Gray Plant Mooty Principal Michael R. Cohen knows that for small and medium-sized business owners, every penny counts. So he'd like to offer some free legal advice.

Gray Plant recently teamed with the state Department of Employment and Economic Development to produce "A Legal Guide to Privacy and Data Security," a free booklet and the latest collaboration between the department and the firm on legal guides for business owners.

“We really tried to write it for non-lawyers, so that when they do talk to their lawyers, they’ll have a better understanding of these issues," said Cohen. “It’s the only guide that I’m aware of that pulls together all the Minnesota..."
were located in far more desirable parts of town than the usual Low Income Housing Tax Credit project. They frequently involved the repurposing of historic old buildings. And the living units were typically smaller and more characteristic of luxury condos than of subsidized housing.

We saw all these really white buildings being put up — we thought it was weird because subsidized housing, at least since the 1970s, has been more or less occupied by non-white people even when it’s built in white neighborhoods,” Orfield noted. “And then all of the sudden there are all these new units which are almost all white. We couldn’t believe it was true. Then we started looking into more and more.”

**POSH digs**

In a provocative new report titled “The Rise of White-Segregated Subsidized Housing,” the Institute on Metropolitan Opportunity coins a new term to describe such non-conventional affordable housing projects: POSH, or “Politically Opportune Subsidized Housing.”

As a prime example of the POSH phenomenon, the report lists one of the most ballyhooed redevelopment projects in recent Minneapolis history — the conversion of the historic Fishtail A-Mill into A-Mill Artist Lofts. With its prime location in the Mississippi River and downtown Minneapolis, amenities that include a yoga studio, rooftop deck, and even its own hydroelectric plant, the A-Mill bears scant resemblance to the typical affordable housing project. That’s hardly a surprise, Orfield notes, given that the A-Mill, with average per unit cost of $665,000 is the most expensive affordable housing project. That’s more per year than their counterparts living in one of the most ballyhooed affordable housing developments.

Under the terms of that settlement, the cities did not admit wrongdoing, but the institute’s report oversimplifies the cities’ defense. More broadly, Moorhouse said the institute’s report oversimplifies the developer aggressively adheres to the requirement to “affirmatively further fair housing” goals because too many affordable housing projects are being located in poor, minority neighborhoods.

Under the terms of that settlement, the cities were not required to do anything about the issue, but they did agree to conduct a long-term study to examine, among other things, whether the cities’ distribution of LIHTC funds does is perpetuating segregation.

Michael Allen, the Washington, D.C. lawyer who brought the complaint on behalf of MICAH, said he “learned a lot from the Institute on Metropolitan Opportunity” report.

“I had no idea the demographics were so drastically different from what I typically see,” he added.

That said, Allen couldn’t speculate about the impact. But under the terms of the settlement with MICAH, the cities must hire an independent consultant to conduct a fair housing analysis, and Allen expects that consultant will consider the report’s findings.

**Developer disagrees**

Dominium, the Plymouth-based developer behind the A-Mill and several other projects, question the

It’s a huge waste of public funds and it’s creating affordable housing — the only affordable housing in white neighborhoods — that’s off-limits to the poor people who really need it.”

— Myron Orfield,
Institute on Metropolitan Opportunity

as non-white, none were headed by individuals over 62, fewer than one in five were individuals with children or suffer from disabilities. That said, Allen couldn’t speculate about the impact. But under the terms of the settlement with MICAH, the cities must hire an independent consultant to conduct a fair housing analysis, and Allen expects that consultant will consider the report’s findings.

**I think my reaction at this point is that when one looks at all the causes of white-segregated housing, subsidized artist loftos are probably extremely low on the list.”**

— Edward Goetz, a professor at the Humphrey School of Public Affairs

**F. Forming a Special Litigation Committee**

A special litigation committee (SLC) is an independent committee empowered by the board to decide whether, and in what manner, a derivative suit should proceed. The Delaware General Corporation Law expressly authorizes boards of directors to adopt special litigation committees as a tool for managing derivative litigation in the landmark case Zapata Corp. v. Maldonado. Other states have similar provisions.

SLCs are an attractive option because a board that has a potentially conflicted majority may be able to appoint independent directors or outsiders who are independent, thereby giving the corporation another chance to show that it is in fact alleging improper conduct. And forming an SLC has the added benefit of allowing the derivative action to be stayed.

Still, Goetz was bluntly dismissive of its overarching claim that artist housing was worsening segregation.

“I think my reaction at this point is that when one looks at all the causes of white-segregated housing, subsidized artist lofts are probably extremely low on the list,” Goetz said. “I sort of beggled my mind that he would focus on that phenomenon and claim that it is an important determinant of white segregation. It’s pretty baffling to me.”

Since the release of the institute’s report, Artspace — a Minneapolis nonprofit developer of artist housing — has also pushed back. In a newspaper op-ed, one Artspace executive said the claim that subsidized artist housing exacerbates segregation is “far removed” from the reality of Artspace’s work.

For his part, Orfield said Dominium, Artspace and others “far removed” from the reality of “Dominium senior vice-president Mark Moorhouse said in a statement. He also dismissed the institute’s speculation Dominium could potentially be held liable for the violating FHA rules, saying the developer aggressively adheres to “all federal and state housing laws.”

More broadly, Moorhouse said the institute’s report oversimplifies a complicated issue. In other words, they looked nothing like most residents of subsidized housing in the Twin Cities. The study found that the A-Mill comported with the study’s broader findings, which examined a total of 27 affordable housing projects built with the Low Income Housing Tax Credit subsidy.

As an A-Mill and five other artist housing projects analyzed, according to the report, 82 percent of the residents were white — a marked contrast from other subsidized housing projects, where white people account for fewer than 30 percent of the population. Residents of the artist housing also earned more than $10,000 more per year than those in a comparable income group and were much less likely to have children or suffer from disabilities.

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