

FAIR HOUSING MANAGEMENT CONSULTANTS

ARLINGTON COUNTY

FAIR HOUSING RENTAL TESTING REPORT

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INTRODUCTION

Fair Housing Management Consultants (“FHMC”) entered into a contract with the Northern Virginia Regional Commission on June 28, 2016 to provide testing services to Arlington County. The testing services are set forth in the Project Work Plan of the contract. One hundred (100) rental tests were conducted in accordance with that contract at apartment complexes located in Arlington County. Oversight of the testing project was maintained by the staff of the Human Right Commission (“Staff”). Appendix A sets forth the testing sites. However, the test sites set forth in Appendix A are not listed in the actual order in which they were tested.

ARLINGTON COUNTY’S ROLE IN CHALLENGING HOUSING BIAS

The legal authority for a local government’s role in challenging discriminatory housing practices was established by the United States Supreme Court’s decision in *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). This decision affirmed that a local government has standing to challenge racially discriminatory housing practices under Title VIII of the Civil Rights Act of 1968, the Fair Housing Act. In the spirit of *Bellwood*, Arlington County was the first local government in the South to participate in a lawsuit that resulted in a substantial judgment for the victims of housing discrimination. *Lundy v. Shirley Park Apartments, et al.*, Civil Action No. 85-976-A (E.D. Va 1985). The County in *Lundy* also required the defendants to undertake affirmative remedial action that included establishing tenant selection criteria and employee training in fair housing laws. From an historical perspective, Arlington County has a rich history of supporting fair housing and in keeping its community an open one.

FAIR HOUSING TESTING

Tester corroboration has become an accepted investigative tool used by administrative agencies at all levels to enforce fair housing laws. In 1982, the United States Supreme Court stated that, under certain circumstances, testers have the right to sue under the federal Fair Housing Act. *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

Testing is a method to determine whether or not a home seeker is treated differently in his or her search for housing. A person's race or national origin, for example, would be impermissible factors in denying an opportunity to rent an apartment. Testers in housing discrimination cases have been defined as "individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful discriminatory housing practices." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982). The experience of testers are used to compare the treatment of one home seeker (protected class) to another (non-protected class). In this context, testing measures the difference in treatment afforded a home seeker as determined by the information and services provided by property management firms, rental agents, and others.

FEDERAL, STATE AND COUNTY FAIR HOUSING LAWS

The federal Fair Housing Act outlaws discrimination in renting or purchasing a home or financing a home mortgage based on race, color, religion, national origin and sex. The federal law was amended in 1988 to include familial status and handicap as protected classes.

The Virginia Fair Housing Law mirrors the federal law and contains the additional protected class of elderliness. The United States Department of Housing and Urban Development ("HUD") is authorized to review local and state fair housing laws to make a determination of whether these laws contain rights and remedies for alleged discriminatory

housing practices that are substantially equivalent to those provided in the federal law. Once a local or state enforcement agency has been certified, HUD will refer complaints of housing discrimination to the certified agency for investigation and resolution. HUD has made a determination that the Virginia Fair Housing Law is substantially equivalent to the federal law.

The Arlington County fair housing ordinance contains the additional protected classes of marital status, age and sexual orientation. The County ordinance does not provide the same remedial relief as provided under both the federal and state Fair Housing Laws.

LEGAL PRECEDENTS ESTABLISHING HOUSING BIAS

The courts have established two ways of proving housing discrimination. Discriminatory housing practices are defined below.

- * Disparate (Unequal) Treatment - Evidence of disparate treatment occurs when a housing provider treats home seekers differently, for example, on the basis of their race. Fair housing testing is designed to uncover disparate treatment. This is the most common evidence uncovered by fair housing testing.
- * Adverse Impact - Evidence of adverse impact occurs when housing providers have policies, practices or procedures that, for example, disproportionately limit the ability of protected class members to obtain housing. If the effect of such a policy, practice or procedure adversely impacts members of a protected class, it would violate the fair housing laws.

DEVELOPMENT OF A COUNTY-WIDE TESTING EFFORT

A total of one hundred rental tests were conducted at apartment complexes located in Arlington County. Fifty (50) tests were conducted at apartment complexes based on race (Black/White testers) and fifty (50) tests were conducted at apartment complexes based on national origin (Hispanic/White testers). All tester teams posed as being single with no children.

The tester teams were developed in this fashion to insure the control factors of race or national origin, depending on the test. By doing so, testing would demonstrate whether or not

home seekers were impacted in the event housing providers took into consideration reasons prohibited under the Fair Housing Act.

The rental test sites were chosen at random from the list of apartment complexes tested in the 2014 rental testing project and the *Washington Post Apartment Showcase Guide Book*, September, 2016.

A master testing schedule was developed, a tester pool was established and training was undertaken on October 7, 2016. Testing began on October 8, 2016 and concluded on November 2, 2016. The testing results are discussed in Analysis section of this report.

Testing Site and Characteristics Assignments

As previously discussed, the purpose of testing in the Arlington County testing project was to determine how Black and Hispanic testers were treated at apartment complexes located in the County. This is done by pairing two testers who are matched as equally as possible to each other except for the material factors of race and national origin. The characteristics that relate to the rental qualification processes were matched as closely as practical for each tester. This included matching, for example, the income, employment background and prior housing history of the testers.

It is important to minimize, as much as possible, variables that are extraneous to what is being tested (differences in treatment based on race and national origin). Generally, it is necessary for testers to assume characteristics other than their own. Testers are, in fact, playing a role during the test.

The Site Visitation Assignment Form

Site Visitation Assignment Forms were developed for each of the 100 tests. This form indicates the type of housing that the tester is looking for (one-bedroom apartment and the move-

in date for example). The form also indicates the tester characteristics that are required for the completion of the test, for example, income and prior housing history. Slightly superior qualifications were assigned to the protected class testers (Black and Hispanic testers) to assist in determining whether differences were the result of the tester's status as a member of a protected class. Personal characteristics, for example, the sex of the testers were also matched.

The testers were sent to the same apartment complex on the same day, usually 1 to 2 hours apart. Generally, the testers were instructed to have the protected class tester visit the rental office first followed thereafter by their teammate. The tester teams were assigned to express interest in renting the same type of apartment. The tester teams were also instructed to indicate similar dates that they wished to rent an apartment.

In the race tests, for example, both the Black and White testers posed as being single with no children and stated that they were looking for a one-bedroom apartment for November 1, 2016.

Tester Training

All testers were required to attend a training session. FHMC conducted a training session on October 7, 2016. Pretest training serves to enhance the credibility of the testing process and diminish the likelihood of deviation from controlled factors. Testers are oriented as to what is expected of them when conducting a test. Tester training included instruction in the following areas: (a) brief discussion of federal, state and local fair housing laws; (b) what testing is; (c) playing the role of a tester; (d) conducting the test and (e) the debriefing process. These, of course, were not the only components of the training, but were critical to the process of preparing the testers.

The training also provided an opportunity to thoroughly familiarize the testers with all of the testing forms. The training also emphasized the importance of timeliness in the completion of the forms in order to insure the validity of the testing process.

Debriefing Process

The testers were generally debriefed each day after completing their assigned tests by the contractor, FHMC. The debriefing interview is a mechanism to ensure that the testing experience is being reported accurately and objectively. During the debriefing interview FHMC carefully reviewed the Tester Report Form with each tester. Particular attention was given to the narrative portion of the form. Any corrections and additions to the report form are made by the testers during the debriefing session. Each member of the tester team was debriefed separately. Debriefing each tester separately maintains the confidentiality and objectivity of the testing results.

ANALYSIS OF TEST RESULTS

Each test was analyzed individually to ascertain if there were any differences in treatment accorded, for example, to the Hispanic and White members of the tester team. The tester teams were assembled based on the protected class sought to be tested along with a visibly matched team apparent to the housing provider upon meeting each team member. Because the nature of housing discrimination is often subtle, care was given to insure that the matching tester teams looked to the provider as the same in every material way except for the protected-class status being tested, race and national origin.

Rather than categorizing one aspect of the test as showing a difference in treatment, the tests were analyzed as a whole to put the totality of treatment afforded to each tester in context.

By doing so, the variables looked for would be clear and, if no variation in treatment existed, such conclusions would be equally clear.

It is important to note that, because the rental tests did not include having the testers complete a rental application or participate in the subsequent qualification process at any of the apartment complexes tested, the tests could only measure the initial contact the testers experienced in the leasing office. The tests were designed to measure differences in treatment based on the availability of a one-bedroom apartment unit requested by the testers and the corresponding treatment concerning the issue of availability received by the testers. Thus, while this aspect of testing is critical in understanding how persons are treated at the initial stage of home seeking, it cannot tell the complete story of how individuals are processed and what their ultimate treatment will be. Notwithstanding, experience dictates that the initial contact with and treatment by a housing provider are often where most problems arise when it comes to housing bias. For example, if a home seeker is not given an application, measuring how the application process was undertaken can never be known. Moreover, application processing is commonly done off-site in many instances so the processors might never know the variables based on protected-class status. Thus, initial experiences in viewing and in ascertaining availability remain the most important aspect of determining if housing bias is practiced.

Review of the Test Results

There were approximately a total of 32,863 units at the 100 apartment complexes tested. At the complexes tested, seventy-one (71) had apartment units available to rent for the dates requested by the testers and 29 complexes did not have apartment units available to rent. Also, thirty-five (35) complexes had rent specials and sixty-five (65) complexes did not have rent specials.

A review of the rental tests in the most recent battery of testing showed that there were differences in treatment found in five tests based on race. Re-tests were conducted at the five apartment complexes where issues were found to determine if there were any subsequent problems. Only one of the five re-tests continued to show a difference in treatment. There were no differences in treatment found in the national origin tests. The testing results are reviewed below.

Test #11 (Race Test)

This test was conducted on October 8, 2016. Both the Black and White testers requested a one-bedroom apartment for November 1, 2016. Both testers spoke to the same leasing agent.

The Black tester indicated that she was looking for a one-bedroom apartment for November 1, 2016. The agent told the tester that they would have an apartment available for that date. The tester was shown an apartment. The agent told the tester the monthly rent. The agent also told the tester what the application, security deposit, amenity and parking fees were. The agent gave the tester floor plans, a business card and other informational material. The tester told the agent that she would call back.

The White tester was told that a one-bedroom apartment would be available for November 1, 2016 (with a similar monthly rent). The White tester was also told similar information about what the application, security deposit, amenity and parking fees were. The tester was also told about a rent special which was a waiver of one half of the amenity fee if the apartment was rented in twenty-four hours. The tester was also shown an apartment. The tester was given the same materials that the Black tester was given. This site was re-tested because the Black tester was not told about the rent special.

Re-test #49

The re-test was conducted on November 2, 2016. Both testers spoke to different leasing agents. Neither agent was involved in the original test (Test # 11). Both testers were told that a one-bedroom apartment would be available for the occupancy date requested, November 15, 2016. Both testers were told the same monthly rent and what the application and security deposit fees were. Neither tester was told about a rent special. Both testers were given floor plans with prices included on the floor plans and other informational materials about the complex. Neither tester was told to call to make an appointment. The re-test showed no differences in treatment.

Test # 18 (Race Test)

This test was conducted on October 27, 2016. Both the Black and White testers requested a one-bedroom apartment for November 15, 2016. Both testers spoke to the same leasing agent. The Black tester indicated that she was looking for a one-bedroom apartment for November 15, 2016. The agent told the tester that they would have an apartment available for that date. The tester was not shown an apartment. The agent told the tester the monthly rent. The agent also told the tester what the application, security deposit, amenity and parking fees were. The agent gave the tester floor plans, a business card and other informational material. The tester told the agent that she would call back.

The White tester was told that a one-bedroom apartment would be available for November 15, 2016 (with a similar monthly rent). The White tester was also told similar information about what the application, security deposit, amenity and parking fees were. The tester was also told about a rent special which included waiving the amenity fee and a \$500 gift card if the apartment was rented within forty-eight hours. The tester was also not shown an

apartment. The tester was given the same materials that the Black tester was given. This site was re-tested because the Black tester was not told about the rent special.

Re-test #46

The re-test was conducted on October 31, 2016. Both testers spoke to same leasing agent. This was the same agent that was involved in the original test (Test # 18). Both testers were told that a one-bedroom apartment would be available for the occupancy date requested, November 15, 2016. Both testers were told the same monthly rent and what the application fee and security deposit fees were. Both testers were told about the same rent special which included waiving both the application and move in fees if the apartment was leased within the next twenty-four hours. Both testers were given floor plans (with prices included on the floor plans) and other materials about the complex. Neither tester was told to call to make an appointment. The re-test showed no differences in treatment.

Test # 19 (Race Test)

This test was conducted on October 27, 2016. Both the Black and White testers requested a one-bedroom apartment for November 15, 2016. Both testers spoke to different leasing agents. The Black tester indicated that she was looking for a one-bedroom apartment for November 15, 2016. The agent told the tester that they would have an apartment available for that date. The tester was shown an apartment. The agent told the tester the monthly rent. The agent also told the tester what the application, security deposit, amenity and parking fees were. The agent gave the tester floor plans, a business card and other informational material. The tester told the agent that she would call back.

The White tester was told that a one-bedroom apartment would be available for November 15, 2016 (with a similar monthly rent). The White tester was also told similar

information about what the application, security deposit, amenity and parking fees were. The White tester was also told about a rent special, which included waiver of the amenity fee and that the parking fee would be \$100.00 until December 3, 2016. The tester was also shown an apartment. The tester was given the same materials that the Black tester was given. This site was re-tested because the Black tester was not told about the rent special.

Re-Test #47

The re-test was conducted on October 31, 2016. Both testers spoke to different leasing agents. The Black tester spoke to the same agent involved in the original (Test #19). Both testers were told that a one-bedroom apartment would be available for the occupancy date requested, November 15, 2016. Both testers were given the same information about the monthly rent and the security deposit and application fees. Both testers were told that the application is available online. Both testers were told about the same rent special. The rent special included waiving the amenity fee and six months free parking if an apartment was leased by November 12, 2016. Both testers were given a price sheet, floor plans, and other informational material about the complex. Neither tester was told to call to make an appointment. The re-test showed no differences in treatment.

Test #23 Race Test

This test was conducted on October 29, 2016. Both the Black and White testers requested a one-bedroom apartment for November 15, 2016. Both testers spoke to same leasing agent. The Black tester indicated that she was looking for a one-bedroom apartment for November 15, 2016. The agent told the tester that they would have an apartment available for that date. The tester was shown an apartment. The agent told the tester the monthly rent. The agent told the tester what the application and security deposit fees were. The tester was also given information about the

application and parking. The agent gave the tester floor plans, a business card and other informational material. The tester told the agent that she would call back.

The White tester was told that a one-bedroom apartment would be available for November 15, 2016 (with a similar monthly rent). The White tester was also told similar information about what the application and security deposit fees were. The White tester was also told about a rent special, which was that the amenity fee would be reduced from \$500.00 to \$99.00. The tester was also shown an apartment. The tester was given the same materials that the Black tester was given. This site was re-tested because the Black tester was not told about the rent special.

Re-test #48

The re-test was conducted on October 31, 2016. Both testers spoke to same leasing agent involved in the original test (Test #23). Both testers were told that a one-bedroom apartment would be available for the occupancy date requested, November 15, 2016. Both testers were given the same information about the monthly rent, security deposit and application fees. Both testers were told that the application is available online. Both testers were told about the same rent special, which was that the amenity fee would be reduced from \$500.00 to \$99.00. Both testers were given a price sheet, floor plans, and other informational materials about the complex. Neither tester was told to call to make an appointment. The re-test showed no differences in treatment.

Test # 29 (Race Test)

This test was conducted on October 15, 2016. Both the Black and White testers requested a one-bedroom apartment for November 1, 2016. Both testers spoke to the same leasing agent. The agent informed the Black tester that they would have apartments available for

that date. The agent offered to show the tester the apartment. The agent told the tester the monthly rent as well as what the application, security deposit, amenity and parking fees were.

The White tester was told that a one-bedroom apartment would be available for November 1, 2016 (with a similar monthly rent). The White tester was also told similar information about what the application, security deposit, amenity and parking fees were. The tester was told about a rent special. The rent special was that the security deposit fee would be waived if the tester attended an Open House event at the complex. The tester was also shown an apartment. The tester was given floor plans and a map of the area. This site was re-tested because the Black tester was not told about the rent special.

Re-Test #50

The re-test was conducted on November 2, 2016. The Black and White testers spoke to different leasing agents. The Black tester spoke with an agent not involved in the original test (Test #29). The White tester spoke with the same agent involved in the original test (Test #29). Both testers were told that a one-bedroom apartment would be available for the occupancy date requested, November 15, 2016. The White tester was told about the following rent specials. The application and security deposit fees would be waived if the tester leased an apartment before she left the rental office. The tester was also told that if she came back the next day, the security deposit fee would be waived if an apartment was leased within 24 hours. The White tester was also given floor plans and a business card.

The Black tester was not told about the rent specials. Also, the Black tester asked the agent if there were any rent specials. The Black tester was given a business card. The Black tester was told that the floor plans are available online. The complex apparently is a green

building and has gone paperless. The re-test showed a difference in treatment based on a rent special.

APPENDIX A
APARTMENT COMPLEXES TESTED IN ARLINGTON COUNTY
(Sites are not listed in the order that they were tested)

Apartment Complexes

The Lofts

The Buchanan

The Paramount

Lenox Club

Camden Potomac

Dominion Plaza

Columbia Park

Columbia Grove

Arbor Heights

Serrano Park

2121 Columbia Pike

Dorchester Apartments

The Wellington

Westmont Gardens

Dorchester Towers

The Point at Arlington Park

River House

North Tract Lofts

Crystal Square

Crystal Plaza

The Reserve @ Clarendon Center

Washington & Lee Apartments

Fort Strong Apartments
Vista on Courthouse
The Beacon
The Grove @ Arlington
Spectrum Apartments
Berkley Apartments
Barton House Apartments
2001 Clarendon Blvd.
Fillmore Gardens
Pike 3400
Halstead Arlington
Wildwood Towers
The View @ Liberty Center
The Amelia
Maxwell
Virginia Square Apartments
19 Nineteen Clarendon
Residence @ Market Commons
Rosslyn Heights
Van Metro Park
London Normandy House
Gables 12 Twenty One
Crescent Apartments

Zoso Flats

The Prime @ Arlington Courthouse

Tellus Apartments

M Flats

Water Park

Park Adams

2201 Pershing Apartments

Sheffield Court

The Clarendon

Meridian @ Courthouse Commons

Quincy Plaza

Richmond Square

The Madison at Ballston Station

Avalon Ballston Square

Meridian @ Ballston

Dominion Towers

Penrose Square on Columbia Pike

Oakland Apartments

Myerton Apartments

Birchwood Apartments

Liberty Tower

Randolph Tower

In Strata Pentagon City

The Grammercy at Metropolitan Park

Crystal Towers

The Millennium at Metropolitan Park

Park @ Pentagon Row

The Point @ Pentagon City

Meridian @ Pentagon City

220 Twentieth Street

Lyon Place at Clarendon Center

The Palatine

Courthouse Plaza

AVA @ Ballston

Courthouse Towers

Windsor @ Shirlington Village

The Marlowe

Park @ Arlington Ridge

Avalon @ Arlington Square

Twenty 400

Dolly Madison Apartments

Delancey @ Shirlington Village

Park Shirlington

Shirlington House

IO Piazza by Windsor

Verde Point Apartments

Avalon Arlington North

Latitude Apartments

Rosslyn Vue

Concord Apartments

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