

any successor company in which said 'Alliance Realty Corporation of Rochester may merge.

- h) Its front main wall shall be not less than 40 feet nor more than 50 feet from the front lot line, except on the north side of Thornton Road, where it shall be not less than 30 feet nor more than 45 feet

# CONFRONTING RACIAL COVENANTS HOW THEY SEGREGATED MONROE COUNTY AND WHAT TO DO ABOUT THEM

4. Any detached garage shall comply with each and all of the following requirements:

- a) It shall be not less than five nor more than seven feet from the rear lot line.

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THE YALE ENVIRONMENTAL PROTECTION CLINIC

- c) It shall be not less than eight feet from the house on the lot.

5. The dwelling shall be occupied by persons of the Caucasian race only.

6. No noxious or offensive trade shall be carried on upon any lot nor shall anything be done thereon which may be or

**Cover image:** *The cover image depicts the racial covenant in an agreement made on July 17, 1939 by Monroe County to facilitate the sale of government-owned land to homebuilder Fred M. Hills.*

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This guide is the result of a partnership between City Roots Community Land Trust and the Yale Environmental Protection Clinic.

Established in 2016, **City Roots** is a community-driven organization that works to establish and promote permanently affordable, equitable housing in Rochester, New York. City Roots is a collaborative of homeowners, renters, youth, community allies, and partners. City Roots' mission is to permanently preserve affordability in Rochester through community owned and managed land, to empower neighbors, and to bridge socioeconomic divisions in order to secure development without displacement. City Roots' vision is to strengthen the Rochester community by cultivating the perspective that land owned by the community can help make housing a human right and affordable for all.

The **Yale Environmental Protection Clinic** is an interdisciplinary program run by the Yale Law School and the Yale School of the Environment. The Clinic's mission is to train students in environmental advocacy through skills-based seminars, interdisciplinary project work, and collaboration with organizations across the country. The Clinic helps students to master the tools of effective environmental advocacy by engaging in struggles for environmental justice, preservation, and sustainability. The Clinic is proud to partner with organizations like City Roots that are committed to building just, equitable, and antiracist environments.

Work on this guide was led by a team consisting of Yale students Regina Harlig, Yale School of the Environment '20, Alex Miskho, Yale Law '22, and Aaron Troncoso, Yale Law and Yale School of the Environment '22, City Roots attorney Jim Pergolizzi, and Yale Law clinical lecturer in law Conor Dwyer Reynolds. This guide builds on the years of research conducted by Shane Wiegand and his students in Rush-Henrietta, and would have been impossible without their remarkable work.

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# CONFRONTING RACIAL COVENANTS

## HOW THEY SEGREGATED MONROE COUNTY AND WHAT TO DO ABOUT THEM

### **WARNING ON HARMFUL CONTENT**

This guide contains narratives, images, and descriptions of racist language that are graphic, harmful, and potentially traumatizing, and do not reflect the views of the authors.

### **DISCLAIMER ON LEGAL ADVICE**

The content of this guide is not legal advice. Instead, this content is for general informational purposes only. Readers of this guide should get advice from an attorney about whether the information in this guide applies to their particular legal situation. This guide does not create any lawyer-client relationship, including one between a reader and the authors of this guide.

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# INTRODUCTION

In June 2020, a 16-year-old Aquinas High School student and his cousin drove to Penfield’s Indian Landing Elementary School to meet their basketball trainer for a mid-day session.<sup>1</sup> Mistakenly thinking the session was being held inside, the two young Black men carried their basketball gear to the school’s doors.\* Finding the doors locked, the pair went back to their car. A school employee who saw the youths, rather than talking to them, called the police. An officer quickly arrived and confronted the pair. After deciding nothing was amiss, the officer left the young men to await their trainer, who ended up holding the session on the school’s outdoor courts.

This story fits into a well-established pattern of police being used to surveil, threaten, and harm Black and Brown people in Monroe County.<sup>2</sup> The story also shows how, as law professor Monica Bell puts it, “policing is one of many mechanisms that reinforce segregation.”<sup>3</sup> Calls to 911 about Black people, who are seen as “suspicious” for simply existing in predominantly White spaces, work to police the lines between the White and non-White worlds.<sup>4</sup> In Monroe County, where research shows residential segregation is at a “very high” level, those lines can be particularly stark.<sup>5</sup> Indeed, in their trip to Indian Landing, the two youths crossed the most segregating school district line in the United States: that between the Rochester and Penfield school districts.<sup>6</sup>

This guide explores how the lines of segregation in Monroe County were drawn using tools similar to the 911 call at Indian Landing, tools that have been called the “chief weapon” in residentially segregating the United States: *racial covenants*.<sup>7</sup> These covenants (also known as “racially restrictive covenants”) were racist, legally binding agreements that White people placed into property deeds and other legal documents to ban non-White people from living in homes in a given neighborhood. Those targeted by racial covenants include Black and Brown people as well as people who were once commonly seen as non-White, such as Jewish people and Italian and Polish people. Like racially motivated phone calls to 911 today, racial covenants allowed White people to use the legal system to segregate Monroe County; indeed, the similarity between the two tools of exclusion has led scholars to call racist 911 calls the “new racially restrictive covenant.”<sup>8</sup> Racial covenants were filed at the Monroe County Clerk’s office through at least the 1940’s, creating “Whites Only” neighborhoods in Rochester and every suburb that touches the city; these neighborhoods included the Ellison Park Heights neighborhood that sits just blocks from Indian Landing.<sup>9</sup>

Racial covenants were used by Monroe County’s most powerful citizens and groups. Those who made and agreed to racial covenants include the Catholic Diocese of Rochester, ESL Federal Credit Union, the cofounder of Wegmans Food Markets, and leaders of the Monroe County Bar Association, Nixon Peabody LLP, the Rochester Home Builders’ Association, and the Rochester Institute of Technology. Kodak placed racial covenants on the neighborhoods it built for its employees. The *Rochester Democrat & Chronicle* advertised and promoted racial covenants, as did members of the Greater Rochester Association of Realtors.

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\* This report will capitalize the words Black and White when referring to race, in line with the American Psychological Association’s Style and Grammar Guidelines. A justification for this choice appears in Kwame Anthony Appiah’s June 18, 2020 article in *The Atlantic* titled “The Case for Capitalizing the B in Black”: “Racial identities were not discovered but created . . . we must all take responsibility for them. Don’t let them disguise themselves as common nouns and adjectives. Call them out by their names.” This report will also capitalize the word Brown when Black and Brown is used together, following the lead of publications like the *Chicago Sun-Times*, which explained its changes in style in a letter to its readers on June 15, 2020 titled “Why We’re Now Capitalizing The ‘B’ In Black.”

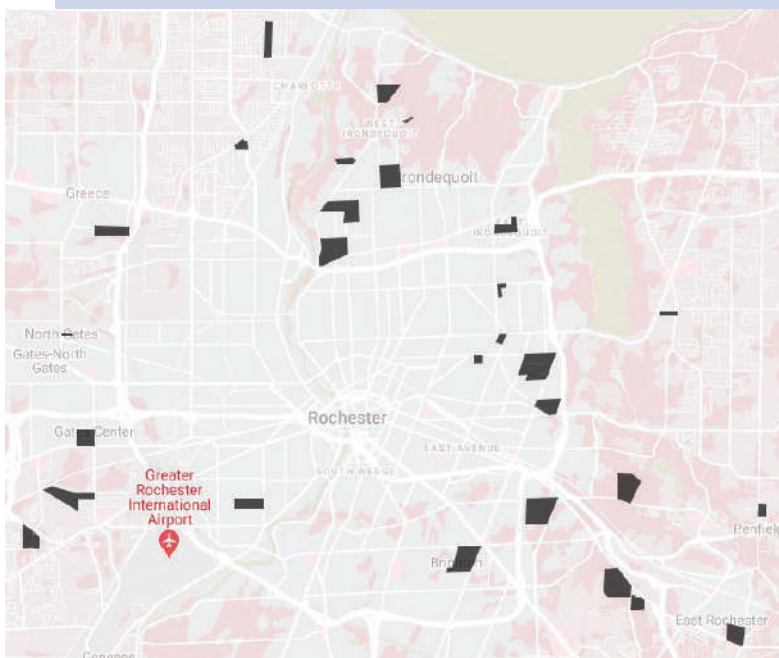


Yet it was not only private individuals and businesses that worked to spread racial covenants across Monroe County. The Monroe County Clerk filed racial covenants for generations without objection well into the 20th century, recording those covenants on official documents that were open to the public. More importantly, Monroe County itself placed racial covenants on property it sold to homebuilders. Town and school officials like those in Gates also placed covenants on their own properties. Segregation in Monroe County was therefore state-sponsored, with elected officials openly, intentionally, and legally forcing neighborhoods to become “Whites Only.”

### BOX 1. SEEING SEGREGATION

The map below shows subdivisions where at least one racial covenant has been found. In some instances, racial covenants cover every home in the subdivision. This map is the result of many

hours of manual deed searches in the Monroe County Clerk’s office, yet it likely only represents a tiny fraction of the total neighborhoods that have racial covenants attached to their homes. As described further in this guide, funding for a covenant mapping project as part of an antiracist educational program would dramatically increase the community’s understanding of how it came to be segregated. Nevertheless, the knowledge contained in this map alone reveals that racial covenants are widespread in Monroe County.



The guide also explains how, despite heroic resistance led by Black and Brown Rochesterians, racial covenants in Monroe County have had lasting effects. These covenants created new and lasting patterns of segregation, increased the social acceptability of racist ideas, and expanded the racial wealth gap by channeling mortgage aid to White people for over a generation. While antiracist activists helped make racial covenants illegal in the 1960’s, those covenants remain in the government records kept open to public view in the Monroe County Clerk’s office, where they can shock, anger, and pain those who encounter them.

The history of racial covenants helps counter a long-taught assumption that racial segregation is due to “natural” forces like the housing market or personal preferences.<sup>10</sup> The facts in this guide are proof of what Black and Brown communities have long known: that segregation in Monroe County is driven by *White supremacy*—a system built specifically to increase the dignity, power, and wealth of White people by taking those things from Black and Brown people.<sup>11</sup> Thanks in part to racial covenants, that system has created

a Monroe County that is often divided and inequitable. Compared to the almost entirely White suburbs, the county's urban core that is predominantly Black and Brown has higher poverty rates, lower performing schools, and inadequate housing and healthcare.<sup>12</sup> While generations of struggle by antiracist activists has made Rochester a stronger, more equitable community, the words of Minister Franklin Florence in 1981 still ring true today: "We're not drifting toward two societies here. We're already there."<sup>13</sup>

Ending segregation in Monroe County will require many undertakings. This guide aims to support and spur those efforts, especially those to be taken by the White communities that were built by racial covenants, the private organizations involved in spreading racial covenants, and the government bodies that forced those covenants into neighborhoods. While the guide details methods for dealing with deeds that have racial covenants on them, it argues that a narrow focus on deeds themselves fails to fully address racial covenants. Doing so requires action that reverses the effects of those covenants by increasing housing equity, promoting antiracist education, and closing the racial wealth gap. By taking the steps outlined in this guide that aim to achieve these goals, people in Monroe County can become leaders in the fight against racial covenants. Monroe County can create a model for other communities while living up to the legacy of residents like Frederick Douglass, Constance Mitchell, and Alice Young.<sup>14</sup> As local antiracist organizer Ashley Gantt recently said, "Time is up, we have nothing to lose but our chains."<sup>15</sup>

**"Time is up.  
We have nothing to  
lose but our chains."**

—Ashley Gantt, Rochester  
antiracist activist

# UNDERSTANDING RACIAL COVENANTS

Racial covenants are racist tools White people used to prevent non-White people from living where they wanted to. These covenants were an integral part of the White supremacist effort that led antiracist activist Mildred Johnson to say, “Rochester is as segregated as they come.”<sup>16</sup> Understanding the power of these covenants requires an explanation of how they served as both legal and social tools of segregation.

## WHAT RACIAL COVENANTS ARE: LEGAL & SOCIAL TOOLS OF SEGREGATION

Before the rise of racial covenants, in the earliest days of Monroe County’s status as a White colony,<sup>17</sup> White supremacy was established through the use of both legal and social tools of segregation. The primary legal tool was the framework of slavery.<sup>18</sup> People like Daniel Penfield, for whom the town of Penfield is named, used the tools of legalized slavery to force Black people to live in cramped quarters on estates now maintained as historical sites.<sup>19</sup> Among these promoters of slavery was Rochester’s namesake, Nathaniel Rochester, a slave trader.<sup>20</sup>

After New York abolished slavery in 1827, violence, harassment, and economic disempowerment were social tools that served as substitutes for legalized slavery.<sup>21</sup> The relatively small number of Black residents of Monroe County—just a few hundred in a county of roughly 50,000—lived almost exclusively in what is now the Corn Hill neighborhood, hemmed in by the need to live near the only employers willing to hire them: White families looking for servants.<sup>22</sup> The few who attempted to live beyond that handful of blocks faced harassment and violence.<sup>23</sup> For example, when Frederick Douglass moved to a home in a suburban neighborhood, he faced protests from White neighbors; eventually, his house was set on fire.<sup>24</sup> Yet as Mon-

roe County’s population of Black people, Brown people, and people then considered “less than White” (such as Jewish, Italian, and Polish people)<sup>25</sup> rose dramatically in the wake of World War I, harassment and violence alone failed to fully control where and how non-White people lived.<sup>26</sup> To maintain a divided Monroe County, White residents began using a new instrument of segregation: racial covenants.

**“Rochester is  
as segregated as  
they come.”**

–Mildred Johnson, Rochester  
antiracist organizer

Understanding what racial covenants are requires a brief explanation of how most neighborhoods get built.<sup>\*\*</sup> The foundations of most new neighborhoods are large tracts of land bought from farmers, the government, or private companies by people known as *real estate developers*. These people “develop” the land by partitioning it into residence-sized lots, with the resulting group of lots forming a neighborhood known as *subdivision*. When developers sell individual lots, either to homebuilders or homebuyers, they must transfer the power over the relevant piece of land in a document known as a *deed*.

During the sale of property, the seller and the buyer can agree to a restriction on the new owner’s power known as a *covenant*. These covenants, which can limit owners’ power to build large houses, remove trees,

<sup>\*\*</sup> The following sections on land use and racial covenants draw heavily on the most thorough academic treatment of covenants available: the 2013 book by Richard R. W. Brooks and Carol M. Rose titled “Saving the Neighborhood: Racially Restrictive Covenants, Law, and Social Norms.”



or create driveways on a piece of real estate, are usually placed into the deeds for most or all properties in a neighborhood, giving the community a “uniform” feeling. These covenants can either be placed directly into deeds or into a “declaration of restrictions” document that is referenced in deeds.<sup>27</sup> Neighbors can also come together after they have bought property and agree to be bound by covenants; they can do so either by filing a declaration of restrictions with the county clerk or by creating a homeowners’ association with bylaws that include those covenants. When one property owner violates a covenant, others who are bound by the same restriction can take legal action to force the non-compliant owner to play by the rules. When covenants in deeds follow special rules, they have the power to “run with the land,” which means that they can be enforced against future homebuyers who purchase property restricted by a covenant (known as “heirs, successors, and assigns”).

A *racial covenant* is a covenant that prevents property owners from allowing non-White people to buy, live on, or use their property. A typical racial covenant in Monroe County reads: “Said lot is sold on the express covenant that it SHALL NEVER BE OCCUPIED BY A COLORED PERSON.”<sup>28</sup> Racial covenants helped segregate neighborhoods by backing up the White supremacist effort to divide and control Monroe County with the power of judges, juries, police, and entire neighborhoods. Covenants did so by fusing a legally enforceable rule of segregation with a socially enforceable norm of segregation. Racial covenants served as a legally enforceable rule of segregation because they were a covenant, a legal device long recognized as a fundamental part of American property law. If this legal rule of segregation was broken by a homeowner choosing to rent or sell to a non-White person, other White property owners in the same neighborhood bound by the same covenant could file a lawsuit that asked a judge to enforce the rule by canceling the rental or sale. If a judge ordered such a cancellation, local police could enforce the judge’s order. White people could also legally enforce a racial covenant by suing covenant-breakers, threatening them with economic repercussions.

## BOX 2. MARKING NEIGHBORHOODS AS “WHITES ONLY”



DEMOCRAT & CHRONICLE PHOTO BY REED HOFFMANN

Soon after moving to the 19th Ward in 1979, Otis Poindexter found racist slurs chalked on the walk up to his front door. Two years later, Poindexter awoke to his home covered in spray-painted slurs. As one fellow Black Rochesterian said, “Nobody writes ‘nigger’ on your house in the inner city.” Poindexter’s story shows how racial covenants have caused harm for generations by marking neighborhoods like the 19th Ward as “Whites Only” spaces. The painting of the same slur in 2020 on an apartment complex housing Black families in the majority-White suburb of Perinton reveals the durability of the racist mentality enabled by racial covenants.

Racial covenants also served as a social norm of segregation because they were written agreements that were made publicly available in a county clerk's office and shown to prospective homebuyers. If a new homebuyer saw a racial covenant on property documents, the covenant signaled that their new neighbors did not want non-White people living among them; if the homebuyer sold or rented to non-White people, they risked becoming social outcasts.<sup>29</sup> A racial covenant also told prospective Black homebuyers that—even

## Segregation in Monroe County is driven by “people who like to discriminate, but lack the courage to do it publicly.”

—Edgar Lambert, former chair of the Rochester NAACP Housing Committee

if the covenant's legal rule of segregation was never enforced against them—they would be living in a hostile community that might expose them to harassment and physical harm. Racial covenants informed real estate professionals who helped sell homes that they risked destroying their reputations with White people if they advertised homes to Black buyers or renters. Finally, by being filed and left open to the public in government offices, covenants broadcast to the public that racism was officially supported and socially acceptable.

Racial covenants' dual nature made them flexible, allowing them to serve the aim of segregation in a wide range of circumstances. If most neighbors were unwilling to collectively enforce a racial covenant's social norm of segregation, a single White resident could hire a lawyer to enforce the covenant's segregation mandate. If neighbors were unwilling to hire a lawyer—or if the law prevented courts from enforcing racial covenants—neighbors could still collectively enforce that covenant's social norm of segregation through harassment and violence. Most importantly, if neighbors were initially unwilling to embrace the racist vision of segregation, the formal, officially approved nature of covenants helped ease that unwillingness into implicit or explicit racist action.<sup>30</sup> In short, racial covenants did not merely reflect existing racism. They worked to promote that racism by making it palatable.

Racial covenants were usually used in conjunction with instruments of exclusion, harassment, and violence. Black people in Monroe County who tried to move into White neighborhoods were deterred through *racial steering*, a still-common practice where real estate professionals dissuade people from renting or buying homes based on their race.<sup>31</sup> Those who overcame racial steering faced anonymous threats, racist slurs, petitions to organize neighborhood harassment campaigns against them, and a host of other troubles.<sup>32</sup> Looming behind the most visible acts of violence was the county chapter of the Ku Klux Klan, founded in the 1920's with a membership numbering in the hundreds, if not thousands, that held events in Rochester, East Rochester, Fairport, and Pittsford.<sup>33</sup> When a Black family moved to a Whites-only street in the 1950's, People calling themselves Klan members on the street sent them threats.<sup>34</sup> During the 1970's, a former police officer served as the Klan chapter's official spokesperson,<sup>35</sup> and in 1980, recruitment posters were hung at Monroe Community College.<sup>36</sup> Into the 1980's, Black families who moved into majority-White neighborhoods faced harassing phone calls, property damage, racial slurs shouted at them and painted on their homes, and crosses burned on their lawns.<sup>37</sup> As more Black people moved to Monroe County, crosses were burned in places including Brighton, Brockport, Chili, Henrietta, Irondequoit, Penfield, and Rochester.<sup>38</sup>

Despite the power of private violence and harassment, racial covenants were uniquely potent tools for segregating Monroe County. In part, this was because a small number of racial covenants could have an unusually large impact. As a leading authority on racial covenants put it, the “overall incidence of covenants is not as important as their strategic location.”<sup>39</sup> Even when placed only on homes near existing Black

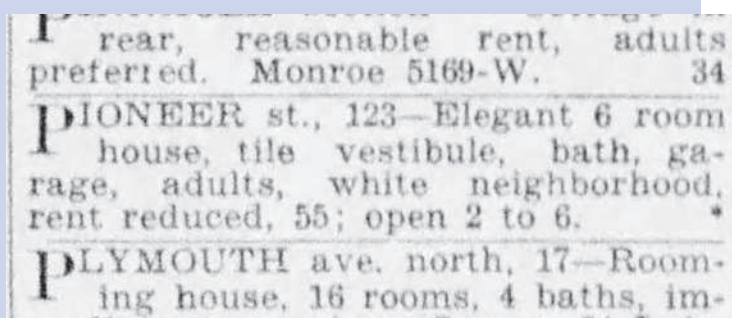
communities, racial covenants could help segregate an entire metropolitan area.<sup>40</sup> And because racial covenants stayed on properties as they were passed down from owner to owner, those covenants created durable patterns of racial exclusion.<sup>41</sup>

At the heart of racial covenants' powers of segregation, however, was their ability to push a broad swath of White people who might not be willing to condone or participate in violence to embrace White supremacist beliefs. Chief among those beliefs was the idea that Black and Brown people devalue property by merely existing upon it. Racial covenants were sold to the public real estate professionals as a means of "protection" against declining property values.<sup>42</sup> As formal legal devices filed by government officials, racial covenants had an aura of legality and respectability that worked to both shield and spread the racist falsehood that non-White people hurt the value of a neighborhood, reinforcing the idea that segregation was necessary to maintain a home's value. As scholars Rick Brooks and Carol Rose put it, racial covenants allowed property owners to "mask their own prejudices" by saying: "It's not me, it's the market."<sup>43</sup> Racial covenants were therefore perfect tools for the kind of people who Edgar Lambert, former chair of the Rochester NAACP's Housing Committee, said drove segregation in Monroe County: "people who like to discriminate, but who lack the courage to do it publicly."<sup>44</sup>

## WHO USED RACIAL COVENANTS TO DIVIDE MONROE COUNTY

It is currently impossible to say precisely how racial covenants segregated Monroe County. This is because the county currently lags behind other communities that have invested resources into mapping racial covenants that exist in their local property records.<sup>45</sup> However, what is clear is that it was "very common" to have racial covenants put on homes in Monroe County at least into the 1940's.<sup>46</sup> With this in mind, a broad narrative about covenants can be pieced together by looking at the actions of a range of individuals, organizations, and government officials who worked hard to spread racial covenants across Rochester and its surrounding towns.

One set of people directly responsible for racial covenants were Monroe County's real estate developers. When these people created a subdivision that they feared Black people might try to move to, such as Council Rock in Brighton, Acre Gardens in Gates, and Ellison Park Heights in Penfield, the developers inserted racial covenants into the deeds of the subdivision's lots.<sup>47</sup> Racial covenants were financially lucrative for real estate developers in Monroe County, as the protection against having non-White neighbors (and, as the racist assumption went, lower property values) allowed homes to be sold at higher prices.<sup>48</sup>



A 1928 *Democrat & Chronicle* ad for a home in the 19th Ward neighborhood, which was known for its racial covenants.

### BOX 3. A DARK KODAK MOMENT IN BRIGHTON



In the 1920's, Kodak looked to help its employees attain homeownership by constructing housing in Rochester's suburbs. One of those developments was Meadowbrook, a neighborhood in Brighton. In making Meadowbrook for what it called "particular people," Kodak put racial covenants on the houses it built and advertised those homes as having "desirable neighbors." Kodak created what is now known as ESL Federal Credit Union to give financial assistance to its employees looking to purchase homes in neighborhoods like "Whites Only" Meadowbrook. In doing so, Kodak and ESL contributed to the racial wealth gap that continues to define Monroe County.

Among the real estate developers and builders who divided Monroe County using racial covenants were local organizations that continue to define the county's landscape, along with leaders of those organizations. For example, Kodak put racial covenants on the deeds in at least one subdivision it created for its employees in the early 20th century.<sup>49</sup> Kodak, partnering with the *Democrat & Chronicle*, advertised homes in this subdivision as having "carefully restricted surroundings" where "you can be sure of . . . the class of people all about you."<sup>50</sup> One former president of the Monroe County Bar Association, Earl Case, placed racial covenants on the subdivision he helped build in Gates.<sup>51</sup> Norman Huyck, one-time president of the Home Builders' Association of Rochester, built homes across Monroe County that have racial covenants within their deeds.<sup>52</sup> The Roman Catholic Diocese of Rochester, in purchasing the land that St. James Church would be built on, promised in the deed that the land "shall never be occupied by a colored person."<sup>53</sup>

Helping real estate developers in the effort to spread racial covenants across Monroe County were *realtors*, people who help buy and sell property. These realtors worked together through their local professional association, the Greater Rochester Association of Realtors.<sup>54</sup> In the 1920's, the National Association

of Real Estate Boards created an ethical code that barred realtors from "introducing into a neighborhood . . . members of any race . . . whose presence will clearly be detrimental to property values."<sup>55</sup> Realtors in Monroe County who violated this prohibition could be banned from the local association. The national association went so far as to create a model racial covenant that could be put onto properties that needed to be "protected."<sup>56</sup> Frank Drumm, who was once president of the Greater Rochester Association of Realtors and was later named "Realtor of the Year" by the Association, put racial covenants on many homes he sold across Monroe County.<sup>57</sup>

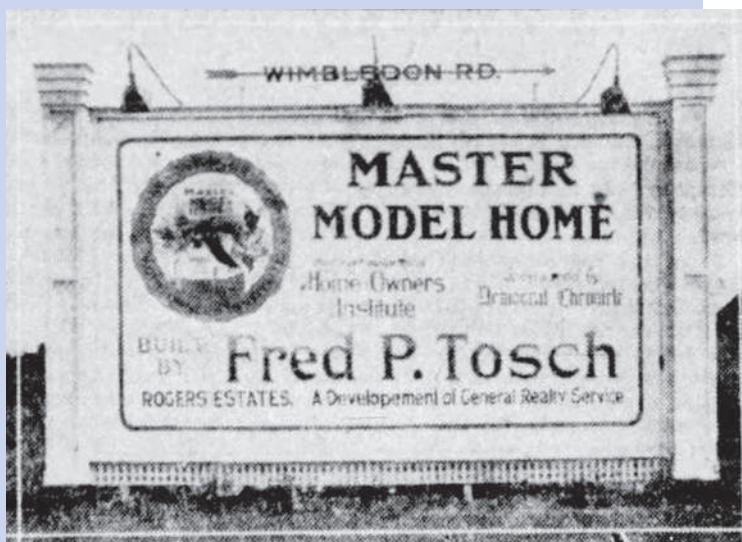


Amplifying the power of racial covenants were other professionals involved in the real estate business. People like Louis F. Stupp, vice president of what is now M&T Bank, helped write and file racial covenants on behalf of their clients.<sup>58</sup> Financial institutions like ESL Federal Credit Union and Rochester Trust and Safe Deposit Company financed the mortgages that let White people live in “Whites Only” neighborhoods.<sup>59</sup> Many of these institutions, acting as owners of property, agreed to place racial covenants on those properties. Such institutions include ESL, the Rochester Savings Bank, and First Federal Savings and Loan.<sup>60</sup> Title companies, which help homebuyers learn the legal details of the property they’re looking to buy, also helped spread racial covenants. Most prospective homebuyers only come to know what restrictions are on a property thanks to a title report or title abstract prepared by a title insurer. These companies’ choices (driven by legal requirements or otherwise) to include covenants in the documents they prepared ensured that the public would know about – and abide by – racial covenants housed at the county clerk’s office.<sup>61</sup>

Private citizens also worked to support racial covenants by agreeing to place them on their own homes. In some communities across the country, homeowners’ associations were formed to place racial covenants into the bylaws that governed their neighborhoods.<sup>62</sup> While it is unclear if this occurred in Rochester, it is clear that many prominent local people agreed to racial covenants when buying their homes. These people include T. Carl Nixon, for whom the law firm Nixon Peabody LLP is named, Royal B. Farnum, who was president of the Rochester Institute of Technology, and Walter E. Wegman, co-founder of Wegmans Food Markets.<sup>63</sup>

Other organizations helping to publicize racial covenants were newspapers like the *Democrat & Chronicle*. When the U.S. Supreme Court affirmed the legality of racial covenants in 1926,<sup>64</sup> the paper told Rochesterians the decision was “of great importance to realtors as well as the property owners in every city.”<sup>65</sup> In the early 20th century, in addition to sponsoring the construction of a “model home” with a racial covenant on it, the paper regularly ran real estate ads telling homebuyers that subdivisions were “protected” by “restrictive covenants” and “rigid restrictions,” phrases that were not-so-subtle euphemisms for racial covenants.<sup>66</sup> The paper also ran stories on the “strong appeal” of subdivisions that had racial covenants, telling readers that the restrictions on those subdivisions gave homebuyers “ample assurance

#### BOX 4. ROCHESTER’S RACIST “MODEL HOME”



This sign directed Rochesterians to the “master model home” built through a partnership between the *Democrat & Chronicle* and real estate developer Fred Tosch in 1928. The home aimed to “encourage better residential construction throughout the country.” The paper extensively promoted the construction of the home in Irondequoit, which was shown to over 20,000 visitors. The home was “protected” by a racial covenant, demonstrating to homebuilders and homebuyers in Monroe County that “better” homes were ones made to be “Whites Only.”



against undesirable conditions.”<sup>67</sup> These stories stated that an important way to protect neighborhoods “against undesirable encroachment” was “through restrictive covenants.”<sup>68</sup> Readers were encouraged to “thoroughly” examine deeds during real estate transactions to make sure they contained “[w]ell-drawn restrictions” that would help in “establishing the character of a neighborhood.”<sup>69</sup> The *Democrat & Chronicle* took pains to broadcast expert statements that “[r]ace restrictions may or may not be a part of any good set of covenants.”<sup>70</sup>

While local organizations and individuals were responsible for pushing racial covenants into Monroe County, it was government officials that helped ensure those covenants spread and persisted. Chief among these officials was a long line of county clerks who filed every racial covenant ever written in Monroe County. While county clerks may have had a legal duty to file deeds featuring racial coven-

ants, this neither excuses nor negates their role in perpetuating segregation.<sup>71</sup> Their official publication of racial covenants was buttressed at the state level by judges who routinely enforced covenants to keep neighborhoods across New York segregated. One judge’s order, for example, not only prevented a Black family from “using or occupying” a home they bought in Westchester, but also prevented their White allies from “assisting” them in doing so.<sup>72</sup> At the same time judges were enforcing racial covenants, New York’s state legislators blocked and stalled legislation aimed at instituting a statewide ban on such covenants.<sup>73</sup>

The most direct government role in spreading racial covenants across the Greater Rochester area was played by Monroe County itself. For example, in 1939, the Monroe County Legislature (then known as the Board of Supervisors) sold a large number of foreclosed properties in the neighborhoods near Irondequoit High School to builder Fred M. Hills. To ensure that those lots would “be subjected to certain restrictive covenant for the benefit of the parties, and of the public, and of prospective owners and occupants of said lots,” the legislature unanimously passed a law “modifying” the building restrictions on those lots.<sup>74</sup> To executive the legislature’s wishes, County Manager Clarence Smith

## BOX 5. THE RICHES OF RACIAL COVENANTS



DEMOCRAT & CHRONICLE

Spreading racial covenants was a lucrative business. By simply writing a sentence into a property deed, developers could sell property at a premium to White buyers willing to pay extra for “protection” from non-White neighbors. Among these developers was Grafton Johnson, who was once called the “largest land operator in the history of suburban Rochester.” Johnson sold countless homes in Monroe County with racial covenants, using the wealth he amassed to finance luxuries like in-home zoos that housed bears and lions. When Johnson died a millionaire in 1934, the Rochester Real Estate Board drafted a “resolution of sympathy” in his honor. Johnson’s story shows how racial covenants increased the economic power of White people by sapping the same power from non-White people.

(serving in the role now played by the County Executive) signed an agreement that inserted a covenant that required all dwellings built on the lots sold to Hills to “be occupied by persons of the Caucasian race only.” While other restrictive covenants in the deed were allowed to expire in 1965, an exception was made for the racial covenant, which it specified should “continue in force . . . forever unless and until modified by common consent.” The deed explicitly stated that property owners had the right to sue those who violated the racial covenant to “recover damages and/or to enjoin the violation.”<sup>75</sup> The County entered into a similar agreement in 1940, which applied to other property in Irondequoit, at the order of the legislature.<sup>76</sup>

County-level elected officials were not the only government leaders who used racial covenants in Monroe County. In 1941, Gates town supervisor Fred Sours—at the direction of the Gates Town Board—was among those who agreed to place a set of “new covenants and restrictions” on a large tract of land in Gates Center, land that included properties owned by the town of Gates. In those restrictions was a covenant stating that “[n]o lot or lots in said tract shall be used or occupied by members of any race except the Caucasian race.” Other property owners that agreed to this covenant included Monroe County and what is now Gates-Chili School District,<sup>77</sup> which ran the former Thomas Edison Elementary School in Gates Center is now Hope Hall.<sup>78</sup> These agreements—which there are potentially many more of—prove that at least some residential segregation in Monroe County was state-sponsored.

Perhaps the most consistent official action to spread racial covenants came from the federal government in a policy known as *redlining*. In the 1930’s, the federal government launched a campaign to maintain and increase homeownership. The government incentivized banks to provide low-interest, long-term mortgages on homes by insuring those mortgages through the Federal Housing Administration. However, the Administration refused to insure mortgages for homes in neighborhoods where making loans would present too high of a risk. As part of the pro-homeownership campaign, the government created maps that used different colored lines to determine a neighborhood’s riskiness. In drawing these lines, the government evaluated a neighborhood’s location, the structural integrity of the homes themselves, the occupation of the residents, and most significantly, their racial and ethnic makeup. Neighborhoods where all residents were

## BOX 6. THE WEGMAN FAMILY’S COVENANTS



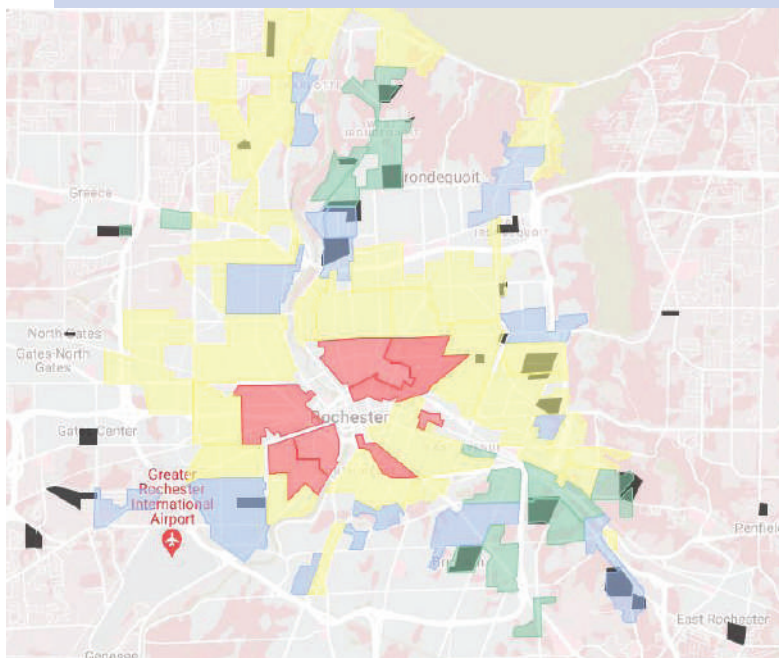
PHOTO PROVIDED TO PENNLIVE.COM  
BY WEGMANS FOOD MARKETS

Racial covenants were used by Monroe County’s most prominent residents, including the Wegman family. In 1924, a few years after co-founding what would become Wegmans Food Markets, Walter Wegman bought a home in Irondequoit from Grafton Johnson’s real estate company. As part of the purchase, Wegman and his wife Anna agreed to a restrictive covenant promising that their house “shall never be occupied by a colored person.” Anna agreed to an identical covenant when the couple bought neighboring property a decade later.

White were deemed minimal risk for banks and outlined in green, with slightly less White neighborhoods outlined in blue. Neighborhoods that had been “infiltrated” (a word frequently used by government evaluators) by non-White residents were deemed high risk for loans and outlined in red, with neighborhoods seen as “definitely declining” outlined in yellow.<sup>79</sup>

## BOX 7. RACIAL COVENANTS & REDLINING IN MONROE COUNTY

The links between racial covenants and federal government policy appear when the federal government's redlining map of Monroe County, created in 1935, is placed over the subdivisions where racial covenants are known to exist (noted in black on the map below). In many cases, these covenants predate the creation of the map, suggesting that federal surveyors



likely used racial covenants to help grade neighborhoods for lending risk. Most redlined neighborhood had Black residents, and all but one neighborhood with Black residents was redlined. No racial covenants have been found in any redlined neighborhood. Today, residents in the Rochester neighborhoods that were redlined still disproportionately experience barriers to homeownership: there is significant overlap between these areas and census tracts with higher than average rates of home loan denial or extremely low numbers of loan applications.

In deciding whether to deem a neighborhood suitable for advantageous loans, government officials took the existence of racial covenants into account. It was official government policy until 1947 (and the unofficial policy long after) to give a neighborhood a low-risk rating only if it contained tools that were the “surest protection” against “undesirable encroachment” from “adverse influences” like “inharmonious racial groups;” such tools included “restrictive covenants” that barred “the occupancy of properties except by the race for which they are intended.”<sup>80</sup> The federal government also encouraged segregation by creating model language for racial covenants<sup>81</sup> and having its Rochester branch manager ask county officials to protect neighborhoods against “adverse influences.”<sup>82</sup> County banks like First Federal Savings & Loan openly announced that they would use federal loan insurance to ensure homebuyers could live “in a neighborhood free from adverse influences.”<sup>83</sup> These policies, which were promoted by the *Democrat & Chronicle*,<sup>84</sup> encouraged real estate developers and realtors to increase the appeal of homes they sold by placing racial covenants in deeds; these policies directly helped increase the wealth gap between White and Black families



by making Black homeownership harder while facilitating White homeownership.<sup>85</sup> As one local historian wrote, while the federal mortgage insurance program poured millions in subsidies into Monroe County, it “did little” for the county’s Black residents.<sup>86</sup>

The combined efforts of White homeowners, real estate developers, realtors, banks, businesspeople, newspaper owners, and government officials to promote racial covenants quickly embedded segregation into Monroe County’s landscape. Covenants were attached to homes in Rochester and each of the towns surrounding the city, from Brighton to Pittsford.<sup>87</sup> By the 1920’s, homes were being openly advertised as being located in either a “White neighborhood” or a “colored neighborhood.”<sup>88</sup> By the 1950’s, a prominent realtor admitted that “gentlemen’s agreements” among White neighbors were the “prime factor” in keeping neighborhoods segregated.<sup>89</sup> In 1960, a state-commissioned survey found the continuing use of racial covenants in dividing Monroe County “noteworthy,” with local homebuilders being “almost 100 percent successful in keeping [Black people] out as original buyers in new tracts.”<sup>90</sup> One White county resident justified this phenomenon in the pages of the *Democrat & Chronicle*, saying that a person who wished “to live in a White neighborhood . . . wants some guarantee when he purchases a home.”<sup>91</sup> New York’s Commission on Discrimination singled out Monroe County for “widespread neighborhood resistance to the entry of non-White families,” with just 1 in 25 Black county residents living outside Rochester’s city limits.<sup>92</sup> Local antiracist activists, too, realized the power of racial covenants, labelling them one of the “[g]ross injustices” defining Monroe County, a tool they said helped cause its Black residents to be “sealed off in a world of cultural, social, and economic isolation.”<sup>93</sup>

**Racial covenants caused Black residents to be “sealed off in a world of cultural, social, and economic isolation.”**

–Anonymous Black Rochesterian

The harmful effects of this government- and community-sponsored segregation are difficult to overestimate. As racial covenants defined new neighborhoods built during the post-War housing boom, they created durable lines of neighborhood segregation that have persisted for generations. These lines function as channels through which resources like well-maintained parks, low-interest mortgages, good schools, paved streets, and air free of toxins can flow toward Monroe County’s White residents to the near-total exclusion of its Black residents. As local antiracist activist David Shakes said in 1981, “I believe it’s planned to do this – to let [B]lack neighborhoods go to hell.”<sup>94</sup>

## HOW RACIAL COVENANTS WERE REPLACED AS LEGAL TOOLS OF SEGREGATION

The end of covenants as a legal tool of segregation loomed large in 1945, when the New York State NAACP told Black Monroe County residents of its plans to “destroy” racial covenants.<sup>95</sup> Those plans bore fruit three years later, when an NAACP-sponsored effort led the U.S. Supreme Court to decide in *Shelley v. Kraemer* that it was unconstitutional for a judge to enforce a racial covenant by cancelling a sale or rental to a Black person.<sup>96</sup> In 1953, the Supreme Court made it illegal for homeowners to enforce covenants by suing covenant-breakers for money.<sup>97</sup> After these decisions, covenants could no longer be used to officially enlist the power of judges, juries, and police into segregating the county’s neighborhoods.

Thus, as Black migration into Monroe County increased significantly during the 1950's and 1960's,<sup>98</sup> White people faced a threat to their carefully constructed systems of segregation. This threat was countered by the quick embrace of another tool for creating legally enforceable rules of segregation: *exclusionary zoning laws* (also known as “restrictive zoning” laws).<sup>99</sup> Exclusionary zoning laws are legal rules that allow towns to block efforts to create apartments, duplexes, and other affordable housing in a community. By banning or heavily restricting the construction of all but expensive, single-family homes in a community, these laws make it nearly impossible for lower-income families to live there.<sup>100</sup> Given the wealth gap between White and non-White Americans – a gap fueled, in part, by racial covenants – exclusionary zoning laws have an obvious and predictable effect: furthering segregation.<sup>101</sup>

Many of the same actors who helped spread racial covenants across Monroe County also worked to develop and promote exclusionary zoning laws.<sup>102</sup> The Federal Housing Administration promoted these laws explicitly through its mortgage insurance policies, calling them one of the “best means of providing protection from adverse influences.”<sup>103</sup> Where realtors once put phrases like “rigid restrictions” and “restrictive covenants” into *Democrat & Chronicle* ads to indicate that a home had a legally enforceable rule of segregation, realtors began to use the phrases “rigid zoning” and “restrictive zoning,” likely to communicate similar ideas.<sup>104</sup> Exclusionary zoning laws were supported by town officials like Penfield Town Board member William Frank, who called affordable housing a tool for “socialistic” style “integration”; these laws were also supported by the Penfield residents who openly warned town officials that affordable housing

was a “wedge to bring colored people into town.”<sup>105</sup> Even when property owners stated their support for exclusionary zoning laws in terms of protecting property values, their ideas likely drew deeply on the link between declining home values and Black and Brown neighbors that racial covenants helped cement in White minds.<sup>106</sup>

**“I believe it’s planned  
to do this—to let  
[B]lack neighborhoods  
go to hell.”**

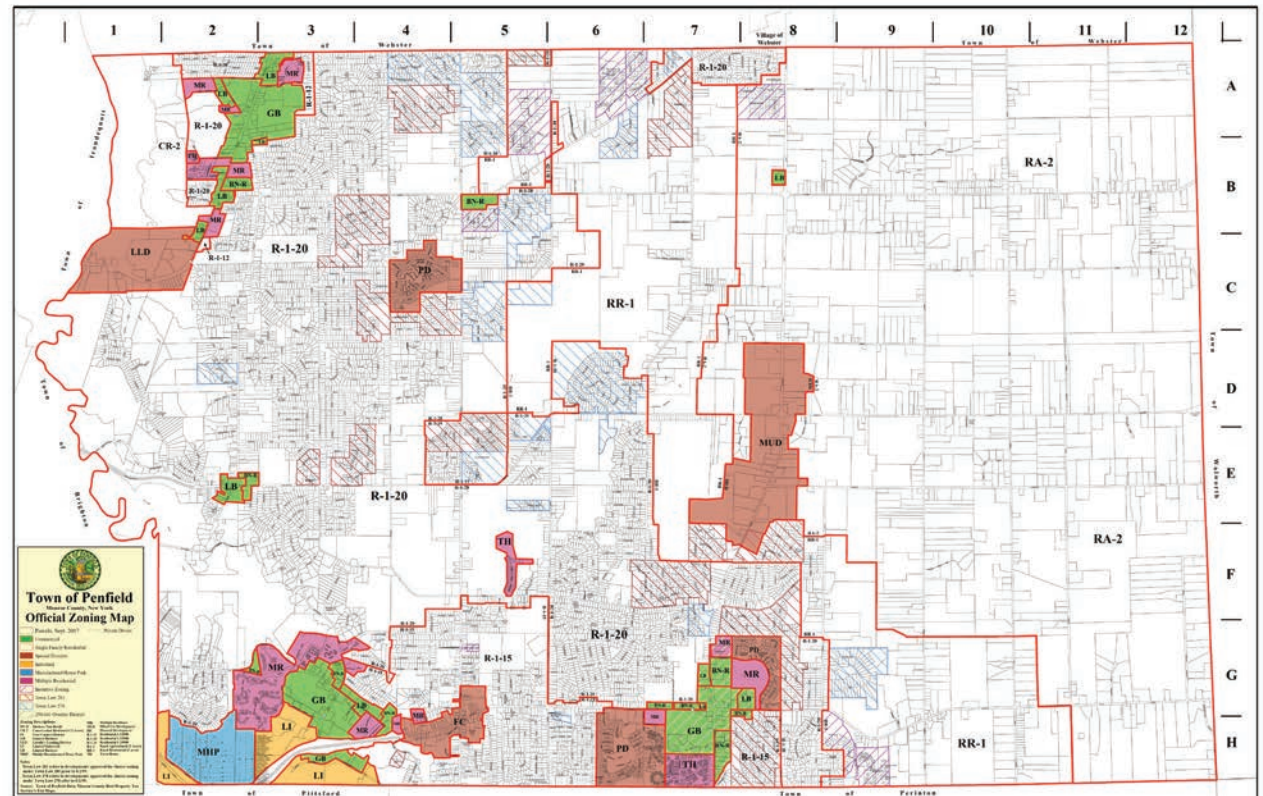
–David Shakes, Rochester  
antiracist activist

By the 1960's, towns across Monroe County uniformly adopted exclusionary zoning laws. These laws were seen by local antiracist activists as thinly veiled substitutes for racial covenants.<sup>107</sup> Then-president of Rochester's NAACP, Robert A. Rhodes, said towns that passed exclusionary

zoning laws were “regress[ing] into the past of restrictive covenants.”<sup>108</sup> A county-sponsored blue-ribbon committee on housing called those laws “naked notices that post suburban land as a preserve of indifference and intolerance.”<sup>109</sup> A study on exclusionary zoning laws, race, and land prices in Monroe County published in a leading economics journal found statistical evidence suggesting that these laws were driven, in part, by racism.<sup>110</sup> Indeed, a housing task force appointed by Penfield's town board in the 1970's admitted that “racial bias may be a factor” behind the town's exclusionary zoning laws.<sup>111</sup> Yet when a lawsuit filed by a coalition of local Black and Brown residents, antiracist activists, and homebuilders challenged Penfield's exclusionary zoning ordinance as unconstitutional, the U.S. Supreme Court dismissed their lawsuit on a technicality, helping cement exclusionary zoning laws as a fixture in Monroe County's suburbs, where they remain in force today.<sup>112</sup>



## BOX 8. VISUALIZING SEGREGATION BY ZONING



Unlike racial covenants, exclusionary zoning laws don't explicitly mention race. Yet zoning maps show clearly how those laws work to segregate Monroe County. In the all-white portions of this zoning map of Penfield, people can only build single-family homes with strict requirements that make those homes expensive and unable to be transformed into duplexes or other multifamily housing. Without special permission from town officials, affordable housing can only be built in a few spots in town. Even in those places, zoning rules require developers to pay expensive fees and engage in costly permitting processes that suppress efforts to build housing for Monroe County's low- and moderate-income residents—residents who are disproportionately non-White.

## WHY THE FIGHT AGAINST RACIAL COVENANTS CONTINUES

Even as exclusionary zoning laws became the primary legal tool of segregation in Monroe County, racial covenants continued to serve White supremacist ends. When the Supreme Court decoupled racial covenants from any legally enforceable rule of segregation in the 1950's, it refused to rule that racial covenants *themselves* were unconstitutional.<sup>113</sup> As a result, these covenants remained on the books in those offices, preserving those covenants' capacity to signal White supremacist ideas to neighbors, homebuyers, and realtors.<sup>114</sup>

## BOX 9. RESISTING ROCHESTER'S RACIAL COVENANTS



Reuben Davis's story of buying a house in the 19th Ward, told in his words, shows the ingenuity and persistence of Black and Brown Rochesterians in resisting racial covenants. "The owner refused to sell to us because we were Black and there was a restrictive covenant in the deed that these houses when built were not to be sold to the coloreds and Italians. . . . She could not understand that that provision in her deed, the restriction, was no longer valid and enforceable. . . . A White friend bought the house and transferred it to me. We had to go through those kinds of devious methods to find decent housing accommodations." Davis's story is revealing because it happened in 1958 — years after racial covenants became legally unenforceable. Davis would later serve as Rochester's first Black city court judge.

Black residents in Monroe County paid a heavy price for the Supreme Court's refusal to fully confront racial covenants, as New Yorkers kept neighborhoods segregated using covenants' social power.<sup>115</sup> Into the 1960's, neighborhoods in Monroe County like the 19th Ward were still "noted for [their] covenants . . . restricting non-White residents."<sup>116</sup> White residents of the 19th Ward called the banker who helped the first Black family move into the neighborhood, harassing him and asking if he "realize[d] the bank was violating traditions of the neighborhood."<sup>117</sup>

Recognizing the continuing power of racial covenants as a socially enforceable tool of segregation, Black people acted to curtail this power. In the 1960's, after years of organizing by Black people and antiracist activists,<sup>118</sup> the New York legislature drafted a bill declaring racial covenants "void" and "unenforceable"; the law also made it illegal to "lis[t]" a racial covenant as a "valid provision" in "public notices."<sup>119</sup> Supporters of the bill argued that it would change the "moral" perspectives of New Yorkers by making racial covenants "illegal" rather than "merely unenforceable," thus "undermin[ing] the silent support [racial covenants] now receive."<sup>120</sup> Opponents included the state professional association that represented New York's realtors, which lobbied against the bill because "it would interfere with the right of an owner of real estate to regulate use of his property." The New York Bar Association refused to openly support the law because

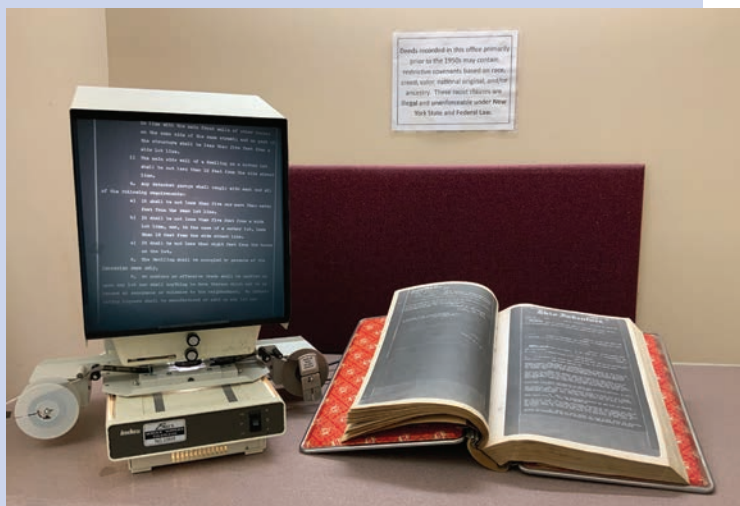
it questioned "what can be accomplished by this bill."<sup>121</sup> In the end, these objections failed, and New York passed the anti-covenant bill into law in 1962.<sup>122</sup> Six years later, a similar antiracist organizing effort led by Black and Brown people helped pass the federal Fair Housing Act,<sup>123</sup> which "flatly outlawed" covenants by making it illegal across the country "[t]o make, print, or publish" any "notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin."<sup>124</sup>

These laws had great potential to eliminate the power of racial covenants to spread and sustain racist norms. Yet laws do not enforce themselves. For these antiracist statutes to meet their potential, they would require enforcement efforts targeted at the individuals and organizations that continued to display and disseminate racial covenants. Immediately after these laws were passed, government officials began to take just such steps. New York's Attorney General cracked down on public notices for property sales that featured racial covenants,<sup>125</sup> and reached agreements that made title companies state, in all title reports issued in New York, that any racial covenant on a property was “unenforceable and void.”<sup>126</sup> These agreements were later expanded upon by the federal government.<sup>127</sup> The U.S. Department of Justice also sued real estate developers, property owners, and homeowners' associations which created or enforced racial covenants.<sup>128</sup>

Yet these enforcement efforts failed to address the heart of what made a racial covenant such a powerful social tool of segregation: the existence of the covenant itself. To address this problem, a group of Washington, DC antiracist activists living in homes covered by racial covenants sued the local county clerk, arguing that the clerk's choice to make racial covenants publicly available violated the Fair Housing Act. In the 1972 decision *Mayers v. Ridley*, the U.S. Court of Appeals for the District of Columbia Circuit agreed with the activists' argument. In the words of Judge J. Skelly Wright, the Fair Housing Act's ban on publishing discriminatory statements regarding home sales prohibits clerks from both “fil[ing]” and “maintain[ing]” racial covenants “as public records.”<sup>129</sup>

The activists in *Ridley* asked the county clerk to fix its violation of this ban by posting notices in their office informing the public that racial covenants were void and unenforceable, while stamping similar notices on all copies of deeds. At the activists' request, the court issued this order.<sup>130</sup> After the *Ridley* court's attempt to clarify the Fair Housing Act, the U.S. Department of Justice announced that any government official who made existing racial covenants “readily available to the public would violate the Fair Housing Act.”<sup>131</sup> The Department forced clerks across the country in states like California, Colorado, Connecticut, Ohio, and Texas to stop violating the Fair Housing Act by making racial coven-

## BOX 10. RACIAL COVENANTS: OPEN TO THE PUBLIC



CONOR DWYER REYNOLDS

Like most county clerks' offices in the United States, the one in Monroe County maintains many deeds that contain racial covenants to be viewed by the public. Some of these covenants appear on deed books called “Liber,” while others appear on microfilm reels that contain images of Liber. In recent days, the Monroe County Clerk has placed signs in its office like the one pictured above, which reads: “Deeds recorded in this office primarily prior to the 1950's may contain restrictive covenants based on race, creed, color, national origin, and/or ancestry. These racist clauses are illegal and unenforceable under New York State and Federal Law.”

ants available to the public; in some of its anti-covenant efforts, the federal government asked that county clerks “totally delete” racial covenants from record books, rather than merely having them “disclaimed and acknowledged to be null and void.”<sup>132</sup>

Despite the efforts described above to enforce anti-covenant laws, racial covenants have yet to be fully addressed. At the turn of the 20th century, the U.S. Department of Housing and Urban Development found that racial covenants were still “regularly disseminated to the public, including prospective and first-time homebuyers, by title insurance and escrow companies, county [clerks’] offices, real estate offices, and homeowners’ associations.”<sup>133</sup> Despite recent anti-covenant actions taken by the Monroe County Clerk described below, racial covenants in Monroe County still sit open for public viewing on official government documents.

Perhaps the most important reason racial covenants remain unaddressed is that those who created, promoted, and benefited from them have long downplayed their importance and spread misinformation about them. For example, in 1970, a *Democrat & Chronicle* advice columnist incorrectly told readers that it was only illegal to file deeds with racial covenants in “some areas.”<sup>134</sup> The following decade, another advice columnist told Rochesterians that removing racially restrictive covenants was a “cumbersome process and involves going to court,” and that “all you would accomplish” through removal was a “symbolic statement.”<sup>135</sup> The president of one local title insurance company said there was “no need to get rid of” racial covenants because they were “not enforceable.”<sup>136</sup> More recently, the New York Bar Association has lobbied against legislation that would make it easier for homeowners to deal directly with racial covenants, arguing that the law would be a “misuse of the recording system” that would impose an “unfair burden” on real estate professionals while wrongly “serv[ing] as a reminder of the existence” of racial covenants.<sup>137</sup> In other parts of the country, members of homeowners’ associations have refused to remove racial covenants from their associations’ bylaws,<sup>138</sup> and legislators have opposed bills to remove racial covenants from property records.<sup>139</sup> In sum, just as there is nothing natural about segregation in Monroe County, there is nothing natural about the continued existence of racial covenants. Rochesterians put these covenants in place, and it is within their power to change them. The following section of the guide provides methods for individuals and organizations to do so.



# ADDRESSING RACIAL COVENANTS

This section draws on the efforts of the many other communities that have attempted to address racial covenants. Most, though not all, of these efforts have narrowly focused on dealing with deeds and other public records that contain racial covenants. While these efforts are important and laudable, they have failed to fully address racial covenants. In part, this is because they are rarely accompanied by comprehensive systems for funding and incentivizing processes to address racial covenants as they appear on public documents. More fundamentally, however, these anti-covenant efforts are lacking because they do not attempt to reverse the lasting economic and social effects of racial covenants. This section provides a framework for anti-covenant action that increases housing equity, combats racist thinking, and closes the racial wealth gap. In Appendix One of this guide, individuals and organizations can find a list of specific actions that fit into this framework.

## DEALING DIRECTLY WITH DEEDS

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When people view deeds in the Monroe County Clerk's office, the racial covenants they may read retain their status as parts of official government records that has long made racial covenants a powerful social tool of segregation. This status explains why individuals and groups across the country continue to attempt to enforce racial covenants.<sup>140</sup> Even when unenforced, Black and Brown antiracist activists say that publicly displayed racial covenants are a "moral injury" that "breeds hate and division," things "so damaging, so hurtful, so embarrassing, so shameful" that "we should remove [them]."<sup>141</sup> As president of the Baltimore NAACP Kobi Little has said: "Now that discriminatory covenants are illegal, remove them. It's like saying now that the 'Whites Only' signs are illegal, remove them."<sup>142</sup>

The most common objection to altering the display or storage of racial covenants is that doing so may alter, hide, or destroy history. In many ways, this objection recalls the ongoing debate on the display of statues honoring the Confederacy throughout the United States. Like Confederate statues, racial covenants are monuments to institutions and practices that dehumanized Black and Brown people. Like Confederate statues, racial covenants deeply hurt many people, who often view them as a symbol that Black and Brown people are unwelcome in certain communities. And like Confederate statues, racial covenants are, in the vast majority of states, available in public spaces without accompanying context or formal disavowal.

With this in mind, it is important to remember three things with respect to racial covenants. First, there are many ways of ensuring that the legacy of racial covenants is taught to the public beyond keeping them open to the public on official government records. One way is through an antiracist primary school curriculum described later in this guide. Second, as courts in New York have stated, county clerks may be required to "cancel," "expunge," or "remove from the files of [their] office" a public record if there is a "statutory duty imposed on the county clerk" to do so.<sup>143</sup> Whatever duties county clerks have under state and federal law to deal with racial covenants may trump concerns about historical preservation or obligations to preserve individual property records. Finally, there are many ways to deal with the deeds and other property documents that contain racial covenants. Some people want them to be physically destroyed, while others may want them kept out of public sight. Rather than advocating for a particular method of dealing with deeds, this guide will explain how different approaches might work.



One method of dealing with deeds mirrors the order in *Mayers v. Ridley*, which required a county clerk to post anti-covenant notices in their office and stamp similar notices on copies of deeds. In recent days, after being informed about *Mayers*, the Monroe County Clerk has taken steps to embrace this process. As noted earlier in this guide, anti-covenant notices calling racial covenants “illegal” and “racist” have been posted in the places where deeds can be viewed by the public. An anti-covenant warning has also been placed on the login page featured on the County Clerk’s online records database. While these actions likely place the Monroe County Clerk ahead of most county clerks nationwide in addressing racial covenants, as described below, clerks in other states (acting independently or according to state legislation) have taken further steps the Monroe County Clerk may be able to take.

Such further steps might follow the redact-and-sequester framework recently embraced in Delaware.<sup>144</sup> An anti-covenant method borrowing from that framework might begin by digitally imaging the entirety of any deed containing a racial covenant. The old deed would then be destroyed under New York law, which allows county clerks to “destro[y]” any record 20 years after it was filed so long as it is “photographed, microphotographed or reproduced on film.”<sup>145</sup> As most or all such covenants exist on microfilm, this destruction could be achieved without harming microfilm reels through the “abrasion” method described by the American National Standards Institute.<sup>146</sup> A copy of the deed with the racial covenant redacted would be uploaded to the county clerk’s online records database, while an unredacted copy of the deed would be sequestered from public view. The redacted deed would be accompanied by a notice that the full deed contains a racial

**“Now that discriminatory covenants are illegal, remove them. It’s like saying now that the ‘Whites Only’ signs are illegal, remove them.”**

–Kobi Little, Baltimore  
NAACP president

covenant and may be viewed only with special permission. A process like this one would balance the desire to physically destroy racial covenants, the requirement to prevent such covenants from being displayed on official government documents, and the obligation of county clerks to maintain property records.

This process could be supported by a process like the one created by anti-covenant laws in California.<sup>147</sup> This would involve placing a cover sheet on all copies of deeds issued to the public by a county clerk explaining and disavowing any racial covenants potentially linked to the underlying property. This policy would educate property owners about the power and history of racial covenants. County clerks have expanded on

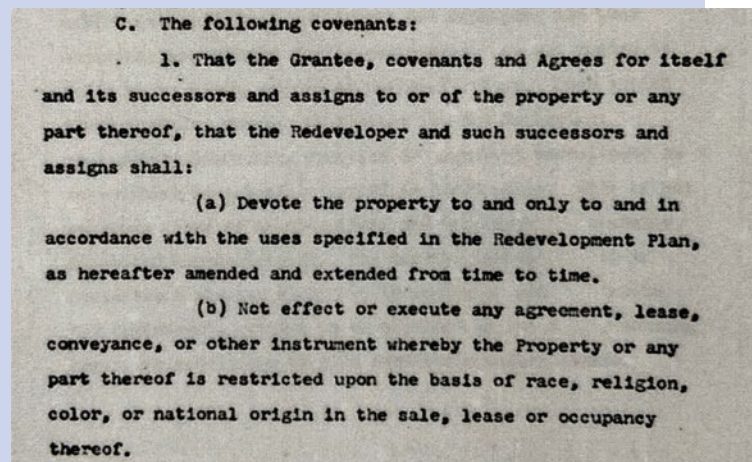
this kind of educational process through extensive and innovative efforts. One clerk in Delaware issued a public statement pledging to address racial covenants,<sup>148</sup> while another in Utah actively reached out to homeowners with racial covenants on their properties to encourage them to deal with deeds.<sup>149</sup> A South Carolina clerk notified the public about the existence and illegality of racial covenants by sending informational letters to citizens, targeting title companies and members of the local bar association.<sup>150</sup> A clerk in British Columbia, Canada created an online service portal where residents could learn about and request the cancellation of racial covenants.<sup>151</sup> Another clerk in Ohio ran a large public notice in local papers explaining both the illegality of covenants and the process for disavowing them.<sup>152</sup> In sum, the Monroe County Clerk’s office has many options to, on its own initiative, educate the public about racial covenants.

A final form of dealing with deeds involves not merely removing racial covenants, but replacing them with antiracist covenants. Like racial covenants, these are a type of property restriction that can be placed into deeds by developers or agreed to by neighbors. Unlike racial covenants, antiracist covenants prohibit future homeowners from discriminating against non-White people in the sale, rental, or use of housing. They do so by requiring future homeowners to abide by all local, state, and federal civil rights laws. Antiracist covenants are legal and social tools of antiracism. As legal tools, antiracist covenants can potentially give antiracist activists an additional enforcement mechanism to fight property owners who take racist actions. More importantly, they function as social tools, creating new norms that can help replace the racist norms promoted by racial covenants.

Antiracist covenants were briefly part of the official response to racial covenants in the 1960's. During that time, antiracist organizations that had fought hard against racial covenants lobbied for antiracist covenants to be attached to property deeds to "prevent discrimination in all future sales and rentals."<sup>153</sup> The federal Urban Renewal Commission required all contracts on urban renewal projects to include antiracist covenants,<sup>154</sup> while the federal Farmers Home Administration required certain property developers using federal farm loans to include antiracist covenants in relevant housing deeds.<sup>155</sup> California also required every state-sponsored urban renewal commission to use antiracist covenants.<sup>156</sup> These laws echoed earlier measures passed by local redevelopment agencies in Des Moines and Los Angeles.<sup>157</sup> While urban redevelopment in Rochester was known as the racist program of "Black folk removal" that displaced Black and Brown communities,<sup>158</sup> the antiracist covenants like those used in that effort may be useful tool today.

Lawyers, realtors, and government officials can work together to explore how to make antiracist covenants commonplace in Monroe County. Real estate developers could place antiracist covenants into deeds when building new subdivisions. Homeowners associations could include these covenants in their bylaws. Property owners who do not belong to such associations could explore partnerships with their neighbors

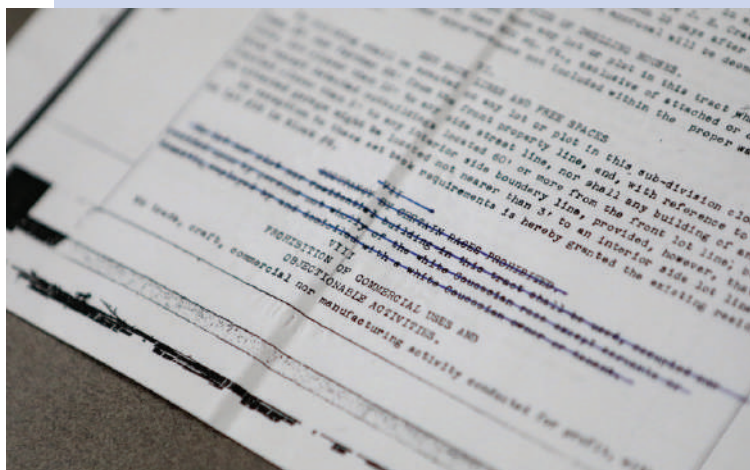
## BOX 11. ANTIRACIST COVENANTS IN ROCHESTER



and antiracist organizations to create antiracist covenants. State legislatures can promote the use of antiracist covenants by removing all fees related to their filing. And as zoning and planning boards already require developers to include restrictive covenants in deeds as part of the project approval process,<sup>159</sup> they too can write policies that require developers to use antiracist covenants.

County clerks are not the only actors who can directly address racial covenants. For example, in 2009, the planning commission in Nassau County, New York adopted an extensive anti-covenant rule. Under the rule, all developers looking for approval of subdivision plans were required to provide a sworn statement that the subdivision was free of racial covenants. Attorneys for developers had to declare that they “searched all relevant property records” for racial covenants; if any covenants were found, the developer or the attorney had to file a declaration with the county clerk “acknowledging” those covenants and “affirming” that they were “void and unenforceable.”<sup>160</sup> Local planning bodies in Monroe County can build on the Nassau County experience by imagining creative policies for acknowledging, rooting out, and reversing the effects of racial covenants.

ANDA CHU FOR MERCURY NEWS GROUP



In California, property owners can physically cross out racial covenants on copies of property deeds. County clerks in states like New York may be able to provide residents with many options for dealing directly with racial covenants, including sequestering deeds that contain racial covenants from public view.

Individuals need not wait for officials to deal directly with racial covenants, though their avenues for action are limited. Where racial covenants appear in homeowners' association bylaws or similar agreements, individuals can organize other property owners to vote the covenants out, though this can be a timely and cost-intensive process.<sup>161</sup> In some places, individuals have filed affidavits at county clerk's offices that disavow any covenants on their deeds; some have partnered with county clerks to create such disavowal forms.<sup>162</sup> Local homeowners may also be able to file a lawsuit that asks judges to remove racial covenants from deeds on their properties.<sup>163</sup> However, this kind of lawsuit comes at significant financial cost; moreover, a judge may not order the kind of removal desired by a homeowner. While these difficulties do not fully foreclose the possibility of antiracist action, they suggest

that the most effective thing individuals can do to deal directly with racial covenants is ask their elected officials to adopt policies of systematic covenant removal – and hold them accountable for doing so. However individuals decide to deal directly with racist property documents, they must pair those actions with efforts to address the lasting effects of racial covenants.

Given the need for system-wide solutions to racial covenants, it is important for local and state officials to be proactive in the removal effort. Notably, New York is *not* among the 13 states that have passed anti-covenant legislation. (These laws are detailed in Appendix Two.) Some of these laws merely ease the ability of homeowners, homeowners' associations, tenants, attorneys, or title companies to remove or disclaim covenants. Some laws go a step further and order county clerks to file documents disavowing racial covenants, stamp all incoming documents with such a disavowal, or prevent the public from viewing racial covenants. Research and interviews with government officials and activists, however, suggest that none of these laws have been particularly effective at dealing directly with deeds containing racial covenants. The key to successful anti-covenant legislation appears to be funding and education programs that ensure covenant-containing deeds are actually dealt with.

The absence of anti-covenant legislation in New York is not for a lack of trying. Recent years have seen anti-covenant bills proposed time and again by legislators in Albany, yet not one of these bills has been passed. The most recent version of the bill would require county clerks to create "restrictive covenant modification" forms. The bill would also require title companies, when preparing a title abstract report for a client, to both include in the report a notice of any racial covenant and (unless a client objects) file a restrictive covenant modification form. Finally, the bill would allow any homeowner to file a restrictive covenant modification form with a copy of the original deed that has the racial covenant crossed out.<sup>164</sup>

While the introduction of this bill is an important first step, the measures in the bill itself are likely inadequate. The bill allows racial covenants to remain officially displayed on government documents. It lacks any provision for educating the public about racial covenants and the need to deal with them directly. It does not provide fee waivers for those looking to file documents addressing racial covenants. Most importantly, the bill fails to link the process of dealing with deeds to a broader framework for addressing the lasting effects of racial covenants.

This does not mean that an anti-covenant bill must do everything and anything to be effective. Rather, it means that anti-covenant bills work best when they provide the foundation for local communities to address covenants on their own terms. An effective anti-covenant law, as described in further detail in Appendix Two, will remove the financial and legal barriers that prevent individuals and county clerks from systematically expunging racial covenants from public records. Perhaps the easiest way to accomplish this is for governments to fund the community-based educational efforts to digitize and map racial covenants described in the next section.

For communities across New York to have effective systems for dealing directly with racial covenants, individuals, organizations, and local officials must push for strong anti-covenant laws at the local and state level. In other states, coalitions that have helped pass such bills have included county clerks,<sup>165</sup> local realtors' associations,<sup>166</sup> title companies and bar associations,<sup>167</sup> and newspapers.<sup>168</sup> These organizations could follow in the steps of the Delaware Real Estate Commission, which in 1973 passed a resolution advocating for racial covenants to be "physically excised" from deeds to remove from them "even the semblance of legality."<sup>169</sup>



## REVERSING RACIAL COVENANTS' EFFECTS

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The deepest legacy of racial covenants cannot be addressed by simply dealing with property deeds. Racial covenants normalized and legitimated White supremacist ideas that continue to harm Black and Brown communities. The patterns of segregation they established largely remain intact today, perpetuated by exclusionary zoning laws. And by helping build a housing ecosystem that undermined homeownership in Black and Brown communities, racial covenants harmed the ability of those communities to build wealth.

**“If kids learn about these racist covenants, maybe when they’re older, they’ll change segregation in Rochester.”**

–Nelson, Fourth Grader

As an ACT Rochester report said, “the strong attitudes and policies that encouraged racial and ethnic segregation had, and continue to have, a profound impact on our community.”<sup>170</sup>

Reversing the effects of racial covenants is the only way to fully confront Monroe County’s covenants. This section lists potential actions that, when used together, amount to a framework that works to combat racist ideas, desegregate Monroe County, and close the racial wealth gap. Individuals, government officials, and private organizations can all find specific tasks they can perform to ad-

dress racial covenants within this framework. Communities that have benefited from racial covenants have a special obligation to take action and financially support anti-covenant actions. Likewise, local institutions that used and spread racial covenants (or were led by people who did) are in a special position to use their wealth to finance anti-covenant work in Monroe County. This is especially true of elected officials at the county level, who wield great power to reverse their predecessors’ creation of state-sanctioned “Whites Only” neighborhoods.

### Antiracist School Curriculum

When White people resist integration of their schools and neighborhoods, their efforts reflect falsehoods about property values and human values that racial covenants helped cement. Combating these racist ideas boils down to a single word: education. Antiracist activists across the country have pushed to make racial covenants an “essential part” of primary school education, and for good reason.<sup>171</sup> As one Rush-Henrietta student who learned about racial covenants said, “If kids learn about these racist covenants, maybe when they’re older they will change segregation in Rochester.”<sup>172</sup> In Monroe County, individuals and organizations can promote this kind of education by supporting the PathStone Foundation’s Antiracist Curriculum Project, which aims to get schools across Monroe County to adopt the “Untaught History: Structural Racism & Resistance Curriculum.” The Curriculum teaches students how racism shaped Monroe County while giving students the chance to address that racism by building a more equitable community. Spreading the Curriculum across Monroe County will require administrators, teachers, and parents to lobby their districts to adopt the Curriculum. It will also require individuals and organizations to financially support the Project.

### Mapping Projects

One of the Antiracist Curriculum Project’s aims is to systematically map the racial covenants found in Monroe County. Doing so would follow in the steps of projects like the Mapping Prejudice Project run by researchers at the University of Minnesota. With access to over a million digitized local property deeds and text-scanning software, researchers created an online system that allows ordinary people to help identify

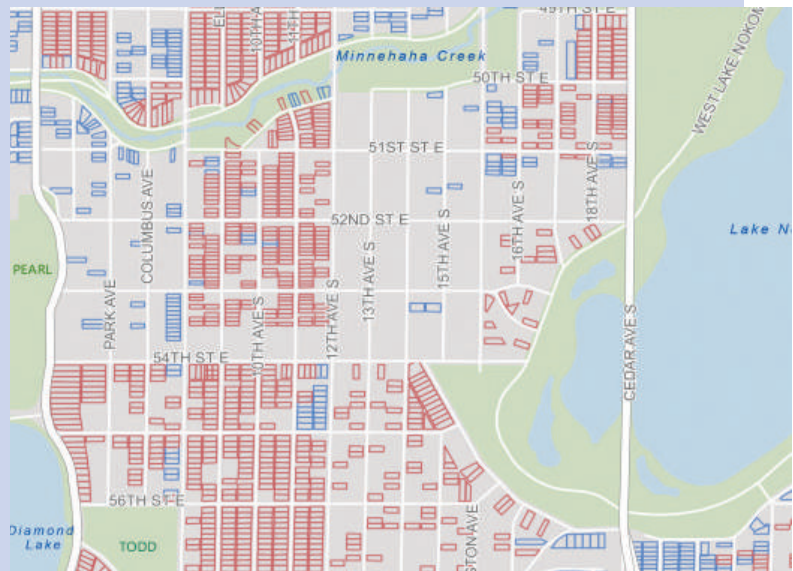


racial covenants. Researchers used the data from this system to map racial covenants across Minneapolis.<sup>173</sup> The Mapping Prejudice Project leverages these maps to educate students, create spaces for community members to discuss their experiences with housing segregation, and generate community dialogue to spur antiracist action.<sup>174</sup> Communities across the country, including those in Charlottesville, Chicago, Hartford, Portland, Richmond, and Washington, D.C. have all launched similar projects to map racial covenants.

This kind of mapping project will take a significant – though not enormous – amount of money. Expertise to run the project could be provided by local universities like the University of Rochester and the Rochester Institute of Technology. The most important prerequisite to a mapping project is digitizing Monroe County’s property records. While the Monroe County Clerk’s office is currently in the process of digitizing those records, that process is not expected to be finished for several years.<sup>175</sup> Private organizations and local officials can provide the staff and financial resources to ensure that a digitization process focused on records potentially containing racial covenants can be completed quickly.

## BOX 12. WHY MAPPING RACIAL COVENANTS MATTERS

Until racial covenants in Monroe County are mapped like they were in Minneapolis, Rochesterians will only know a tiny fraction about how racial covenants shaped their destinies. With these covenants’ locations pinpointed, researchers might be able to conduct studies examining the links between racial covenants and health outcomes, environmental harms, economic power, and other determinants of prosperity for Black and Brown communities. However, until public or private funding spurs digitization of property deeds from the early 20th century at the Monroe County Clerk’s office, any mapping project remains out of reach.



## Public Education

Given their longstanding role in broadcasting and justifying racial covenants to the public, newspapers like the *Democrat & Chronicle* have a special obligation to educate communities about racial covenants. The *Democrat & Chronicle* could fulfill this obligation by, for example, expanding its current series on housing segregation in Monroe County.<sup>176</sup> It could also work with the County Clerk to publish “how-to” guides on addressing racial covenants, following in the footsteps of newspapers in other communities.<sup>177</sup> And the *Democrat & Chronicle*’s editorial board could promote other anti-covenant actions.

Educational projects can serve as the foundation for efforts to address the effects of racial covenants. Those efforts are already underway in Monroe County, led by a host of grassroots organizations working for and led by Black and Brown people. Many of these organizations are fighting against what scholars have called “racially restrictive covenants in disguise”: racist policing practices and systems.<sup>178</sup> Supporting these kinds of organizations and funding their work is the best way people in Monroe County can ensure the priorities and perspectives of Black and Brown people guide the effort to rebuild Rochester as an antiracist community. These organizations include—but are not limited to—Free The People ROC, The Avenue BlackBox Theatre, Flower City Noire Collective, Rochester Black Pride, and 540WMain.

## Reparations

Indeed, other communities have addressed racial covenants by paying reparations, transfers of wealth made to acknowledge and reverse the effects of White supremacy. For example, in 2009, a neighborhood association in one of Charlotte, North Carolina’s most segregated neighborhoods posted a “sample deed” online that included a racial covenant. When a government antidiscrimination agency found that the posting violated a local human rights law,<sup>179</sup> the neighborhood association settled the resulting legal action against them by “making reparations to the North Carolina NAACP” in the sum of \$17,500.<sup>180</sup> One way of paying reparations locally is to fund local Black and Brown-led community organizations like those listed in this guide.

Among those organizations is City Roots Community Land Trust. City Roots is one of many land trusts existing in the Greater Rochester area, including the Genesee Land Trust and the Mendon Foundation.<sup>181</sup> Community land trusts like City Roots operate on the principle that rebuilding historically oppressed and exploited neighborhoods takes more than developing and maintaining quality, permanently affordable housing. Communities also need healthy, culturally relevant food, reliable transportation, ample recreation space, and businesses that serve their needs and wants. The power to make decisions about these resources ultimately comes down to having control over the land upon which those resources are located. Community land trusts are important tools for providing communities with that kind of control.

## Community Land Trusts

Community land trusts like City Roots work by buying land, taking it out of the real estate market, and placing it under the control of a democratically operated, community-based organization that develops that land to create affordable housing to be owned by local people. Homeowners on trust land can have stable, affordable housing that helps them build wealth. When homes are sold, the land trust ensures that the houses stay in the hands of local people who might not be able to afford equivalent housing in the broader market. At the same time, the trust allows local people to control the land in their communities, developing it to suit their desires and needs. When community land trusts are built on principles of bottom-up, collective control by ordinary people, they can serve “simultaneously as a bulwark against displacement, a tool for development, and a vehicle for empowering communities.”<sup>182</sup>

City Roots is a collaboration between homeowners, renters, youth, community allies, and partners working to empower neighbors and secure the development of permanently affordable housing without displacement. The trust’s work currently focuses on developing community control of land in the Beechwood and PLEX neighborhoods. Individuals and organizations in Monroe County can support community land trusts by donating to City Roots and helping it obtain institutional funding. Local officials can increase funding to local land trusts and help expand their presence in both urban and suburban communities. State officials in Albany can expand the Community Land Trust Initiative that currently funds City Roots and other land trusts across the state.<sup>183</sup>

## Individual Advocacy

Individuals also have an important role in educating their communities about racial covenants. Just as communities in Monroe County once used racist petitions to educate neighbors about racial covenants, communities today can use antiracist surveys known as *open housing agreements* (or “open housing covenants”) to educate and desegregate their communities. In the 1960’s, open housing agreements were widely used, especially by religious leaders of majority-White congregations, to specifically counteract the effects of racial covenants.<sup>184</sup> These agreements ask signers to affirm their desire to live in integrated communities, abide by antidiscrimination laws, or take other antiracist actions regarding housing (like those described in this guide). Antiracist activists can launch similar educational efforts in their neighborhoods that inform residents about racial covenants on properties in the area; in doing so, activists would follow in the footsteps of local antiracist activists like former Mayor Bill Johnson, who led an antiracist pledge card movement across Monroe County in the early 1990’s.<sup>185</sup> These efforts can aim to demonstrate support for desegregation to a community’s residents, real estate professionals, and government officials.

## Planning and Zoning Reform

These kinds of organizing efforts can push for goals like dismantling exclusionary zoning laws. Zoning and planning boards can, on their own initiative, reshape their communities by changing land use policies to create affordable housing. Removing single-family zones, allowing multifamily housing in most or all residential areas, advocating for specific affordable housing projects, pushing for regional planning approaches, and reducing the complexity of the permitting process can all work to create housing equity in the Greater Rochester area. County officials can facilitate these changes by working towards county-wide planning systems. However, government officials cannot do this work alone. Thanks in part to racist perceptions about affordable housing—which, in part, were created by racial covenants—many residents of Monroe County’s suburbs have long fought the construction of apartments and affordable homes in their towns. Communities both within and beyond the suburbs will need to come together to hold government officials accountable.

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This framework for action is tentative and incomplete. Racial covenants themselves were the products of harmful innovation that transformed tools of property law into tools of segregation. The success of any effort to address racial covenants in Monroe County will require similar creative efforts that leverage resources in ways not listed above. For example, one effort at the state level could be to work toward decoupling school funding from local property taxes. Such a measure could help mitigate the vast disparity in available resources between schools located in historically segregated wealthy neighborhoods, which source most of their funding from local property taxes, and those located in poor neighborhoods, which largely rely on aid provided by the state government and are vulnerable to budget cuts by the legislature.<sup>186</sup> Regardless of what happens on the state level, Monroe County can and should work to become an innovator and leader in confronting racial covenants. The point of this framework is to both provide concrete steps forward and to stimulate further steps that will fully address racial covenants in the long run.

In the final section, readers can find books, movies, and other materials that can help educate future efforts to address racial covenants, along with the Appendices and citations for the information contained in this guide.

## SOURCES FOR FURTHER LEARNING

Readers looking for audio and visual educational material are encouraged to listen to and watch:

- **A Raisin in the Sun**, a 1961 film adaptation of the 1959 Lorraine Hansberry play that involves a Black family attempting to move between segregated neighborhoods in Chicago. *Available through the Monroe County Library System.*
- **Jim Crow of the North**, a 2019 documentary by Twin Cities PBS on the history of housing segregation in Minneapolis that focuses on racial covenants. *Available here:* <https://www.tpt.org/minnesota-experience/video/jim-crow-of-the-north-stijws/>.
- **Segregated By Design**, a 2019 short film by Silkworm Studio on how government policies segregated the United States. *Available here:* <https://www.segregatedbydesign.com/>.
- **Interview with Loma Allen**, a 2008 oral history made available through the Rochester Black Freedom Struggle Online Project. Allen was a Black antiracist activist in Monroe County, and her oral history describes the lengthy campaign to fight housing segregation in Rochester. *Available here:* <https://rbscp.lib.rochester.edu/rbfs-Allen>.
- **All the Way Home**, a 1957 short film written by poet and activist Muriel Rukeyser about how White suburbanites react when a neighbor tries to sell their house to a Black family. *Available here:* <https://www.youtube.com/watch?v=S9e7zXKNNwg>.

Readers looking to further educate themselves on the history of racial covenants in the United States are encouraged to read:

- **People vs. Property: Race Restrictive Covenants in Housing**, a 1947 book by Herman H. Long and Charles S. Johnson, which is an extensive study of covenants made during a time when they still worked as a legally enforceable tool of segregation. *Available here:* <https://babel.hathitrust.org/cgi/pt?id=mdp.39015020076074&view=1up&seq=1>.
- **The Negro Ghetto**, a 1948 book by Robert C. Weaver that links covenants with the broader White supremacist effort in the early 20th century to divide the United States and oppress people of color. *Available here:* [https://openlibrary.org/books/OL5995329M/The\\_Negro\\_ghetto](https://openlibrary.org/books/OL5995329M/The_Negro_ghetto).
- **Caucasians Only: The Supreme Court, the NAACP, and the Restrictive Covenant Cases**, a 1959 book by Clement E. Vose that details the campaign by antiracist activists that culminated in the Supreme Court's racial covenant cases. *Available through the Monroe County Library System.*
- **Saving the Neighborhood: Racially Restrictive Covenants, Law, and Social Norms**, a 2013 book by Richard R. W. Brooks and Carol M. Rose, which is the most in-depth treatment of racial covenants as both legal and social tools of segregation. *Available on special order from Lift Bridge Book Shop in Brockport.*
- **The Color of Law: A Forgotten History of How Our Government Segregated America**, a 2017 book by Richard Rothstein that tells the story of government-sponsored segregation policies through American history. *Available through the Monroe County Library System.*



# APPENDIX 1.

## ADDITIONAL ACTION ITEMS

### All Individuals and Organizations

- Donate to organizations such as:
  - The PathStone Foundation's Antiracist Curriculum Project (<https://pathstone.foundation/antiracist-curriculum-project/>)
  - City Roots Community Land Trust (<https://www.cityrootsclt.org/>)
  - Other Black and Brown-led grassroots organizations, including but not limited to: Free The People ROC (<https://www.facebook.com/pages/category/Community/Free-The-People-Roc-102996344778475/>), The Avenue BlackBox Theatre (<https://www.avenuetheatre.org/>), Flower City Noire Collective (<http://flowercitynoirecollective.org/>), Rochester Black Pride (<https://www.rocblackpride.com/>), and 540WMain (<https://540westmain.org/>).
- Employ comprehensive antiracist training for organizations, staff, and individuals.
- Push to support the use of community land trusts and end exclusionary zoning laws across Monroe County.

### Private Individuals

- Research if your property has an existing racial covenant. If it does, publicly acknowledge and disavow that covenant.
- Individual homeowners in New York can file an affidavit in the clerk's office that disavows all racial covenants attached to their properties.
- Actively use open housing agreements or other campaigns to educate & desegregate your communities.

### Universities, Educators, and Teachers

- Include antiracist readings and histories of racial inequality, including racial covenants, in curriculums.
- Hire Black and Brown faculty, especially faculty who specialize in racial segregation and fair housing practices.
- Create student opportunities, such as housing clinics, for local activism on racial segregation and fair housing practices.
- Provide funding and resources (often at university level) for digitization of records, databases, and maps of racial covenants in local communities.

### Homeowners' Associations

- Homeowners' associations can vote to remove racial covenants from governing documents, publicize to their homeowners the existence of racial covenants while affirming their illegality.
- Mandate that existing and incoming members sign an antiracist statement or vote to insert an antiracist covenant into the association's governing documents.

## **Real Estate Developers**

- Before developing property, real estate developers can search for any racial covenants, and if they exist, make known their presence and publicly disavow them.
- Provide funding toward antiracist actions, such as subsidizing affordable housing units or paying fees to remove racial covenants.
- Use antiracist covenants to prevent future homeowners from discriminating against non-White people.

## **Realtors and Title Insurers**

- Train realtors on antiracist practices and inherent racial biases in the housing and real estate industry. This includes the practice of steering, where realtors steer buyers toward neighborhoods based on race.
- Support the use of antiracist covenants.

## **Newspapers**

- Acknowledge past roles in promoting racial segregation through articles and advertisements.
- Publish articles on the history of racial covenants, activism in local communities, and steps that can be taken by individuals, other groups, and local legislatures.

## **Banks**

- Put resources into safe, stable mortgage products and other tools Black and Brown communities need to attain homeownership.
- Work with community land trusts to ease the placement of property into those trusts.
- Add additional measures to check home valuations to ensure demographic makeup of neighborhood is not influencing valuations.

## **Local Legislators and Executives**

- Pass resolutions of acknowledgement and disavowal that take concrete steps to reverse the effects of the racial covenants forced on communities by Monroe County.
- Work to create anti-covenant documents that are free to file in the Monroe County Clerk's Office.
- Fund covenant digitization and mapping efforts.
- Build monuments or placards in covenanted neighborhoods that educate the public about the existence and effects of racial covenants.
- Create economic development agencies that account for racial covenants (and other tools of segregation, such as redlining) in economic improvement projects.
- City attorney offices can use local fair housing laws to force homeowners' associations to address racial covenants.

## **Local Zoning and Planning Boards**

- Change land use policies to create affordable housing, including removing single-family zones, allowing multifamily housing in all residential areas, advocating for specific affordable housing projects, and reducing permitting complexity.
- Affirmatively support the creation of community land trusts.
- Push for regional planning approaches so that the interests of all Monroe County residents are taken into account in land use decisions.
- Mandate the use of antiracist covenants and/or covenant disavowal forms during the development process to prevent future homeowners from discriminating against non-White people.

## **State Governments**

- Pass anti-covenant legislation, which may ease the process of directly dealing with covenants, order county clerks to file documents disavowing racial covenants, or order homeowners' associations to remove covenants from their bylaws.
- Allocate specific funding to help ensure public knowledge of covenants and support of local anti-covenant efforts.
- Ensure school districts in areas of historically low property values have equal funding, which could include decoupling property taxes from school funding.

## **State Bar Associations**

- Provide dedicated funding for antiracist actions and organizations, including covenant removal actions and legal clinics.
- Support legal aid services for Black and Brown communities, including organizing pro bono opportunities, e.g., eviction court.

## APPENDIX 2.

# STATE LAWS ADDRESSING RACIAL COVENANTS

This section describes the laws that address racial covenants passed by over a dozen states. Many of these laws create “covenant modification forms” which can be filed by property owners at their local county clerk’s office without the costly, time-consuming need to consult an attorney. Others go further by informing people about anti-covenant efforts, allowing a broader range of people to file covenant disavowal forms, or forcing county clerks to redact and sequester racial covenants.

These laws represent laudable progress. For example, those that give property owners the chance to cross out or otherwise deal directly with racial covenants create a new avenue for individuals to take antiracist action. Yet many share three flaws, described below. Some of these flaws can be addressed by looking to the provisions within cutting-edge anti-covenant legislation. Other flaws can be addressed through novel provisions. While the below section outlines some fixes, the best way to ensure anti-covenant bills have the right provisions is to hold hearings that actively solicit the preferences of the Black and Brown communities harmed most by racial covenants.

1. The **first common flaw** is failing to provide robust covenant removal procedures. Most anti-covenant bills “remove” racial covenants by adding an additional form into the chain of title, giving the underlying covenants context yet leaving them in public view. As noted in this guide, some people have objected to this method of removal, believing it does not go far enough in removing the stain and illegality of racial covenants as officially displayed documents. States like Delaware have shown that these objections can be addressed through legislation that allows individuals to redact racial covenants while sequestering deeds with those covenants from public view.
2. The **second common flaw** of anti-covenant bills is the failure to address the effects of racial covenants that persist to this day. These laws lack provisions that combat racist ideas, desegregate communities, or close the racial wealth gap. This failure might be fixed by provisions that fund local efforts to digitize and map racial covenants. These mapping projects can help inform and bolster broader antiracist projects, as they have in Minneapolis and other communities. This failure can also be addressed by mandating covenant modification forms that include antiracist covenants.
3. The **final common flaw** in anti-covenant legislation is failing to educate the public to ensure covenant-removal provisions are actually used. Interviews with county clerks across the country suggest that only a few people have used these provisions. Future anti-covenant bills can prevent this kind of underutilization in a number of ways. One way would be to give the right to file covenant modification forms to others than property owners, such as tenants, title company employees, lawyers, and real estate agents. Another way would be to make those forms free to file and available online. County clerks could also be made to advertise the availability of such forms. In states where racial covenants appear in the bylaws of homeowners’ associations, states could allow the governing bodies of those associations to remove such covenants upon a simple majority vote. Moreover, homeowners’ associations can be forced to remove any racial covenants from their bylaws after receiving notice of those covenants’ existence, with individuals being given the right to sue any refusing associations and recover their attorney’s fees for doing so.



## ANTI-COVENANT LAWS BY STATE

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### Arizona

#### 2000 Arizona Laws, Ch. 16 (Senate Bill 1164)

Arizona's Senate Bill 1164 requires the real estate commissioner for the state of Arizona to "execute and record in the office of the county recorder in each county in this state a document that disclaims the validity and enforceability of [discriminatory] restrictions and covenants."<sup>187</sup> The disclaimer does not attach to any specific piece of property, nor does it appear to actually strike out or delete the language associated with the discriminatory covenant.

### California

#### 1999 California Laws, Ch. 589 (Senate Bill 1148)

In 1999, California enacted Senate Bill 1148 into law. The bill added §1352.5 to the California Civil Code and §12956.1 to the California Government Code.

**§1352.5** provided that:

"The board of directors of an association, without approval of the owners, shall amend any declaration or other governing document that includes a restrictive covenant prohibited by this section to delete the restrictive covenant, and shall restate the declaration or other governing document without the restrictive covenant but with no other change to the declaration or governing document . . . If after providing written notice to an association requesting that the association delete [an illegally discriminatory] covenant . . . and the association fails to delete the restrictive covenant within 30 days of receiving the notice, the Department of Fair Employment and Housing, a city or county in which a common interest development is located, or *any person* may bring [a civil lawsuit] against the association . . . [to force the deletion of the covenant]. The court may award attorney's fees to the prevailing party."

**§12956.1** provided that:

"A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a declaration, governing documents, or deed to any person shall place a cover page over the document or a stamp on the first page of the document stating, in at least 20-point boldface red type, the following: 'If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language.'"

In addition to the cover page requirement, the law also allowed "any person who holds any interest in the property that is the subject of this document [to] require the county recorder to remove any blatant racial restrictive covenant contained in any recorded document associated with that property." The law required such applications to "be in writing . . . [to] identify the document and the location within the document where the restrictive covenant is located, and . . . be accompanied by any fee prescribed by the recorder, not to exceed the actual cost of the required action." Finally, the law also made it a misdemeanor to file a document "for the express purpose of adding a racially restrictive covenant," notwithstanding that "the county recorder shall not incur any liability for filing such a document."

### **2000 California Laws, Ch. 291 (Assembly Bill 1493)**

In 2000, California amended §12956.1 through passage of Assembly Bill 1493.<sup>188</sup> The amendments had the effect of decreasing the 20-point font requirement to 14-point font and notably, altering the deed modification process for property owners. Rather than filing a request with the county recorder's office, a property owner wishing to remove a restrictive covenant would "file an application with the Department of Fair Employment and Housing (DFEH) requesting a determination of whether the restrictive covenant violates the fair housing laws and is void." The application would include the same information as a previously-authorized request: namely, a copy of the document in question and the location within the document where the covenant in question could be found. If an illegal covenant was found, DFEH would return a form to the applicant to be signed and recorded, reading in part:

"I (we) \_\_\_\_\_ have an ownership interest of record in the property located at \_\_\_\_\_ (address) that is the subject of this document. The Department of Fair Employment and Housing has determined that this document contains a restrictive covenant that violates the law and is void. Pursuant to Section 12956.1 of the Government Code, this document is being recorded solely for the purpose of eliminating that restrictive covenant as shown on page(s) \_\_\_\_\_ of the document recorded on \_\_\_\_\_ (date) in book \_\_\_\_\_ and page \_\_\_\_\_, or instrument number \_\_\_\_\_ of the official records of the county of \_\_\_\_\_. No other changes have been made."

### **2002 California Laws, Ch. 803 (Assembly Bill 1926)**

In 2002, §12956.1 was further amended by Assembly Bill 1926,<sup>189</sup> to allow "any person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant" to "submit for recordation to the county recorder . . . a modified document striking out the unlawfully restrictive covenant." At the county recorder's discretion, the property owner could then be asked to "obtain a determination . . . that the covenant is unlawful" from the Department of Fair Employment and Housing, or else could be allowed to record the document "if all other requirements of recordation are met, including the payment of any recording fee."

### **2005 California Laws, Ch. 297 (Assembly Bill 394)**

In 2005, Assembly Bill 394 revised the process of racial covenant modification significantly by adding §12956.2 to the California Government Code. This eliminated the role of the Department of Fair Employment and Housing (DFEH), which previously was the key agency responsible for authorizing the modification of unlawful racial covenants. Instead of providing property owners with two options for covenant modification—direct application to the DFEH, or direct application to the county recorder, who had the discretion to refer them to the DFEH for approval—it mandated instead that county recorders make Restrictive Covenant Modification forms available to the public, and allowed any "person who holds an ownership interest of record in property that the person believes is the subject of an unlawfully restrictive covenant"<sup>190</sup> to submit the modification form to the county recorder.

The act also required recorders to pass these forms, once completed, to the county counsel for determination of whether the original document contained an illegal restriction. Once recorded, the modification document would be indexed by the county clerk's office "in the same manner as the original document being modified" and recorded a reference back to the original document "in the form of a book and page or instrument number, and date of the recording." While a standard fee was permitted to be assessed, "the county recorder may [also] choose to waive the fee prescribed for recording and indexing instruments."

### **Additional Efforts**

In 2008 and 2009, a state legislator in California introduced bills to make the state's covenant-removal law even more stringent by requiring "title companies to scour property records and strike the covenants whenever a property changes hands."<sup>191</sup> One bill, after being "amended to have county officials carry out the purge," "died in legislative committee" thanks to "intense opposition from county governments worried about spending millions of dollars to cleanse records." A spokesperson for the California Land Title Association worried the bill "could add thousands of dollars to each property sale," while the president of the state's NAACP branch said the covenants "should be removed everywhere. I don't buy any argument that it costs too much to do it."

## **Colorado**

### **1990 Colorado Laws, Ch. 274 (House Bill 90-1218)**

In 1990, Colorado's House Bill 90-1218 authorized "any attorney, title insurance company, or title insurance agent" in the state to "remove by recording a new instrument any [unlawfully discriminatory] restrictive covenants which are based upon race or religion, or reference thereto, which are contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property [if they have been] held to be void and unenforceable by final determination of the supreme court of the state of Colorado or the supreme court of the United States." However, the bill restricted removal under these circumstances to occur only "upon the transfer or sale of, or any interest in, real property subject to such restrictive covenants." The law provided an additional mechanism to remove covenants via "the written approval of a majority of all of the owners of real property located within the subdivision."<sup>192</sup>

### **Additional Efforts**

In 2019, a state legislator in Colorado, John Cooke, said he would "determine" whether an additional bill addressing methods of removing racially restrictive covenants "could be introduced in Colorado."<sup>193</sup> However, it does not appear that a bill was subsequently passed in the state legislature.

## **Delaware**

### **2018 Delaware Laws Ch. 409 (Senate Bill 243)**

Delaware passed Senate Bill 243 in 2018, which allows a property owner with a discriminatory covenant to "request that the recorder for the county in which the instrument is recorded redact and strike the provision from the instrument."<sup>194</sup> The recorder must then submit the request and the covenant in question to the county attorney, who makes a decision within 90 days of receipt as to whether the covenant is indeed unlawful. The county attorney may also pre-clear "a list of phrases" that represent unlawful restrictive covenants and allow county recorders to grant requests to remove these phrases without further review. Unlike California's law, which specifically excludes common interest development (condominium) owners from the covenant removal process, Delaware's law allows any owner in a common interest community to make a request that the recorder "redact and strike" a discriminatory covenant "from all instruments affecting real property that is part of the common interest community."

Delaware's law also includes a notable prohibition that "a recorder shall make available only the redacted version of [the previously covenanted] instrument . . . [unless] in response to a subpoena or order of a court of competent jurisdiction." After speaking with several county recorders in Delaware, it seems that in practice, this means that the county recorder completely redacts the language of the discriminatory

covenant, striking it out on all deeds it appears on within the chain of title. An example covenant modification form can be found here: <https://www.nccde.org/DocumentCenter/View/27249/Restrictive-Covenant-Redaction-Form>.

## **Kansas**

### **2006 Kansas Laws Ch. 144 (House Bill 2582)**

Passed in 2006, Kansas' House Bill 2582 targets homeowners' associations.<sup>195</sup> It requires an association, within 30 days of receiving written notice of a discriminatory covenant in violation of Kansas law by "the [Kansas Human Rights] commission, [or] a city or county in which the association is located," to delete the covenant in question. If it fails to do so, the city, the county, or "any person adversely affected by [the] restrictive covenant" may sue the HOA to delete the covenant. The provision also says that in that case, the court "may award attorney's fees to the prevailing party."

## **Maryland**

In 1971, Maryland passed House Bill 764, a bill that, among other things, declared restrictive covenants to be "null, void and of no effect, and contrary to the public policy of this State, as well as contrary to the Constitution and the laws of the United States." Stricken from the final bill was this notable mechanism for removing racial covenants:

"Any person who has an interest in any real or lease-hold property may request the clerk of any court in which is recorded a document affecting title to said property, to reform such document by deleting therefrom any such covenant. Upon the receipt of such request the clerk of court shall place such document on record without cost after deleting from the record copy thereof any reference to such covenant."

### **2004 Maryland Laws Ch. 478 (Senate Bill 692)**

In 2004, Maryland addressed covenants in homeowners' associations' governing documents through Senate Bill 692. The bill allowed any HOA to delete a discriminatory covenant "if at least 85% of the lot owners in the development agree to the deletion" – a step forward from common law, which would require unanimous consent of the HOA members. While this allowed concerned homeowners to circumvent small numbers of holdouts, it still represented a fairly onerous process, as described in one news article:

"Cape St. Claire Improvement Association board members are working to remove racially discriminatory language from covenants that date back to the 1940's. The board needs approval from 85 percent of the 2,400 or so homeowners to remove [the] language . . . Legislation passed in recent years allows homeowners' associations to change covenants with the approval of 85 percent of the homeowners. That sounds easy – until you realize that it means getting more than 2,000 people to actually vote. 'That's a pretty big hurdle,' [the association president] said."<sup>196</sup>

### **2018 Maryland Laws Ch. 636, (Senate Bill 621)**

In 2018, Maryland's legislature passed Senate Bill 621, which allowed property owners to record a "restrictive covenant modification form." The form leaves the "language of the unlawfully restrictive covenant stricken" while simultaneously recording a reference to the "place where the original instrument containing the unlawfully restrictive covenant is recorded." The act also required "the governing body of a homeowners' association to delete any recorded covenant or restriction that restricts ownership based



on race, religious belief, or national origin”<sup>197</sup> from a common area deed within 180 days of a request by any lot owner—a far more powerful tool than the 2004 bill provided. The homeowners’ association was empowered by the bill to remove any discriminatory covenant without the typically-required approval of any sort of majority of lot owners.

#### **2020 Maryland Laws Ch. 421 (House Bill 1077)**

In 2020, Maryland strengthened its covenant removal process further through House Bill 1077, which prohibited county recorders from collecting fees and surcharges associated with the filing of restrictive covenant modification forms intended to remove discriminatory covenants.

### **Minnesota**

#### **2019 Minnesota Laws, Ch. 45 (H.F. 51)**

Minnesota’s H.F. 51, passed in 2019, allows the owner of any interest in a piece of real property to “discharge and release a restrictive covenant related to a protected class permanently from the title”<sup>198</sup> by filing a Discharge of Restrictive Covenant Affecting Protected Classes form with the county recorder. The form must be executed before a notary, and it preserves a reference to the original covenant by requiring that the form contain “the date of recording of the instrument containing the restrictive covenant, and the volume and page number or document number of the instrument.” The form is subject to standard “applicable recording fees.”

### **Missouri**

#### **2005 Missouri Laws (Senate Bill 168)**

In 2005, Missouri Senate Bill 168 passed into law, requiring any homeowners’ association to “amend, without approval of the owners, any declaration or other governing document that includes a [discriminatory] restrictive covenant.” Going further than many other laws, Senate Bill 168 allows “the Missouri commission on human rights, a city or county in which a common interest development is located, or *any person*”<sup>199</sup> to bring an action for injunctive relief against a homeowners’ association that fails, within 30 days of receiving notice, to remove a restrictive covenant from a governing document.

### **Nevada**

#### **1965 Nevada Laws Ch. 350 (Assembly Bill 424)**

In 1965, Nevada enacted Assembly Bill 424, which allowed “The owner or owners of any real property subject to [a discriminatory covenant to] record an affidavit declaring such restrictions or prohibitions to be void in the office of the county recorder in which such real property is located . . . such recording shall operate to remove such restrictions or prohibitions.”<sup>200</sup>

#### **2019 Nevada Laws Ch. 68 (Senate Bill 117)**

Nevada’s Senate Bill 117, passed in 2019, substantially rewrote this earlier law, acknowledging that these covenants were “void and unenforceable” regardless of whether the property owner recorded such an affidavit, but simultaneously providing property owners with an alternative means of action: filing a “declaration of removal of discriminatory restriction” form which “[declares] that all [unlawfully discriminatory] restrictions or prohibitions are removed from the . . . original instrument” with their local county recorders. <sup>201</sup>The law directed the Real Estate Division of the state’s Department of Business and Industry to “solicit recommendations from the county recorder of each county concerning the design and

contents of [such a form]” and to “prescribe such a form after considering all recommendations solicited.” Senate Bill 117 additionally required that the form preserve “identifying information concerning the original written instrument” and be available “free of charge” online, at each county recorder’s office, and at each branch office of the Real Estate Division throughout the state.

## Ohio

### 1997 Ohio Laws Ch. 5309 (Senate Bill 83)

In 1997, Ohio passed Senate Bill 83, which declared that “no county recorder shall... transcribe or bind . . . and, if applicable, file . . . a decree of registration . . . If the decree sets forth any [unlawfully discriminatory] restrictive covenant.”<sup>202</sup> Additionally, the law prohibited duplicate certificate of titles that include discriminatory covenants from being issued “without first deleting . . . any reference to [the unlawful] covenant.” The ban also extended to “any memorial, notation, or memorandum to the extent that it refers to any [discriminatory restrictive covenant].” While this statute only applies to land registered through the Torrens property system—a largely antiquated method of land transfer used to simplify and certify title to land by preserving and continuously updating a single title document at the recorder’s office—it provides an important proof of concept for states reluctant to remove racial covenants for fear of creating a broader precedent for removing other types of covenants from deeds, since Ohio has been able to do this for over two decades.

### Additional Efforts

In 2017, an Ohio State Representative and a county recorder announced that they would introduce legislation to allow property owners to remove discriminatory covenants from the online version of their deeds, using a similar mechanism already in place to redact the addresses of police officers.<sup>203</sup> However, it does not appear that this proposed legislation was enacted.

## Oregon

### 2018 Oregon Laws Ch. 35 (House Bill 4134)

Oregon’s House Bill 4134, passed in the 2018 legislative session, allows “any owner” of real property containing a discriminatory covenant to “file a petition . . . in the circuit court for the county in which the property is located” to “remove that provision from the title.”<sup>204</sup> The court “may not charge any filing fees to the petitioner.” The petitioner is required to serve notice by registered or certified mail to all other recorded owners, and to provide them with a copy of the petition, which includes, among other things, a “clear reference to the provision claimed to be [unlawfully discriminatory].” All other owners have 20 days to request a hearing, during which the only question to be decided by the judge is whether the covenant in question is indeed unlawfully discriminatory. If so, “the court shall enter a judgment removing the provision from the title.”

## Texas

### 1985 Tex. Laws Ch. 309 (House Bill 2256)

In 1985, Texas’ House Bill 2256 granted members of a subdivision the ability to form “petition committees,” empowered to gather support in favor of the modification, extension, or deletion of restrictive covenants on the subdivision’s lots. These petitions can be satisfied by obtaining the signatures of property owners representing either 75% of the total lots, 75% of the total number of separate parcels, or 75% of the total square footage, and contain a description of the proposed alteration, and a comparison with the

original description. If, within two years, the committee obtains the requisite signatures, they can then file the petition modifying the covenant in question. Property owners can “delete their property from the operation of the . . . modified restrictions” by filing a statement before the 270th day after the petition has been filed. If the covenant being modified “contains any provision relating to race, religion, or national origin that is void and unenforceable,” these provisions are deleted “as if [they] had never been contained in the restrictions.”<sup>205</sup>

## Virginia

### 1998 Virginia Laws Ch. 873 (House Bill 1121)

In 1998, Virginia created a private right of action against individuals who “solicit or accept compensation of any kind for the release or removal of any [racially restrictive] covenant.”<sup>206</sup> The bill was aimed at “[a]ttorneys cashing in by charging home buyers to remove illegal, racist clauses from property deeds” by telling those buyers the clauses were still enforceable.<sup>207</sup> A person coerced into paying for covenant removal could recover “an amount equal to the greater of three times the compensation solicited or received, or \$500, plus reasonable attorneys’ fees” in a lawsuit. The act additionally provided that “any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the [document] if it includes [a discriminatory] covenant,” and that such a refusal “shall not be deemed a breach of a contract.”

### 2020 Virginia Laws Ch. 748 (House Bill 788)

In 2020, Virginia instituted a pathway for homeowners themselves to release discriminatory restrictive covenants “without assistance of an attorney” through House Bill 788.<sup>208</sup> The bill provides that a property owner may record a “Certificate of Release of Certain Prohibited Covenants.” The form records a “brief description of [the] prohibited covenant” but otherwise does not include a reference to the exact text or location of the original covenant. The form declares merely that “The covenant contained in the above-mentioned instrument is released from the above-described real property to the extent that it contains terms purporting to restrict the ownership or use of the property [in an unlawfully discriminatory manner].”

## Washington

### 1987 Washington Laws Ch. 56 (Senate Bill 5371)

Washington State has revisited the topic of racially restrictive covenants several times in legislation. In 1987, Senate Bill 5371 enabled homeowners with discriminatory covenants attached to their property to bring an action in state court “striking the [discriminatory] provisions from the public records and eliminating the [discriminatory] provisions from the title of the property.”<sup>209</sup> If the court “finds that any provisions of the written instrument are void [because they discriminate unlawfully] it shall enter an order striking the void provisions from the public records and eliminating the void provisions from the title or lease of the property.” The person bringing the action is subject to court filing fees.

### 1995 Washington Laws Ch. 292 (House Bill 1692)

In House Bill 1692, passed in 1995, the legislature expanded the eligibility for bringing this type of action to include occupants or tenants of a home.<sup>210</sup>

### 2006 Washington Laws Ch. 58 (Senate Bill 6169)

Washington State’s Senate Bill 6169, signed in 2006, targets discriminatory covenants in homeowners’ associations, allowing the boards of these organizations to take action to remove these covenants from their

governing documents via a simple majority vote, without the approval of the members of the association. The act also requires the board to take this action upon the “receipt of a written request by a member of the association . . . within a reasonable time.”<sup>211</sup>

### **2018 Washington Laws Ch. 65 (House Bill 2514)**

In 2018, House Bill 2514 modified these laws again, allowing the owner of a piece of property with a racially restrictive covenant to file a form with the county auditor or other similar official “striking from the referenced original instrument all provisions that are void and unenforceable” without incurring any filing fee.<sup>212</sup> The legislature delegated the task of creating a standard form for this purpose to the Washington State Association of County Auditors. While this law would seem to make it clear that the legislature has granted Washington County Auditors the power to remove these discriminatory covenants from the public record, at least one court has disagreed: In 2019, a Washington State Superior Court ruled that the state could remove the language of the covenant from the deed, but not from “the fundamental documents, including the title, that tell the story of the history of a particular piece of property.”<sup>213</sup>



# CITATIONS

## TEXT BOXES

Below are citations for the information found in the informational boxes inlayed throughout this guide.

- **Box 1. Seeing Segregation.** An interactive version of this map that includes relevant citations can be found at <https://bit.ly/rochestercovenants>.
- **Box 2. Marking Neighborhoods as “Whites Only.”** Otis Poindexter’s story appears in Michael Days’ article “Gloomy Day to Paint on Penhurst St.” in the April 29, 1980 edition of the *Democrat & Chronicle* at page 1C. The quote about “on your house,” stated by Alfonso McKinney, appears in an article titled “Being Black in Rochester” by Dick Mitchell and Jim Myers on page 4 of the special “Because We Are Black . . .” section of the August 16, 1981 issue of the *Democrat & Chronicle*. For more on recent incidents of racist graffiti in Perinton, read Randy Gorbman’s July 2, 2020 article titled “Hate Crimes Task Force to Investigate Hateful Graffiti in Perinton” published in Rochester City Newspaper and available here: <https://www.rochestercitynewspaper.com/rochester/governor-andrew-cuomo-calls-hate-crimes-task-force-investigate-hateful-graffiti-perinton/Content?oid=11970638>.
- **Image: Ad for 19th Ward Home.** This ad is found on page 23 of the September 3, 1928 edition of the *Democrat & Chronicle*.
- **Box 3. A Dark Kodak Moment in Brighton.** The racial covenants for the Meadowbrook neighborhood appear in Certificate of Restrictions for the Meadowbrook Tract filed on May 2, 1929 on page 314 of Liber of Deeds 1479 in the Monroe County Clerk’s office. Kodak developed Meadowbrook through the Kodak Employees Realty Corporation, which was run out of the Kodak Office. These facts are described in the article “Take a Trip Through Kodak Tracts” on page 5 of the June 1938 edition of Kodak Magazine. The quotes about Meadowbrook appear in both that article and an advertisement for Meadowbrook on page 6C of the August 31, 1930 edition of the *Democrat & Chronicle*. The relationship between segregated neighborhoods like Meadowbrook and ESL Federal Credit Union is described in the article “A Plan for Home Owning” located on page 13 of the December 1923 edition of Kodak Magazine. That article reads: “It goes without saying that all property purchased for development by the Kodak Employees Realty Corporation has been carefully considered before title being taken, and the purchaser can rest assured that all agreements as to development will be fully carried out. Owning the lot or having a good equity in it makes matters much easier when you are ready to build your home and to finance its purchase through the Eastman Savings and Loan Association.” Further information on ESL’s history can be found in the article titled “Eastman Savings and Loan Association” on page 5 of the February 1921 edition of Kodak Magazine.
- **Box 4. Rochester’s Racist “Model Home.”** The story of the model home appears in the article “Master Model Home To Be Object Lesson In House Construction” that appears on page III:1 of the June 10, 1928 edition of the *Democrat & Chronicle*. The 20,000 visitors figure comes from a December 9, 2018 article by Christopher Brandt on his website [myperfectlittlemoney.com](http://myperfectlittlemoney.com); Brandt has done extensive research into builder Fred P. Tosch’s model homes. The deed containing the racial covenant for the model home appears in a deed from Grafton Johnson to Fred P. Tosch dated June 16, 1928 in Liber of Deeds 1469 at page 402.
- **Box 5. The Riches of Racial Covenants.** Examples of deeds filed in the Monroe County Clerk’s office that Grafton Johnson used to make Rochester-area developments “Whites Only” include a deed from Grafton Johnson to Clarence E. Jennings dated October 10, 1924 in Liber of Deeds 1293 at page 593, a deed from Grafton Johnson to Norman J. Huyck filed on February 6, 1928 in Liber of Deeds 1452 at page 163, and a deed from Grafton Johnson to homebuyers in Liber of Deeds 1959 at page 168. The quotes about Johnson appear in an article titled “Grafton Johnson Succumbs at Home in Greenwood, Ind.” that appears in the August 17, 1934 edition of the *Democrat & Chronicle* at page II:1.
- **Box 6. The Wegman Family’s Covenants.** The covenants referenced here can be found in two deeds in the Monroe County Clerk’s office. The first is a deed between Summerville Fruit Farms, Inc. and Walter E. Wegman made July 14, 1924 in Liber of Deeds 1275 at page 411, which includes the “express covenant that [the land] shall never be occupied by a colored person.” The second is a deed between Summerville Fruit Farms, Inc. and Anna F. Wegman made August 24, 1931 in Liber of Deeds 1587 at page 5.
- **Box 7. Racial Covenants & Redlining in Monroe County.** An interactive version of this map that includes relevant citations can be found at <https://bit.ly/rochestercovenants>. The information about redlining can be found in the U.S. Department of Housing and Urban Development’s 1976 publication “Redlining and Divestment as a Discriminatory Practice in Residential Mortgage Loans” as well as Barbara van Kerkhove’s 2015 piece for the Empire Justice Center titled “The River Runs Dry II: The Persistent Mortgage Drought in Rochester’s Communities of Color,” available at <https://empirejustice.org/wp-content/uploads/2017/12/river-runs-dry-ii.pdf>.

- **Box 8. Visualizing Segregation by Zoning.** Penfield’s zoning map is available on the town’s website. The description of Penfield’s zoning laws draws on their zoning ordinance, also available on the town’s website. The relationship between race and income in Monroe County is described further in ACT Rochester’s August 2017 report “Hard Facts: Race and Ethnicity in the Nine-County Greater Rochester Area.” The impact of exclusionary zoning ordinances on racial segregation is described in Kimberly Quick’s August 4, 2017 piece titled “Exclusionary Zoning Continues Racial Segregation’s Ugly Work,” available on the Century Foundation’s website here: <https://tcf.org/content/commentary/exclusionary-zoning-continues-racial-segregations-ugly-work/>.
- **Box 9. Resisting Rochester’s Racial Covenants.** Reuben Davis’s story was told on April 25, 1980, and is available in the oral history made public through the Rochester Public Library’s “Rochester Voices” project. Information on Davis in this box also comes from that oral history. The racial covenant on the home Davis looked to buy is within the May 5, 1914 deed from Elmdorf Realty Company to Francis Elmer Steinhauser at Liber of Deeds 941 at page 167. The “strawman” purchase of Davis’s home is reflected in the July 23, 1958 deed from Flora Catherine Steinhauser to Philip L. Harris dated July 23, 1958 at Liber of Deeds 3161 at page 315, while Davis’s purchase of the home is reflected in the July 24, 1958 deed from Philip L. Harris to Reuben K. Davis at Liber of Deeds 3162 at page 84.
- **Box 10. Racial Covenants: Open to the Public.** The signs in the Monroe County Clerk’s office were hung on July 24, 2020, and appear in many places in the office where the public may view racial covenants.
- **Box 11. Antiracist Covenants in Rochester.** This example antiracist covenant can be found at Liber of Deeds 3561 at page 573, and was made between the City of Rochester and the Albuf Corporation on May 19, 1964. Discussion about the effects of urban redevelopment can be found in the articles on page 24 of the May 19, 1966 edition of the *Democrat & Chronicle*.
- **Image: Crossed Out Deed.** The information in this box can be found in Appendix Two.
- **Box 12. Why Mapping Racial Covenants Matters.** Examples of research that can be conducted to trace the effects of racial covenants include a mapping and statistical analysis project conducted by Public Health—Seattle & King County focusing on the link between covenanted neighborhoods and health indicators including life expectancy and low birth-weight. For more on this research, read Andrea Weiler’s July 21, 2016 post on Public Health’s website titled “Why 50-Year-Old Housing Practices Could Be Linked to Poor Health Outcomes Today,” available at: <https://publichealthinsider.com/2016/07/21/why-50-year-old-housing-practices-could-be-linked-to-poor-health-outcomes-today/>.

## ENDNOTES

- 1 The story in this paragraph comes from the text of, and Facebook post embedded within, Gary Craig’s July 15, 2020 article in the *Democrat & Chronicle* titled “He’s a Black honor roll student and a ‘great kid.’ Why the police were still called on him.” This article is available at <https://www.democratandchronicle.com/story/news/2020/07/15/police-called-aquinas-high-school-basketball-player-penfield-brighton-felt-inevitable/5380067002/>.
- 2 An extended history of policing in Rochester is available in Ted Forsyth’s 2015 analysis titled “A Comparative Analysis of the Police Advisory Board and the Civilian Review Board and a 52 Year History of Police Accountability Efforts in Rochester, NY,” available at <http://rochester.indymedia.org/sites/default/files/PAB%20report%20to%20CRB%20v2.pdf>. For more on how modern-day policing practices harm Rochesterians, read the August 2018 New York Civil Liberties Union report authored by Scout Katovich titled “More Than a Nuisance: The Outsized Consequences of New York’s Nuisance Ordinances.” This report is available at [https://www.nyclu.org/sites/default/files/field\\_documents/nyclu\\_nuisancereport\\_20180809.pdf](https://www.nyclu.org/sites/default/files/field_documents/nyclu_nuisancereport_20180809.pdf).
- 3 This quote is from page 655 of Monica C. Bell’s 2020 article “Anti-Segregation Policing,” which appears in Volume 95 of the *New York University Law Review*.
- 4 Read Jonathan Kahn’s 2019 piece “The 911 Covenant: Policing Black Bodies in White Spaces and the Limits of Implicit Bias as a Tool of Racial Justice,” which appears in Volume 15 of the *Stanford Journal of Civil Rights & Civil Liberties* at page 1.
- 5 This is from “Index of Dissimilarity” data, a “measure of residential segregation” that was created through Brown University’s American Communities Project, and is available at <https://s4.ad.brown.edu/projects/diversity/segregation2010/msa.aspx?metroid=40380>.
- 6 This information can be found in Appendix A of EdBuild’s January 2020 report, “Fault Lines: America’s Most Segregating School District Borders,” available at <https://edbuild.org/content/fault-lines/full-report.pdf>.

- 7 Read page 91 of the 1947 report “To Secure These Rights: The Report of the President’s Committee on Civil Rights.”
- 8 Read Priscilla A. Ocen’s 2012 piece “The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing,” which appears in Volume 59 of the UCLA Law Review at page 1540.
- 9 The racial covenant for this neighborhood appears on a document titled Restrictions for Ellison Park Heights filed by Estella L. Welkley on April 8, 1938 in Liber of Deeds 1882 at page 437 in the Monroe County Clerk’s office.
- 10 As segregation expert Richard Rothstein said, “We abolished segregation in all these other areas of American life, but we’ve left untouched the biggest segregation of all, which is residential segregation, and we accept it as part of the natural environment because we think it all happened by accident.” This quote appears in Keli A. Tianga’s article titled “The Not-So Hidden Truths About the Segregation of America’s Housing,” which appeared online on May 22, 2018 in Shelterforce.
- 11 A deeper discussion of White supremacy appears in Akiba Solomon and Kenrya Rankin’s 2019 book “How We Fight White Supremacy: A Field Guide to Black Resistance.
- 12 For a discussion of Rochester’s high eviction rates and affordable housing shortage, read the March 2018 report by Housing Justice for All titled “Cuomo’s Housing Crisis: Homelessness & Unaffordability in New York State.” For an explanation of the ways that the Rochester City School District has “historically underperformed,” read Jaime R. Aquino’s November 14, 2018 report titled “A Review of the Rochester City School District.” According to NYU Langone Health’s City Health Dashboard, as of 2020, Rochester is below average on every “health outcome” metric, from life expectancy to obesity. It is also below average on every “clinical” care metric from dental care to prenatal care, with one exception: the rate of uninsured. The Dashboard can be seen at <https://www.cityhealthdashboard.com/>. A demographic and socioeconomic analysis of Rochester’s suburbs appears in Appendix B of ACT Rochester’s August 2017 report “Hard Facts: Race and Ethnicity in the Nine-County Greater Rochester Area.”
- 13 This quote appears in an article titled “Being Black in Rochester” by Dick Mitchell and Jim Myers on page 2 of the special “Because We Are Black . . .” section of the August 16, 1981 issue of the Democrat & Chronicle.
- 14 For more on Douglass’s years of antiracist activism in Rochester, read David W. Blight’s 2019 book, “Frederick Douglass: Prophet of Freedom.” For more on Alice Young’s antiracist activism in Rochester, listen to her oral history conducted on June 25, 1980 available through the Rochester Voices program that can be accessed here: <http://www.rochestervoces.org/historical-media/interview-alice-h-young/>.
- 15 This quote is from a post made by Gantt on her Facebook page on June 17, 2020, and is used here with Gantt’s permission.
- 16 This quote appears in an article titled “Being Black in Rochester” by Dick Mitchell and Jim Myers on page 2 of the special “Because We Are Black . . .” section of the August 16, 1981 issue of the Democrat & Chronicle.
- 17 For more on Monroe County’s status as a White colony, read Blake McKelvey’s 1939 article “Aspects of the Phelps and Gorham Treaty of July 4-8, 1788,” appearing in Volume 1, Number 1 of Rochester History.
- 18 For more on the role of slavery as a legal framework, read Paul Finkelman’s article “Slavery in the United States: Persons or Property?” which appears on page 105 in the 2012 collection edited by Jean Allain titled “The Legal Understanding of Slavery: From the Historical to the Contemporary.”
- 19 For more on Daniel Penfield and his home, read Arch Merrill’s article “Daniel Penfield Built a House – And A Town,” which appears in the August 1, 1948 edition of the Democrat & Chronicle at page C1; Merrill’s article “Home Spans History of Township” in the July 3, 1960 edition of the Democrat & Chronicle at page 21; and John Kohlstrand’s article “Penfield to Name Landmark,” which appears in the June 29, 2002 edition of the Democrat & Chronicle at page 3B.
- 20 For more on Nathaniel Rochester and slavery, read the 2009 article by Marilyn S. Nolte, Victoria Sandwick Schmitt, and Christine L. Ridarsky titled “‘We Called Her Anna’: Nathaniel Rochester and Slavery in the Genesee Country, Rochester History,” appearing in Volume 71, No. 1 of Rochester History.
- 21 Discussions of the “failure of freedom” in New York after emancipation appear in Edgar J. McManus’s 2001 book “A History of Negro Slavery in New York” and Leslie M. Harris’s 2004 book “In the Shadow of Slavery: African Americans in New York City, 1626 – 1863.”
- 22 This information is taken from: page 14 of Victoria Sandwick Schmitt’s 2005 article “Rochester’s Frederick Douglass: Part One,” which appears in Volume 57, Number 3 of Rochester History; page 9 of the 1832 report Abstract of the Returns of the Fifth Census of the United States; and pages 4 – 5 of Dann J. Broyld’s 2010 article “Rochester: A Transnational Community for Blacks Prior to the Civil War,” which appears in Volume 72, Number 2 of Rochester History.
- 23 Read page 20 of Schmitt’s article cited in footnote 22.
- 24 Read page 20 of Schmitt’s article cited in footnote 22, along with Justin Murphy’s article “White Supremacy Has a History in Rochester,” which appears in the August 18, 2017 edition of the Democrat & Chronicle at page 6A.
- 25 This phrase is borrowed from Paula S. Rothenberg, “White Privilege” (2008), which describes the racial evolution of “ethnic White” communities in the United States.

- 26 Read pages 19 and 20 of Blake McKelvey's 1959 article "Lights and Shadows in Local Negro History," in Volume 21, Number 4 of Rochester History, along with pages 7 through 21 of Blake McKelvey's 1963 article "Rochester's Ethnic Transformations," which appears in Volume 25, Number 3 of Rochester History.
- 27 For further explanation of this practice, see David E. MacEllven's 1962 article "Land Use Control Through Covenants" in Volume 13 of the Hastings Law Journal at page 310.
- 28 This language appears in a deed between Grafton Johnson and Charles F. Fischer dated January 18, 1924 available in Liber of Deeds 1260 at page 569. The full text of the covenant reads: "Said lot is sold on the express covenant SHALL NEVER BE OCCUPIED BY A COLORED PERSON, nor for the purpose of doing a liquor business thereon."
- 29 For an example of this phenomenon, watch the 1957 movie "All The Way Home," available here: <https://www.youtube.com/watch?v=S9e7zXKNNwg>.
- 30 Read pages 255 to 256 of Robert Clifton Weaver's 1948 book "The Negro Ghetto."
- 31 In 2015, the City of Rochester identified racial steering as a continuing problem in Monroe County. Read the City's draft 2015 report titled "Analysis of Impediments to Fair Housing Choice" available at <http://www.cityofrochester.gov/WorkArea/DownloadAsset.aspx?id=8589967070>.
- 32 For examples of these tactics, read: "Negro Physicist Sues 2 in Town Over House Sale," appearing in the August 21, 1960 edition of the Democrat & Chronicle at page B1; Bill Vogler's article "White Efforts to Bar Negroes Fell Flat" in the September 16, 1965 edition of the Democrat & Chronicle at page B1, which details a 1959 petition drive regarding the purchase of 95 Crosmann Terrace; Jack Williams's article "Discrimination in Negro Housing Reported to Local Group" in the November 3, 1960 edition of the Democrat & Chronicle at page 31. Similar tactics are reported in the article "Good Neighbors" in the February 25, 1961 edition of the Democrat & Chronicle at page 12, along with the following articles by Bill Volger: "Five Years Ease Chance for Home" in the September 17, 1965 edition of the Democrat & Chronicle at page B1; "After 19th Ward Uproar . . . Integrated Calm" in the April 16, 1962 edition of the Democrat & Chronicle at page 21; "Negro Turns 'White' to Buy Home" in the September 13, 1965 edition of the Democrat & Chronicle at page B1.
- 33 Read Arch Merrill's article "When Men Hid Faces Behind Masks of KKK" in the May 31, 1953 edition of the Democrat & Chronicle at page 2C.
- 34 Read Robyn Roberts's article "She Pointed Way for Minorities in City Education" in the February 7, 1986 edition of the Democrat & Chronicle at page B1.
- 35 Read Larry King's article "Recruiting Klansmen: The KKK Is Still Going, But Not Strong" in the "Upstate" section of the September 25, 1977 edition of the Democrat & Chronicle at pages 26-29.
- 36 Read Dede Murphy's article "Cross Burnings Signal Alarm to Some" in the June 7, 1980 edition of the Democrat & Chronicle at page B1.
- 37 Read page 2 of the article by Mitchell and Myers cited in endnote 13, which says, "In the last three years, crosses have been burned or racist insults painted at the house of four black families living in the city's southwest and northeast sides and in the towns of Henrietta and Chili." Also read the following articles: "Cross Burned in Yard on Northeast Side" in the December 8, 1980 edition of the Democrat & Chronicle at page B1, noting a cross burning in Black person's yard in the Northland-Lycum neighborhood; Gary Gerew's "Police Probe Cross Burning, KKK Cross" in the June 2, 1980 edition of the Democrat & Chronicle at page B1, noting a Henrietta cross burning and KKK cross placed in Black family's yard in Chili; Michael Days' "Gloomy Day to Paint on Penhurst St." in the April 29, 1980 edition of the Democrat & Chronicle at page 1C, noting the spray painting of Black residence with slurs; Dick Mitchell's "Irondequoit Family Claims Racial Harassment" in the January 15, 1980 edition of the Democrat & Chronicle at page 4B, noting the first Black family to own a home in an Irondequoit neighborhood experienced "teenagers started driving across the lawn," harassing phone calls at all hours of the night, shouted racial slurs, and the word "nigger" was sprayed on their front door.
- 38 This fact is explained in the above endnote and the following articles: Dede Murphy's "Cross Burnings Signal Alarm to Some" in the June 7, 1980 edition of the Democrat & Chronicle at page B1, noting that two crosses were burned in the Rochester area in June 1980, including one cross "with KKK initials"; "FBI Enters Investigation of Cross Burning Here" in the July 16, 1956 edition of the Democrat & Chronicle at page 5, noting how "hooded men" were seen burning a cross in Penfield; "Cross Burned in Swamp Area" in the July 29, 1951 edition of the Democrat & Chronicle at page 2B, noting a cross burned in Chili near the Rochester Institute of Technology; "Cross Found Burning in Brighton" in the July 28, 1964 edition of the Democrat & Chronicle at page 3A; and Greg Boeck's Stormin' Norman in the "Upstate" section of the February 8, 1981 edition of the Democrat & Chronicle at page 3, noting a cross burning in Brockport in response to a Black player joining basketball team.
- 39 This quote appears in Nancy Wechsler's June 26, 1947 Memo on Housing and Civil Rights at page 5 in ProQuest History Vault: President Truman's Committee on Civil Rights, Folder 001541-010-0194 (quoting Robert Weaver).
- 40 Read page 158 of Brooks & Rose's 2013 book "Saving the Neighborhood," mentioned earlier in this guide.
- 41 Read page 49 of Brooks & Rose's 2013 book "Saving the Neighborhood."



- 42 Read Clement Ellery Vose, *Caucasians Only: the Supreme Court, the NAACP, and the Restrictive Covenant Cases* 219-20 (1959).
- 43 Read pages 7 – 10 of Brooks & Rose’s 2013 book “Saving the Neighborhood.” The “I” is not capitalized in the original quote.
- 44 This quote appears in William Vogler’s article “After 19th Ward Uproar . . . Integrated Calm” in the April 16, 1962 edition of the *Democrat & Chronicle* at pages 21-22.
- 45 These communities are discussed later in this guide.
- 46 Read Michael Zeigler’s article “Ethnic Restrictions May Be Hiding in Area Deeds” in the August 17, 1986 edition of the *Democrat & Chronicle* at page B1.
- 47 The racial covenants for these neighborhoods appear in the following documents: Uniform Plan of Restrictions, a document filed by Earl F. Case on Sept. 10, 1937 in Miscellaneous Liber 38 at Page 221; a deed from Grafton Johnson to Clarence E. Jennings dated October 10, 1924 in Liber of Deeds 1293 at page 593; Restrictions for Ellison Park Heights filed by Estella L. Welkley on April 8, 1938 in Liber of Deeds 1882 at page 437. All of these documents are available in the Monroe County Clerk’s office.
- 48 For example, read an advertisement in the *Democrat & Chronicle* on April 15, 1923 at page 43, which notes that “rigid restrictions” on homes which provided “[s]eclusion” from “inharmonious environments” often led to “exorbitant prices.”
- 49 These restrictions in the Meadowbrook neighborhood are described later in this guide.
- 50 Read, for example, the advertisements in the *Democrat & Chronicle* located on page 7A of the October 4, 1936 edition and page 5C of the June 22, 1930 edition.
- 51 In 1937, Earl F. Case filed a uniform plan of restrictions on the “Acre Gardens” subdivision in Gates. Within that plan was a racial covenant stating, “No race nor nationality other than those from whom the premises are intended shall use or occupy any dwelling on the premises, except that this covenant shall not prevent occupancy by domestic servants of a different race or nationality employed by an owner or tenant.” Uniform Plan of Restrictions, Sept. 10, 1937, Miscellaneous Liber 38 at Page 221. Case was elected as president of the Rochester Bar Association, the predecessor to the Monroe County Bar Association, in 1947. Read the article “Lawyers Sing Their Wares in Skit at Rally” in the *Democrat & Chronicle* on June 4, 1947 at page 17.
- 52 For an example of racial covenants on Huyck-built homes, see the deed from Grafton Johnson to Norman J. Huyck filed on February 6, 1928 in Liber of Deeds 1452 at page 163 in the Monroe County Clerk’s office.
- 53 This deed between General Realty Service, Inc. and the Diocese of Rochester was signed on December 5, 1929 and appears in Liber of Deeds 1524 at page 368 in the Monroe County Clerk’s Office. The deed, which allows for the construction of a church on the site where St. James Church now resides in the city, allowed for “such residential use necessary for a religious corporation,” yet required the Diocese to agree that the “premises . . . shall never be occupied by a colored person.” The Peace of Christ Parish’s website states that Bishop John O’Hern made this land purchase in 1929 that served as the foundation for the construction of St. James Church in 1949-1950. This website is available at <https://www.peaceofchristparish.org/about/churches/stjames>.
- 54 For an early description of the Board’s work, read the *Democrat & Chronicle* article titled “Greater Demand for Appraisals” in the November 6, 1927 edition at page 18.
- 55 This language is detailed in the Oregon History Project’s 2005 website on realtor ethics, available at <https://oregonhistoryproject.org/articles/historical-records/nareb-code-of-ethics/#.Xx13w55KiUk>.
- 56 Read Michael Jones-Correa’s article titled “The Origins and Diffusion of Racial Restrictive Covenants” in *Political Science Quarterly*, Vol. 115, No. 4 (Winter 2000) at pages 563 – 65.
- 57 Read the article titled “Frank Drumm Honored” in the *Democrat & Chronicle*’s May 16, 1963 edition at page 40.
- 58 Stupp’s role in creating racial covenants can be seen in deeds like those located in Liber of Deeds 1959 at page 168, which involves the transfer of land in the Scottwood Tract from Grafton Johnson to homebuyers. Stupp’s role in the Central Trust Company is described in the *Democrat & Chronicle*’s October 9, 1937 article titled “Record Shows Stupp Estate Cut to \$49,472” on page 14. The merger of Central Trust and M&T Bank is described in an advertisement on page 22 of the July 7, 1992 edition of the *Democrat & Chronicle* which states: “Central Trust, now M&T Bank.”
- 59 The sources for this statement in regard to ESL appear in the box text citations above. A mortgage for a covenanted home made in 1938 by the Rochester Trust and Safe Deposit Company appears on the mortgage described in Liber of Deeds 1747 at page 541.
- 60 These financial institutions, for example, agreed to impose racial covenants on property they owned in Gates in 1941 in a document titled “Agreement Modifying Restrictions” dated October 1, 1941 available in Liber of Deeds 2072 at page 58.
- 61 The role of title insurance companies in perpetuating the power of racial covenants is discussed in Brooks & Rose at 17 as well as *Mayers v. Ridley*, 465 F.2d 630, 649 (D.C. Cir. 1972).

- 62 Read Brooks & Rose at pages 87 through 107.
- 63 In a deed dated July 18, 1917 appearing in Liber of Deeds 991 at page 380, Ferdinand Schafer sold a home in the 19th Ward's Elmdorf Tract to T. Carl Nixon. That deed stated that the transfer was "subject to the covenants . . . set forth in a warranty deed to Stelly Doody from Elmdorf Realty Company dated September 19, 1913." In that deed, which appears at Liber of Deeds 919, page 312, appears a covenant promising "not to sell or lease said premises to colored people or Italians." Nixon Peabody is named after T. Carl Nixon, who was a senior partner at the firm. Read the article "T. Carl Nixon, 77, Succumbs; Attorney" in the Oct. 15, 1967 edition of the Democrat & Chronicle at page 1. The sources for the statement about the Wegman family appear in the box text citations above. Royal B. Farnum was the president of the Rochester Institute of Technology from 1919 to 1921, as described on the Institute's website here: <https://www.rit.edu/history-rit>. In a deed conveying Lot 65 of the Elmdorf Tract from Agnes Dieliman to Royal B. Farnum dated February 10, 1919 available at Liber of Deeds 1051 at page 490 states that the property is transferred "subject to the covenants and restrictions contained in a deed from the Elmdorf Realty Company to Thomas H. Nash." In a deed conveying Lot 65 of the Elmdorf Tract from the Elmdorf Realty Company to Thomas H. Nash dated August 17, 1914 available at Liber of Deeds 950 at page 148 includes a racial covenant targeting "colored people" and "Italians."
- 64 The Supreme Court did so in the case *Corrigan v. Buckley*, 271 U.S. 323 (1926).
- 65 Read the June 27, 1926 edition of the Democrat & Chronicle at III:14.
- 66 For examples of these advertisements, read the Democrat & Chronicle, June 1, 1924 at 35 (ad for homes in the Wintonleigh subdivision with "[a]mple restrictions for protection of . . . neighborhood) and Democrat & Chronicle, May 15, 1927 at III:23 (ad for homes in Council Rock Estates with "rigid restrictions" that were "attracting attention from the very families you would enjoy having as neighbors"). Both Council Rock and Wintonleigh subdivisions had homes with racial covenants on them. For Council Rock, read the deed from Grafton Johnson to Clarence E. Jennings dated October 10, 1924 in Liber of Deeds 1293 at page 593. For Wintonleigh, read the deed from Grafton Johnson to John W. Garrett dated May 16, 1924 in Liber of Deeds 1293 at page 1.
- 67 These quotes come from the following articles: Democrat & Chronicle, "Beauty Stressed in Council Rock", Jan. 29, 1928 at IV:4; "Investment in Suburban Land Declared Good," Democrat & Chronicle, July 20, 1924 at IV:6.
- 68 Read "Careful Scrutiny Urged in Unzoned Area Purchases" in the Democrat & Chronicle, Jun. 4, 1939 at 9B.
- 69 Read the Democrat & Chronicle article "Restrictions Guard Owner" in the Oct. 2, 1938 edition at 16A.
- 70 Read "Restrictions In Subdividing Called Sound" in the Democrat & Chronicle, Jun. 29, 1947 at 10D.
- 71 Many key actors in the spread of White supremacy in the United States have said, as one sheriff who used cattle prods on civil rights marchers in Alabama did, "I was just doing my job and upholding the law." Words of Sheriff Jim Clark, quoted in Gary May, "Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy" (2013) at 252.
- 72 These quotations come from the following judicial opinions: *Ridgway v. Cockburn*, 296 N.Y.S. 936 (Sup. Ct. 1937); *Dury v. Neely*, 69 N.Y.S.2d 677 (Sup. Ct. 1942); *Kemp v. Rubin*, 69 N.Y.S.2d 680 (Sup. Ct. 1947).
- 73 This effort is described in some detail in ProQuest History Vault: Papers of the NAACP, Part 05: Campaign against Residential Segregation, 1914-1955, Folder 001521-021-0396.
- 74 Resolution No. 144 of 1939, July 5, 1939, available on page 199 of the 1939 edition of the Proceedings of the Board of Supervisors of the County of Monroe.
- 75 This agreement, dated July 17, 1939, can be found in the Monroe County Clerk's Office in Liber of Deeds 1960 at page 268.
- 76 This agreement, titled "In the Matter of a Uniform Plan of Restrictions for Newport Heights Tr." and dated March 19, 1940, can be found in the Monroe County Clerk's Office in Liber of Deeds 2000 at page 393.
- 77 This agreement, titled "Agreement Modifying Restrictions," is available at Liber of Deeds 2072 at page 58.
- 78 For details on Hope Hall, read Mark Hare's article "Learning problems can be solved here" in the January 28, 2007 edition of the Democrat & Chronicle at page 5H. Gates School District Number 4 ran Thomas Edison Elementary, as described in the July 19, 1951 edition of the Democrat & Chronicle at page 17. This district became part of the Gates-Chili School District after a 1955 vote described in the December 8, 1955 edition of the Democrat & Chronicle at page 45.
- 79 This section draws on the U.S. Department of Housing and Urban Development's 1976 publication "Redlining and Divestment as a Discriminatory Practice in Residential Mortgage Loans." As stated by Matthew Daneman, "Redlining is a name for a practice by banks to not make home loans or to require particularly onerous terms on mortgages because of some noneconomic bias related to where the property sits. The term was coined in the 1960's by Northwestern University sociologist John McKnight, and it refers literally to a red line that would be drawn on maps, showing where bank money wouldn't go." This quote is from Daneman's article "NY settles with Five Star over mortgages," Democrat & Chronicle, January 19, 2015, available at <https://www.democratandchronicle.com/story/money/2015/01/18/five-star-settles-redlining-claims/21879775/>.

- 80 The quoted language comes from the February 1938 edition of the Federal Housing Administration's Underwriting Manual. Other information comes from Richard Rothstein, "The Color of Law: A Forgotten History of How Our Government Segregated America" (2018) at 65-67; and Testimony of Edward Rutledge, Executive Director, National Committee Against Discrimination in Housing in Hearings Before the Subcommittee on Housing and Urban Affairs of the Committee on Banking and Currency, U.S. Senate, 90th Congress, First Session on the Fair Housing Act of 1967 at 225, 236 ("In 1948, the U.S. Supreme Court ruled that racial restrictions were not enforceable in courts. I was with FHA at that time. It took a year and a half until the Solicitor General personally told FHA to change. Then the agency simply changed the language but didn't change its tactics one bit.").
- 81 This information came in the Administration's "Outline of Protective Covenants" document, which included a model racial covenant that read, "No person of any race other than the \_\_\_\_\_ shall use or occupy any building or lot, except that this covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant." This information appears in N.A.A.C.P., Memo Concerning the Present Discriminatory Policies of the Federal Housing Administration, Oct. 28, 1944 in ProQuest History Vault: Papers of the NAACP, Part 05: Campaign against Residential Segregation, 1914-1955, Folder 001521-006-1037.
- 82 S. Howard Levy, "Regional Planning Termed Good Business," Democrat & Chronicle, Jun. 21, 1942 at 10B.
- 83 Read "Savings & Loan Association Here Uses FHA Insured Mortgage Plan," Democrat & Chronicle, Mar. 28, 1937 at 10C.
- 84 The paper said the Federal Housing Administration provided "great assistance" by giving real estate developers through its underwriting standards, especially its note regarding the "[p]rotection provided by . . . restrictive covenants against undesirable encroachment." "Site Selecting Emphasized in Home Building," Democrat & Chronicle, Dec. 7, 1941 at 10B.
- 85 Robert Clifton Weaver, "The Negro Ghetto" (1948) at 72-73; Charles Abrams, "Forbidden Neighbors" (1955) at 182-83, 234; Michael Jones-Correa, "The Origins and Diffusion of Racial Restrictive Covenants," Political Science Quarterly, Vol. 115, No. 4 (Winter 2000), p. 566.
- 86 Blake McKelvey, "Housing and Urban Renewal: The Rochester Experience," Rochester History, Vol. 27, No. 4, Oct. 1965.
- 87 Example deeds that can be found in the Monroe County Clerk's office include: Grafton Johnson to John W. Garrett dated May 16, 1924 in Liber of Deeds 1293 at page 1 (Rochester); Restrictions for Ellison Park Heights filed by Estella L. Welkley on April 8, 1938 in Liber of Deeds 1882 at page 437 (Brighton); Certificate of Restrictions of Springbank Heights Subdivision available at Liber of Deeds 2015 at page 237. (Chili); Uniform Plan of Restrictions, a document filed by Earl F. Case on Sept. 10, 1937 in Miscellaneous Liber 38 at Page 221 (Gates); Certificate of Restrictions filed by Harry D. Haight on September 11, 1936 in Liber of Deeds 1779 at page 456 (Greece); Summerville Fruit Farms, Inc. to Walter E. Wegman made July 14, 1924 in Liber of Deeds 1275 at page 411 (Irondequoit).
- 88 For an example, see the ad in the Sept. 3, 1928 edition of the Democrat & Chronicle at 23.
- 89 Read "Building Codes Enforcement by City Urged," Democrat & Chronicle, Dec. 8, 1964 at 12A.
- 90 Read "Survey Shows Race Bias in Housing," Democrat & Chronicle, Mar. 3, 1960 at 26. While the survey found that a "variety of weapons" had kept Black residents out of suburbs, including "fear, apprehension over reprisals, and pandering to accepted racial phobias," it singled out the "written and verbal agreements" as particularly effective tools of segregation.
- 91 Read James Foster, Letter to the Editor: Negro Neighborhood Better for Negroes, Democrat & Chronicle, Dec. 10, 1956 at 16.
- 92 Read State Commission on Discrimination, "Negroes in Five New York Cities" (1959) at 25, 75.
- 93 The "gross injustice" language comes from Reverend Alfred B. Wangman of Bethany Presbyterian, quoted in "Bias Assailed by Preacher," Democrat & Chronicle, Feb. 21, 1949 at 16. The "sealed off" language is from an essay by an anonymous black Rochesterian quoted in Justin Murphy, "Closed Doors," Democrat & Chronicle, Feb. 9, 2020 at 1A. Another example of a critique of covenants by local antiracist activists includes that of activist and school teacher Harvey Granite as it appeared in Harvey Granite, Letter to the Editor, Democrat & Chronicle, Sept. 30, 1951 at 15A.
- 94 Dick Mitchell & Jim Myers, "Because We Are Black . . .," "Being Black in Rochester" at 2 in Democrat & Chronicle, Aug. 16, 1981.
- 95 James Egert Allen, Letter to New York State Branches, Nov. 27, 1945, NAACP Files, Library of Congress, NAACP 1940-45, 1943-46: New York State Conference.
- 96 Brooks & Rose, 140 – 172.
- 97 Brooks & Rose at 173 (citing Barrows v. Jackson, 346 U.S. 249 (1953)).

- 98 Read “Homogenous Community a Myth,” in the special section titled, “Being Black in Rochester” at 18 in *Democrat & Chronicle*, Aug. 16, 1981.
- 99 The “restrictive zoning” term is no longer widely used, but was commonplace during the 1950’s and 1960’s, perhaps because of its functional similarity to restrictive covenants. For examples of the term’s use, see “Restrictive Zoning OK’d in East Rochester,” *Democrat & Chronicle*, Nov. 25, 1958 at 16; “Suburban Zoning Challenged,” *Democrat & Chronicle*, Dec. 19, 1968 at 10A (“Whether it’s intended this way or not, the effect of restrictive suburban zoning is to exclude whole classes of people from living outside the city.”); Carey Brown, Letter to the Editor, *Democrat & Chronicle*, Mar. 9, 1969 at 2E (describing suburbanites being “verbally assaulted” for implementing “so-called ‘restrictive’ zoning”).
- 100 A brief explanation of exclusionary zoning’s impacts on U.S. communities can be found in the Urban Institute’s article “Zoning Shapes Our Lives” published on June 12, 2019 and available at <https://housingmatters.urban.org/articles/how-zoning-shapes-our-lives>.
- 101 Read Marc Seitles’ piece, “The Perpetuation of Residential Racial Segregation in America: Historical Discrimination, Modern Forms of Exclusion, and Inclusionary Remedies” in Volume 14 of the *Journal of Land Use and Environmental Law* at page 89, published in 1998.
- 102 Read David Freund, “Colored Property: State Policy and White Racial Politics in Suburban America” (2010) at 92-93.
- 103 The quoted language comes from the February 1938 edition of the Federal Housing Administration’s Underwriting Manual.
- 104 For examples, see *Democrat & Chronicle*, Sept. 7, 1947 at 16C; *Democrat & Chronicle*, Dec. 7, 1952 at 13F (ad for homes in Irondequoit’s Hellendale subdivision with “restrictive zoning”); *Democrat & Chronicle*, Sept. 27, 1964 at 6S (ad for homes in Pittsford’s Candlewood subdivision with “restrictive zoning”).
- 105 These examples draw on the experiences of Penfield in its approach to drafting land use regulations in 1966. These quotes appear in Joint Planning Board / Town Board meeting minutes from that year, which are available at the Penfield Town Clerk’s Office. The “integration” quote appears on page 10 of the August 16, 1966 minutes, spoken by Penfield Town Board member William Frank. The “wedge” quote appears on page 6 of the August 2, 1966 minutes, spoken by Penfield Town Board member Walter Peter, who said he had 46 residents call to ask if a proposal to include affordable housing in the town’s land use plans was such a “wedge”—and that Town Board members should “listen to them.”
- 106 For more on this, read Conor Dwyer Reynolds’s 2019 pre-print article titled “The Motives for Exclusionary Zoning,” available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3449772](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3449772).
- 107 A detailed analysis and history of exclusionary zoning in Monroe County appears in Marilyn Evon Wenell Whisler, “The Politics of Zoning in Metropolitan Rochester” (1972), an unpublished doctoral dissertation on file at the University of Wisconsin.
- 108 Robert A. Rhodes, Letter to the Editor, *Democrat & Chronicle*, May 2, 1968 at 14A.
- 109 Charles Boller, “Gates Supervisor Answers Critics,” *Democrat & Chronicle*, Mar. 28, 1968 at 8B. For more on the Committee, see “Petrossi Named Chairman of Housing Committee,” *Democrat & Chronicle*, Jul. 1, 1967 at 10A.
- 110 See Steven M. Maser et al., “The Effects of Zoning and Externalities on the Price of Land: An Empirical Analysis of Monroe County, New York,” *Journal of Law & Economics*, Vol. 20 (1977) at 125-28.
- 111 This statement appears in an “Opinion Survey” sent to Penfield residents in 1972 by the Penfield Housing Task Force. A copy of this survey appears on pages 530-43 of the Appendix to the Petitioner’s Brief in *Warth v. Seldin*, 422 U.S. 490 (Nov. 27, 1974).
- 112 The case was *Warth v. Seldin*, 422 U.S. 490 (1975). For a discussion on the impact of *Warth*, see Lawrence Gene Sager, “Insular Majorities Unabated: *Warth v. Seldin* and *City of Eastlake v. Forest City Enterprises, Inc.*,” *Harvard Law Review*, Vol. 91, No. 7 (1978).
- 113 Loren Miller, “Residential Segregation and Civil Rights” at 3 in ProQuest History Vault: Civil Rights during the Johnson Administration, 1963-1969, Part V: Records of the National Advisory Commission on Civil Disorders (Kerner Commission), Folder 001346-021-0293 (“It is well to bear in mind that both Shelley and Barrows held that race restrictive agreements were not void and affirmed the right of signers of such agreements to voluntarily enter into and adhere to racial covenants. What the cases did do was to deny judicial assistance to those who sought to impose residential segregation through private agreements.”).
- 114 For more on this, see the chapter “Failures and Foundations: The Covenant Cases and Postwar Black Freedom Struggles” in Jeffrey D. Gonda, “Unjust Deeds: The Restrictive Covenant Cases and the Making of the Civil Rights Movement” (2015). For an example of how White supremacists worked to preserve the power of covenants long after they were formally deemed illegal, see Peter Edson, “Ban on Restrictive Covenants Won’t Cripple Property Values, Owensboro Messenger,” Dec. 25, 1949 at 18 (describing how there was “more than one way to skin a cat” when it came to using covenants to exclude “racial or religious” groups). See also Portland Urban League, Press Release: Oregon Realtors Expel Agent for Selling to Negro; Urban League Protests, Jan. 12, 1949 (describing how realtors circumvented the covenant decisions by continuing to discipline realtors who sold to Black people).



- 115 For example, in 1962, a White couple outside of Elmira told the Rochester-Elmira District director of the State Commission on Human Rights that they had been pressured to not rent their home to Black people by neighbors invoking the racial covenant on the couple's home. Southport Property Owners Tell of 'Silent Segregation,' *Elmira Star-Gazette*, Apr. 13, 1962 at 13. That year, New York Attorney General Louis Lefkowitz said that racial covenants "continue to be used . . . and their presence causes some owners to believe – mistakenly – that an obligation is due . . . to follow the restriction." Statement of Louis J. Lefkowitz in 11 Race Rel. L. Rep. 1, 1622 (1966).
- 116 Bill O'Brien, "19th Ward Seen Going Non-White," *Democrat & Chronicle*, Aug. 7, 1967 at 6B.
- 117 William Vogler, "After 19th Ward Up roar . . . Integrated Calm," *Democrat & Chronicle*, Apr. 16, 1962 at 21-22.
- 118 This effort is described in detail in ProQuest History Vault: Papers of the NAACP, Part 05: Campaign Against Residential Segregation, 1914-1955, Folder 001521-021-0396. These papers describe the efforts of the City-Wide Citizens' Committee on Harlem to "organiz[e] effective public opinion and support for the enactment of State legislation making racial restrictive housing covenants void and unenforceable."
- 119 1962 New York Laws c. 646, codified at N.Y. Gen. Oblig. Law § 5-331. Text of this bill can be found at Session Laws of the State of New York, 1962, Vol. 3 at 2952. The bill was initially even stronger, imposing a \$100 civil penalty on anyone who executed a deed containing a restrictive covenant. The original bill also created a liability shield for title insurers who refused to repeat restrictions in deed. See "Bill Outlaws Racial Clause in Land Deeds," *Troy Times Record*, Feb. 1, 1962 at 38.
- 120 The "moral" quote comes from Committee on Housing and Urban Development, Memorandum on Housing Legislation: S. 2252, Mar. 8, 1962, while the "silent support" quote comes from Memo from New York Civil Liberties Union Executive Director George E. Rundquist, Mar. 30, 1962. Both memos appear in the Legislative Bill Jacket for New York Laws Chapter 646.
- 121 These comments come from John R. O'Donoghue, Letter to Robert MacCrate, Mar. 28, 1962 and New York State Bar Association, Report of Committee on State Legislation, Apr. 14, 1962. Both documents appear in the Legislative Bill Jacket for New York Laws Chapter 646.
- 122 1962 New York Laws c. 646, codified at N.Y. Gen. Oblig. Law § 5-331. Text of this bill can be found at Session Laws of the State of New York, 1962, Vol. 3 at 2952.
- 123 See generally Rigel C. Oliveri, "The Legislative Battle for the Fair Housing Act (1966 – 1968)" in "The Fight for Fair Housing: Causes, Consequences, and Future Implications of the 1968 Federal Fair Housing Act" (Gregory D. Squires, ed., 2017).
- 124 The "flatly outlawed" language comes from Rose & Brooks at 3. The relevant text of the Fair Housing Act can be found at Sec. 804, Fair Housing Act of 1968, PL 90-284, April 11, 1968, 82 Stat. 73, 83 codified at 42 U.S.C. § 3604.
- 125 "State Asks for Removal of Racial Clause," *Poughkeepsie Journal*, Jun. 24, 1961 at 1; "Lefkowitz Cites Amenia Case as Civil Rights Gain in 1961," *Poughkeepsie Journal*, Dec. 24, 1961 at 1.
- 126 Statement of Louis J. Lefkowitz in 11 Race Rel. L. Rep. 1, 1622 (1966). The title companies refused to include these statements in title abstracts because "an abstract is prepared in some areas where there is no title insurance. Thus, any mention of insuring against enforceability would not be appropriate. In addition, there is a question of legality of abstract corporations rendering such an opinion." See Letter of Edward T. Brown in 11 Race Rel. L. Rep. 1, 1623 (1966).
- 127 Rose & Brooks at pages 221-23.
- 128 Gerald A. Fitzgerald, "U.S. Charges Racial Bias: Suits Filed Against Calvert, Prince Georges Housers," *Baltimore Sun*, Nov. 6, 1969 at 14 (describing suits against an apartment owner and a real estate developer in Maryland for "use of restrictive racial covenants in deeds"); "Three Real Estate Agents Accused of 'Blockbusting,'" *Asheville Citizen*, Nov. 6, 1969 at 44 (describing suit against Ohio real estate developers of inserting racially restrictive covenants into deeds).
- 129 *Mayers v. Ridley*, 465 F.2d 630, 630-32 (D.C. Cir. 1972).
- 130 See the above citation.
- 131 The Department's announcement is described in "Joe Beck, County Told Race Limits On Deeds Illegal," *Wisconsin State Journal*, Jun. 3, 1988 at 1B (quoting letter from U.S. Department of Justice official Carl Gabel to Dane County Register of Deeds Carol Mahnke) (emphasis added); see also Associated Press, "U.S. Sues to Nullify Deed Race Clauses," *Fort Worth Star-Telegram*, Dec. 8, 1984 at 32A (noting that a federal lawsuit alleged that a clerk had "continued to record deeds containing racially restrictive covenants and to make them available to the public in violation of the [Fair Housing Act]"). For examples of federal action against county clerks, see e.g., David R. Squires, "They're Illegal, but Some Deeds Still Bar Non-Whites," *Fort Worth Star-Telegram*, Oct. 19, 1987 at 1-2 (describing HUD request to Tarrant County, Texas recorder's office to "delete" covenants in existing deeds that resulted in compromise agreement to "stamp[] a disclaimer on deed records saying the discriminatory language is illegal" on "the more than 1,000 documents filed daily in the county deeds office" and posting the disclaimer "in the deeds records office"; also describing how HUD reached "[s]imilar agreements" with officials in (1) Harris County, Texas; (2) Hartford, Connecticut; (3) San Mateo County, California; and (4) Delaware County,

- Ohio); Renate Robey, “Jeffco Targets Racial Bars in Area Covenants,” *Denver Post*, Aug. 11, 1989 (noting that, in 1980, the U.S. Civil Rights Commission reached an agreement with Jefferson County, Colorado to “add notes to 153 subdivision plats, saying racially discriminatory language is illegal” and “amend[] its land use ordinances to reflect that discrimination in plats is illegal”); Associated Press, “U.S. Sues to Nullify Deed Race Clauses,” *Fort Worth Star-Telegram*, Dec. 8, 1984 at 32A (describing Department of Justice’s nationwide investigation into county clerk practices regarding racially restrictive covenants); Ben L. Kaufman, “Justice Department Defends Its Record,” *Cincinnati Enquirer*, Dec. 26, 1986 at B1 (noting that, in 1984, the U.S. Department of Justice filed a federal lawsuit in 1984 that “led to a consent decree [with] the Delaware County [Ohio] recorder to reject deeds with racially restrictive covenants”); Untitled Report, UPI, Dec. 28, 1984 (noting that the lawsuit led to a federal consent decree requiring the county clerk “to declare invalid provisions in real estate deeds in Delaware County that restrict housing sales or rentals on a racial basis”; the decree prevented the clerk from “making, printing or publishing any statement or notice with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race or color” and required the clerk “affix to each volume containing recorded deeds a statement that any provisions restricting sale, rental or use of property because of race or color ‘are invalid under federal law and unenforceable’”); see also Joe Beck, “County Told Race Limits n Deeds Illegal,” *Wisconsin State Journal*, Jun. 3, 1988 at 1B (describing letter from DOJ to county clerk in Dane County, Wisconsin asking “what action” the clerk had taken to affirmatively address racially restrictive covenants). For examples of other courts embracing the logic and remedy of *Ridley*, see *United States v. Univ. Oaks Civic Club*, 653 F. Supp. 1469, 1476 (S.D. Tex. 1987) (describing unpublished order in the 1980’s case of *United States v. Anita Rodeheaver* requiring a Texas county clerk to “post in her office and affix to all documents pertaining to real property furnished by her office a notice stating that racially restrictive covenants are void under federal law”); “Deed Restrictions Barring Blacks Ruled Illegal,” *Houston Chronicle*, Sept. 5, 1986 at 1-26 (describing order in 1986 case of *United States v. Royden Oaks*, C.A. No. H-86-1744 (S.D. Tex.) requiring “that notices be posted immediately in the [county clerk’s] office” regarding the illegality of racially restrictive covenants).
- 132 See, e.g., *United States v. Univ. Oaks Civic Club*, 653 F. Supp. 1469, 1476 (S.D. Tex. 1987) (describing request of United States to have “total deletion of [a racial] covenant” as opposed to having it “remain[] intact, although disclaimed and acknowledged to be null and void”); David R. Squires, “They’re Illegal, but Some Deeds Still Bar Non-Whites,” *Fort Worth Star-Telegram*, Oct. 19, 1987 at 1-2 (describing HUD request to Tarrant County, Texas recorder’s office to “delete” covenants in existing deeds that resulted in an compromise agreement to “stamp[] a disclaimer on deed records saying the discriminatory language is illegal”).
- 133 Committee on Housing & Community Development, California State Assembly, Legislative Analysis of AB 1493, Jan. 12, 2000.
- 134 Gertrude Baumer, “Remember These: Scale, Proportion, Color, Character,” *Democrat & Chronicle*, Jan. 11, 1970 at 1-4F.
- 135 Edith Lank, “Deed Restriction on Buyer’s Race Is Unenforceable,” *Democrat & Chronicle*, Spt. 6, 1986 at D1.
- 136 Michael Zeigler, “Ethnic Restrictions May Be Hiding in Area Deeds,” *Democrat & Chronicle*, Aug. 17, 1986 at B1.
- 137 Real Property Law Section, N.Y. State Bar Ass’n, Memorandum in Opposition to S. 1844 by Sen. Parker, Jun. 3, 2013.
- 138 American Civil Liberties Union of Maryland, Testimony in Support of HB 1024 in 2004 Legislative History for HB1042, Nov. 29, 2007, Maryland DLS Library.
- 139 For examples, see Minnesota Senate, Floor Session, Testimony on H.F. 51, May 18, 2019 (noting vote against covenant removal bill).
- 140 For an example of this kind of enforcement, read the New York Times article dated April 21, 2005 by Motoko Rich titled “Restrictive Covenants Stubbornly Stay on the Books,” which describes the efforts of a Virginia homeowner to enforce a racial covenant.
- 141 The “moral injury” language comes from Minnesota Senate, Floor Session, Testimony on H.F. 51, May 18, 2019 (words of Minnesota legislator Jeff Hayden). The “hatred” language comes from Testimony of Sen. Joan Conway, Judicial Proceedings Committee, Maryland Senate, Feb. 15, 2018. The “so damaging” language comes from Testimony of Kobi Little, Judicial Proceedings Committee, Maryland Senate, Feb. 15, 2018.
- 142 Testimony of Kobi Little, Judicial Proceedings Committee, Maryland Senate, Feb. 15, 2018.
- 143 This language appears in *Gow v. Bingham*, 107 N.Y.S. 1011, 1019 (Sup. Ct. 1907), which is describing the holding in *State ex rel. Dental Soc’y v. Jacobs*, 103 A.D. 86, 94, 92 N.Y.S. 590, 595 (App. Div. 1905). In *Jacobs*, the Appellate Division said that when “a paper is filed” in a county clerk’s office, the clerk may be ordered “to remove such paper from the files of the office” if there is “some statutory authority” requiring that removal. In *People ex rel. Shook v. Kelsey*, the Appellate Division upheld its decision in *Jacobs*, saying that government official can “be compelled to change a record in his office” when such a change “is expressly authorized by statute.” 100 N.Y.S. 391 (App. Div. 1906).
- 144 Read 2018 Delaware Laws Ch. 409 (Senate Bill 243).
- 145 Read N.Y. County Law § 532.

- 146 This standard is known as ANSI/AIIM MS42-1989: Information and Image Management – Recommended Practice for the Expungement, Deletion, Correction, or Amendment of Records on Microforms.
- 147 See, e.g., 2002 Cal. Legis. Serv. Ch. 803 (A.B. 1926).
- 148 Letter to the Editor, William A. Honey, *Wilmington News Journal*, Oct. 24, 1986 at A19.
- 149 Jack Fenton, “Olympus Park Housing Contracts Smell of Racism,” *Salt Lake Tribune*, Jul. 24, 1988.
- 150 Tucker Lyon, “County to Proclaim: No Racial Language on Deeds,” Dec. 4, 1987 at A1 (describing 1987 agreement between the Orangeburg County, South Carolina recorder’s office and the U.S. Department of Justice, which also required the office to regularly submit compliance reports to the Department).
- 151 “B.C. woman raises concerns over land title forbidding East Indian, Asiatic people,” *Abbotsford News*, Feb. 5, 2019.
- 152 E.g., *Akron Beacon Journal*, Oct. 10, 1998 at C2 (extraneous commas in original).
- 153 National Committee Against Discrimination in Housing, *Trends in Housing*, Vol. 7, No. 2 at 5 (April 1963).
- 154 Housing and Home Finance Agency, Urban Renewal Administration, Local Public Agency Letter No. 256, Nov. 30, 1962; Regulations and Instructions on Equal Opportunity in Housing Issued by the Housing and Home Finance Agency Under The President’s Executive Order No. 11063 as of January 1, 1963 (Feb. 1963) at 12 – 13; see also “Federal, State, and Local Action Affecting Race and Housing,” National Association of Intergroup Relations Officials, September 1962 at 5 in ProQuest History Vault: Civil Rights during the Kennedy Administration, 1961-1963, Part 1: The White House Central Files and Staff Files and the President’s Office Files, Folder 001349-013-0001; Housing and Home Finance Agency, Urban Renewal Administration, Local Public Agency Letter No. 236, Feb. 15, 1962 in 7 *Race Rel. L. Rep.* 1, 628 (1962) (text of covenant reads: “The redeveloper will comply with all State and local laws, in effect from time to time, prohibiting discrimination or segregation by reason of race, religion, color, or national origin in the sale, lease, or occupancy of the property. This provision shall be made a covenant running with the land, and shall be binding upon the redeveloper and every successor in interest to the property.”).
- 155 Farmers Home Administration, Administration Letter 777 (444), Dec. 14, 1962, quoted in 7 *Race Rel. L. Rep.* 1, 1267 (1962). This covenant read: “Borrower covenants and agrees that borrower will not discriminate, or permit discrimination by any agent, lessee, or other operator, in the use or occupancy of the housing or related facilities financed in whole or in part with the loan in connection with which this instrument is given, because of race, color, creed, or national origin.”
- 156 Cal. Stat. 1965, Ch. 1665. Redevelopment-related deeds were required to include the following language: “The grantee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, religion, ancestry or national origin in the sale, lease, rental, assignment, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, assignees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”
- 157 These ordinances are described in Charles S. Rhyne & Brice W. Rhyne, “Civil Rights Ordinances” (1963) at 90 – 93.
- 158 This quote was said by James A. Green on page 1B in the January 14, 1973 *Democrat & Chronicle* article titled “Man Battles an ‘Injustice.’”
- 159 Noah M. Kazis, “Public Actors, Private Law: Local Governments’ Use of Covenants to Regulate Land Use,” 124 *Yale L.J.* 1790, 1810 (2015).
- 160 This regulation is on file with the Yale Environmental Protection Clinic.
- 161 For more on addressing these difficulties, read the laws described in Appendix Two.
- 162 An example of this partnership appears in the Denver ABC 7 article titled “Man on crusade to expose Colorado’s racist property records: ‘This is so appalling!’” published on <https://www.thedenverchannel.com/news/investigations/this-is-so-appalling-says-man-on-crusade-to-expose-colorados-racist-property-records>
- 163 Such a lawsuit might use the provision of New York law that allows owners of real property to file a lawsuit to “have any recorded instrument” relating to their property “other than those required by law to be recorded” to be “canceled as of record.” N.Y. Real Prop. Law § 329.
- 164 K. Parker (sponsor), Senate Bill S4964, introduced Apr. 2, 2019.
- 165 Committee on Housing & Community Development, California State Assembly, Legislative Analysis of AB 1493, Jan. 12, 2000 (noting that a host of county clerks supported a bill to allow individuals to remove racial covenants).
- 166 Greater Baltimore Board of Realtors, Letter in Support of HB 1024 in 2004 Legislative History for HB1042, Nov. 29, 2007, Maryland DLS Library.

- 167 Minnesota Senate, Floor Session, Testimony on H.F. 51, May 18, 2019 (noting support of covenant removal bill by the Real Property section of the Minnesota Bar Association and the Minnesota Land Title Association).
- 168 Ed., “Our View: Let’s root out racism in home records,” Tacoma News Tribune, Jan. 16, 2019 at 7A.
- 169 Norm Lockman, “Realty Unit Asks Bar to Held End Bias in Deeds,” Wilmington Morning News, Feb. 8, 1973 at 17.
- 170 Read the 2013 report released by ACT and written by Edward Doherty titled “Poverty and the Concentration of Poverty in the Nine-County Greater Rochester Area.”
- 171 Testimony of Kobi Little, Judicial Proceedings Committee, Maryland Senate, Feb. 15, 2018.
- 172 Quote of Nelson, 4th Grader, Rush-Henrietta, on file with Shane Wiegand.
- 173 David Gadsden, “Researchers Map Prejudice in Minneapolis’ Past,” ESRI Blog, Oct. 23, 2017.
- 174 For more, see <https://www.mappingprejudice.org>.
- 175 Discussion with Rebecca Case Caico, July 16, 2020.
- 176 See, e.g., Justin Murphy, “How Rochester’s growing city and suburbs excluded black residents,” Democrat & Chronicle, Feb. 21, 2010.
- 177 Carl Weiser, “How to Change a Racial Restriction,” Wilmington News Journal, Dec. 4, 1992 at B7.
- 178 The “disguised” quote comes scholar Deborah Archer’s comments in a 2019 New York University School of Law press release available at <https://www.law.nyu.edu/news/deborah-archer-crime-free-housing-ordinances-segregation>. Also read Priscilla A. Ocen’s 2012 piece “The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing,” which appears in Volume 59 of the UCLA Law Review at page 1540. For more on the antiracist activism around policing in Rochester, read Gino Fanelli’s June 15, 2020 article titled “City Council to Cut Police Funding by 4%, Shunning Calls for 50%” in Rochester City Newspaper.
- 179 Read Glenn Burkins, “Legacies of Racism,” QCityMetro.com, Dec. 15, 2009, along with Charlotte-Mecklenburg Community Relations Committee, Letter to Kenneth T. Davies December 11, 2009 at <http://media.charlotteobserver.com/static/images/pdf/naacp.pdf>
- 180 Steve Crump, “Neighborhood’s ‘Whites only’ deed sparks controversy in Charlotte,” WBTV.com, Jan. 7, 2011.
- 181 For more on these land trusts, read the “What We Do” page on the Genesee Land Trust’s website, available at <https://www.geneseeandtrust.org/what-we-do>.
- 182 John Emmeus Davis, “Origins and Evolution of the Community Land Trust in the United States” (2014) at 56.
- 183 For more about this initiative, read the New York Attorney General’s October 10, 2019 press release available at <https://ag.ny.gov/press-release/2019/attorney-general-james-grants-850000-rochester-affordable-housing>.
- 184 See Henry Clark, “Churchmen and Residential Segregation,” Review of Religious Research, Vol. 5, No. 3 (1964) at 157-64. For more on open housing agreements, see Laura Pulido et al., “A People’s Guide to Los Angeles” (2012) at 79 (describing local human relations committee open housing agreement campaign); Henry Clark, “The Church and Residential Desegregation: A Case Study of an Open Housing Covenant Campaign” (1965).
- 185 Read Valerie Smith’s article on page 1 on the October 23, 1992 edition of the Democrat & Chronicle titled “More than Lip Service in Pledge.”
- 186 Daarel Burnette II, “Devastated Budgets and Widening Inequities: How the Coronavirus Collapse Will Impact Schools,” EdWeek.org, May 8, 2020. Available at <https://www.edweek.org/ew/articles/2020/05/09/devastated-budgets-and-widening-inequities-how-the.html>.
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- 191 Amy Taxin, “Bill Targets Racist Language,” Associated Press, Mar. 16, 2009 at A10.
- 192 1990 Colo. Legis. Serv. Ch. 274 (H.B. 90-1218)
- 193 Tyler Silvy, “Greeley Neighborhood Still Has Active, Unenforceable Racist Rule on the Books,” Greeley Tribune, Feb. 17, 2019, available at <https://www.greeleytribune.com/news/greeley-neighborhood-still-has-active-unenforceable-racist-rule-on-the-books/>.
- 194 2018 Delaware Laws Ch. 409 (Senate Bill 243)
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- 196 Lisa Beisel, “Cape Works to Remove Racial Language,” Annapolis Capital, Jun. 7, 2010 at A1.
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- 198 2019 Minn. Sess. Law Serv. Ch. 45 (H.F. 51).
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- 200 1965 Nevada Laws Ch. 350 (A.B. 424).
- 201 2019 Nevada Laws Ch. 68 (Senate Bill 117).
- 202 1997 Ohio Laws Ch. 5309 (Senate Bill 83).
- 203 Kimball Perry, “Outdated, Discriminatory Deed Restrictions Could Be Struck from Online Versions in Ohio,” Columbus Dispatch, Sept. 25, 2017, available at <https://www.dispatch.com/news/20170925/outdated-discriminatory-deed-restrictions-could-be-struck-from-online-versions-in-ohio>; “Craig, Recorder O’Connor Tackle Fair Housing Language With Proposed Law Change,” Targeted News Service, Sept. 26, 2017, available at <https://recorder.franklincountyohio.gov/RCDR-website/media/documents/PR-Discriminatory-Language.pdf?ext=.pdf>.
- 204 2018 Oregon Laws Ch. 35 (H.B. 4134).
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- 206 1998 Virg. Laws Ch. 873 (H.B. 1121).
- 207 Patrick Lee Plaisance, “Behm Bill Aids Homeowners—Charge to Erase Racist Clauses in Deeds Would be Prohibited,” Newport News Daily Press, Feb. 19, 1998 at C1.
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- 213 Doug Nadvornick, “Spokane Judge Rules in Restrictive Covenant Case,” Spokane Public Radio, May 3, 2019, available at <https://www.spokanepublicradio.org/post/spokane-judge-rules-restrictive-covenant-case>.

