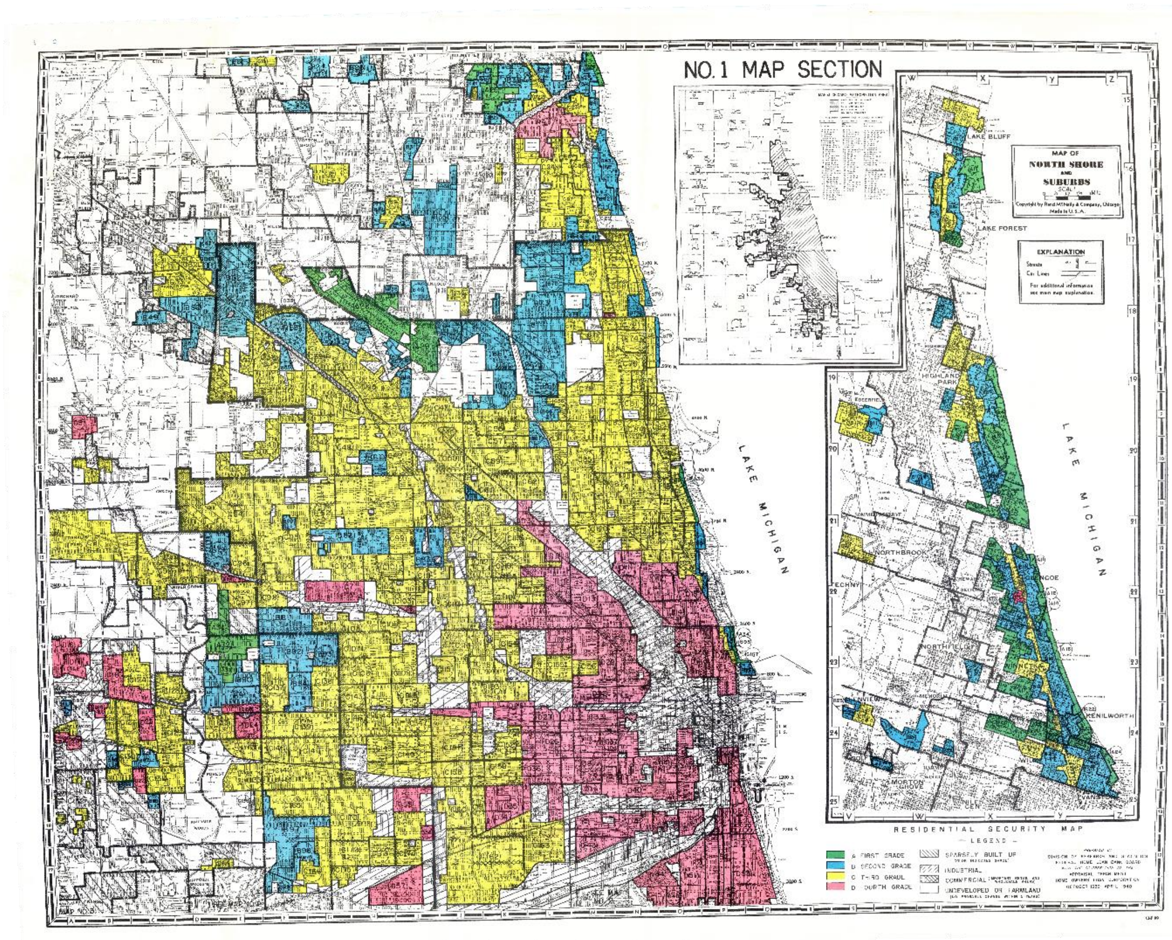
November 2020

HOT TOPIC ALERT
Equity in Real Estate



Original 1939 federal "Residential Security" map of the north shore of Chicago and suburbs with color-coded gradation of neighborhoods. (Source: Mapping Inequality Project, University of Richmond)

More than five decades after passage of the federal Fair Housing Act, housing discrimination and residential racial segregation remain severe and pervasive across the United States. Research from HUD shows that real estate professionals tell about and show members of racial minority groups fewer potential homes than prospective white buyers or renters. A three-year investigative project by New York *Newsday*, *Long Island Divided*, revealed a serious pattern of discrimination in real estate sales: unequal treatment or steering was reported against Black buyers in 49% of the test cases, with discrimination against Latino buyers 39% of the time, and against Asian buyers 19% of the time. Discrimination in real estate contributes to recent findings that many U.S. metropolitan areas are more segregated today than they were in the 1960s.

NATIONAL ASSOCIATION OF REALTORS®

The problem is not limited to Long Island, nor is it limited to homebuyers. In Chicago, African American renters pay higher prices to rent in white neighborhoods than white renters pay for the same types of residences. In the Boston area, a study found evidence of racial discrimination in 71% of the cases tested. Evidence of discrimination was found across a variety of property types, including owner-occupied buildings and stand-alone properties owned by commercial real estate companies. The data revealed that real estate professionals are deeply involved in this discrimination.

In this Hot Topic Alert, we examine the issue of racial equity in real estate. We look at historical laws and practices that tolerated discrimination or promoted segregation and examine legal efforts to end discrimination. We consider the benefits of diverse communities and review the groups that are toward achieving equity. Finally, we highlight some of the efforts by National Association of REALTORS® (NAR) and state and local REALTOR® organizations to promote equal opportunity in housing.

HOW DID WE GET HERE?

"The past is never dead. It's not even past."
-William Faulkner

The story of racism in America is a long one, dating back to the arrival of the first enslaved Africans in 1619. Legal slavery lasted nearly 250 years and was formally ended after the Civil War and the ratification of the 13th Amendment in 1865. Three years later, the 14th Amendment was ratified, guaranteeing to all Americans the "equal protection of the laws."

The abolition of slavery, and the enactment of constitutional protections for formerly enslaved people, did little to help racial equity. Sporadic legislative efforts, such as the Civil Rights Act of 1866, made reassuring promises on paper, but those promises were seldom kept. Jim Crow laws and Black Codes in Southern states not only permitted racial segregation, but in many cases, mandated it. African Americans were denied not only political rights, but were also denied economic rights. Economic and social advancement by African Americans was sometimes resisted with violence, as in the 1921 Tulsa Race Massacre in which hundreds of people were killed and a prosperous African American community known as "Black Wall Street" was destroyed. Pervasive discrimination led many African Americans to join in the "Great Migration" to Northern and Western cities. Moving across the country, however, just exchanged the overt discrimination of Jim Crow for more subtle, but no less harmful, forms of discrimination. In fact, by the mid-1960s, Chicago earned the unwelcome distinction of being the most segregated large city in the United States.

THE LONG RED LINE

As the country struggled to recover from the Great Depression, New Deal federal policies meant to support the housing market encouraged or required segregated housing. The National Housing Act of 1934 was enacted "to encourage improvements in housing standards and conditions [and] to provide a system of national mortgage insurance." The Federal Housing Administration (FHA) was established by this Act, and the FHA very soon formalized the process now known as "redlining."

The FHA Underwriting Manual provided policy on valuation requirements for federally-insured mortgages. It included a directive that valuators looking at insuring mortgages in particular neighborhoods "determine whether incompatible racial and social groups are present" to determine whether the location would be "invaded" by racial groups including African Americans and immigrants. The Manual concluded that "A change in social or racial occupancy generally contributes to instability and a decline in values." The Underwriting Manual's emphasis on "harmonious racial groups" led to the mapping of neighborhoods separated by race. Neighborhoods inhabited primarily by African American residents were marked in red – giving us the term "redlining" – and banks denied mortgages and capital investments in these areas.

Redlining has been unlawful for over 50 years, but the effects of the practice still persist. Many formerly redlined areas remain highly segregated, with little private investment. The heritage of redlining is one cause of the persistent homeownership gap between African Americans and whites. A person of color denied a mortgage because they lived in a redlined neighborhood was unable to build wealth through home equity in the way that white homeowners, with FHA-insured mortgages, were able to do. When African Americans tried to buy homes in non-redlined areas, racially restrictive covenants or other public and private measures kept them out.

The net worth of a typical African American family today is $17,150, while that of the typical white family is $171,000, even though African Americans earn, on average, 60% of the income of whites. Property owners in traditionally black neighborhoods have seen a significantly smaller gain in wealth due to increased property values than have owners in non-segregated neighborhoods. Wealth – as opposed to income – is built by the transfer of resources from one generation to another. A family that has no significant wealth is unlikely to pass wealth down to children and grandchildren.

The residual effects of redlining have created a vicious circle of inequity that perpetuates race-based economic inequality. Redlining has had such a pervasive effect that merely outlawing the practice has done little to undo it. There is a need to take action to "undesign the redline" by adopting policies that create more equitable communities for everyone.

AGREEING TO DISCRIMINATE

Neighborhood segregation was enforced by means other than redlining. The most common means for imposing segregation was the racially restrictive covenant. A racial covenant was a provision in a deed or conveyance that stated that the property in question "shall not be rented, leased, or conveyed to, or occupied by, any person other than of the white or Caucasian race." By some estimates, more than half of all residential properties built before 1948 (the year the U.S. Supreme Court held that such covenants were unlawful) were constrained by racially restrictive covenants.

Although it has been over seventy years since racial covenants were outlawed, their effects are still with us today. Restrictive covenants created racially homogenous neighborhoods which, in turn, impact the health and safety, as well as the overall quality of life, of residents. Neighborhoods traditionally occupied by people of color are more apt to have environmental hazards, such as landfills, located in them, and are more likely to be situated immediately adjacent to major highways. These neighborhoods are also more susceptible to climate change, as research has shown that formerly redlined neighborhoods have significantly higher land surface temperatures than non-redlined neighborhoods.

The language creating unenforceable racial covenants remains on many deeds. Their presence on these documents is an unpleasant reminder of the days when such practices were not just legal, but widespread. Laws in some states have a process to allow property owners to strike racial covenants from deeds. For example, in 2020, the Virginia REALTORS® worked with members of the General Assembly to allow a simple form to be filed to correct a deed to remove a restrictive covenant. Other community projects work to unearth historical deeds to educate the public. The St. Paul Area Association of REALTORS® and REALTOR® members of the Minnesota REALTORS® Rebuilding Community Work Group are working with the Mapping Prejudice Project at the University of Minnesota to uncover the history of racially restrictive covenants and educate the public about this form of structural racism.

MOVING TO THE SUBURBS

After the Second World War, an unprecedented housing shortage led the FHA and the Veterans' Administration to insure financing for developers to mass produce housing. This led to the development of communities such as Westlake neighborhood of Daly City, California, and the Levittowns in New York and Pennsylvania, and was the start of the postwar migration to suburbia. For the first time, Americans became more likely to purchase homes than to rent. Houses in these developments were sold with racially restrictive covenants in the deeds. While white GIs returning from World War II were able to buy an inexpensive home in a government-backed development with a government-backed mortgage, returning African-American GIs were locked out of the new suburbs. The value of these homes quickly increased, and white families benefited from that equity growth to start businesses, finance their children's college education, and help their children with down payments on their first homes. Black GIs and their descendants received none of these benefits.

THE FAIR HOUSING ACT – MAKING EQUITY THE LAW

In 1968, one week after the assassination of Dr. Martin Luther King, Jr., Congress passed the Fair Housing Act, which prohibited discrimination in the sale, rental, and financing of housing based on race, religion, national origin, or sex. The law was later amended to prohibit discrimination based on disability or familial status (presence of children in the family). Unlike previous efforts to eliminate housing discrimination, the 1968 Act contained enforcement mechanisms. The U.S. Department of Justice was authorized to file suit in many cases involving discrimination. If force or threat of force was used to deny or interfere with fair housing rights, the Department could institute criminal proceedings. The Fair Housing Act allows individuals who believe that they have been victims of an illegal housing practice to file a complaint with the U.S. Department of Housing and Urban Development (HUD).

The Fair Housing Act also requires all federal agencies to "administer their programs . . . in a manner affirmatively to further the purposes of [the Fair Housing Act]," also known as the obligation to affirmatively further fair housing (AFFH). The AFFH obligation requires federal agencies and recipients of federal funding to take proactive steps to address longstanding patterns of segregation, discrimination, and disinvestment. The AFFH provision of the Fair Housing Act went unenforced for many years. Then, in 2015, HUD finalized a rule requiring states, counties, and cities receiving HUD funding to document patterns of racial bias in their neighborhoods and to create local goals to for reducing segregation. The Rule was in place for just over five years. HUD Secretary Ben Carson withdrew the tool HUD had provided for recipients to analyze segregation 2018, and in July of 2020, terminated the Rule altogether.

The Fair Housing Act is a historic milestone on the road to eliminating segregation. It is an important statement of national policy that puts the United States government officially on record in favor of housing equity. And it provides rules of the road for real estate professionals and others involved in housing transactions.

THE HARMS OF RACISM AND BENEFITS OF EQUITY

The benefits of housing equity are widespread. Diverse, non-segregated neighborhoods come with a long list of advantages. More diverse areas tend to have higher household incomes, higher levels of educational attainment, and lower rates of violent crime. Students of all races who attend integrated schools develop more complex and flexible manners of thinking and learn better strategies for developing creative problem-solving habits. Students who attend more ethnically and economically diverse schools are more likely to have higher test scores and better grades compared to those who attend less diverse schools. They also are more likely to graduate from high school, to attend integrated colleges, and to graduate from college. These students not only do better academically, but socially as well. Businesses are also increasingly aware that diversity helps their bottom line.

Just as housing equity presents benefits, racial segregation presents tangible detriments to society as a whole. A new study from Citigroup found that the US economy has lost out on $16 trillion in growth over the last 20 years because of discriminatory policies in wage growth, education access, homeownership and lending to minority-owned businesses. A study of segregation in Chicago concludes that segregation in that city depresses black per capita incomes, lowers the educational attainment rates of both black and white residents, and even contributes significantly to the city's homicide rate. As Neel Kaskari, President of the Minneapolis Fed stated in a recent interview, "racism is an undercurrent of the status quo . . . it absolutely holds our economy back. There are big chunks of our population whose innate human capital is basically being squandered because they are not getting an education that enables them to take advantage of their natural talents and gifts. That not only hurts them, that hurts all of us. It hurts our society and our economy."

Living in a segregated neighborhood impacts residents' quality of life in many other ways. Residents have less access to transportation or quality health care, or even grocery stores selling healthy food. A person's neighborhood and environment are important determinants of physical and mental health. This disparity has become even more apparent recently, as communities of color and formerly redlined neighborhoods are at heightened risk for COVID-19. Neighborhoods with mostly African American residents have suffered disproportionately from the pandemic. Equally important, children who live in high-poverty neighborhoods have significantly poorer educational outcomes than children in more diverse areas. These outcomes continue past children's school years. Neighborhoods and social institutions, along with schools, are important determinants of a child's later success in life.

ZONING – OR NOT ZONING – FOR EQUITY

In the past, zoning ordinances have been used as a tool to impose racial segregation. Today, zoning laws are being retooled as ways to promote more racially and economically diverse neighborhoods. Zoning ordinances designed to accommodate and encourage diversity, also known as inclusionary zoning, are being adopted by cities nationwide as these cities work towards ensuring the development of affordable housing stock in diverse neighborhoods. Inclusionary zoning is a market-based approach to providing affordable housing. Developers are encouraged or required to set aside a certain percentage of housing units in their projects for low- and moderate-income residents. The practice leverages private-sector development, minimizing the financial subsidies required to meet affordable housing goals.

Inclusionary zoning is implemented in a variety of ways. In Fairfax County, Virginia–home of the nation's first inclusionary zoning ordinance– the ordinance allows developers to increase the density of a project according to the number of affordable units offered. Montgomery County, Maryland – a county that borders Washington, D.C. and that has a very high cost of living – requires that between 12.5 and 15% of the total number of units in every subdivision or high-rise building of 20 or more units must be moderately priced.

Nationwide research shows that communities that implement inclusionary zoning tend to see an increase in their stock of affordable housing. In addition, children living in areas covered by inclusionary zoning do better in school, either because they are attending better schools, or because their living situations are more stable. Inclusionary zoning creates more affordable housing options in low-poverty areas, allowing disadvantaged families to move to those areas. This can improve health outcomes for lower-income residents and encourage social and economic integration.

WHO IS WORKING FOR EQUITY?

Many organizations are working towards the goal of equity in the real estate market. The National Fair Housing Alliance is an umbrella organization of private fair housing groups, with members in nearly every state. Groups that work to end housing discrimination may obtain financial assistance from HUD under its Fair Housing Initiatives Program (FHIP). FHIP grantees conduct investigation of fair housing claims and promote fair housing education.

The Urban Institute provides policy research and analysis on all facets of social and economic policy, with an emphasis on urban issues. The Institute's Housing Matters website sets out valuable research on an array of housing-related issues, including taxation transportation and education.

The National Association of Real Estate Brokers (NAREB) was founded in 1947 as an equal opportunity and civil rights advocacy organization for African American real estate professionals, consumers, and communities. One of NAREB's signature programs is 2Mn5. The goal of 2Mn5 is to increase the number of African American homeowners by two million in five years through various public and private outreach activities.

The Asian Real Estate Association of America (AREAA) is a national organization dedicated to increasing sustainable homeownership in the Asian American and Pacific Islander (AAPI) community. AREAA partners with RE/MAX and Freddie Mac to prepare an annual *State of Asia America Report*. The report compiles data relating to AAPI housing, demographics, education, income, and policy, and identifies barriers to AAPI homeownership. AREAA has also worked to make the homebuying process more accessible to the AAPI community, by working to provide translation resources and documents in Chinese, as well as in Korean, Vietnamese, and Tagalog.

The National Association of Hispanic Real Estate Professionals (NAHREP) is working to increase homeownership in the Latino community. NAHREP also works with the Hispanic Wealth Project, an initiative with the goal of tripling Hispanic wealth. As a part of the Project, NAHREP has developed the "NAHREP 10," ten principles to guide the building of wealth and prosperity of the Latino community in America. The principles include economic and personal financial strategies, such as minimizing debt and investing "at least 20% of your income in real estate and stocks".

NAR AND THE WORK FOR EQUITY

Racial equity is a topic that has been very much on the minds of Americans in 2020. Current events such as the disproportionate impact of COVID-19 on people of color, and the law enforcement violence that sparked nationwide protests this summer, have pushed the topic to the forefront of our collective consciousness. These social injustices can be traced very clearly to the racially divided neighborhoods we live in.

NAR recognizes that decades of government and private policies, including policies of the real estate industry and of NAR's predecessor organization, have created deep systemic inequities. We have work to do, not only to stop discrimination, but to redress historic wrongs. In January of 2020, NAR announced a renewed emphasis on fair housing. NAR created a new Fair Housing Policy Committee and hired a new Director of Federal Fair Housing Policy, Bryan Greene, who previously served as HUD's head of fair housing enforcement. Through a slate of initiatives that NAR announced soon after Greene's hire – the Fair Housing Action Plan, or ACT! Plan -- we are promoting accountability, culture change, and training to stamp out discrimination in real estate.

The ACT! Plan includes support for increased discrimination testing in the industry and for promoting stronger real estate licensure laws. NAR is also funding innovative training for REALTORS® that goes beyond compliance with the law and seeks to inspire deeper appreciation for the values of inclusion and equal access. NAR introduced a 54-minute video on confronting implicit bias in real estate, which will be followed by a three-hour classroom training. NAR announced the launch of *Fairhaven: A Fair Housing Simulation* at the 2020 REALTORS® Conference & Expo. *Fairhaven* is an online interactive simulation training in which agents confront discrimination in real estate transactions from the point of view of both agent and client.

Beyond initiatives to address discrimination in real estate transactions, NAR is engaged in and exploring further policy and regulatory activity to close the gap in homeownership and intergenerational wealth. NAR opposed HUD's elimination of the AFFH rule, and asked HUD to drop its proposed amendment to the disparate impact rule that would make it more difficult to prove housing discrimination. NAR has also unveiled a 5-point plan for reducing the black-white homeownership gap in partnership with the Urban Institute and NAREB. NAR continues to explore further policy measures to redress historic harms.

NAR is also addressing racial discrimination in real estate appraisals. The 2020 Appraisal Summit looked at recent claims that home valuation processes are a factor in exacerbating racial inequality. There was broad agreement among the panelists that more fair and equitable valuation systems would help increase African American homeownership rates and close the wealth gap created by low rates of ownership. NAR has formed a Racial Discrimination in Appraisals work group to examine recent studies suggesting black-owned homes are appraised for significantly less than white-owned homes, even when differences in neighborhoods, structure, and similar factors are taken into consideration. The group will explore changing training for appraisers and increasing diversity in the appraisal profession.

As a further part of its commitment to diversity and fair housing, NAR is partnering with multicultural organizations of real estate professionals – NAREB, the National Association of Hispanic Real Estate Professionals (NAHREP), the Asian Real Estate Association of America (AREAA) – to address shared real estate policy issues, and also to collaborate on programs to increase fair housing opportunities. NAR also participates with other organizations in educational programs and forums aimed at advancing the cause of fair housing.

STATE AND LOCAL WORK FOR EQUITY

To encourage state and local activity on equity in real estate, NAR is actively investing to assist state and local REALTOR® associations in their efforts to promote diversity and fair housing. Financial assistance is one part of these efforts.

- Fair Housing Grants of up to $1,000 are available to support fair housing-related education. Grants of up to $5,000 are available to support partnerships with local agencies or organizations that further the fair housing mission.
- Diversity and Inclusion Grants provide funding to state and local REALTOR® Associations to enhance the inclusion of diversity in their leadership. Diversity and Inclusion Grants may also provide funding for efforts to collaborate with local chapters of national multicultural real estate organizations.
- Community Rebuilding Grants of up to $3,000 will help fund local REALTOR® Associations' efforts to rebuild and restore public community places impacted by the recent racial injustice demonstrations.
- Smart Growth Grants of up to $1,500 are available to support education related to planning for equity. Grants of up to $5,000 are available to help engage or support, in partnership with other stakeholders, initiatives related to planning for equity.

- Finally, Housing Opportunity Grants help support activities that create or improve access to affordable housing. REALTORS® can be leaders in improving their communities by creating affordable housing opportunities.

State REALTOR® Associations are taking a leading role in the push for fair housing. In Illinois, the Illinois REALTORS® have worked with the Cook County Human Rights Department on the implementation of the County's new "Just Housing Amendments" to the County's Human Rights Ordinance, limiting the use of criminal background checks in screening applicants for rental housing. If a person has a criminal history, housing providers must conduct an Individualized Assessment taking several factors into account. In Idaho, the Idaho Association of REALTORS® and Greater Idaho Falls Association of REALTORS® are active members of the Idaho Housing Forum, a coalition of stakeholders conducting statewide initiatives and activities to increase fair housing awareness. The Forum puts on conferences and Fair Housing Month events and maintains a web site that serves as a clearinghouse for fair housing and related information of interest.

Local associations have also put forth important efforts.

- In Columbus, Ohio, the local REALTORS® used a NAR Diversity Grant to present programs related to diversity awareness and a Fair Housing Grant to conduct a virtual book club featuring "The Color of Law" author Richard Rothstein.
- REALTORS® in Santa Fe have become a leading force in the Santa Fe Housing Action Coalition (SFHAC), a broad group of stakeholders including businesses, homebuilders, educational, medical, and art institutions, and others that seek to expand and diversify housing options in an area with a tight housing market. With help from a Housing Opportunity Grant, SFHAC developed a media/public engagement plan to raise awareness about local housing equity issues.
- In St. Louis, REALTORS® sponsored a "Rebuild Day" in 2018. Rebuild Day restored five homes in the neighborhood of the house at issue in *Shelley v. Kraemer*, the case that put an end to the legal enforceability of racial covenants. The 2018 event was particularly significant, as it was timed to commemorate both the 70th anniversary of the *Shelley* case and the 50th anniversary of the Fair Housing Act.

CONCLUSION

In 1967, about a year before the passage of the Fair Housing Act, Look Magazine ran an article titled "Negro in the Suburbs." Perhaps the most memorable feature of the article was the illustration for the article by Norman Rockwell. Called "The New Kids in the Neighborhood," the picture showed two African American children standing by a moving van being regarded warily by three white children. In the background, another neighbor is watching the scene unfold by peeking through their curtains. We can infer what has happened, but we are left to our own devices to imagine what will happen next.

What will happen next? While we have come a long way towards guaranteeing equity in real estate, there is still much work to be done. The challenges of promoting equity also present an opportunity, one that will lead to thriving, inclusive communities where people of all backgrounds can flourish.

Hot Topic Alerts are prepared for NAR by Legal Research Center, Inc.
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White Papers: Comprehensive reports prepared for NAR on issues directly impacting the real estate industry. Examples include: Rental Restrictions, Land Banks, Sales Tax on Services, State & Local Taxation, Building Codes, Hydraulic Fracturing, Foreclosure Property Maintenance, Climate Change, Private Transfer Fees.

Growth Management Fact Book: Analysis of issues related to land use and modern growth management topics include: density — rate of growth, public facilities and infrastructure, protection of natural resources, preservation of community character, and affordable housing.

All available on REALTOR® Party webpage under the *State & Local Resources* tab.