Guidance on Discrimination in Home Appraisals Under the New Jersey Law Against Discrimination

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This enforcement guidance clarifies and explains how the New Jersey Office of the Attorney General (OAG) and the Division on Civil Rights (DCR) apply the New Jersey Law Against Discrimination (LAD) to discrimination in home appraisals.[1]

Background on Home Appraisals

A home appraisal establishes the value of a property for the purpose of obtaining a home loan or other financing. In a typical home purchase or mortgage refinancing transaction, a home lender hires an appraiser to provide an unbiased and objective opinion of the market value of a home. The appraiser develops an opinion on the value of the property by analyzing and comparing it to other similar properties that have recently been sold nearby.

A home appraisal is significant for buyers and sellers alike. For a buyer, an appraisal below the contract price may mean that the buyer must increase their down payment. That increase in the buyer's out-of-pocket payment may cause the sale to fall through, "potentially preventing a prospective buyer from purchasing a home."[2] For a seller, an appraisal below the contract price may force the seller to renegotiate the sale at a lower price, reducing their gains from the sale. An underappraisal can also harm a homeowner in a refinancing transaction, reducing equity in the home and increasing their interest rate. And all of this can affect the wealth of individuals, families, and entire communities. When a home is sold at a lower price, that sale "becomes a candidate for the next appraiser to choose as a comparable sale for the next appraisal in the community, carrying the impact of the lower value forward."[3] Over time, a systematic pattern of undervaluation can reduce property values across a community and thereby reduce the wealth of the residents who live in that community.

Research demonstrates that the burden of undervaluation falls disproportionately on buyers and sellers of color, leading to persistent racial disparities in rates of homeownership and the widening gaps in racial and ethnic wealth and homeownership.[4] The Biden Administration's Property Appraisal and Valuation Equity (PAVE) task force has made clear that racial and ethnic bias in appraisals contributes to the undervaluation of homes in majority Black neighborhoods.[5] A recent study, meanwhile, found that homes in majority Black and majority Latinx/e neighborhoods are significantly more likely to be appraised below the contract price than homes in predominantly white neighborhoods, and "Black and Latino applicants receive appraisal values lower than contract price more often than white applicants."[6] These disparities persist in New Jersey,[7] and they are an important factor driving racial and ethnic disparities in homeownership and wealth in the state.[8]

The LAD and Home Appraisal Discrimination

In New Jersey, the LAD prohibits discrimination in home appraisals. The LAD makes it unlawful for "any person" to discriminate "in the terms, conditions or privileges of the sale, rental, lease,

assignment or sublease of any real property" on the basis of any protected characteristic, including race, color, religion, national origin, ancestry, disability, gender, sexual orientation, and gender identity or expression.[9] That prohibition extends beyond property owners to any person involved "in the furnishing of facilities or services" in the transaction, including home appraisers.[10] The LAD also separately prohibits "any person, bank, banking organization, mortgage company, insurance company or other financial institution, lender or credit institution involved in the making or purchasing of any loan or extension of credit" or "any agent or employee thereof" from "discriminat[ing] against any person or group of persons."[11] This latter prohibition applies, at a minimum, when a person seeks "financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any real property."[12] The LAD also makes it unlawful for any person to "interfere with any person in the exercise or enjoyment of . . . any right granted or protected by" the LAD, and a discriminatory housing appraisal can interfere with an individual's housing rights in violation of this provision.[13] Taken together, all of these provisions bar discrimination in home appraisals conducted during the homebuying or lending process.

Because the LAD prohibits discrimination by "any person" who is involved in the "furnishing of facilities or services" or "involved in the making or purchasing of any loan or extension of credit," the LAD imposes obligations on a number of key entities involved in conducting, soliciting, or using a home appraisal during the homebuying or lending process. The LAD prohibits discrimination by home appraisers, who are the industry professionals responsible for conducting an appraisal. The LAD's broad language, however, prohibits discrimination not just by the appraisers who conduct the appraisal, but also by the other entities involved in selecting an appraiser and using the appraisal to decide whether and on what terms to extend a mortgage or other financing to a prospective borrower. These entities include lenders, such as banks and non-bank mortgage lenders, and appraisal management companies (AMCs), which connect lenders with appraisers and may manage the appraisal process during a real estate transaction.

Obligations of Home Appraisers, Lenders, and AMCs

The LAD imposes several important obligations on home appraisers, lenders, and AMCs.[14]

First, the LAD prohibits these entities from engaging in *disparate treatment*. Disparate treatment can occur when an appraiser, AMC, or lender maintains an intentional or unintentional policy or practice that treats a person or group of people—for example, an individual homeowner or home buyer, or an entire community—differently based on a protected characteristic, or when it applies a policy differently to different people based on a protected characteristic.

Second, the LAD prohibits appraisers, lenders, and AMCs from maintaining a policy or practice that has an unlawful *disparate impact*. These entities may not maintain a policy or practice that has a disproportionately negative effect on homeowners or buyers based on a protected characteristic, unless that policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest and there is not a less discriminatory, equally effective alternative means of achieving that interest. For example, an appraiser, lender, or AMC may violate the LAD if it uses criteria or adopts practices related to home appraisals that have a disproportionately negative effect on homeowners or buyers based on race or national origin and there is a less discriminatory alternative available to achieve the entity's interests.

Third, the LAD prohibits an appraisal company, lender, or AMC from submitting or relying on a home appraisal that it knows or should have known is discriminatory, and it likewise prohibits these entities from selecting or relying upon an appraisal conducted by an appraiser who maintains policies or practices the entity knows or should have known are discriminatory.[15] For example, the LAD prohibits an appraisal company, lender, or AMC from submitting or relying on an appraisal that it knows or should know contains discriminatory language referencing the race or ethnicity of a homeowner, buyer, or community.[16]

Violations of the LAD may trigger liability under other laws and regulations, as well. Real estate appraisers are licensed and regulated by the New Jersey Real Estate Appraiser Board within the New Jersey Division of Consumer Affairs (DCA). An appraiser who violates the LAD also violates the professional rules of conduct applicable to appraisers, and may be subject to discipline by the Board. [17] In addition, the New Jersey Consumer Fraud Act (CFA) is our State's broad consumer protection law.[18] Among other things, it prohibits unconscionable, abusive, and deceptive commercial practices. On August 5, 2022, Governor Murphy signed legislation establishing a conclusive presumption that, in cases brought by the Attorney General, a commercial practice that violates a State or federal law—including the LAD—also presumptively violates the CFA.[19]

OAG and DCR are committed to combating discrimination in home appraisals and ensuring that appraisers, lenders, and AMCs comply with their obligations under the LAD. To that end, OAG has launched a Home Appraisal Discrimination Initiative, and DCR has created an Appraisal Discrimination Enforcement Task Force to address discrimination in home appraisals. In the coming months, DCR and the Task Force will also provide additional information and guidance to members of the public about how the LAD's protections apply in the context of home appraisals.

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If you believe you have experienced discrimination in connection with a home appraisal in New Jersey, please contact DCR by emailing appraisals@njcivilrights.gov. The LAD prohibits retaliation—whether by a home appraiser, lender, realtor, or anyone else—against anyone who alleges unlawful discrimination in connection with a home appraisal.

If you believe that a home appraiser has violated the LAD or has otherwise committed professional misconduct, you may also contact the New Jersey State Real Estate Appraiser Board or file a complaint by visiting the Board's website: http://www.njconsumeraffairs.gov/pages/consumer-complaints. As noted, an appraiser who violates the LAD also violates the professional rules of conduct applicable to appraisers, and may be subject to discipline by the Board.

Finally, if you believe you have received an unfair, inaccurate, or discriminatory home appraisal, you also have the option of requesting a Reconsideration of Value from your lender. A home buyer or homeowner can request that their lender or financial institution reconsider an appraisal the consumer believes is inaccurate and ask for the appraiser to reassess the value of the home.[20]

[1] The purpose of this guidance document is to clarify and explain DCR's understanding of existing legal requirements in order to facilitate compliance with the LAD. This guidance document does not impose any new or additional requirements that are not included in the LAD, does not establish any rights or obligations for any person, and will not be enforced by DCR as a substitute for enforcement of the LAD. This document does not provide legal advice and should not be treated as providing legal advice. Homeowners, prospective homebuyers, home appraisers, lenders, and others with questions about the LAD are encouraged to speak with a qualified attorney to address their specific questions.

[2] Interagency Task Force on Property Appraisal and Valuation Equity, Action Plan to Advance Property Appraisal and Valuation Equity: Closing the Racial Wealth Gap by Addressing Mis-valuations for Families and Communities of Color 3 (March 2022), https://pave.hud.gov/sites/pave.hud.gov/files/documents/PAVEActionPlan.pdf.*Id.* at 3.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *See* Racial and Ethnic Valuation Gaps in Home Purchase Appraisals, Freddie Mac (Sept. 20, 2021), https://www.freddiemac.com/research/insight/20210920-home-appraisals; *see also* Andre Perry et al., The Devaluation of Assets in Black Neighborhoods: the case of residential property Metropolitan Policy Program at Brookings Institute (Nov. 2018), https://www.brookings.edu/wp-content/uploads/2018/11/_2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf.

[7] *See* Federal Housing Finance Agency, *Uniform Appraisal Dataset Aggregate Statistics: Fair Lending Dashboards*, https://www.fhfa.gov/Dashboards/UAD/Pages/uad_fair_lending.aspx (showing that, in New Jersey in 2022, 15.2 percent of homes appraised below the contract price in census tracts where the minority population was between 50.1 and 80 percent of the total population, compared to just 11.6 percent of homes appraising below the contract price in census tracts where the minority population was below 50 percent of the total population).

[8] *See, e.g.*, New Jersey Institute for Social Justice, Black Homeownership Matters: Expanding Access to Housing Wealth for Black New Jerseyans 6, 14 (May 2022), https://njisj.org/wp-content/uploads/2023/05/Black_Homeownership_Matters_Report_5.3.22_web.pdf.

[9] N.J.S.A. § 10:5-12(h)(2).

[10] *Ibid.*

[11] N.J.S.A. § 10:5-12(i)(1).

[12] N.J.S.A. § 10:5-12(i).

[13] N.J.S.A. 10:5-12(d); *see, e.g.*, *United States v. Am. Inst. of Real Estate Appraisers of Nat'l Assoc. of Realtors*, 442 F. Supp. 1072, 1079 (N.D. Ill. 1977) (holding "treat[ing] race . . . as a negative factor in determining the value of dwellings . . . may . . . 'interfere' with persons in the exercise and enjoyment of rights).

[14] *See, e.g.*, *Gerety v. Atl. City Hilton Casino Resort*, 184 N.J. 391, 398 (2005) (describing theories of LAD liability).

[15] N.J.S.A. 10:5-12(g)-(h). Federal law, which is instructive in interpreting the LAD, is in accord. *See Bergen Commercial Bank v. Sisler*, 157 N.J. 188, 200 (1999) ("To the extent the federal standards are 'useful and fair,' they will be applied in the interest of achieving a degree of uniformity in the discrimination laws."); 24 C.F.R § 3605 (a person is prohibited from "[u]sing an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race" or another protected characteristic); 24 C.F.R. § 100.7(a)(1)(iii) ("A person is directly liable for . . . [f]ailing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it."); 12 C.F.R. § 1002.6(b)(1) ("a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants"); *see also Connolly v. Lanham*, SAG-22-02048, 2023 U.S. Dist. LEXIS 135040, at 7-12 (D.C. Md. 2023) (explaining that courts have found lenders who rely upon discriminatory appraisals liable pursuant to the FHA and ECOA when it "enables, gives force to, or participates in a course of conduct that it knows or should know to be discriminatory").

[16] *See* Federal Housing Finance Agency, Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary, Dec. 14, 2021, https://www.fhfa.gov/Media/Blog/Pages/Reducing-Valuation-Bias-by-Addressing-Appraiser-and-Property-Valuation-Commentary.aspx (noting that FHFA has found prohibited references to race and ethnicity in the "Neighborhood Description" and other free-form text fields in the appraisal form).

[17] N.J.A.C. § 13:45C-4.2.

[18] N.J.S.A. 56:8-1 et seq.

[19] P.L. 2022, c. 96.

[20] Patrice Alexander Ficklin et al., *Mortgage Borrowers Can Challenge Inaccurate Appraisals Through the Reconsideration of Value Process* (Oct. 6, 2022), https://www.consumerfinance.gov/about-us/blog/mortgage-borrowers-can-challenge-inaccurate-appraisals-through-the-reconsideration-of-value-process/.