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Real Estate Agents as Agents of Social Change: Redlining, Reverse Redlining, and Greenlining

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ABSTRACT

This article examines the role of US real estate agents in redlining, reverse redlining, and greenlining practices. Redlining was the practice of the Federal government, private banks, and other institutions to deny credit to neighborhoods based on race. Reverse redlining is marketing inferior credit and other products to those same neighborhoods. Greenlining is incenting investment in previously redlined neighborhoods. This article argues that although many real estate agents used practices that unjustly excluded access to neighborhoods, all can be faithful agents of inclusion to global, flourishing communities. That is, while real estate agents took leading roles in redlining and reverse redlining in the past, they can now lead in greenlining efforts. Moreover, those who want to effect greater access to global flourishing communities should consider becoming real estate agents.

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I. INTRODUCTION

This article examines the role of real estate agents in the US in redlining, reverse redlining, and greenlining. Redlining was the practice of the Federal government, private banks, and other institutions to deny credit to neighborhoods based on race. Reverse redlining is marketing inferior credit and other products to those same neighborhoods. Greenlining is incenting investment in previously redlined neighborhoods.

For most Americans, homeownership is the chief means of accumulating wealth.[1] A home not only provides physical shelter, but also provides access to neighborhood resources such as sustenance, schools, transportation, jobs, and faith communities. Home equity also funds higher education, entrepreneurship, and other avenues of financial mobility. Real estate brokers and agents are often gatekeepers of neighborhoods with higher property values. While historically many agents unjustly barred access to such neighborhoods, they may now be agents of inclusion to flourishing communities. Flourishing communities offer more to residents than higher property values. They draw from the strength of nature and multiple cultures, and are fountains of healthful and sustainable access to creative work and other cultural activity. They are places for vibrant artistic expression and incubators for lively, locally-owned businesses.

First, I will discuss the beginning of the real estate profession in the US and the choice to make realtors fiduciaries — both paralleled industrialization and the rise of professionalism. Second, I will discuss the role of real estate agents in redlining practices. Redlining began in the 1930s but its origin lies deeper in the aftermath of slavery and racial hierarchy theories that peaked in popularity at that time. Mandated by discriminatory real estate board codes of ethics and federal lending and

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[1] MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 8 (1995).

appraisal standards, real estate agents prevented buyers from entering certain neighborhoods or, through blockbusting practices, persuaded sellers to move based on racial lines. Some were contract sellers who offered onerous terms to minority buyers.

Third, I will discuss reverse redlining, which came to the forefront around the 2000s and contributed to the housing market collapse and global credit crisis of the early twenty-first century. Many real estate agents encouraged borrowers to apply for subprime loans, which led to increased defaults and foreclosures. Often, targeted borrowers were from communities that previously had been redlined.

Finally, I will examine greenlining practices, which promote investment in previously redlined neighborhoods and can promote global flourishing communities. I conclude that although in the past many real estate agents were agents of unnecessary exclusion by taking active roles in redlining and reverse redlining, and almost no role in greenlining, all real estate agents can become agents of flourishing inclusion. They can–and should—take the lead in greenlining. This would be consonant with their original calling of being faithful professionals and thriving entrepreneurs. Also, individuals who want to effect social change should consider becoming real estate agents.

II. REAL ESTATE AGENTS AS FIDUCIARIES

Full time real estate brokers appeared in the US in the 1800's.[2] Their appearance paralleled the industrialization and urbanization of the US. As the US moved from an agricultural-based economy to an industrialized one, real estate agents began to broker sales of land, rentals, and development of

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2 JEFFREY HORNSTEIN, A NATION OF REALTORS: A CULTURAL HISTORY OF THE TWENTIETH-CENTURY MIDDLE CLASS 14 (2010).

property. Some soon developed a reputation for being unscrupulous and were called "curbstoners."[3]

To combat unsavory practices, in 1847, the first real estate board was established in New York.[4] However, the board was unable to stave off the housing bust of the late 1800s. Following the bust, the National Association of Real Estate Associations was formed in 1908,[5] later becoming the National Association of Real Estate Boards (NAREB).[6] In 1913, NAREB adopted a Code of Ethics based on the Golden Rule.[7] The term "Realtor" was approved in 1916 to identify men who were members of boards that belonged to NAREB.[8]

Boards in the fast growing cities of both the Midwest and West drove the impetus for professionalism.[9] As much as possible, realtors wanted to be associated with "the established professions of law, medicine, and, less frequently, the ministry and engineering."[10] The boards sought to protect

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3 *Id.* at 14.

4 ROSE HELPER, RACIAL POLICIES AND PRACTICES OF REAL ESTATE BROKERS 173, 220 (1969).

5 *Id.* at 221.

6 The National Association of Real Estate Boards (NAREB) should not be confused with the National Association of Real Estate Brokers (also called NAREB), which was formed in 1947 for black brokers. *About NAREB*, *available at* http://nareb.com/about-nareb/ (last visited Feb. 22, 2014). The National Association of Real Estate Boards later became the National Association of Realtors (NAR). *NAR's Mission, Vision, and History*, *available at* http://www.realtor.org/about-nar/mission-vision-and-history (last visited Feb. 22, 2014) [hereinafter *NAR's Mission*].

7 *NAR's Mission*, *supra* note 6; Frederik Heller, *The Code Hits 100*, REALTOR MAG. (Nov. 2012), http://realtormag.realtor.org/law-and-ethics/ethics/article/2012/11/code-hits-100; *See also* HORNSTEIN, *supra* note 2, at 58.

8 HELPER, *supra* note 4, at 221. The term "realtor" was coined by broker Charles N. Chadbourn in Minneapolis in 1911. HORNSTEIN, *supra* note 2, at 76. In 1917, it appeared in Webster's Dictionary. *Id.* at 75-76. It became a registered trademark in 1950. DAVID BARRY, NINE PILLARS OF THE CITADEL: A REPORT SUBMITTED TO THE FEDERAL TRADE COMMISSION/U.S. DEPARTMENT OF JUSTICE WORKSHOP ON COMPETITION POLICY AND REAL ESTATE INDUSTRY, 43 (Nov. 2005), *available at* http://www.justice.gov/atr/public/workshops/rewcom/213351.pdf.

9 HORNSTEIN, *supra* note 2, at 1.

10 *Id.* at 48.

"civic virtue,"[11] "intelligently create great cities," and "bring homeownership to every American."[12] Real estate brokerage was a calling, requiring "risk taking, tact, and vision…'building cities' and helping families to acquire homes of their own, the foundation of civilization."[13]

Boards standardized practices, including lease forms, eviction procedures,[14] commissions, and the collection and organization of data.[15] The national organization, based in Chicago, promulgated model licensing and zoning laws, which were often adopted verbatim.[16] Boards also promoted city planning and sought to "stabilize values."[17] They established multiple listing services (MLS) and ways to share commissions.[18] However, access to the MLS was restricted to members.[19]

Early on, NAREB decided that brokers would be agents instead of independent contractors.[20] They also instituted the "exclusive agency" agreement with owners; these were agreements for 60 to 90 days.[21] Any broker who found a buyer had to share his commission with the listing broker.[22]

Agents are fiduciaries.[23] By adopting the fiduciary model, NAREB promoted their members' professionalism. A fiduciary is a selfless actor.[24]

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[11] *Id.* at 19.
[12] *Id.* at 35.
[13] *Id.* at 51.
[14] *Id.* at 21.
[15] *Id.* at 15.
[16] *Id.*
[17] *Id.*
[18] *Id.* at 16.
[19] *Id.* at 17.
[20] Thomas J. Miceli et.al., *Restructuring Agency Relationships in the Real Estate Brokerage Industry: An Economic Analysis*, 20 J. REAL ESTATE RESEARCH. 31, 34 (2000).
[21] HORNSTEIN, *supra* note 2, at 17.
[22] *Id.*
[23] RESTATEMENT (SECOND) OF AGENCY § 1(1) (1958); RESTATEMENT (THIRD) OF AGENCY §1.01 (2006).
[24] RESTATEMENT (THIRD) OF AGENCY §8.01 CMT. B (2006).

The fiduciary sets aside his or her personal interests to serve the principal. Fiduciary duties originated in the common law, and ultimately from the courts of equity, canon, and Roman law.[25] These duties are usually divided into two main categories: duties of care and duties of loyalty.[26] Duties of care include diligence.[27] Duties of loyalty include not making a profit at the expense of the principal and conveying all relevant information to the principal.[28] The breach of fiduciary duties is a tort, and, if breached, agents must forfeit all profits and commissions.[29]

A real estate broker runs a business, which is licensed by the state. State licensing began around 1916.[30] Brokerages hire agents, who also must pass licensing requirements.[31]

For many decades, real estate brokers and agents were mainly white men. However, this began to change during World War II when, in 1947, the National Association of Real Estate Brokers was formed for blacks who were excluded from the National Association of Real Estate Boards (NAREB).[32]

In 1972, NAREB changed its name to the National Association of Realtors (NAR).[33] Since the 1970s, the NAR has been the largest trade

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[25] *See* Mary Szto, *Limited Liability Company Morality: Fiduciary Duties in Historical Context*, 23 QUINNIPIAC L. REV. 61, 86–98 (2004) for the historical origins of agency.

[26] *See generally*, RESTATEMENT (SECOND) OF AGENCY §376-396 (1958); RESTATEMENT (THIRD) OF AGENCY § 8.01-8.12 (2006).

[27] RESTATEMENT (THIRD) OF AGENCY § 8.08 (2006).

[28] RESTATEMENT (SECOND) OF AGENCY § 381 (1958); RESTATEMENT (THIRD) OF AGENCY § 8.11 (2006).

[29] Robert Hayes, *The Practice of Dual Agency in California: Civil Code Sections 2373-2382*, 21 U.S.F.L. REV. 81, 82 (1986); WILLIAM A. GREGORY, THE LAW OF AGENCY AND PARTNERSHIP § 71 (3d. 2001).

[30] HELPER, *supra* note 4, at 221.

[31] *See generally*, Barlow Burke, Law of Real Estate Brokers §12.01-12.04 (2007).

[32] *State of Housing In Black America*, NAT'L ASS'N OF REAL ESTATE BROKERS, http://www.narebshiba.com/page_id=2 (last visited Jan. 16, 2013).

[33] *NAR's Mission*, *supra* note 6.

association in the US.[34] The National Association of Hispanic Real Estate Professionals was founded in 1999.[35] And, in 2003, the Asian Real Estate Association was founded.[36] The National Association of Real Estate Brokers is now known as NAREB; this should hopefully not be confused with the former National Association of Real Estate Boards, which is now the NAR.[37]

Today, almost two-thirds of agents are white women.[38] The average agent today is female, 57-years-old, married, and has some college education.[39] While 72 percent of the US population is white,[40] 87 percent of agents are white.[41] While 13 percent of US citizens are African-American,[42] only four percent of agents are African-American;[43] 16 percent of Americans are Hispanic or Latino,[44] while only 5 percent of agents are;[45] 5 percent of Americans are Asian,[46] while 4 percent of agents are Asian.[47]

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[34] *Id.*

[35] *Hispanics and Homeownership,* NAT'L ASS'N OF HISPANIC REAL ESTATE PROFESSIONALS, ,http://nahrep.org/facts-and-figures (last visited Jan. 16, 2013).

[36] *About AREAA*, ASIAN REAL ESTATE ASS'N OF AM., http://areaa.org/about.php?PHPSESSID=9285dcefac415bd4e315e5d22df003a1 (last visited Jan. 16, 2013).

[37] In this article, unless otherwise noted, NAREB will refer to the older organization that was originally formed in 1908.

[38] NAT'L ASS'N OF REALTORS, MEMBER PROFILE 2010, 65–73 (2010) [hereinafter NAR 2010] *available at* http://www.realtor.org.

[39] NATIONAL ASSOCIATION OF REALTORS, MEMBER PROFILE 2013, 7 (2013), *available at* www.realtor.org/sites/.../2013-member-profile-highlights-2013-05.pdf.

[40] Press Release, U.S. Census Bureau, 2010 Census Shows America's Diversity, (Mar. 24, 2011), *available at* http://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn125.html.

[41] NAR 2010, *supra* note 38, at 73.

[42] U.S. Census Bureau, *supra* note 40.

[43] NAR 2010, *supra* note 38, at 73.

[44] U.S. Census Bureau, *supra* note 40.

[45] NAR 2010, *supra* note 38, at 73.

[46] U.S. Census Bureau, *supra* note 40.

[47] NAR 2010, *supra* note 38, at 73.

Today, the NAR has over 1.2 million members.[48] Although most real estate brokers and agents do not belong to NAR, the organization's policies dominate the industry. Throughout its history, NAREB/NAR has promoted single-family home ownership as consonant with the American dream and in line with a better citizenry.[49] This dovetailed with federal housing policies. The development of the realty industry thus contributed to the discourse of the middle class, which came into being with industrialization.[50] NAREB/NAR promoted its role as fiduciaries of the American public.[51]

III. REDLINING

Redlining is "[a] pattern of discrimination in which financial institutions refuse to make mortgage loans, regardless of the credit record of the applicant, on properties in specified areas because of alleged deteriorating conditions."[52]

Official redlining practices began in the 1930's during the Great Depression. A housing bubble and bust preceded the Great Depression.[53] Before mortgage lending became affordable, only wealthy families could buy homes. Banks would require 50-60 percent for a down payment and

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48 *Mission, Vision, and History*, NAT'L ASS'N OF REALTORS, http://www.realtor.org/about-nar/mission-vision-and-history (last visited Dec. 10, 2012).

49 HELPER, *supra* note 4, at 195.

50 HORNSTEIN, *supra* note 2, at 1–11.

51 *Id.* at 63.

52 BLACK'S LAW DICTIONARY 1279 (6th ed. 1990).

53 Evan Soltas, *Housing Was at the Root of the Great Depression, Too*, BLOOMBERG NEWS, Sept. 25, 2012, http://www.bloomberg.com/news/2012-09-25/housing-was-at-the-root-of-the-great-depression-too.html; Charles L. Nier, III, *Perpetuation of Segregation: Toward a New Historical and Legal Interpretation of Redlining Under the Fair Housing Act*, 32 J. MARSHALL L. REV. 617, 619-20 (1999) [hereinafter Nier, III]. "During the five year span from 1928 to 1933, residential property construction decreased by 95%, while home repair expenditures dropped 90%. By 1933 half of all the nation's residential mortgages were technically in default, with foreclosures reaching the rate of over 1000 per day." *Id.*

repayment within one to three years.[54] In 1935, NAREB argued that the federal government should subsidize mortgages and private ownership, not public housing.[55]

The federal government agreed and enacted multiple programs to revive the economy and increase employment. These programs promoted residential construction and made home ownership widely available.[56] This was achieved by "standardized homebuilding procedures" to address the "rising costs of construction," and by providing mortgage insurance.[57] Such mortgage insurance lowered interest rates from six to eight percent down to four percent, and raised the amounts that could be financed from 50 to 70 percent of the purchase price to 90 percent.[58] After 1939, with a federally insured mortgage, it was cheaper to purchase than to rent.[59]

Unfortunately, three underlying assumptions of these federal programs were the following: (1) people could be divided by race; (2) only white communities held property values; and therefore; (3) segregation by race was necessary to protect white property values. Thus, these programs introduced official racial redlining[60] and allowed the government to

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[54] ANTERO PIETILA, NOT IN MY NEIGHBORHOOD: HOW BIGOTRY SHAPED A GREAT AMERICAN CITY 72 (2010).

[55] TIMOTHY MCDONNELL, S.J., THE WAGNER HOUSING ACT: A CASE STUDY OF THE LEGISLATIVE PROCESS 138–39 (1957), *available at* http://historymatters.gmu.edu/d/5106 (citing Walter S. Schmidt, *Report Concerning Certain Federal and Private Activities in the Field of Real Estate and Housing*)).

[56] Nier, III, *supra* note 53, at 621–24.

[57] HORNSTEIN, *supra* note 2, at 119.

[58] BERYL SATTER, FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA 41 (2009).

[59] *Id.* at 41 (citing KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 196, 204-06 (1985)). One could rent an apartment in the city for $50 a month; with an FHA loan, one could purchase a home for $5000 in the suburbs with a down payment of $550 and a mortgage payment of $26.91 a month. *Id*.

[60] Nier, III, *supra* note 53, at 620.

promote restrictive racial covenants and segregation.[61] In effect, only whites received federally insured mortgages.

Up until this time, banks had already decided not to lend to blacks.[62] Additionally, racial covenants, i.e., agreements not to sell or rent to persons of non-Caucasian race, and statutory discrimination were common. These restrictions paralleled eugenics theories of the 1800's that attempted to justify social and economic hierarchy based on physical characteristics.[63] American interest in eugenics peaked from the 1890's through 1920's,[64] and the US was a leader in its promotion.[65] In eugenics, persons were divided into the Caucasian, Negroid, and Mongoloid races; Caucasians were considered superior to the other two.[66] Eugenicists studied characteristics such as "skin color, hair texture, skull shape [and] brain size . . . ."[67] Among Caucasians, Anglo-Saxons were the "peak of human existence," followed by Northern Europeans.[68] Others, including Mediterraneans, could only succeed if they "assimilated" into Anglo-Saxon society.[69] Assimilation meant adopting Anglo-Saxon language, and legal, religious, and economic culture.[70] Ironically, because of immigration curbs, which attempted to keep

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[61] Stanley P. Stocker-Edwards, *Black Housing 1860-1980: The Development, Perpetuation, and Attempts to Eradicate the Dual Housing Market in America*, 5 HARV. BLACK LETTER J. 50, 55–56 (1988); 12 U.S.C. § 1701 (1934).
[62] PIETILA, *supra* note 54, at 64.
[63] *See id.* at 42–46, for a fascinating discussion of eugenics and its parallel development to discriminatory housing practices.
[64] *Id.*at 32.
[65] *Id.*at 44.
[66] Charles A. Gallagher, *White*, *in* HANDBOOK OF THE SOCIOLOGY OF RACIAL AND ETHNIC RELATIONS 11 (Hernán Vera & Joe R. Fagin, eds., 2007).
[67] PIETILA, *supra* note 54, at 42.
[68] *Id.*
[69] *Id.*
[70] JUAN F. PEREA, RICHARD DELGADO, ET AL., RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA 508 (2d. ed.) (2007) (citing Joe Feagin, *Old Poison in New Bottles: The Deep Roots of Modern Nativism*, *in* IMMIGRANTS OUT! (Juan F. Perea ed., 1997)).

America's Caucasians "pure," jobs in the North opened up for blacks from the South.[71]

The first great Northern migration of blacks occurred in the 1910's and 1920's.[72] Much violence, including bombings, ensued as whites tried to prevent blacks from moving near them.[73] In 1910, Baltimore enacted the first statute in the US that forbade blacks and whites from moving into each other's neighborhoods.[74] In 1917, the Supreme Court struck down such laws in *Buchanan v. Warley* for violating the due process clause of the Fourteenth Amendment.[75] However, the same year, the Supreme Court held that private racial covenants were enforceable in *Corrigan v. Buckley*.[76] Racial covenants remained legally enforceable until 1948.[77]

A typical restrictive covenant stated, "At no time shall said premises . . . be sold, occupied, let or leased . . . to anyone of any race other than the Caucasian, except that this covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant."[78] Early California covenants excluded Chinese.[79] Other covenants specifically excluded Jews, Catholics, Mexicans, and Italians.[80] One black

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[71] PIETILA, *supra* note 54, at 47.
[72] Stocker-Edwards, *supra* note 61, at 51.
[73] *Id.* at 55.
[74] PIETILA, *supra* note 54, at 22–23.
[75] Buchanan v. Warley, 245 U.S. 60 (1917).
[76] *See generally* Corrigan v. Buckley, 271 U.S. 323 (1926).
[77] *See generally* PIETILA, *supra* note 54. Baltimore had a three-tiered housing market: whites, Blacks, and Jews. See *id.* at 15, 18, 56-57. Neighborhood succession went from "white" to Jewish to black. *Id.*; *see also* Buchanan v. Warley, 245 U.S. 60 (1917).
[78] SATTER, *supra* note 58, at 40 (citing CLEMENT E. VOSE, CAUCASIANS ONLY: THE SUPREME COURT, THE NAACP, AND THE RESTRICTIVE COVENANT CASES (1967)).
[79] PIETILA, *supra* note 54, at 48.These were "struck… down as a violation of the most-favored-nation clause of an 1868 U.S. Treaty with China." *Id.* Subsequently, violence was used against the Chinese. *Id.*
[80] PIETILA, *supra* note 54, at 49.

neighborhood excluded whites.[81] Thus, redlining paralleled racial covenants.

The federal Home Owner's Loan Corporation (HOLC) "initiated and institutionalized . . . redlining."[82] With the use of secret color-coded maps that spanned the nation, the HOLC had four designations: green, blue, yellow, and red.[83] Properties, blocks, and neighborhoods were rated.[84] White areas were "green" and were recommended for lending.[85] Neighborhoods with Jews were ranked blue or yellow and considered risky.[86] A neighborhood with blacks was rated red, no matter what economic level the blacks had.[87] Redlined areas were considered "worthless or likely to decline in value[,]" and no loans could be made for "either purchasing or upgrading."[88] Thus, redlining was the real estate kiss of death. HOLC's unfortunate innovation was to make racial discrimination in lending uniform across the nation.[89]

The Federal Housing Administration (FHA) and the Veterans' Administration (VA) adopted HOLC's discriminatory practices and granted loans only to buyers whose homes were located in "stable and desirable" communities.[90] The FHA had detailed maps of "the present and likely future

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[81] *Id.* at 48.
[82] Reggie Oh, *Apartheid in America: Residential Segregation and the Colorline in the Twenty-First Century*, 15 B.C. THIRD WORLD L.J. 385, 390–91 (1995); Nier, III, *supra* note 53, at 621–24. The HOLC was designed to offer low-interest loans to individuals who were in danger of losing their homes or had already lost their homes. Benjamin Howell, *Exploiting Race and Space: Concentrated Subprime Lending as Housing Discrimination*, 94 CAL. L. REV. 101, 107–08 (Jan. 2006).
[83] PIETILA, *supra* note 54, at 61.
[84] SATTER, *supra* note 58, at 41.
[85] *Id.* at 41-42.
[86] *Id.* at 42.
[87] *Id.*
[88] *Id.*
[89] PIETILA, *supra* note 54, at 64.
[90] Oh, *supra* note 82, at 391–92. These "stable" and "desirable" neighborhoods were usually "comprised exclusively or almost exclusively of white families." Nier III, *supra* note 53, at 624–26. The Federal Housing Administration and Veterans Administration

location[s]" of blacks.[91] Even a block with a single black home could be redlined; this gave whites even more incentives to exclude blacks.[92] The FHA Underwriting Manual warned against creating incompatible racial neighborhoods.[93] The organization also drafted a model racial restrictive covenant[94] and often insisted upon imposing them when granting mortgage insurance.[95] Even after a racial covenant had expired, the FHA tried to enforce them![96] Although redlining began in the 1930's, its repercussions can be felt today. "[The FHA] and VA programs subsidize nearly one-half of all mortgaged homes…"[97] "Between 1930 and 1970, 98 percent of all federally subsidized mortgages went to white families."[98]

Interestingly, the definition of "white" changed over time. Originally, it meant those of British and northern European ancestry.[99] However, gradually, Italians, the Irish, and Jews also became classified as "white."[100]

"completely altered the residential housing market in the United States by financing suburbanization." *Id*. The Federal Housing Administration favored financing of "single-family detached homes over multi-family projects," favored new homes over repairing old homes, and required appraisers to guarantee loans. *Id.* at 625. All of these factors encouraged white families to move out of the city rather than repair their city homes. Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739, 751 (Apr. 1993); Alex M. Johnson, Jr., *How Race and Poverty Intersect to Prevent Integration: Destabilizing Race as a Vehicle to Integrate Neighborhoods*, 143 U. PA. L. REV. 1595, 1612–13 (May 1995).These programs opened a cheap market for homes in the suburbs, but denied access to blacks through the official policies and manuals of each institution. *Id*.

91 SATTER, *supra* note 58, at 42.

92 *Id*. at 45.

93 Dubin, *supra* note 90, at 751.

94 Stocker-Edwards, *supra* note 61, at 55.

95 SATTER, *supra* note 58, at 42.

96 PIETILA, *supra* note 54, at 73.

97 Dubin, *supra* note 90, at 752.

98 Oh, *supra* note 90, at 393.

99 PEREA ET AL., *supra* note 70.

100 *See* James R. Barrett & David Roediger, *How White People Became White* and Karen Brodkin Sacks*, How Did Jews Become White Folks? reprinted in* RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA, 508–13, 516–24 (2d. ed.) (2007).

Redlining, unfortunately, became a self-fulfilling prophecy. "As real estate appraisal became professionalized in the 1930's, the reigning consensus was that homeowners should be separated by both class and race."[101] FHA appraisers "channeled mortgage insurance to white, suburban areas and away from black, inner-city neighborhoods."[102] Minority housing values decreased due to the lack of loans (and thus home purchases).[103] White neighborhoods experienced an increase in appraisal value because white buyers received federally funded loans to purchase those homes.[104]

Also, because blacks could not receive mortgage loans, they became victims of contract selling. White speculators received mortgages for redlined areas by offering kickbacks to banks.[105] They then bought properties at market rate, and then sold them for at least double their market value to blacks on contract.[106] If the contract buyers missed one payment, they were evicted.[107]

The results of all these practices were violence, white flight from urban neighborhoods, hyper-segregation, and slum conditions in redlined black neighborhoods. In the 1948 landmark case of *Shelley v. Kraemer*, the Supreme Court held racial covenants legally non-enforceable.[108] The FHA

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[101] Howell, *supra* note 82, at 110. "This consensus was premised on the belief that the influx of certain races into an area would cause property values there to decline." *Id*.
[102] *Id.* at 112.
[103] *Id.* at 113–15. Additionally, it became even more unlikely that whites would purchase homes in minority areas if occupying such residences meant they would pay higher interest rates for loans and insurance. *Id*.
[104] *Id.* at 113–15.
[105] SATTER, *supra* note 58, at 114.
[106] *Id.* at 3. It was not uncommon for a speculator to sell property to a black buyer at three times its market rate. *Id.* For example, in 1955 a white real estate agent bought a house for $4,300 and one week later sold it for $13,900 to a black family. *Id*.
[107] Stocker-Edwards, *supra* note 61, at 83 (citing V. FRANKLIN, THE EDUCATION OF BLACK PHILADELPHIA: THE SOCIAL AND EDUCATIONAL HISTORY OF A MINORITY COMMUNITY, 1900-1950 63 (1979)). It appears that Blacks were also exploited in the 1920's by brokers who threatened to evict black tenants unless these tenants bought their homes at inflated prices. *Id*.
[108] *See* Shelley v. Kraemer, 334 U.S. 1 (1948).

insisted, at the time, that the decision would not change its policies.[109] Eventually, by the early 1950s, the FHA implemented a policy of equal opportunity, but it did not begin to address the discriminatory practices of private lenders until 1968.[110] Until 1965, the FHA did not offer mortgage insurance "in most black neighborhoods and in all racially changing ones…"[111]

A. The Role of Real Estate Agents in Redlining

> I don't object to selling to minority people, but there is one thing I will not do and never have done . . . It is being the first to sell in a white neighborhood to a colored family or some race that is not wanted in the neighborhood, because you lose your prestige . . . your insurance business, because they get mad at you . . . my goodwill is worth more to me than a few sales.[112]
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> [A]ll men are created equal as far as the Good Book says . . . I just let conscience be my guide.[113]
>
> - Chicago brokers interviewed in 1955-56

Like many other institutions, the National Association of Real Estate Brokers (NAREB) maintained explicit racially discriminatory policies for several decades. The FHA and NAREB's discriminatory policies were exacerbated by blockbusting practices of brokers,[114] which in turn

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[109] SATTER, *supra* note 58, at 43.
[110] Dubin, *supra* note 90, at 752.
[111] SATTER, *supra* note 58, at 357.
[112] *See* HELPER, *supra* note 4.
[113] *Id.* at 128.
[114] Garrett Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910-1913*, 42 MD. L. REV. 289, 320 (1983).

aggravated apprehension of integrated living.[115] Physical separation increased racial stereotypes.[116]

After the US Supreme Court outlawed statutory racial restrictions in 1917, real estate boards resolved to nevertheless prevent nonwhites from living in white neighborhoods.[117] The Chicago Real Estate Board decided they would only sell property to blacks on blocks with blacks, and only after such blocks were filled solidly, to contiguous blocks.[118] In 1921, the Chicago Real Estate Board voted to expel "any member who rented or sold property on a white block to blacks."[119] Chicago's work became a model for other Boards and NAREB.[120] Restrictions included Japanese buyers.[121] For example, the Board of Portland, Oregon, put in its Code of Ethics that "[n]o member of the Board will directly or indirectly sell or be a party to the sale of Portland residential property to persons of the Negro or Oriental races now inhabited almost exclusively by white persons."[122]

In response to actions by local boards around the country, NAREB revised its Code of Ethics in 1924, including the introduction of Article 34. From 1924 through 1950, under Article 34, a broker was forbidden from "introducing into a neighborhood a character of property or occupancy, members of any race or nationality . . . whose presence will clearly be detrimental to property values in that neighborhood."[123] "Thirty-two states

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[115] Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699, 751–52 (1993).
[116] *Id.* at 752. Racial stereotypes were furthered by the use of African Americans as "scab" labor. *Id*. Companies used minorities to break up strikes through the 1930s. Even though this practice disappeared, the negative feelings towards minority workers did not. *Id*.
[117] HELPER, *supra* note 4, at 226.
[118] SATTER, *supra* note 58, at 40.
[119] PIETILA, *supra* note 54, at 50.
[120] SATTER, *supra* note 58, at 40.
[121] HELPER, *supra* note 4, at 227.
[122] *Id.* at 228.
[123] *Id.* at 201.

adopted 'model real estate licensing acts' that authorized state commissions to revoke the licenses of agents who violated NAREB's Code of Ethics."[124] Therefore, legally and by its Code of Ethics, NAREB members were required to enforce segregation. Those who did not were considered traitors.[125] According to one account:

> Even in neighborhoods without restrictive covenants, the [Baltimore Board's] standard real estate sales contract decreed that 'at no time, shall the land included in said agreement or any part thereof, any building erected thereon, be occupied by any negro or negroes, or persons of negro or African extraction or descent, in whole or in part.'[126]

Therefore, just as federal lending was synonymous with racial discrimination, so racial discrimination was with being a licensed realtor.

Following the Supreme Court's 1948 ban of the legal enforcement of racial covenants, in 1950, NAREB removed the language "members of any race or nationality" from its Article 34.[127] However, in studies done in the 1950s and 1960s, brokers confirmed that the amended language of Article 34 still meant racial discrimination in practice.[128] Although the NAREB disclosed in both 1926 and 1945 statements that it would aid "Negroes and other minority groups" with housing, this meant only in segregated neighborhoods.[129]

It was not a coincidence that NAREB and federal housing policies were both racially discriminatory. Richard Ely, a professor at the University of Wisconsin, and a progressive movement leader, worked closely with

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[124] PIETILA, *supra* note 54, at 50.
[125] HELPER, *supra* note 4, at 276.
[126] PIETILA, *supra* note 54, at 53.
[127] HELPER, *supra* note 4, at 232–33.
[128] *Id.* at 232–335.
[129] *Id.* at 236. Unfortunately, disparaging remarks about women and other minorities including "Chinamen" were common at meetings and banquets of local boards. HORNSTEIN *supra* note 2, at 25.

NAREB to promulgate a body of "land science" that justified the professionalism of real estate brokers. Ely commissioned Frederick Babcock to write a text on real estate appraisal in the 1920s.[130]

Babcock became head of the FHA's underwriting division, during which time he drafted appraisal guidelines for the FHA, including its mortgage risk grid.[131] Babcock wrote "that 'the desirability' of a neighborhood rested 'primarily on its [racial, ethnic, and class] homogeneity.'"[132] Moreover, in his 1932 book, *The Valuation of Real Estate*, he wrote the following:

> Among the traits and characteristics of people which influence land values, racial heritage . . . seem[s] to be of paramount importance . . . [and] can result in a very rapid decline. Usually such declines can be partially avoided by segregation and this device has always been in common usage in the South where white and negro populations have been separated.[133]

Unfortunately, Ely himself held that Negroes were more suited to being tenants than owners.[134]

Homer Hoyt became the FHA's chief economist in 1934 following his time as a real estate broker in Chicago.[135] In his 1933 dissertation, Hoyt ranked nationalities in terms of real estate ownership: "English, Germans, Scots, Irish, Scandinavians" ranked highest, and "Negroes" and "Mexicans" ranked lowest.[136] Until the 1960's, appraisal manuals used Hoyt's hierarchy and also advised neighborhoods to have covenants.[137]

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130 HORNSTEIN, *supra* note 2, at 143.
131 HELPER, *supra* note 4, at 202.
132 HORNSTEIN, *supra* note 2, at 107.
133 HELPER, *supra* note 4, at 202.
134 HORNSTEIN, *supra* note 2, at 108 (citing Richard T. Ely and Charles J. Galpin, *Tenancy in an Ideal System of Land Ownership*, AM. ECON. REV. 9, no.1, 180–212 (Mar. 1919)).
135 PIETILA, *supra* note 54, at 62.
136 *Id.*
137 *Id.* at 64.

The official policy of the American Institute of Real Estate Appraisers was also explicit. It stated that racial diversity contributed to the devaluing of property because, "when a new class of people of different race, color, nationality, and culture moves into a neighborhood, there is a tendency on the part of the old inhabitants to . . . move to other districts."[138]

Other standard real estate texts also equated property value with racial homogeneity and stated that property values decline with an increase of black residents.[139] One text cited "racial invasion" as a prime reason why a seller leaves.[140] A 1956 text refers to entrance of "Mexican nationals" and Negro farm workers as reasons for prior residents to leave.[141]

In 1946, "no Japanese could buy property in Spokane unless the sale was reviewed by a special board set up by the Spokane Realty Board for that purpose."[142] In 1948, when the US Supreme Court decided *Shelley v. Kramer*, which held racial covenants unenforceable, NAREB filed a brief in favor of racial covenants.[143]

In the 1960s, NAREB vowed to fight open occupancy, i.e., non-segregated neighborhoods, and fair housing legislation.[144] In 1963, the NAREB set forth its Policy on Minority Housing, emphasizing that it opposed "open occupancy," that brokers were marketing intermediaries, and that the "right of property owners free to determine with whom they will deal is a right fundamental in the American tradition . . . [and] that the broker fully performs his legal and social responsibilities when he faithfully

[138] HELPER, *supra* note 4, at 201.
[139] *Id.* at 202.
[140] *Id.* at 211.
[141] *Id.* at 215.
[142] *Id.* at 231.
[143] PIETILA, *supra* note 54, at 107.
[144] SATTER, *supra* note 58, at 192.

engages to find a purchaser acceptable to his principal . . . ."[145] Even until the 1970s there existed separate multiple listings for Jews.[146]

Black brokers were excluded by many real estate boards; they formed their own boards in the 1920s, and a national association in 1947.[147] The local boards spun off of the National Business League, which was founded by Booker T. Washington in the beginning of the 1900's.[148] The boards called members "realtists."[149] As noted earlier, the national black group was called the National Association of Real Estate Brokers. It was founded in Tampa, Florida, "as an equal opportunity and civil rights advocacy organization for African American real estate professionals, consumers and communities in an overtly racist America."[150] In Baltimore, blacks were not allowed to become realtors until the 1960s.[151] Blacks formed the Real Estate Brokers of Baltimore as realtists.[152] The national association played a significant role in promoting the "first local fair housing legislation in 1962 in New York City, the first state fair housing legislation in 1963 in California and the first national fair housing legislation in both 1947 and 1968."[153]

1. Blockbusting and Contract Selling

> [T]hese brokers go out into other neighborhoods and for cash bonuses persuade the savings and loan officers out of the neighborhood to make . . . 80 percent loans . . . I bought a home

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[145] HELPER, *supra* note 4, at 286–87.
[146] PIETILA, *supra* note 54, at 143.
[147] HELPER, *supra* note 4, at 237.
[148] *NAREB History*, NAT'L ASS'N OF REAL ESTATE BROKERS, http://www.narebshiba.com/?page_id=2 (last visited Jan. 16, 2013) [hereinafter NAREB History].
[149] *Id.*
[150] *Id.*
[151] PIETILA, *supra* note 54, at 144.
[152] *Id.*
[153] NAREB History, *supra* note 148.

> from a speculator. He had paid $12,000 for it. He had a loan for $11,500 and had to put out only $500. (Chicago broker in 1950s).[154]

> [I]n April 1957 . . . Albert and Sallie Bolton . . . were being evicted from their home . . . . They had paid . . . .$13,900 for a cramped, one-hundred-year-old wood-frame house . . . the white real estate agent, Jay Goran . . . had himself purchased the building only the week before—for $4,300 . . . the scam went deeper . . . Goran never told the Boltons that he was the building's owner. He convinced them to . . . sign some complicated documents that stipulated [the current owner remained owner] . . . until they had entirely paid off the property's cost, plus 6 percent interest, through high monthly installments.[155]

The term,"blockbusting," was named after the Allied bombs that were used in World War II, which had the potential to destroy an entire city block.[156] The practice of Blockbusting, in the real estate sense, occurred most between the 1950s and 1970s.[157] The practice generally proceeds as follows: brokers or speculators urge white homeowners to move because of rumors of an influx of black residents, resulting in white owners selling their homes at low prices out of panic.[158] The broker then guides black buyers towards these homes and sells them at an elevated price,[159] or subdivides properties and rents at a premium.[160]

This practice arose in the 1940s because of the federal policy of redlining, NAREB and state policies of racial segregation, personal convictions by brokers, and a growing black buyer market. By offering

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[154] HELPER, *supra* note 4, at 181.
[155] SATTER, *supra* note 58, at 3–4.
[156] PIETILA, *supra* note 54, at 96.
[157] Dmitri Mehlhorn, *A Requiem For Blockbusting: Law, Economics, and Race-Based Real Estate Speculation*, 67 FORDHAM L. REV. 1145, 1147 (Dec. 1998).
[158] Note, *Racial Steering: The Real Estate Broker and Title VIII*, 85 YALE L. J. 808, 812 (May 1976) [hereinafter *Racial Steering*].
[159] *Id.* at 812.
[160] Aoki, *supra* note 115, at 751–52.

kickbacks to bank officers, blockbuster-speculators obtained loans for redlined properties, or they "were financed by syndicates of private investors, often headed by lawyers . . . ."[161] They sometimes rigged auctions of properties.[162]

On the one hand, the white homeowner was willing to sell at a lower price because speculators offered cash. Homeowners also might sign an exclusive agency agreement with a speculator and then be locked in.[163] Panic selling created an oversupply, which lowered prices.[164] Also, white buyers disappeared with rumors of a black transition.[165]

On the other hand, black buyers were willing to pay a higher price to speculators because they could pay with a small or no down payment and on contract.[166] They had no alternative because they were uniformly denied credit by banks due to redlining. Blacks were often not told that the broker was also the owner of the property, nor that they would be saddled with oppressive repair costs. The contract for deed was paid in monthly installments to the speculator. If a black buyer defaulted on only one payment, the speculator could reclaim the property and still resell at a profit.[167] Many speculators resold properties multiple times.

Contracts for deeds were not recorded, nor was an appraisal conducted; a purchaser could move in right away.[168] Contract selling also had a secondary market. Contract sellers raised more cash by selling their contracts at a discount to "reputable doctors, dentists, lawyers, and other business and professional[s]."[169] Lenders stayed away from initial black

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[161] PIETILA, *supra* note 54, at 99.
[162] *Id.* at 100.
[163] HELPER, *supra* note 4, at 179.
[164] *Id.*at 86.
[165] *Id.*
[166] *Id.* at 177.
[167] HELPER, *supra* note 4, at 179.
[168] PIETILA, *supra* note 54, at 99.
[169] SATTER, *supra* note 58, at 75.

purchases because of the frequent violence, vandalism, and arson that accompanied them. However, after this danger subsided, lenders aided further purchases.[170]

Who were blockbusters? In interviews done with Chicago brokers in the 1950s and 1960s, many brokers denied being the first to introduce a black owner or tenant to a white neighborhood because this often led to violence and police intervention.[171] Brokers who lived in such neighborhoods expressed dismay at bringing upheaval to white homeowners who feared crime, declining schools, intermarriage, and depressed property values.[172] They also feared losing business from white clients and the disdain of other local brokers. However, once they believed change was inevitable, local brokers sold homes to subsequent black owners on a block. Therefore, blockbusters appeared to be brokers from outside the neighborhood.[173] Brokers saw an enormously profitable practice: borrowing money at low rates, buying homes at low prices, selling at high prices often multiple times, and earning money on both interest rates and sales prices.[174] One broker stated that there were probably "15 or 20 white brokers that specialize in . . . being first."[175] Blockbusters may also have been local firms that secretly collaborated with outside firms.[176]

In Baltimore, blockbusters sometimes used straw black buyers so they could withstand the violence in being the first blacks on a block.[177] Many

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[170] HELPER, *supra* note 4, at 90.
[171] *Id.* at 121.
[172] *Id.* at 80. Sadly, blockbusting is reminiscent of a prior practice of speculators. Speculators would buy land in a prominent neighborhood, announce construction of a nuisance, and then blackmail residents to buy them out. HORNSTEIN, *supra* note 2, at 21.
[173] HELPER, *supra* note 4, at 176.
[174] *Id.* at 4.
[175] *Id.* at 256.
[176] *Id.*
[177] PIETILA, *supra* note 54, at 145. It is unclear who these straw buyers were; how long they stayed, and how they were compensated.

blockbusters hired part-time salesmen, such as milkmen and mailmen, because they knew the neighborhood well.[178] They would knock on doors and plead for a listing.[179] After the first house had been sold to a black family, other homes would be "bombarded with solicitation cards and letters, telephone calls at all hours, and personal visits."[180] Agents were not beyond telling crude lies such as, "Did you hear about the rape?"[181]

Not all blockbusters were white. In at least one account, an African-American blockbuster saw his work as part of the civil rights movement, opening up home owning opportunities to blacks.[182]

The speculators not only victimized black buyers, but also banks. When buyers could not afford their monthly payments, speculators defaulted on their bank loans.[183] Banks then sold these foreclosed buildings at rock bottom prices, which speculators then repurchased![184] Speculators also intentionally destroyed properties to earn money from arson insurance.[185]

In 1962, blockbusting was brought to public attention and outrage ensued.[186] Some communities enacted anti-solicitation ordinances and for-sale sign restrictions.[187] Anti-solicitation ordinances prohibit brokers from contacting uninterested or unwilling homeowners.[188] Similarly, for-sale sign restrictions regulated the size and placement of signs.[189]

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[178] *Id.*
[179] *Id.* at 146.
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] SATTER, *supra* note 58, at 333.
[184] *Id.* at 334.
[185] *Id.* at 335.
[186] Mehlhorn, *supra* note 157, at 1153.
[187] Mark W. Zimmerman, *Opening the Door to Race-Based Real Estate Marketing: South-Suburban Housing Center v. Greater South Suburban Board of Realtors*, 41 DEPAUL L. REV. 1271, 1287 (1992).
[188] *Id.* at 1287.
[189] *Id.* at 1290. "Tipping characterizes a phenomenon in which an increasing ratio of blacks to whites in a neighborhood triggers white flight from the neighborhood, resulting

Eight days after the murder of Dr. Martin Luther King, Jr. and the ensuing riots across the nation, the Civil Rights Act of 1968 was passed.[190] Title VIII of the Act (more commonly known as the Fair Housing Act) declared redlining, blockbusting, and lending discrimination illegal.[191] Further responses from the federal government included enacting the Home Mortgage Disclosure Act (HMDA) and the Community Reinvestment Act (CRA),[192] both of which focused on whether lending institutions were meeting the needs of their communities.[193]

Unfortunately, NAREB opposed the Fair Housing Act.[194] Also, in the 1970's the FHA was riddled by scandal. By this time, the FHA had extended mortgage insurance to low-income, minority areas. However, speculators abused this program too. Across the country, real estate

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in resegregation." Note, *Benign Steering and Benign Quotas: The Validity of Race-Conscious Government Policies to Promote Residential Integration*, 93 HARV. L. REV. 938, 941–42 (Mar. 1980) [hereinafter *Benign Steering*]. Tipping occurs because whites and minorities have different ideas of what an integrated neighborhood should look like in terms of percentages of minority members. *Id.* "Black entry creates white apprehension, leading to white exit and a decline in white entry, which further increases white apprehension, encouraging still more whites to leave and fewer whites to enter. Ultimately a new black ghetto is created." *Id*. at 943.

[190] NICK KOTZ, JUDGMENT DAYS: LYNDON JOHNSON, MARTIN LUTHER KING, JR. AND THE LAWS THAT CHANGED AMERICA 420 (2005).

[191] Nier, III, *supra* note 53, at 630–31.

[192] A. Brooke Overby, *The Community Reinvestment Act Reconsidered*, 143 U. PA. L. REV. 1431, 1461–65 (May 1995); Craig E. Marcus, *Beyond the Boundaries of the Community Reinvestment Act and the Fair Lending Laws: Developing a Market-Based Framework for Generating Low- and Moderate-Income Lending*, 96 COLUM. L. REV. 710, 713, 720 (Apr. 1996). Under the Community Reinvestment Act, institutions were "graded" under four categories of compliance, yet most institutions were rated "Outstanding" or "Satisfactory," regardless of the differences in their practices and whether they were meeting community needs. The only incentives for financial institutions to work toward better ratings were the possibilities of denial of an expansion application and negative publicity. Instituitions that lacked a desire to expand ceased efforts to obtain a better rating because the grading was not consistent and denials of applications were nearly unheard of. *Id*.

[193] Nier, III, *supra* note 53, at 632–34. The HMDA worked to discover "red flags," and the CRA worked to enforce those institutions' obligations to their communities. *Id*.

[194] Stocker-Edwards, *supra* note 61, at 71.

agencies bribed "[FHA] appraisers to overlook structural flaws and inflate the values of homes sold . . . ."[195] Then speculators sold buildings at an inflated price to blacks and Hispanics.[196] Speculators falsified loan applications so lenders would provide FHA-insured mortgages.[197] Mortgage companies made more money when borrowers defaulted because the FHA paid interest and service fees.[198]

In the 1970s, real estate brokers told white homeowners that their neighborhoods were considered FHA areas to get them to sell their homes.[199] Because these longstanding homeowners had mortgage loans at rates as low as 3.5 percent, mortgage companies were eager to see them move so they could finance new buyers at much higher rates. In the 1970s, banks in Philadelphia still refused to lend to whites or blacks who wanted to purchase homes in neighborhoods of the other race.[200]

By the 1980s and early 1990s, blockbusting ceased to exist in the public eye.[201] However, flipping appeared in the mid-1990s. This involved brokers purchasing property for dirt cheap, not making any repairs, and then selling them to black buyers for exorbitant amounts, such as five times the original sales price.[202] These broker/sellers then offered financing at twice the market interest rate.[203] They offered kickbacks to appraisers whose fraudulent documentation was accepted by greedy mortgage brokers and

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195 Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 U. PA. L. REV. 1285, 1312–13 (May 1995).
196 SATTER, *supra* note 58, at 340.
197 *Id.*
198 *Id.*
199 *Id.*
200 Stocker-Edwards, *supra* 61, at 88 (citing P. MULLER, METROPOLITAN PHILADELPHIA: A STUDY OF CONFLICTS AND SOCIAL CLEAVAGES 16 (1976)).
201 Mehlhorn, *supra* note 157, at 1158–59. Federal courts were hearing less and less cases involving blockbusting allegations, evidence of blockbusting had disappeared, and cities began "dismantling their blockbusting regimes." *Id.*
202 PIETILA, *supra* note 54, at 257.
203 *Id.* at 257–58.

title companies.[204] Sadly, as with contract selling a few decades earlier, many black families lost their homes because of flipping practices.[205]

Unfortunately, the practices of redlining, blockbusting, contract selling, and flipping prepared the way for reverse redlining, which contributed to the global financial crisis of the first decade of the 2000's.

IV. REVERSE REDLINING

> As she describes it, Beth Jacobson and her fellow loan officers at Wells Fargo Bank 'rode the stagecoach from hell' for a decade, systematically singling out blacks . . . for high-interest subprime mortgages . . . . Ms. Jacobson said that she made $700,000 one year and that the company flew her and other subprime officers to resorts across the country.
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> [In his affidavit, Mr. Paschal stated] Wells Fargo created a unit . . . to push expensive refinancing loans on black customers . . . . They referred to subprime loans as ghetto loans . . . they hired blacks to call on African-American churches.[206]

Reverse redlining is the practice of targeting vulnerable communities, often previously redlined, for predatory lending. These borrowers often suffer a lack of access to information about other means of credit. Like the contract sellers of prior years, predatory lenders offer onerous terms, which are likely to lead to default. Although not all subprime lending is predatory,[207] much subprime lending uses oppressive tactics with disastrous consequences. As described below, subprime borrowers may end up paying

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[204] *Id.* at 258.
[205] *Id.*
[206] Michael Powell, *Bank Accused of Pushing Mortgage Deals on Blacks*, N.Y. TIMES, June 7, 2009, http://www.nytimes.com/2009/06/07/us/07baltimore.html?_r=0.
[207] Ashley N. Young, *The Real Estate Agent's Role in the Housing Crisis: A Proposal for Ethical Reform*, 24 GEO. J. LEGAL ETHICS 973, 978 (2011) (citing Harold L. Levine, *A Day in the Life of a Residential Mortgage Defendant*, 36. J. MARSHALL L. REV. 687, 688 (2003)).

thousands of dollars more in interest and fees than prime borrowers, putting them at higher risk of default and foreclosure.

With the creation of the Federal Home Loan Mortgage Corporation in 1970, known as Freddie Mac, residential lending increased sharply because lenders had more available funds after selling their loans on the secondary mortgage market.[208] With this came more mortgage brokers, who do not directly bear the risk of default.[209] Rather, these brokers reaped benefits from lending overpriced loans. Subprime lending was supposed to make credit available to more borrowers, especially the underserved.[210] However, its abuses have led to the opposite outcome. This industry grew immensely during the 1990s and early twenty-first century.[211]

Who is a prime borrower and subprime borrower? The Fair, Isaacs, and Company's (FICO) credit scoring system "track[s] records of . . . consumer credit, disproportionately raising the scores of those who adhere to credit practices traditionally recognized as prudent, and depressing the scores of those who have lived nontraditional economic lives."[212] A bad credit score prevents an individual from moving into the prime loan market, perpetuating their bad score.[213] As redlining conflated property values with

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[208] Howell, *supra* note 82, at 117. The practice of combining loans into securities and subsequently selling them on a secondary market is called "securitization." *Id*.
[209] *Id.* at 118. "Securitization also made possible the increase market share of non-deposit institutions, namely mortgage brokers, who typically originate loans on behalf of wholesale lenders which in turn sell the mortgages into the secondary market." *Id*.
[210] Charles L. Nier, III & Maureen R. St. Cyr, *A Racial Financial Crisis: Rethinking the Theory of Reverse Redlining to Combat Predatory Lending Under the Fair Housing Act*, 83 TEMP. L. REV. 941, 944 (2011).
[211] *Id*. at 944. Automation of the lending process and limited mortgage lending regulations "helped to increase the popularity and perceived attractiveness of subprime loans."
[212] Howell, *supra* note 82, at 126.
[213] *Id.* at 127. High interest rates of non-traditional loans reduce the borrower's ability to pay, thus lowering their credit score, and some borrowers simply choose to under-invest in their creditworthiness in order to avoid excessive fees. These actions lead lenders to lower borrowers' credit rating further, perpetuating the cycle. *Id*.

race, FICO correlates low credit scores with the percentage of minorities in a neighborhood.[214]

A typical subprime loan product is an adjustable rate mortgage (ARM) with a teaser low interest rate, which then jumps to a higher rate. These have to be periodically refinanced to avoid the higher rates. Each time they are refinanced, more fees are earned by the mortgage industry. However, when appraisal values drop, refinancing is no longer possible. Because these loans were securitized and sold on a secondary market, lenders passed on this risk to others.

Discretionary pricing, a common practice related to reverse redlining, also plagued subprime borrowers.[215] A lender evaluates an applicant's risk factors, determines a risk-based interest rate, and then authorizes additional charges for the applicant.[216] These unjustifiably increased fees cause financial hardship and increased risk of foreclosure,[217] but lead to greater profits for lenders and brokers.[218]

Predatory practices did not end with loan origination. When a borrower defaulted on a loan, predatory mortgage brokers arranged for second loans,[219] or repossessed property upon foreclosure.[220] They also "rescued" homeowners facing foreclosure by purchasing their homes, renting them to

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[214] *Id.* at 125.
[215] Robert G. Schwemm & Jeffrey L. Taren, *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARV. C.R.-C.L. L. REV. 375, 395 (2010).
[216] *Id.* at 395–96.
[217] *Id.* at 397.
[218] *Id.*
[219] Lloyd T. Wilson, Jr., *Effecting Responsibility in the Mortgage Broker-Borrower Relationship: A Role for Agency Principles in Predatory Lending Regulation*, 73 U. CIN. L. REV. 1471, 1482 (2005). This usually only occurs if there is still equity in the property. *Id*.
[220] *Id*. at 1482. This requires a lender to bid on the property at a foreclosure sale. The lender will then turn around and offer the property in conjunction with high-risk financing. *Id*.

the victims, and later evicting them.[221] Another practice involved former mortgage brokers offering their services as a "loan expert," charging large upfront fees, and offering little to no assistance.[222]

Subprime lending produces a vicious cycle: as more borrowers default because of oppressive terms, more subprime lending is needed for already devastated communities.[223] It is estimated that 61 percent of "subprime" borrowers would have qualified for prime credit.[224] If they had received prime loans, their loan payments would have been affordable. Subprime loans were aggressively marketed to African-American and Hispanic borrowers.[225] A person of color who was qualified for a prime loan was three times more likely to be wrongfully steered towards a subprime loan.[226] A high-earning black was almost twice as likely as a low-income white to have a subprime loan.[227]

Target marketing was possible because of segregation, which allowed for a lack of information infiltration in vulnerable populations.[228] Marketers could easily identify neighborhoods that had racial minorities.[229] Thus,

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[221] Linda E. Fisher, *Target Marketing of Subprime Loans: Racialized Consumer Fraud & Reverse Redlining*, 18 J.L. & POL'Y 121, 145 (2009).
[222] *Id*. at 145–46.
[223] *See* Howell, *supra* note 82, at 106–07.
[224] HEATHER MCCULLOCH AND PREETI VISSA, EXPANDING SUSTAINABLE HOMEOWNERSHIP FOR COMMUNITIES OF COLOR IN THE WAKE OF THE FORECLOSURE CRISIS, 8 (2011), *available at* http://greenlining.org/issues/economic-equity/2011/expanding-sustainable-homeownership-for-communities-of-color-in-the-wake-of-the-foreclosure-crisis/.
[225] Howell, *supra* note 82, at 129.
[226] McCulloch & Vissa, *supra* note 224, at 15 (citing LAYING THE FOUNDATION FOR NATIONAL PROSPERITY: IMPERATIVE OF CLOSING THE RACIAL WEALTH GAP (2009)).
[227] *Id.*
[228] Howell, *supra* note 82, at 122–23. Unfortunately, segregation has also led to huge gaps in educational opportunities for blacks and other minorities. Segregated neighborhoods also lend themselves to inequitable police and criminal justice practices. For a description of the scandalous practices that lead to the crisis of the inordinate number of incarcerated minorities, *see* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2012).
[229] Fisher, *supra* note 221, at 128.

lenders, mortgage brokers, and real estate agents systematically exploited vulnerable neighborhoods that were scarred by redlining.[230] This industry used fraud to achieve their earnings goals.[231] As in the practices of the 1960s and 1970s, lenders wrongly stated income, assets, and property values.[232] As in the days of contract selling in the 1940s through 1960s, the result of these fraudulent practices was crushing loan terms, often resulting in home foreclosures.[233]

According to Beth Jacobson, a subprime loan officer at Wells Fargo, the bank had "an emerging-markets unit that specifically targeted black churches, because it figured church leaders had a lot of influence and could convince congregants to take out subprime loans." [234] The bank's euphemistic term for subprime lending was "alternative lending."[235] The seminars were called "wealth building" seminars, and Wells Fargo donated $350 to a borrower's church when a borrower took a loan from Wells Fargo.[236]

Ms. Jacobson further states that other tactics used at Wells Fargo included telling underwriting departments that their clients did not provide income verification when W-2's were available, cutting and pasting credit reports from one customer to another, putting "bounties" on minority borrowers, and giving bonuses to loan officers who referred prime borrowers to subprime products.[237] Sadly, for a customer who had a $165,000 mortgage, paying the subprime interest rate meant $100,000 more

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[230] Howell, *supra* note 82, at 102.
[231] *Id.* at 103.
[232] Fisher, *supra* note 221, at 142.
[233] *Id.* at 142–43.
[234] Powell, *supra* note 206.
[235] Fisher, *supra* note 221, at 140 (citing Affidavit of Elizabeth Jacobson, Mayor of Baltimore v. Wells Fargo Bank, N.A., No. 08-cv-00062, 29 (D. Md. June 1, 2009)).
[236] Creola Johnson, *The Magic of Group Identity: How Predatory Lenders Use Minorities to Target Communities of Color*, 17 GEO. J. ON POVERTY L. & POL'Y, 165, 173 (2010) (citing affidavit by Tony Pachal, 10).
[237] Powell, *supra* note 206.

in interest payments![238] Lending practices elsewhere included lenders and brokers filling out loan applications for borrowers with wildly inflated income numbers.[239]

In 2011 and 2012, Wells Fargo and two other lenders settled discrimination suits with the Department of Justice after being accused of steering African-American and Hispanic borrowers to subprime loans.[240] Although the lenders denied any wrongdoing, Bank of America agreed to pay $335 million related to its Countrywide Financial unit, and SunTrust Mortgage paid out $21 million.[241] In July 2012, Wells Fargo, the nation's largest mortgage lender, also denying wrongdoing, agreed to pay at least $175 million[242] to more than 30,000 African-American and Hispanic borrowers.[243] Wells Fargo also agreed to pay $50 million for homebuyer assistance programs in hard-hit communities around the nation.[244] Investigators found that outside brokers originating Wells Fargo loans charged minority borrowers higher fees.[245] According to Thomas Perez, head of the Justice Department's Civil Rights Division, an African-American seeking a $300,000 loan paid an average of nearly $3,000 more in fees than a similarly qualified white applicant, which he described as amounting to a "racial surtax."[246]

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238 *Id.*
239 Fisher, *supra* note 221, at 143.
240 *Wells Fargo Settlement: A Predatory Lender Pays Up*, BALTIMORE SUN, July 15, 2012, http://articles.baltimoresun.com/2012-07-15/news/bs-ed-wells-fargo-20120715_1_subprime-mortgages-minority-borrowers-mortgage-brokers [hereinafter Wells Fargo].
241 *Id.*
242 *Id.*
243 Meg Handley, *In 'Financial Tragedy' Wells Fargo to Pay $175M Over Predatory Lending Allegations*, U.S. NEWS, July 13, 2012, http://www.usnews.com/news/blogs/home-front/2012/07/13/in-financial-tragedy-wells-fargo-to-pay-175m-over-predatory-lending-allegations.
244 *Id*.
245 Wells Fargo, *supra* note 240.
246 *Id.* This is in stark contrast to "white privilege," the deference that many white persons receive not only in lending but in many other arenas such as job and educational

The consequences of reverse redlining and predatory lending have been disastrous. Before 2000, home prices tracked median household incomes and price inflation.[247] From 2000 to 2005, homeownership rates increased, including minority ownership.[248] In 2005, however, housing prices began to stagnate or decline, and all gains made since 2000 were lost.[249] Moreover, reverse redlining has also led to re-redlining. Since the subprime financial crisis, among the four largest US banks, prime refinancing rose by 32 percent in white communities, and fell by 33 percent in minority communities.[250]

Although minority borrowers were targeted for subprime loans, they cannot be blamed for the foreclosure crisis.[251] The majority of these loans were made to white borrowers, and minority borrowers were not originally more likely to default than white borrowers.[252] However, the higher charges and fees assessed against minority borrowers have wiped out their wealth. Among subprime borrowers, black homeowners paid higher interest rates than white homeowners![253] They paid more interest than white prime borrowers![254] As in contract selling, communities of color have been

opportunities. For a discussion of white privilege, *see* STEPHANIE WILDMAN, PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA (1996).

[247] Schwemm & Taren, *supra* note 215, at 377.

[248] *Id.*

[249] *Id.* at 377–78.

[250] MCCULLOCH & VISSA, *supra* note 224, at 9 (citing CALIFORNIA REINVESTMENT COALITION ET. AL., PAYING MORE FOR THE AMERICAN DREAM IV: THE DECLINE OF PRIME MORTGAGE LENDING IN COMMUNITIES OF COLOR (May 2010)).

[251] Nier, III & St. Cyr, *supra* note 210, at 951.

[252] *Id.* at 950–51.

[253] MCCULLOCH & VISSA, *supra* note 224, at 17 (citing Carolina Reid & Elizabeth Laderman *The Untold Costs of Subprime Lending: Examining the Links Among Higher-Priced Lending*, *Foreclosures and Race in California* (Fed. Reserve Bank of San Francisco, Working Paper (2009)).

[254] MCCULLOCH & VISSA, *supra* note 224, at 17.

stripped of assets and wealth, deepening the wealth gap between white and black families.[255]

Before the crisis, a minority family held only 16 cents for each dollar of wealth that a white family held.[256] Moreover, of minority wealth, 61 percent was held in home equity,[257] as opposed to only 38.5 percent for whites.[258] In California in 2006, the median net worth for whites was $304,982, as opposed to $51,000 for minorities.[259] Across the nation in 2008, 74.9 percent of whites owned their own homes, compared with only 47.5 percent of African-Americans and 48.9 percent of Hispanics.[260] Around 4.5 percent of whites have faced foreclosures; whereas 8 percent of blacks and Latinos have also faced foreclosures.[261] Blacks and Latinos are also twice as likely to be in risk of imminent foreclosure.[262]

Sadly, Latino families report an average loss of $89,155 due to foreclosure.[263] Indirect wealth loss for foreclosures between 2009 and 2012 totaled $193 billion for African-Americans and $180 billion for Latino communities.[264] In 2011, 21.6 percent of African-Americans and 21.4 percent of Latino homeowners were at risk of foreclosure.[265] In addition to financial losses, foreclosure also brings depression, marital disruption, and decline in work and academic performance.[266]

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[255] Nier, III & St. Cyr, *supra* note 210, at 947.
[256] MCCULLOCH & VISSA, *supra* note 224, at 6 (citing CORPORATION FOR ENTERPRISE DEVELOPMENT, ASSETS AND OPPORTUNITY SPECIAL REPORT: NET WORTH, WEALTH INEQUALITY AND HOMEOWNERSHIP DURING THE BUBBLE YEARS (2008)).
[257] MCCULLOCH & VISSA, *supra* note 224, at 6.
[258] Melvin Oliver & Thomas M. Shapiro, *Subprime as a Black Catastrophe*, AMERICAN PROSPECT, Sept. 22, 2008, http://prospect.org/article/sub-prime-black-catastrophe.
[259] MCCULLOCH & VISSA, *supra* note 224, at 19.
[260] *Id.*
[261] *Id.* at 15.
[262] *Id.*
[263] *Id.* at 8.
[264] *Id.* at 5.
[265] *Id*. at 7.
[266] *Id.* at 16.

According to a 2008 US Census report, homeownership rates for Asians dropped the most, down 1.24 percent making the current rate 59.4 percent.[267] African-Americans had a 0.88 percent drop to 45.6 percent,[268] Hispanic ownership dipped 0.80 percent to 49.1 percent, and white ownership decreased 0.40 percent to 73.4 percent.[269] The loss in Asian home ownership may be attributable to the fact that two-thirds of Asians in America are foreign born, leading to language and cultural barriers, which present a significant obstacle for distressed homeowners.[270]

Unfortunately, the US government has not officially acknowledged this devastation in communities of color. The 633 page report released by the Financial Crisis Inquiry Commission in January 2011 did not mention the destruction of wealth that subprime lending has wreaked on the African-American community[271] and other minorities.

A. The Role of Real Estate Agents in Reverse Redlining

Real estate agents played several roles in aiding the proliferation of reverse redlining. They steered customers towards segregated neighborhoods, which made targeted marketing possible. They also aggressively sold homes in a housing bubble by touting cheery forecasts and promoting subprime loans.

Although the Fair Housing Act prohibited racial steering and blockbusting, NAREB continued to advocate for discriminatory practices.[272] NAREB's position was that realtors do not violate the law by

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[267] *Asian Homeownership Rates Hit Hardest in the Current Real Estate Downturn,* ASIAN REAL ESTATE ASS'N OF AM., Sept. 25, 2009, http://www.areaa.org/index.php/advocacy.
[268] *Id.*
[269] *Id.*
[270] *Id*.
[271] Nier, III & St. Cyr, *supra* note 210, at 942. The FCIC interviewed over "…700 witnesses and reviewed millions of pages of documents . . . ." Its silence on minorities is astounding. *Id*. at 941–42.
[272] Stocker-Edwards, *supra* note 61, at 71–72.

not showing homes in particular neighborhoods due to the buyer's race, because the law only makes actionable a refusal to sell a dwelling that the purchaser wants to buy.[273] Therefore, the purchaser must be aware of such a dwelling.[274]

In 1988, the federal government authorized the Housing and Urban Development office (HUD) to sue real estate agents for discrimination.[275] This action has lessened overt practices of discrimination.[276] There have also been increased training opportunities for agents in FHA compliance.[277]

Nevertheless, some agents continue to discriminate because their business is dependent on personal contacts and ties to certain communities.[278] If an agent's personal connections leave a community, he or she loses his or her territory and business.[279]

Even if an individual agent or brokerage does not have any express racial animus, unconscious bias often may come into play. Unconscious bias may be ingrained in one's youth by parental and societal attitudes, and media images.

1. Steering

> In October 1996, the Holleys visited Triad Realty's office in California where they met with agent Grove Crank . . . . While the Holleys [wanted a home ranging from $100,000 to $150,000], Crank only showed them houses that were out of their price range . . . the Holleys located a house on their own within their price range

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[273] *Id.*
[274] *Id.*71–72.
[275] RICHARD GREG MOYE JR., THE IMPACT OF SHIFTING NEIGHBORHOOD RACIAL COMPOSITION ON HOME VALUE APPRECIATION 17–18 (Jan. 2012) (unpublished Ph.D. dissertation, Temple University), *available at* http://gradworks.umi.com/3493922.pdf (last visited July 3, 2013).
[276] *Id*. at 17.
[277] *Id*. at 18.
[278] Stocker-Edwards, *supra* note 61, at 77–78.
[279] *Id.*

> Suspiciously, this house was among the homes listed by Triad but it was never shown to [them]. The Holleys still [wanted to buy the house] and although they and the seller were willing to go forth with the sale, Crank refused to sell the house to those 'n' and even called the Holleys the 'salt and pepper team.' Eventually, the home was sold for $20,000 less than the amount the Holleys had offered.[280]

It is estimated that minorities face discrimination half of the time when purchasing or renting homes.[281] In 1976, an observer in Philadelphia stated that the most common tactic used to preserve a dual housing market was directing whites and blacks to different home listings.[282] This practice of racial steering refers to pointing white buyers to white neighborhoods and minority buyers to minority neighborhoods.[283] These practices can be divided into two categories: (1) counseling buyers to buy homes in neighborhoods matching their race; and (2) refusing to show homes that would otherwise meet the criteria of buyers.[284]

The following actions, in conjunction with other proof, tend to occur in instances of racial discrimination: misrepresenting the neighborhood, availability of the home, or its terms and conditions; pointing out bad characteristics or racial composition of the neighborhood; offering to sell a home in a different part of town; placing "sold" signs at available properties; breaking appointments or not making a home reasonably available for inspection; breaching a sales contract; or selling the home to a

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[280] Andrene N. Plummer, *A Few New Solutions to a Very Old Problem: How the Fair Housing Act Can Be Improved to Deter Discriminatory Conduct by Real Estate Brokers*, 47 HOW. L. J. 163, 163 (citing Holley v. Crank, 258 F. 3d 1127, 1129–30 (9th Cir. 2001).
[281] *Id*. at 184 (citing Abraham Bell & Gideon Parchomovsky, *The Integration Game*, 100 COLUM. L. REV. 1965, 1966 (2000)).
[282] Stocker-Edwards, *supra* note 61, at 87 (citing P. MULLER, METROPOLITAN PHILADELPHIA: A STUDY OF CONFLICTS AND SOCIAL CLEAVAGES 40 (1976)).
[283] *Racial Steering: The Real Estate Broker and Title VIII*, 85 YALE L. J. 808, 809 (May 1976) [hereinafter Racial Steering].
[284] *Id.* at 809–10.

white buyer after refusing to sell it to a minority buyer.[285] If a home in a primarily white neighborhood was sold to a black family, that family has to pay more than if they were white.[286]

Agents may steer buyers because sellers instruct them not to sell to certain races, or because the agent assumes home owners and buyers desire segregated communities and by steering the agent satisfies their preferences,[287] or because it is profitable to employ both a steering and blockbusting strategy.[288] Brokers also make assumptions about the incomes of prospective buyers leading to unequal treatment.[289] Brokers also protect sellers' racist interests by making excuses for why a seller refuses to sell to a minority.[290]

In a 1969 study, whites preferred neighborhoods that "are at least 80% white, while blacks prefer neighborhoods that are . . . 50% black and 50% white."[291] A 2003 study affirmed these conflicting preferences.[292] A 2008 study examining racial change from 1980 to 1990 showed that when a

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[285] Bill Wishard, *Racial Discrimination in Sale of Real Estate*, 14 AM. JUR. PROOF OF FACTS 2D 511, § 17 (1977, updated 2012).
[286] MOYE, JR., *supra* note 275, at 203 (citing K. Ihlanfeldt and T. Mayock, *Price Discrimination in the Housing Market*, J. OF URBAN ECON. 66, 125–140 (2009)).
[287] Racial Steering, *supra* note 283, at 824.

> The local broker often enjoys a position of influence over a buyer new to the community, and his suggestion as to where the buyer should live can shape the buyer's preferences. Hence, the broker's assumption that buyers prefer to live with members of their own race may become a self-fulfilling prophecy.

Id.
[288] *Id.* at 810–12.
[289] Plummer, *supra* note 280, at 184.
[290] *Id.* at 188–89. For example, a real estate broker may tell a buyer that the seller is rethinking his decision to sell rather than telling the buyer that the seller refuses to sell to a minority family. *Id.* at 188–89.
[291] MOYE, JR., *supra* note 275, at 23.
[292] *Id.* at 23.

neighborhood became 15 percent black, a tipping point, many whites left.[293] The actions of real estate agents often destabilize neighborhoods by "devaluing home values in racially transitioning neighborhoods."[294]

Advertising also can be a form of racial steering.[295] Studies indicate that discriminatory advertising is not based on objective factors, but on racial stereotypes.[296] In a 1995 report, real estate brokerages were less likely to advertise homes in "integrating neighborhoods" than in "all white neighborhoods."[297] Presumably, less advertizing would lead to fewer potential buyers, offers, and lower prices.

It is not surprising that given a climate of racial discrimination, a study of the Detroit housing market showed that in the five years before 1992, only 43 percent of blacks consulted a broker, while 60 percent of whites did.[298] This difference would likely lead to perpetuating the status quo in the racial composition of neighborhoods.

Studies done in 2003, 2006, 2009, and 2012 confirm that real estate agents still engage in steering.[299] The 2006 study "Do Real Estate Agents Treat Minorities Differently Than Whites?" reveals discrimination in 48 percent of cases in targeted Westchester County, New York, real estate

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293 *Id.* at 156 (citing D. Card, A. Mas and J. Rothstein, *Tipping and the Dynamics of Degregation*, 123 Q. J. OF ECON. 177 (2008)).
294 *Id.* at 34.
295 Ross D. Petty, Anne-Marie G. Harris, Toni Broaddus & William M. Boyd III, *Regulating Target Marketing and Other Race-Based Advertising Practices*, 8 MICH. J. RACE & L. 335, 339 (2003).
296 *Id*. at 340; Civil Rights Forum on Communication Policy, *When Being No. 1 is Not Enough: the Impact of Advertising Practices on Minority-Owned & Minority-Formatted Broadcast Stations*, 13 n.4 (1999), *available at* http://www.fcc.gov/Bureaus/Mass_Media /Informal/ad-study/.
297 MOYE, JR., *supra* note 275, at 20.
298 Reynolds Farley, *Racial Differences in the Search for Housing: Do Whites and Blacks Use the Same Techniques to Find Housing?*, 7 HOUS. POL'Y DEBATE 379 (1996).
299 MOYE, JR., *supra* note 275, at 27; *see also* WESTCHESTER RESIDENTIAL OPPORTUNITIES, INC., WRO 2012 FAIR HOUSING TESTING REPORT: FAIR HOUSING IN WESTCHESTER COUNTY? 3, 6 (2012), *available at* http://www.wroinc.org/documents/ FairHousingTestingReportasof4.4.2013.pdf [hereinafter WRO Report 2012].

offices.[300] Minorities were purposefully misinformed that no units were available, were shown fewer units, and were shown units in the wrong price range.[301] Also, agents did not return phone calls to minorities.[302] African-Americans had to make many more phone calls to set up an appointment.[303]

A follow up 2012 Fair Housing Testing Report shows that in 40 percent of cases in Westchester County, blacks and Hispanics were given unequal treatment, including steering; not being shown units; being shown less desirable units; or having a credit check when not required of others.[304] One agent showed only one listing in a heavily Hispanic-populated neighborhood to a Hispanic tester, praising such neighborhood; then the same agent showed the white counterpart three white communities, while also disparaging the Hispanic neighborhood.[305]

A 2012 study in Allentown, Pennsylvania, revealed discrimination in 78 percent of cases.[306] Hispanic and black buyers were steered toward two neighborhoods in Allentown, while white buyers were steered towards the suburbs.[307] Also, agents gave better service, including prompt return calls to white buyers.[308] Agents also disparaged the city school district and urged white buyers to seek private schools.[309]

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300 WESTCHESTER RESIDENTIAL OPPORTUNITIES 2006, DO REAL ESTATE AGENTS TREAT MINORITIES DIFFERENTLY THAN WHITES? 4 (2006), *available at* www.wroinc.org/pdf/FairHousingTestingReport.pdf [hereinafter WRO Report 2006].
301 *Id.* at 10.
302 *Id.*
303 *Id.* at 10.
304 *Id.* at 6.
305 *Id.* at 16.
306 Colin McAvoy, *Allentown Real Estate Agents Treat White, Minority Homebuyers Differently, Report Says*, The Express Times, June 26, 2012, http://www.lehighvalleylive.com/allentown/index.ssf/2012/06/allentown_realtors_engage_in_d.html.
307 *Id*.
308 *Id*.
309 *Id*.

2. Promotion During Housing Bubble and Bust

> [A] young . . . couple . . . had pre-qualified for a fixed-rate loan no larger than $310,000. Their agent kept pressing them to look at $400,000-plus properties because he could get the same payment, or even lower payment . . . by encouraging them to get a '2/28' subprime, 30-year loan that started with a low rate . . . . By selling the more expensive home, the agent earns a larger commission . . . .[310]

In addition to steering before and after the housing crisis, during the crisis, realtors also presented rosy pictures of the housing market. At the height of the housing bubble in 2005-07, the NAR held that there was no bubble; even when prices started to decline, the NAR held prices would begin to rise again.[311] Instead, prices declined further.[312] In late 2006, the NAR began a "multi-million dollar media campaign . . . to . . . convince [buyers] that it was a 'great time to buy.'"[313] Another campaign pointed to the Realtor Code of Ethics for justification for trusting a realtor.[314] The NAR's Realtor® Magazine "provided realtors with scripts for dealing with clients worried about the advisability of buying in a down market."[315] Real estate brokers also referred customers to subprime mortgage brokers.[316] Many mortgage companies were "captive lenders" of the real estate agents.[317]

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[310] *The Subprime Blame Game: Where were the Realtors?*, KNOWLEDGE@WHARTON (Oct. 17, 2007) http://knowledge.wharton.upenn.edu/article.cfm?articleid=1824 [hereinafter Blame Game].
[311] Brent T. White, *Walking away Scot-Free: Trust, Expert Advice, and Realtor Responsibility*, 40 REAL EST. L. J. 312, 325-26 (2011).
[312] *Id*. at 325-30.
[313] *Id*. at 338.
[314] *Id*. at 344.
[315] *Id*. at 352.
[316] Fisher, *supra* note 221, at 136.
[317] Blame Game, *supra* note 310.

While brokers earned billions of dollars in commissions during the housing bubble, many buyers became stuck in underwater homes and faced foreclosure.[318] Professor Brent White rightly advocates that brokers either be held accountable as professionals who provide investment advice, or be recognized merely as salespeople.[319]

V. GREENLINING AND OTHER SOLUTIONS

While both redlining and reverse-redlining strip wealth from needy communities and have had devastating effects on minority wealth accumulation, greenlining directs investment into communities to "encourag[e] individual behaviors that will maximize net social benefits directly within the constraints of available resources."[320] Greenlining's main goal is to "neutralize disinvestment with investment."[321]

Greenlining arose with community development efforts in the 1960s and 1970s to combat redlining.[322] It may entail many strategies for promoting community investment and affordable housing. It often involves partnerships among community groups, governmental agencies, and businesses. The 1974 Housing and Community Development Act enabled channeling of government funds into community development corporations.[323]

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318 White, *supra* note 311, at 344.
319 *Id.* at 368.
320 Daniel T. Friedson, *Greenlining Toward A Community of Local Entrepreneurship, Home Ownership, and Quality of Life*, 9 WTR J. AFFORDABLE HOUS. & CMTY. DEV. L. 183, 191, 193 (2000). The South Shore Bank of Chicago (SSB) was created in 1973. *Id.*
321 *Id.* at 193. "In a prosperous community, there is more building and growing than tearing down; in a slum, tearing down exceeds building and growing. When the building and growing are equal to the tearing down, a community has reached economic equilibrium." *Id.*
322 *Id.* at 191-94.
323 Housing and Community Development Act, 12 U.S.C. §1706e (1974); *see* William Frej and Harry Specht, *The Housing and Community Development Act of 1974: Implications for Policy and Planning*, 50-2 SOC. SERVICE R., 275–92 (1976).

One major aspect of community development is providing financing for homes, businesses, parks, and cultural institutions. This may be achieved through community development banks, credit unions, and loan funds.[324] An example of greenlining is the use of Rehab CDs.[325] Unlike traditional CDs, Rehab CDs are taken in from around the country, "greenlined" into impoverished communities, and used to renovate buildings, increase education investments, and start businesses.[326] In exchange, the investors receive annual reports detailing how their money is used and are offered lower interest rates.[327]

Another example is the "retrievable housing plan."[328] This was developed by the Shore Bank of Chicago (SSB), which has since become part of the Urban Partnership Bank.[329] This plan consists of four steps: (1) forming a real estate development corporation;[330] (2) forming a nonprofit organization to provide job training; (3) granting loans for renovations;[331] and (4) founding a multi-family housing industry.[332] SSB's rationales for this plan were that "no group of people better combines social and business agendas than local residents who have both a social and financial stake in the

[324] Rochelle E. Lento, *Community Development Banking Strategy for Revitalizing Our Communities*, 27 U. MICH. J. L. REF. 773, 776–77 (1994).
[325] Friedson, *supra* note 320, at 193.
[326] *Id.* at 193–94. Small-business investments are the most difficult because most economically depressed neighborhoods are bedroom communities whose residents prefer to shop outside the community due to the belief that black communities receive inferior goods for the same or higher prices. *Id*.
[327] *Id.* at 194.
[328] *Id.*
[329] *Id.*
[330] *Id.* at 194–95. This corporation engaged in development inside *and* outside the community in order to "cushion further the loss potential that is necessary for SSB's high-risk lending practices." It was able to "promote social efficiency by exercising specific value-enhancing behavior on a parcel of property, thereby increasing the likelihood of an aggregate increase in neighboring property values." *Id.*
[331] *Id.* at 195. "This practice of requiring upward conversion or positive maintenance promotes social efficiency." *Id.*
[332] *Id.*

neighborhood" and that "each improved building also enhances the general economic environment and the quality of all the loans in the area."[333]

Two organizations of note dealing in greenlining are The Greenlining Institute and Korean Churches for Community Development (KCCD). The Greenlining Institute, based in Berkeley, California, is a multiracial coalition that both organizes grass roots leaders and conducts national policy initiatives.[334] It was formed in 1993, following in the footsteps of the Greenlining Coalition, which was organized in the mid-1970's.[335] Among other initiatives, the Greenlining Institute has advocated for bringing the practice of greenlining to America's moderate and lower income neighborhoods and thus assisting with job creation, energy savings, and lower greenhouse gas emissions.[336] These neighborhoods have suffered the most from our current recession and, because of discriminatory zoning, are exposed the most to car and industrial emissions.[337] This initiative would involve a block-by-block weatherization project of upgrading appliances, plumbing, and insulation.[338]

KCCD, based in Los Angeles, is the largest Asian nonprofit organization in the US working with churches and community development.[339] In 2008, KCCD began hosting its annual Homeownership Preservation and Foreclosure Prevention Fair and foreclosure prevention workshops twice a

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[333] *Id.*
[334] To read more about the institute, *see Our Mission & History*, THE GREENLINING INSTITUTE, http://greenlining.org/about-greenlining/our-mission-history/_(last visited Jan. 11, 2013).
[335] *Id*.
[336] TARA MARCHANT & ZARA BURKIRIN, GREENING OUR NEIGHBORHOODS & PUTTING AMERICANS TO WORK: A CASE FOR CARBON REDUCTION & JOB CREATION, 6 (2009), *available at* http://greenlining.org/wp-content/uploads/2013/02/GreeningNeighborhoods 012810.pdf.
[337] *Id*. at 8.
[338] *Id*. at 9.
[339] *About Us*, KOREAN CHURCHES FOR CMTY. DEV., http://kccd.org/about-us (last visited July 24, 2013).

month.[340] They also sponsor homebuyer education classes.[341] Because many of KCCD's constituents rely on cash payments only, they are highly vulnerable to fraud and predatory lending.[342] KCCD joined with the Federal Deposit Insurance Corporation (FDIC) to develop FDIC's Korean Money Smart curriculum, part of KCCD's other financial literacy programs.[343] In addition to the above initiatives, greenlining can also promote global flourishing communities.

A. Flourishing Communities

> At least once a week, my five-year-old goddaughter Lesley and I explore our neighborhood together . . . . We pass a Hawaiian restaurant, the Rainier Valley Chamber of Commerce (in a building that also provides housing to formerly homeless men), a holistic health center, the Burqaa halal grocery, an all-you-can-eat Ethiopian buffet, Seattle's oldest African American men's social club, and a new music hall . . . . On Wednesday afternoons . . . we visit the farmers' market . . . . Nearly everything I need for day-to-day living is within walking distance of my house . . . . The Seward Park Audubon Center offers free . . . nature walks.[344]

What is a flourishing community? A thriving neighborhood, like an ecosystem, flourishes because of variety and synergy. Thriving communities are attuned to their natural surroundings. They celebrate healthful activities such as walking, hiking, biking, and gardening. There

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[340] *History*, KOREAN CHURCHES FOR CMTY. DEV., http://kccd.org/content/chronology (last visited June 24, 2013).
[341] *Homebuyer Education & Downpayment Assistance*, KOREAN CHURCHES FOR CMTY DEV., http://kccd.org/content/homebuyer-education-downpayment-assistance (last visited June 24, 2013).
[342] *Financial Literacy*, KOREAN CHURCHES FOR CMTY DEV., http://kccd.org/content/financial-literacy.html (last visited June 24, 2013).
[343] *Id*.
[344] Wendy Call, LIFE IN 98118; SEATTLE'S RAINIER VALLEY-ONE OF THE NATION'S MOST DIVERSE ZIP CODES (2012), *available at* http://www.onenationindivisible.org/our-story/life-in-98118-seattles-rainier-valley-one-of-the-nations-most-diverse-zip-codes/.

are sidewalks, trails, and bike paths. Local and organic food production is encouraged. Flourishing communities have locally-owned and operated businesses that provide jobs. Residents can also work at home or commute with public transportation. Residents can walk to restaurants, grocery stores, boutiques, theaters, houses of worship, schools, parks, and other services. A car is not necessary.

Flourishing communities draw in a diverse population, not only in terms of ethnicity and race, but also in income. They provide different housing options for renters and homeowners. They have multigenerational residents. Seniors are welcome and cherished. Young people can get around without being chauffeured.

A thriving community attracts professional artists, but also encourages creativity among all residents. Music, crafts, fashion, cuisine and exciting new trends are birthed in a flourishing community. All are engaged because the neighborhood is both a sanctuary and hub of creativity.

In sum, flourishing communities are not sterile bedroom communities with uniform houses dependent on cars and high energy consumption. Residents are not concealed behind garage door openers. Boredom is not an option.

Two examples of flourishing communities in the United States are Rainier Valley in Seattle, Washington, and Frogtown in St. Paul, Minnesota. Montgomery County in Maryland is an example of an increasingly diverse community as well.

Rainier Valley is a community located southeast of Seattle, Washington, that is considered one of the most multicultural communities on the West Coast.[345] It is associated with Columbia City, which became part of Seattle in 1907.[346] The community welcomed masses of immigrants from Italy,

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[345] *See Welcome to Rainier and Columbia City!*, COLUMBIA CITY: RAINIER VALLEY, http://www.rainiervalley.org (last visited Jan. 21, 2013).
[346] *A Short History*, COLUMBIA CITY: RAINIER VALLEY, http://www.rainiervalley.org

Japan, the Philippines, Latin countries, Vietnam, East Africa, and Ireland.[347] African-Americans soon followed the immigration into Rainier Valley as well.[348] This influx of cultures caused the area to be named the "Neighborhood of Nations."[349] When its businesses began to struggle in the 1980s, a neighborhood association developed and grew into the Columbia City Revitalization Committee (CCRC).[350] Also, "Town Hall breakfasts led by inspired leaders, catalyzed teams of residents and businesses to do clean-ups and start new projects designed to help the business district and residents."[351] Other community organizations worked in conjunction with the CCRC to reintroduce farmers markets, music events, park maintenance, and gardens.[352] The introduction of these diverse activities and cultures encouraged movement into the community from around the country. "In the 2000's, Columbia City became hot property. New businesses and residents came in and there was a tremendous amount of housing infill, new condos and increased prices."[353] Some local businesses were distressed by the increase in prices, but new "live-above" businesses and apartments were developed, allowing the distressed businesses to stay.[354]

South East Effective Development (SEED) was founded in 1975 with the goal of community development through art.[355] SEED works to connect the many cultures in Rainier Valley through opportunities such as the Rainier Valley Cultural Center, which offers an aesthetic venue for cultural events

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/Cchistor.htm (last visited July 4, 2013) [hereinafter Columbia City History].
[347] *Id*.; *See generally* RAINIER VALLEY HISTORICAL SOCIETY, http://rainiervalleyhistory.org (last visited July 4, 2013).
[348] Columbia City History, *supra* note 346.
[349] *Id.*
[350] *Id.*
[351] *Id.*
[352] *Id.*
[353] *Id.*
[354] *Id.*
[355] *SEED Housing and Economic Development*, SE. EFFECTIVE DEV. (SEED), http://www.seedseattle.org/index.html (last visited July 4, 2013).

and celebrations.[356] SEED also works in housing and economic development. The combined finances of the federal government, private partnerships, grants, and banks fund its housing and commercial development projects.[357] SEED provides affordable and safe rental properties for the families of Rainier Valley.[358]

Frogtown, a neighborhood in northwest St. Paul, Minnesota, is one of Minnesota's "most intact working class neighborhoods."[359] It has become a haven for Vietnamese and Hmong immigrants as well as other immigrant populations.[360] There are numerous churches with ethnic ties and restaurants serving food from around the world.[361] The Greater Frogtown Community Development Corporation (GFCDC) helps residents obtain home ownership, provides home improvement funding, and assists in economic development.[362] "For 17 years, GFCDC has built new or substantially renovated 107 homes that have been sold to low and moderate income families."[363] Unfortunately, many homes were foreclosed because of the recent credit crisis; GFCDC is currently working hard to provide rental properties.[364]

Frogtown residents promote gardens for healthful living and eating.[365] The Frogtown Gardens website states, "[w]e may be poor financially, but we are rich in history, diversity, children, energy, cuisine, languages and so

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[356] *Id*.
[357] *Id.*
[358] *Id*.
[359] *About Frogtown*, GREATER FROGTOWN CMTY DEV. CORP., http://greaterfrogtowncdc.org/about.html (last visited Jan. 21, 2013) [hereinafter GREATER FROGTOWN].
[360] *Id.*
[361] *Id.*
[362] *Id.*
[363] *Id.*
[364] *Frogtown Affordable Rental Housing Program*, GREATER FROGTOWN http://www.greaterfrogtowncdc.org/rental.html (last visited July 4, 2013).
[365] *Frogtown Garden Power*, FROGTOWN GARDENS, http://www.frogtowngardens.org/Frogtown_Gardens/Welcome.html (last visited July 4, 2013).

much more."[366] These gardeners encourage the planting of fruit trees in every yard.[367] They have created a community garden named Amir's Garden, which remembers a toddler who perished in a house fire on the site.[368]

In addition, Frogtown residents have joined together to promote sustainable urban farming. Frogtown Park and Farm, a 12.7 acre space, has been approved for purchase by the city government.[369] Additional monies were raised from foundations.[370] Organizers estimate that the Park and Farm will annually return $900,000 in "health care savings, increased property value, food production and storm water management, among other benefits . . . ."[371] This green space will be a demonstration farm and sanctuary, a place to build health "through physical activity, through eating well and sensibly, [and] through allowing ourselves space for quiet meditation."[372] The organizers are bucking conventional thinking that this land should be sold to developers for its highest "market" value.[373]

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[366] *Id*.
[367] *About Us/Events*, FROGTOWN GARDENS, http://www.frogtowngardens.org/Frogtown_Gardens/About_Events.html (last visited July 4, 2013).
[368] Cynthia Frost, *From the Ashes, Amir's Garden Grows a Vision of the Future in St. Paul's Frogtown Neighborhood,* TWIN CITIES DAILY PLANET, Aug. 2, 2012, http://www.tcdailyplanet.net/news/2012/08/02/ashes-amirs-garden-grows-vision-future-st-pauls-frogtown-neighborhood.
[369] Sana Naz, *Frogtown Farm Plans Move Forward in St. Paul*, TWIN CITIES DAILY PLANET, May 12, 2013, http://www.tcdailyplanet.net/news/2013/03/12/striving-be-green-frogtown; Frederick Melo, *St. Paul: Frogtown Farm Park Premiers in Coleman Budget*," TWINCITIES.COM, Aug. 20, 2012, http://www.twincities.com/stpaul/ci_21358386/st-paul-frogtown-farm-park-debuts-coleman-budget .
[370] Naz, *supra* note 369.
[371] *Next Up for Park Deal: Raise Money*, GROWING FROGTOWN (on file with author).
[372] FROGTOWN FARM, http://frogtownfarm.org/Frogtown_Farm/Welcome.html (last visited July 5, 2013).
[373] *Frogtown Deserves Greenspace*, FROGTOWN FARM, http://frogtownfarm.org/Frogtown_Farm/Why.html (last visited July 5, 2013).

Frogtown is also home to creative enterprises like the Daily Diner. The Daily Diner trains former homeless individuals in food services.[374] It also serves "diner favorites while incorporating local ingredients and ethnic flavors . . . [from Frogtown] . . . including 'light rail chili' . . . 'Dale Street wings' . . . catfish sandwiches, Asian salads, and chicken with waffles."[375] The Diner is decorated with murals and other art from local artists and is part of Frogtown Square, which provides 50 units of senior housing above commercial space.[376]

Turning to Maryland's Montgomery County, the 2010 census shows that this county has become a majority-minority county.[377] From 1990 to 2000, the minority population grew from 19 percent to more than 38 percent.[378] Around that time, more than one-fifth of the county's 850,000 residents were born in another country.[379]

By 2010, 50.7 percent of households in Montgomery County identified themselves as "Black or African-American, Hispanic or Latino, Asian or Pacific Islander or an ethnicity other than non-Hispanic White."[380]

The Montgomery County Government sponsors the Gilchrist Center for Cultural Diversity (GCCD) whose mission is to "help make Montgomery County a thriving multicultural community where every resident feels welcomed, participates civically, and contributes positively to the

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[374] Jess Fleming & Frederick Melo, *Daily Diner Frogtown, Union Gospel Mission Team up to Train Workers*, TWINCITIES.COM, Apr. 17, 2013, http://www.twincities.com/localnews/ci_23028890/daily-diner-frogtown-union-gospel-mission-team-up.
[375] *Id*.
[376] *Id*.
[377] *As Montgomery County Grows, It Grows More Diverse, Says 2010 Census*, MARYLAND-NATIONAL CAPITAL PARK POLICE, Feb. 9, 2011, http://mncppc.typepad.com/news/2011/02/as-montgomery-county-grows-it-grows-more-diverse-says-2010-census.html#more [hereinafter Montgomery Grows].
[378] Michael Amon, *Gilchrist Center Aims to Bring People Together*, WASHINGTON POST, Sept. 13, 2001, http://www.montgomerycountymd.gov/gilchrist/Resources/Files/gcaims.pdf.
[379] *Id*.
[380] Montgomery Grows, *supra* note 377.

economy."[381] GCCD connects residents with "public and private services, volunteering, civic engagement, cross cultural activities, and economic empowerment."[382] It offers free legal advice, English classes, job-search workshops, computer training, citizenship preparation classes, cultural groups, and other services.[383]

From these examples of flourishing communities, it is clear that greenlining should not only incent investment in previously redlined neighborhoods, but should also be utilized to promote the flourishing of additional global communities. These communities have sustainable property values.

1. The Role of Real Estate Agents in Greenlining and Promoting Global Flourishing Communities

Until recently, brokers have not been involved in greenlining in large numbers. For example, it is not apparent what role agents have played in organizations such as the Greenlining Institute and in communities such as Rainier Valley and Frogtown. This lack of visible involvement can and should change.

There have been some promising greenlining activities by brokers. As mentioned earlier, the National Association of Real Estate Brokers, the organization for black brokers, has been on the forefront of promoting fair housing since its founding in 1947.[384] Along with legislative changes in the 1960s, the organization has been involved in the Community Reinvestment Act of 1977, FIRREA in 1989, and other laws promoting diversity in

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381 *Montgomery County Charles W. Gilchrist Center for Cultural Diversity*, MONTGOMERY COUNTY, MD, http://www.montgomerycountymd.gov/gilchrist/info/mission.html (last visited July 5, 2013).
382 *Id*.
383 *Id*.
384 *NAREB History*, NAREB, http://www.narebshiba.com/?page_id=2 (last visited July 5, 2013).

housing.[385] Today, they promote equitable policies in light of the foreclosure crisis, including foreclosure mitigation, Homeowners' Bill of Rights legislation, preserving minority homeownership communities and access to credit, increasing affordable housing, job creation for minorities, and green energy-saving initiatives.[386] Many of its proposals require urgent implementation to address the devastation of minority communities due to the subprime crisis.

In 2011, the Multicultural Real Estate Coalition, made up of the National Association of Real Estate Brokers, Asian Real Estate Association of America (AREAA), and the National Association of Hispanic Real Estate Professionals (NAHREP) issued "The Five-Point Plan: Refocusing the Future of Minority Homeownership."[387] This plan calls for balanced regulation, more diversity in employees in financial services institutions, strong consumer protection, and mandatory financial education for first-time homebuyers.[388]

As for the NAR, it is encouraging that it now promotes diversity training,[389] workforce housing,[390] and partnerships with Habitat for Humanity.[391] Since 1998, it has sponsored a one day certificate program

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[385] *Id*.
[386] *ANAREB's African American and Ethnic Minority Housing. Policy Issues*, NAREB, http://www.narebshiba.com/?page_id=157 (last visited July 5, 2013).
[387] *The Five-Point Plan, Refocusing the Future of Minority Homeownership*, THE NAT'L ASS'N OF HISPANIC REAL ESTATE PROFESSIONALS, http://nahrep.org/downloads/2011-five-point-plan.pdf (last visited July 5, 2013).
[388] *Id.*
[389] *Diversity Program*, NAT'L ASS'N OF REALTORS, http://www.realtor.org/programs/diversity-program (last visited July 5, 2013) [hereinafter *Diversity Program*].
[390] *Housing Opportunity Program*, NAT'L ASS'N OF REALTORS, http://www.realtor.org/programs/housing-opportunity-program (last visited July 5, 2013).
[391] Erica Christoffer, "*Building Hope*", NAT'L ASS'N OF REALTORS, Nov. 9, 2012, http://speakingofrealestate.blogs.realtor.org/2012/11/09/building-hope/; *The Na'tional Association' of Realtors Renews its Support of Habitat for Humanity*, HABITAT OF HUMANITY, Aug. 10, 2006, http://www.habitat.org/newsroom/2006archive/08_10_2006_NAR_renews_partnership.aspx.

called "At Home with Diversity®," which addresses "diversity, fair housing and business planning development." [392] NAR publishes an annual publication on fair housing during Fair Housing Month, which is in April. This publication "includes a poster, advice on reporting acts of discrimination, information on multicultural real estate organization meetings, NAR diversity, [and] smart growth and housing opportunity grants."[393] NAR also promotes foreign investors in US property.[394]

These are excellent efforts. However, as in the 1920's when NAREB was at the forefront of promoting civic responsibility by selling single-family homes, NAR may consider whether it wants to be at the forefront and not the tail end of promoting global flourishing communities for everyone. This is so, especially in light of the United States' changing demographics.

It is predicted that by 2043, the population of the United States will no longer be majority white.[395] Both the Hispanic and Asian populations are growing faster than other groups and will constitute a large part of the housing market for the decades to come.[396] During 2000 to 2009, while whites had 1.1 births for each death, Hispanics had 8.9 births for each death.[397] From 2000 to 2010, the Asian-American population, now at 18.2 million persons, expanded at "double-digit rates in 49 of the 50 states."[398]

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[392] *At Home with Diversity*, NAT'L ASS'N OF REALTORS, http://www.realtor.org/designations-and-certifications/at-home-with-diversity (last visited July 5, 2013).
[393] *Diversity Program*, *supra* note 389.
[394] NAT'L ASS'N OF REALTORS, REACH FOR SUCCESS: 2013 ISSUES AND CHALLENGES, 25 (2012), *available at* http://www.realtor.org/reports/reach-for-success-2013-issues-and-challenges.
[395] Michael Cooper, *Census Officials, Citing Increasing Diversity, Say U.S. Will Be a 'Plurality Nation'*, N.Y. TIMES, Dec. 12, 2012, A20, *available at* http://www.nytimes.com/2012/12/13/us/us-will-have-no-ethnic-majority-censusfinds.html?_r=0.
[396] *Hispanics and Homeownership*, NAHREP, http://nahrep.org/facts-and-figures (last visited July 5, 2013).
[397] *Id.*
[398] NIELSEN, STATE OF THE ASIAN-AMERICAN CONSUMER Q3 2012 1 (2012) , *available at* http://www.nielsen.com/content/dam/corporate/us/en/microsites/publicaffairs/State

The Greenlining Institute has called for a broad coalition of stakeholders, including brokers and other real estate professionals, to develop a "sustainable homeownership agenda."[399] In light of the statistics just mentioned, now is the perfect time for the NAR and its sibling associations to accelerate their greenlining efforts by promoting flourishing global communities. In addition to calling themselves "realtors," they may all become "realists."

Specifically, brokers and their organizations should consider these individual and collective steps to action:

1) Develop training materials that describe the history of the realty industry in redlining and reverse redlining;

2) Adopt a letter of healing and hope acknowledging this past propensity with vows to move forward with greenlining (a sample is attached as Appendix 1);

3) Develop "Best Practices for Real Estate Agents;"

4) Conduct intensive training on methods to avoid steering and other present day discriminatory practices with appropriate disciplinary measures for noncompliance;

5) Develop consumer education on these practices as well;

6) Develop compensation incentives for greenlining, including working with community groups that promote urban gardening, farming and greenspaces that build healthful living, and sustainable property values. Currently, broker compensation incentives are geared towards steering buyers to segregated neighborhoods. Unless a break from the past is acknowledged, the realty industry will continue to perpetuate racist and nonsustainable practices of the past;

7) Develop a task force among NAR, National Association of Real Estate Brokers, Asian Real Estate Association of America

oftheAsianAmericanConsumerReport.pdf).
[399] MCCULLOCH & VISSA, *supra* note 224.

(AREAA), and National Association of Hispanic Real Estate Professionals (NAHREP) to address these issues in innovative ways;

8) Contribute to organizations that promote greenlining and community development;

9) Develop mentoring programs/internships for high school and college students, and older people of color in real estate brokering; and

10) Lobby legislatures for tax incentives and continuing education requirements for the above.

Social activists may also join the ranks of brokers to contribute to the efforts listed above.

VI. CONCLUSION

This article has traced the history of practices of real estate agents from redlining to reverse redlining to greenlining. Realtors arose in the United States during the industrial revolution. In order to avoid unscrupulous practices, they developed professional associations and codes of ethics. They adopted the agency model of fiduciary duties, as opposed to being independent contractors.

Unfortunately, for many years, local boards and the national association of real estate agents were ethically and legally committed to redlining, that is, banks refused to lend to areas deemed undesirable because of racial discrimination. From 1924 to 1950, the NAREB Code of Ethics forbade realtors from integrating neighborhoods, and state licensing authorities could revoke licenses for violating the Code of Ethics. Even after the US Supreme Court held racial covenants legally unenforceable in 1948, discriminatory practices continued. Agents induced appraisers to overvalue "white" properties and devalue others. They steered customers away from neighborhoods to avoid integration, or practiced blockbusting and contract selling. This involved spreading rumors of integration and causing white owners to sell at low prices, and black owners to buy at high prices. Some agents profited on fears of integration and perpetuated racial stereotypes.

Although federal and state legislation later banned redlining and blockbusting, agents were subsequently involved in reverse redlining practices in the 2000s, which exacerbated the inequities of redlining. Agents steered consumers to listings based on race. This exacerbated segregation and enabled targeted marketing for predatory lending. In reverse redlining, vulnerable borrowers, many of them minorities, were given subprime loans even though they qualified for prime loans. Many of these high risk subprime loans led to default, foreclosures, and other unsavory practices. Real estate agents were on the front lines by promoting home sales with rosy forecasts during the housing bubble and bust.

As our economy recovers from the worst financial crisis since the Great Depression, real estate agents, as other professionals, have an opportunity to return to the professionalism and fiduciary duties that are part of their original calling. Greenlining practices can channel investment into sustainable global communities. These communities thrive not because of artificially constructed property values, but because they genuinely flourish. They draw from the strengths of nature and multiple cultures. In turn, they bear the fruit of sustainable work and other cultural activities. They are not cultural deserts, but oases of thriving cultural expression. Their property values are sustainable.

Officials predict that the Chinese economy will surpass the US economy by 2019,[400] and by 2043 the United States will no longer have a white majority.[401] Real estate professionals have always been on the front lines of social policy and change. They now have an opportunity to take the lead in

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[400] *China Economy to Overtake US by 2019: State Research*, SOUTH CHINA MORNING POST, Jan. 9, 2013, *available at* http://www.scmp.com/business/economy/article/1123807/china-economy-overtake-us-2019-state-research.
[401] Cooper, *supra* note 395.

promoting global flourishing communities and to thrive with them. Additionally, those who want to effect social change also should consider becoming real estate agents. Hopefully, the role of real estate agents in greenlining will one day overshadow their past involvement in redlining and reverse redlining. The American dream should not just be a home, but a home in a global flourishing community with sustainable property values.

APPENDIX 1

Letter of Healing and Hope

We, the real estate brokers in the United States, issue this letter of healing and hope.

Either intentionally, or through ignorance, throughout our history, we have promoted or enabled segregated communities through racial covenants, blockbusting, steering, and reverse redlining and promotion of subprime mortgages. These segregated communities have enabled predatory lending and racial profiling, and fostered vast disparities in access to education, credit, transportation, work, nutrition, and intergenerational wealth transfer.

We have also promoted unsustainable housing, e.g., housing that is dependent on high consumption of gas and other natural resources.

Although we called ourselves agents with fiduciary duties, we have often pursued our own profit, and not the best interests of our clients.

We vow that we will acknowledge this past. We vow that we do not have to repeat the past, but will do all we can to heal relationships and neighborhoods.

As we move towards a United States that will no longer have a majority race, we are hopeful, that together we can realize a new American dream that is sustainable, inclusive, and healing.