

A new law addresses the harm done by decades of racist housing practices

The Washington state law provides low-interest loans for down payments for those harmed by racially restrictive covenants

Perspective by James Gregory

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Racially restrictive covenants — legal instruments that barred certain populations, based on race, from buying, renting or occupying property in designated areas — mandated housing exclusion and destroyed opportunities for generations of Black, Asian, Latino and Indigenous families in the decades before the Fair Housing Act of 1968. These covenants had a decisive impact on property rights and continue to affect rates of homeownership and wealth today. Only now are the full contours of this story coming to light, and state (and local) governments are finally beginning to act to address the damage.

Nowhere is this clearer than in Washington state, which passed the Covenants Homeownership Act in April. This pioneering legislation aims to help some of those harmed by racially restrictive covenants (and their descendants) to buy homes. Legislators carefully crafted the new law to navigate the complicated issues facing reparations and race-based programs, potentially providing a road map for other states and localities.

Racially restrictive covenants became a common instrument of segregation and exclusion in the 1910s. Some covenants said “Whites only.” Others banned particular populations that sometimes included Jews and Middle Easterners, along with anyone perceived to be Black, Asian, “Indian” or “Mexican.” In the Seattle area, one subdivision developer specified “Aryans only.” Developers or owners recorded these legally binding instruments with county authorities.

Restrictive covenants were binding in perpetuity. Prospective buyers had to promise not to rent or sell the property in the future to certain races or else they could face litigation for violating the terms of this legally binding agreement.

Promoted by the American Board of Realtors (ABR), covenants were deployed in hundreds of cities and suburbs across the United States. The ABR and its local affiliates conducted campaigns starting in the 1920s to persuade land developers, neighborhood associations and individual property owners to “protect” property with racially restrictive covenants.

These racist devices gained the imprimatur of the federal government in the 1930s as President Franklin D. Roosevelt’s administration tried to revive the Depression economy by ramping up homeownership — for White Americans. The Homeowners Loan Corporation (HOLC) that was created as part of Roosevelt’s New Deal drew “redlining maps” for all major cities in 1936 to help the mortgage lending industry determine safe and unsafe areas for investment. HOLC awarded high scores to neighborhoods with restrictive covenants, while neighborhoods that allowed people of color were deemed “hazardous” for lenders, making mortgages for properties in these neighborhoods difficult to obtain and artificially expensive.

Next, the Federal Housing Administration (FHA), the agency responsible for the federally backed, low-interest loans that made homeownership possible for millions of families in the post-World War II era, encouraged developers to restrict by race and limited FHA loans to White (male) homeowners. From 1934-1962, fewer than 2 percent of FHA loans went to families of color.

In 1948, the Supreme Court ruled in *Shelley v. Kraemer* that a racially restrictive covenant was a private contract that had no standing in a court of law because enforcement by a state government would violate the 14th Amendment’s Equal Protection Clause.

But far from outlawing covenants, the ruling actually had little impact. The court did not ban discrimination nor the covenants themselves. Race discrimination remained perfectly lawful and White neighborhoods and realtors continued to enforce restrictions by other means.

In fact, housing segregation intensified significantly over the next two decades, in part because FHA redlining practices were incorporated into the housing benefits provided by the GI Bill — which dramatically increased suburban homeownership for White male World War II veterans. Indeed, the Washington Supreme Court issued rulings in 1960 and 1961 affirming the legal “right of segregation,” and developers continued to record new racial restrictions as late as 1968.

In 1968, Congress finally outlawed this sort of blatant housing discrimination. Yet, racially restrictive covenants maintained much of their threat even after the Fair Housing Act voided them. These now outlawed practices had, over decades, codified the notion that high property values were synonymous with all- or nearly all-White suburban neighborhoods.

Many neighborhoods that had been restricted as a matter of law kept that reputation decades — and now, even generations — later. Realtors continued to steer buyers to certain neighborhoods to maintain all-White or mostly White neighborhoods. Parties selling or renting properties continued to practice discriminatory behavior and neighbors used social pressure — stares, snubs and even violence — to maintain the racial composition of their areas.

Another legacy is equally important. Today's extreme disparities in homeownership and family wealth have much to do with this history. Laws against housing discrimination came too late. In the decades since the Fair Housing Act, housing prices have exploded. This reality has meant that families with modest incomes who missed the golden age of low-interest loans and mass homeownership (1940-1970), have remained locked out of the housing market in many areas to this day.

Only 45 percent of Black families nationwide enjoy homeownership today, while 73 percent of White families own homes. In Washington state, homeownership rates for African Americans have actually declined in recent decades as prices have soared. Only 31 percent of Black families statewide own a home. In Seattle (King County), that number is only 27 percent.

And being shut out of the golden era of homeownership has had an immense impact on intergenerational wealth — passed down from parents and grandparents to subsequent generations. In 2018, in Seattle, the median home was valued at more than 25 times as much as in 1970. This far exceeded overall inflation and the rate of increase in family incomes (640 percent). A family selling a full-valued home could take advantage of this rocketing market, exchanging one house for another or disbursing housing assets through inheritance. But buying for the first time required a substantial income in this newly booming market.

Historians are working to reveal the extent and impact of racial covenants. In 2021, recognizing the importance of this work, the Washington legislature authorized a statewide inventory of racist property restrictions. The Racial Restrictive Covenants Project — Washington State (of which I am director), has so far identified more than 50,000 restricted parcels. Similar projects are underway in Minneapolis, St. Louis, Chicago, D.C. and a dozen other locations; some, like ours, have been encouraged by state and local governments that are finally paying attention.

And now Washington state has taken another step.

Lawmakers crafted the Covenants Homeownership Act (CHA) to compensate the victims of housing exclusion and their descendants. Recognizing that legal challenges might arise from a race-based law, they wrote the CHA to be “harm based.” It establishes that the state of Washington “was both an active and passive participant” in discrimination that caused financial harm. Then it provides compensation in the form of mortgage assistance (no-interest loans to be put toward a down payment on a home) for families excluded from equal housing opportunities in the years before the 1968 Fair Housing Act.

Applicants must be first-time home buyers with incomes at or below the area median. They must have been Washington residents before 1968 or descendants of someone who was. Because restrictive covenants usually specified “Whites only,” it is presumed that all Black, Asian, Indigenous and Latino families who meet the residency and other criteria will be eligible for a no-interest down-payment loan.

And the size and number of compensation awards will be substantial. Funding will come from a \$100 Covenant Homeownership recording fee that will apply to all real estate transactions. The logic behind the fee is that owners selling properties have benefited from the wealth building opportunities that have been a byproduct of homeownership — opportunities denied to most families of color.

The fee should produce about \$100 million in loans each year, which by one estimate means 2,000 to 4,000 loans, in the \$25,000-50,000 range each year, that will be given to qualifying home buyers to use as a down payment to purchase their first home.

If the program proves successful, it may well become a model for other states and finally begin to undo the damage done by housing exclusion.