

## VIII. Fair Housing Activities

### The Delaware Human Relations Commission and Division of Human Relations

The State of Delaware's Human Relations Commission was established in 1961. The original purpose of the Commission was to combat discrimination against individuals on the basis of race, creed, color, or national origin in places of public accommodation. The Commission has been vested with the responsibility of enforcing the Delaware Fair Housing Act since 1969.<sup>1</sup> The Commission is required to cooperate with the Governor, General Assembly, and public agencies and officials in promoting amicable relationships among racial groups within the state. The Commission is also authorized to serve as a conciliator in disputes involving race, age, marital status, color, sex, handicap, creed, national origin and ancestry. The Commission can conduct investigations and prepare studies relevant to the performance of its duties. It can also recommend legislation to the Governor and General Assembly. The Commission is authorized by statute to have twenty-eight members, but there are currently only nineteen commissioners. The Governor appoints all of the commissioners; seven of them fill at-large seats. The Commission meets on a monthly basis.

The Delaware Office of Human Relations was established in 1970, under what was then the Department of Community Affairs and Economic Development. Section 4608 of the Delaware Fair Housing Act authorized the Human Relations Commission to delegate its investigatory and enforcement powers under the state Fair Housing Act to the Office of Human Relations.<sup>2</sup> In 1983, by an Executive Order, the Office of Human Relations became the Division of Human Relations ("The Division"), an agency within the Department of Community Affairs. In 1991, the Division of Human Relations was transferred to the Delaware Department of State.

The Division is currently staffed with five Human Relations Representatives, three secretaries, a Human Relations Supervisor, and an Executive Director. The Executive Director, the supervisory human relations representative, and three other human relations representatives are based at the Division's Wilmington office. The Division's Dover and Georgetown satellite offices have one human relations representative and a secretary in

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<sup>1</sup> "There is created a State Human Relations Commission which shall consist of 28 members. Each county of the State shall be represented by 7 members, and 7 members shall be selected without regard to the county in which they reside. The members shall be appointed by the Governor and shall be broadly representative of various racial and cultural groups of the State. Seven of the original members shall be appointed for a term of 1 year, 7 for a term of 2 years, 7 for a term of 3 years and 7 for a term of 4 years. Thereafter, all appointments shall be made for terms of 4 years" (31 Del. C. § 3001 (2002)).

<sup>2</sup> "The Office of Human Relations is established, and shall have the power to perform and shall be responsible for the performance of all the administrative, ministerial, fiscal and clerical functions, including, but not limited to, appointment and removal of employees as provided by law, heretofore vested in the State Human Relations Commission, and all the powers, duties and functions heretofore vested in the Director of the State Human Relations Commission pursuant to § 3003 of Title 31" (29 Del. C. § 8733 (2002)).

each of those offices.

### ***The Complaint Process***

The Division of Human Relations investigates fair housing complaints and makes recommendations for determinations as to whether a violation of the Act has occurred. After a complaint is received, a human relations representative conducts an investigation and makes a recommendation as to the disposition of the matter. The Division and HUD must approve the investigator's determination. If the investigator recommends a cause finding, the state Attorney General must also approve the determination.

If the Commission determines that there is reasonable cause to believe that a discriminatory act has occurred or is about to occur, it is obligated to issue a charge on behalf of the complainant. When a charge is issued, the complainant or the respondent can elect to have the claim adjudicated in a civil action in court in lieu of an administrative proceeding. If no such election is made, an administrative hearing is scheduled before a panel appointed by the Chairperson of the Human Relations Commission. At the hearing, the parties are entitled to be represented by counsel, to present evidence and to call and question witnesses. At the conclusion of the hearing, the panel is obligated to issue an order and decision containing findings of fact and conclusions of law.

If the panel finds that the respondent has engaged in a discriminatory housing practice, it is obligated to award appropriate relief, including damages, injunctive relief, or such other relief that may be necessary. Any party aggrieved by a final order can obtain judicial review of the Commission's decision in the Superior Court of the county in which a discriminatory act is alleged to have occurred. If any of the parties elects to proceed with a civil action, rather than an administrative proceeding, the matter is referred to the Attorney General for prosecution. If the Attorney General does not commence a timely civil action, the Commission is obligated to employ special counsel to pursue the matter.

The Delaware Fair Housing Act also provides for private enforcement actions. An aggrieved person may commence a civil action in the county in which the discriminatory practice is alleged to have occurred not later than two years after the act took place. There is no obligation to exhaust administrative remedies prior to pursuing a private enforcement action.

The Division receives fair housing complaints primarily through telephone calls and walk-ins. Some matters are not formally filed because there is not enough evidence to support the claim or the matter is resolved without a formal complaint. The majority of fair housing complaints that the Division receives allege discrimination based on race or disability. When the Division receives a complaint, an investigator is assigned to the case according to the county in which the complaint is received.

The Division encourages conciliation of Fair Housing complaints. When a complaint is filed, the respondent is notified that a complaint has been filed is invited to settle the dispute. If both parties agree, the conciliation process commences. Conciliation at this stage is a "no fault solution," meaning that no formal charge is filed against the respondent. The matter remains at the complaint level. Most the Division's conciliation agreements do not involve financial compensation. When compensation is included, it is usually based on actual, out of pocket losses sustained by the complainant.

### ***The Division's Relationship with HUD***

The federal Fair Housing Act provides for the certification of state and local fair housing agencies and for the referral of complaints of discrimination to such agencies. Federal regulations implementing this statutory provision are set forth in 29 C.F.R. Part 115. The 1988 Amendments to the Fair Housing Act anticipated that state and local fair housing agencies would continue to play the integral role in handling discrimination complaints that they had under the original legislation. State and local agencies are eligible for certification if the rights, procedures, and remedies available under the state or local laws are "substantially equivalent" to those available under the federal Fair Housing Act.

Complaints filed with HUD in localities that have certified local agencies must be referred to the local agency. Once such a referral is made, HUD cannot take any further actions unless: (1) the local agency fails to take any actions on the referral within thirty days after receipt of the complaint; (2) the agency fails to proceed with reasonable promptness; or (3) the Secretary determines that the agency no longer qualifies for the "substantially equivalent" certification.

The Division has had a contractual relationship with HUD since 1985 pursuant to which it investigated complaints of discrimination. The Commission obtained "substantial equivalency" status with HUD in 1994 after the Delaware Fair Housing Act was amended to incorporate the modifications required by the 1988 amendments to the federal Fair Housing Act. HUD must approve the Division's findings concerning discrimination complaints. All complaints of discrimination filed in Delaware are "dual filed" with HUD, with the exception of complaints involving marital status or age discrimination, which are not protected classes under the federal statute. This means that the complaint is deemed to have been filed at the state and federal levels, asserting both state and federal claims. If a Delaware resident files a complaint with HUD, it refers the complaint to the Division for investigation on HUD's behalf. The Division thereafter investigates the complaint and recommends a finding. HUD makes the final decision regarding the disposition of the complaint.

## **Housing Opportunities of Northern Delaware**

Housing Opportunities of Northern Delaware ("HOND") was established in 1981. It is a private, non-profit corporation that promotes fair housing. A board of directors that reflects a broad cross-section of business and community groups governs the organization. HOND's public education activities include providing information about fair housing laws to community groups and counseling agencies. It regularly convenes workshops and seminars for consumers, community groups, housing professionals and the local housing industry. HOND encourages realtors, bankers, apartment managers, landlords and others to comply with fair housing laws and regulations.

HOND provides assistance and counseling to individuals who are the victims of discriminatory housing practices. It works with community groups and counseling agencies that are interested in fair housing. HOND conducts research projects that focus on housing practices. The organization also works with state, federal and local governmental agencies including, among others, FDIC, HUD, the Delaware Human Relations Commission, the City of Wilmington and New Castle County. The organization monitors legislation at the local, state and national levels and serves as an advocate for fair housing.

## **HOND's Activities, 1998-2001**

The following describes HOND's major activities between July 1999 and June 2002<sup>3</sup>:

July 1, 1998 - June 30, 1999

- Received 2,549 calls and referrals<sup>4</sup>
- Identified 5 cases of alleged discrimination within Wilmington and New Castle County borders; performed 50 fair housing (rental and sales) audits in New Castle and Kent counties
- Referred 9 cases to the Division of Human Relations Division of alleged discrimination in housing and access to affordable housing by homeless individuals

July 1, 1999 - June 30, 2000

- Received 3,879 calls and referrals
- Identified 5 cases of alleged discrimination in Wilmington and New Castle County; conducted 61 fair housing audits that examined lending, rental and sales practices in New Castle, Kent and Sussex Counties
- Referred 10 cases of to the Division of Human Relations for alleged discrimination in housing and access to affordable housing by homeless individuals

July 1, 2000 - June 30, 2001

- Received 4,500 calls and referrals
- Identified 7 cases of alleged discrimination within Wilmington and New Castle County. Other activities included conducting 75 fair housing audits examining lending, rental and sales in New Castle, Kent and Sussex counties.

## **Delaware Community Reinvestment Action Council**

The Delaware Community Reinvestment Action Council ("DCRAC") was established in 1987 by James H. Sills, Jr., a former Mayor of Wilmington. DCRAC is an advocacy organization that focuses on public education. Its mission is "[t]o ensure equal access to credit and capital for the under served populations and communities throughout Delaware through Education, Advocacy and Legislation." It is a private, nonprofit organization with a community-based board of directors. It is supported by funding from sources including: HUD, the IRS, the City of Wilmington, New Castle County, and lending institutions.

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<sup>3</sup> Derived from HOND's Annual Reports for 1999, 2000 and 2001.

<sup>4</sup> For every annual report, the topics of calls and referrals include housing discrimination, fair housing concerns, low income families seeking affordable rental housing, first time homebuyers, fair housing, and mobility counseling.

DCRAC is a HUD-funded FHIP agency. It monitors HMDA data and lending practices in Delaware. The organization seeks to hold lending institutions to their obligations under the Community Reinvestment Act to serve low-income and minority communities. The organization's current focus is on predatory lending practices in Delaware. DCRAC occasionally receives fair housing complaints. Most of these have involved claims of predatory lending. The agency works with the State Banking Department and the Attorney General's Office to address these complaints. DCRAC has produced a number of studies that focus on the lending patterns of Delaware's financial institutions.

## **Delaware Housing Coalition**

The Delaware Housing Coalition is a statewide advocacy organization committed to addressing affordable housing issues in Delaware. Its constituency consists of low- and moderate-income renters. The Delaware Housing Coalition has a fifteen-member board comprised of representatives from each county in the state. The mission of DHC is to "advocate for safe, decent, and affordable housing throughout the state." To fulfill the goals outlined in its mission statement, the Delaware Housing Coalition engages in a number of activities, including:

- Promotion of Tenant Opportunities and Rights:

DHC promotes tenants' rights through a variety of activities. It assists with the establishment of resident councils and grassroots organizing around housing issues. Through the Tenants Rights Hotline, the organization assists with landlord-tenant issues, provides information on affordable housing opportunities, educates tenants about their rights, and helps tenants to file fair housing complaints. The Delaware Housing Coalition offers information to Spanish-speaking residents of Delaware by providing Spanish-language summaries of the landlord-tenant code and the state mobile home code and offering translated articles published in *The Housing Journal* and on DHC's website. DHC also does field organizing among tenants in New Castle County.

- Education and Research:

As part of its advocacy mission, the Delaware Housing Coalition conducts educational outreach and research. DHC generates information about housing issues in Delaware through its research. DHC produces a report, *The Realities of Poverty in Delaware*, which provides information about poverty, healthcare, housing, salaries and wages. The organization also facilitates a number of statewide meetings and conferences to bring together housing advocates throughout the state and to raise awareness about housing issues.

### ***Fair Housing Complaints***

Based on its interactions with tenants through field organizing and the Tenants Rights Hotline, the Delaware Housing Coalition identified a number of instances of housing discrimination. These complaints include discrimination based on disability, race, and hostile

housing environment.

- **Disability:** Persons with disabilities experience difficulties with access and accommodation. They may experience intimidation and name-calling from employees of the rental property. In some instances, the housing units of disabled residents are maintained differently than the housing units of non-disabled residents. Disabled tenants who utilize Section 8 can be affected by disparate maintenance. Because Section 8 units are subject to housekeeping inspections, these residents can be placed in danger of losing their units.
- **Race:** DHC has received complaints in which managers or employees of rental properties made racial remarks. In another situation, a rental property congregated people in buildings based on their racial identity.
- **Hostile Housing Environment:** In another situation, a female tenant moved from her residence because of sexual innuendos directed at her.

### ***DHC's Comments about the Division of Human Relations***

As an advocacy organization that assists tenants in submitting complaints, the Delaware Housing Coalition expressed concerns about the investigation and conciliation process that the Division utilizes. It believes that Division of Human Relations should be more aggressive about issuing findings that penalize Fair Housing Act violators. DHC also stated concerns about the manner in which some complaints are handled. The Division believes that these assertions are not accurate.

## **Assessment of Current Programs and Activities**

The Delaware Division of Human Relations' record over the past decade indicates that the vast majority of complaints filed were settled. The victims typically received small amounts of financial compensation for the injuries sustained or no compensation at all. Since the early 1990s only four complaints have proceeded to an administrative hearing. This record suggests that the agency's conciliation focus has undermined its enforcement functions.

The original administrative enforcement mechanism of the 1968 Fair Housing Act was limited to a sanctionless conciliation process, which was tantamount to voluntary compliance and largely ignored by the real estate industry. A private right of action was established which allowed victims to file suits, but even if a plaintiff prevailed, the relief awarded typically consisted of a nominal damage award and injunctive relief that ordered the defendant simply to comply with existing laws. Congress eventually became aware of these failings. In 1988, the Fair Housing Act was amended and a new enforcement mechanism was added.

The preeminent purpose of the 1988 Amendments was the creation of an effective enforcement system that would add some muscle to the Fair Housing Act, a statute that, without effective enforcement provisions, had been little more than a "toothless tiger." The 1988 Amendments also provide for the certification of state and local agencies and for the referral of complaints to such agencies if the rights, procedures, and remedies available

under the state or local laws are "substantially equivalent" to those available under the federal Fair Housing Act.

The 1988 Amendments to the Fair Housing Act encourage conciliation and voluntary settlement, but they were designed to provide an effective enforcement mechanism that would punish violators with substantial damage awards for victims and other penalties. Congress envisioned local enforcement agencies that would act as police officers and prosecutors. Vigorous prosecution compensates victims, serves as a deterrent to violators and it encourages individuals with legitimate claims to file complaints.

The state's private advocacy groups are considerably under-resourced. They are all two or three person operations. Only one, HOND, is devoted entirely to Fair Housing matters. DCRAC is focused on lending issues and the CRA obligations of Delaware's financial institutions. The Delaware Housing Coalition is primarily a tenant advocacy organization. DCRAC and DHC contribute to Fair Housing advocacy efforts but that is not their only mission. Overall, the resources devoted to Fair Housing in Delaware are not enough to meet existing needs.

