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You Can't Live Here: The Enduring Impacts of Restrictive Covenants

The 50th anniversary of the Fair Housing Act represents an opportunity to remind ourselves not only of the importance of the law in shaping the real estate landscape today, but also to look back on what the situation was like before it was enacted, when the process of buying or renting a home was decidedly unfair for millions of Americans.

During the first few decades of the twentieth century, a property's value wasn't defined just by architectural details, curb appeal, and neighborhood features, but also by the people who lived in the community. In determining property value, explained a standard appraisal text in 1931, "we must recognize the customs, habits and characteristics of various strata of society and races of peoples." The presence of an African-American family in a neighborhood populated by whites, for example, or an Italian family in a neighborhood populated by Northern Europeans, was generally believed to have detrimental effects on property values and social order.

In the early 20th century, many cities in the South and the Mid-Atlantic used zoning ordinances to keep blacks, whites and other ethnicities in their own neighborhoods. Baltimore enacted the first racial zoning ordinance in 1910, and within a few years the practice was widespread in the region. When the U.S. Supreme Court declared a Louisville, Kentucky racial zoning ordinance as unconstitutional in 1917, restrictive covenants became the preferred method of accomplishing the same end.

A typical restrictive covenant was a contract among property owners prohibiting sales of homes to blacks or other minorities for a specified period of time, usually twenty years. Because the covenants were private agreements, they were not covered under laws seeking to prevent discrimination. They quickly became a popular method of ruling who could live in a neighborhood and

who could not, and were in widespread use in major cities such as Chicago, Seattle, and St. Louis.

Restrictive covenants proved so effective in segregating neighborhoods and stabilizing the property values of white families that they soon became an integral part of the federal government's discriminatory housing practices. "If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes," stated the Federal Housing Administration's influential Underwriting Manual. From 1934 on, the FHA recommended the inclusion of restrictive covenants in the deeds of homes it insured, and instituted a policy known as redlining, refusing to insure homes in African-American neighborhoods.

Civil rights lawyers began challenging restrictive covenants and redlining policies in courts beginning in the 1930s, but met with limited success. But in the 1940s, the massive societal changes brought about by World War II began to change the tide, albeit slowly. In 1948, the Supreme Court's landmark decision in the *Shelley v. Kraemer* case held that racially restrictive covenants were unenforceable in court. The following year, the FHA reversed course, instructing its field offices not to reject applications for mortgage insurance solely because they might violate existing restrictive covenants. The change, however, only applied to new applications for mortgage insurance; not until 1968 was the policy fully overturned, when Congress explicitly prohibited racial discrimination in housing financing as part of the Fair Housing Act.

The real estate industry and the National Association of Real Estate Boards (as the National Association of REALTORS® was called at the time) were complicit in these restrictions. In 1924, the Code of Ethics was revised to include Article 34, which stated: "A REALTOR® should never be instrumental in introducing into a

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neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood.” The language regarding “race or nationality” was removed from the Code of Ethics in 1950 in response to the Shelley v. Kraemer decision.

In the 4th quarter of 2017, the Census Bureau reported that the home ownership rate among white, non-Hispanic Americans was 72.7 percent, while for African-Americans the rate was just 42.1 percent. That enormous disparity can in large part be attributed to restrictive covenants and other discriminatory practices of the past. “Equity that families have in their homes is the main source of wealth for middle-class Americans,” explains author Richard Rosenstein in his book *The Color of Law* (Liveright Publishing, 2017). “African American families today, whose parents and grandparents were denied participation in the equity-accumulating boom of the 1950s and 1960s, have great difficulty catching up today.”

Although passage of the Fair Housing Act in 1968 represented a huge step towards ensuring that all Americans have a chance to live where they choose, dismantling these racially discriminatory practices has been a continual, decades-long process. For REALTORS® and others in the real estate community, there’s still much to do.

For more information, resources and to get involved, visit www.FairHousing.realtor