Supreme Court re-examined the coverage of the Reconstruction Civil Rights Act of 1866 and concluded that it was broad enough to provide black citizens with redress against private as well as government discrimination in housing transactions. Third, Congress passed a Housing and Urban Development Act authorizing new housing programs for low income and moderate income

44. See id. at 14.
45. Id. at 17.
46. Id.
47. Id.
48. Id. at 22.
49. Id.
50. Id. at 26.
51. Id.
families that would provide volume and choice of location.52

Title VIII provided certain enforcement mechanisms designed to achieve fair housing goals. First, a victim of housing discrimination could seek relief by filing a complaint with HUD. Second, it created a private right of action for victims of discrimination. Third, it gave the Attorney General the authority to initiate litigation in cases where there was a "pattern or practice" of discrimination.

As regulations were adopted and HUD began to implement the law, deficiencies became evident. Under the law, a victim of housing discrimination can report a violation to HUD. The Department will then investigate and try to bring the two parties together to conciliate their differences. HUD does not have the authority to issue "cease and desist" orders to those found guilty of violating the law or the power to otherwise enforce its conciliation efforts. Accordingly, HUD has been largely unsuccessful in getting landlords and sellers of housing to take the process seriously.

The 1968 law provides another alternative to a victim of housing discrimination. A victim can initiate a private lawsuit against the landlord or seller. However, this takes considerable time and money. Besides having to hire an attorney and taking time off from work to appear for depositions and to appear in court, the victim must go through a lengthy litigation process which is often further delayed by overcrowded court calendars.

The Justice Department can also sue to enforce fair housing laws, but only where the Attorney General believes there is a "pattern or practice" of housing discrimination, or in cases raising an issue of general public importance. This provision of the law has little impact on practices in the housing market. From November 1, 1983 to January 31, 1987, the Justice Department filed a total of 53 lawsuits, fewer than 18 per year.53

B. The Fair Housing Amendments Act

At the beginning of the 100th Congress, Senators Edward M. Kennedy (D-Mass.) and Arlen Specter (R-Pa) and representatives Don Edwards (D-Cal) and Hamilton Fish, Jr. (R-NY) introduced the Fair Housing Amendments Act (HR 1158). The bill won House and Senate approval and was signed into law by President Reagan on September 13, 1988.54 The amendments will strengthen the Fair Housing Act of 1968 in two ways: (1) by strengthening the enforcement provisions of the act,

and (2) by expanding protected classes to include disabled persons and families with children.

The amendments increase HUD's ability to enforce fair housing laws. Where HUD's conciliation process fails, victims are entitled to a determinative hearing before an administrative law judge. Furthermore, the complainant has the right to intervene in the proceeding, and the decision of the administrative law judge can be appealed to the federal court of appeals for the circuit in which the discriminatory practice was alleged to have occurred.

Under the amendments, when the administrative law judge finds discrimination, equitable and declaratory relief (including orders requiring the respondent to sell or rent the house to the complainant) as well as compensatory and punitive damages can be awarded (similar administrative enforcement procedures are currently used by 28 other federal agencies and departments). The Fair Housing Amendments Act also permits an application to be made to a federal court for an order to hold a house or apartment off the market while a case is being decided.55

IV.

NEED FOR LATINO FOCUSED EFFORTS

Federal fair housing laws need more effective enforcement mechanisms to resolve housing discrimination complaints overall. However, additional efforts focused on Latinos are also essential to effectively address housing discrimination against Latinos.

Current legislation is limited to improving the effectiveness of the enforcement process after a complaint is filed. It does not address the need to increase the likelihood that Latinos encountering housing discrimination will file complaints. Despite evidence of pervasive housing discrimination against Latinos, HUD data reveal that Latinos tend to file very few complaints. According to the data:

* From Fiscal Year 1980 through Fiscal Year 1985, formal complaints filed with HUD-certified fair housing state and local agencies by blacks alleging discrimination totaled 14,172. Such complaints by Latinos totaled 1,328; yet the black population is only about 37% larger than the Latino population.56

* This pattern was consistent over the six-year period. The ratio of black-to-Latino complaints exceeded 10:1 in every year except Fiscal Year 1983 (9:1).57

57. Id.
* During the same period, complaints from Latinos as a percentage of total complaints ranged from 5.4% to 7.2%, and exceeded 7% in only one year.58

There are several possible reasons for this differential. The black population is larger, and the above-cited studies suggest that in some markets, blacks are more likely to encounter discrimination than Latinos. It is also possible that blacks are more likely to encounter overt forms of discrimination than Latinos and are therefore more likely to know that they have been discriminated against. However, these factors do not fully explain the extent of the difference in complaints.

Latinos are less likely to file civil right complaints in general and fair housing complaints in particular. Several reasons have been suggested. First, many Latinos may not have a complete understanding of their rights. Second, all but the most blatant forms of housing discrimination frequently are not recognized as illegal discrimination by the victims. Some forms of housing discrimination for example, "steering," false information on the availability of rental units, and differential treatment in lending practices are difficult, if not impossible, for a victim to identify.

Furthermore, the weak enforcement mechanism in the present fair housing laws may contribute to the low numbers of complaints filed by Latinos. The lengthy period required to reach conciliation and the lack of any real redress to the victim may deter Latino victims from filing complaints. In addition, rental agents and realtors are aware that they are not likely to be penalized for practicing illegal housing discrimination and, therefore, are not often deterred from discriminating. These factors may limit confidence within the Latino community in the HUD conciliation process, thus reducing the number of complaints.

Language differences may exacerbate the above cited factors. HUD no longer publishes brochures explaining fair housing laws in languages other than English. This reduces the ability of limited English proficient persons to understand their rights under the law. Limited English proficiency may hinder Latinos from fully understanding what realtors or rental agents are telling them, thus limiting their ability to detect discrimination.

Additionally, a review of HUD grants to public and private fair housing groups reveals that very few grants have gone to groups emphasizing services to the Latino community. Moreover, HUD has not carried out a single fair housing initiative focusing on Latinos since the 1979 Dallas survey.59 To the extent that building the capacity of state and local groups is at least partially a function of the availability of resources,
it is not surprising that there are few strong local fair housing groups focusing on the needs of Latinos.

While HUD has not focused on Latino fair housing needs, potentially effective mechanisms for addressing housing discrimination against Latinos do exist. The Fair Housing Enforcement Development Project, sponsored by HUD and the National Committee Against Discrimination in Housing (NCDH), provides some insight into ways in which increased anti-discrimination activity can be generated. Under the 1981 Demonstration Project, small grants were provided to nine local fair housing groups to conduct fair housing testing and a limited amount of outreach and public information.

The Demonstration Project was successful. This project resulted in a series of impressive achievements:

* In each geographic area participating in the project, complaints rose dramatically. There was also a relatively high rate of success in complaint resolution.\(^60\)
* During the two-year period of the project, HUD reported a dramatic increase in complaints (from 4,000 to 5,300); over 50% of this increase occurred in areas where the demonstration was being conducted.\(^61\)
* A modest amount of federal funding generated an extremely high level of activity. It is estimated that each dollar of project funding generated two to three dollars in activity by the local groups.\(^62\)

At least one of the demonstration groups, the Greater Dallas Housing Opportunity Council, carried out Latino focused activities. Its effort resulted in increased complaints by Latinos, although this data did not permit precise quantification of Latino-specific effects.

The activities carried out under the demonstration project clearly address many of the factors contributing to the low level of fair housing complaints by Latinos. The local groups increased awareness of housing discrimination, provided counseling and technical assistance in filing complaints, and established a strong institutional presence in their respective communities.

V. CONCLUSIONS

Strengthening the effectiveness of fair housing laws in protecting the rights of Latinos requires two major policy initiatives. First, the strengthening of existing fair housing laws is crucial. There is a need for expansion of coverage and the establishment of more effective enforcement mechanisms to resolve complaints. Latinos, particularly families

\(^{60}\) Id.
\(^{61}\) Id.
\(^{62}\) Id.
with children, need effective enforcement mechanisms for complaints because they cannot afford remedies which require them to take individual legal action.

Second, publication and outreach is needed to increase the capacity of Latinos to assert their own rights. Both of these policy objectives have been partially advanced through the Fair Housing Amendments of 1987. However, this new legislation alone will not be sufficient. The unique issues confronting Latinos in the housing market require the establishment of a Latino focused fair housing initiative within HUD. This initiative should include the following:

* Systematic testing including Latino, white and black teams, in various locations, to provide more solid data on Latinos and the housing discrimination they face,
* Funding to Latino organizations involved in fair housing activities, to support outreach and public education,
* Receiving and recording of complaints,
* Conducting of tests,
* Referral of documented complaints to HUD, and
* Provision for all necessary bilingual materials and training required to inform the Latino community of equal housing rights, opportunities, and complaint procedures.

The data shows that housing discrimination is not an occasional incident; it is too often the norm. Responsible and active federal, state, and local policies are needed to protect the civil rights of Latinos in this country in their search for decent housing.