

Disparate Impact

The new phrase of the day in Fair Housing law is “disparate impact.”

In June of 2015, the United States Supreme Court drastically broadened the scope of the Fair Housing Act in the case of *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*

In this case, the Court had to decide if someone could be guilty of racial discrimination despite having never intentionally engaged in actions to discriminate. In a decision that sent shockwaves through the landlord-tenant community, the answer was “YES.”

The plaintiffs in the Inclusive Communities case alleged that Texas was disproportionately allocating too many federal housing tax credits to properties in minority areas and too few credits in suburban areas. Thus, it resulted in keeping minorities out of suburban areas.

There was no evidence in the case that

Texas officials meant to discriminate against anyone.

Instead, the case was based upon a theory that the disproportionate effect of the policy had a “disparate impact” on a protected class. As such, the lawsuit was not only actionable, but essential in order to fight class discrimination.



The Supreme Court bought the argument and the flow of “disparate impact” cases began to be filed in federal courts around the country.

Recently, in Virginia, the City of Richmond settled a Fair Housing case involving the disparate impact of aggressive zoning and code enforcement in a manufactured home park. (See press release on page 2.)

The bottom line is that in many Fair Housing cases, it is no longer necessary to prove intentional discrimination. Training and proper policies continue to be critical for the operation of your community(ies).



Virginia Disparate Impact MH Case First Against Private Landlord

Late last month, four tenants of a manufactured home community in Fairfax County, Virginia filed a lawsuit claiming the park’s policy of requiring proof of legal residence for all occupants of a given home had a disparate impact on Latino families in the community.

This case marks the first time the “disparate impact” theory of liability has been used against a private landlord in the Fair Hous-

ing realm.

According to the lawsuit, the park had a long standing policy of requiring tenants to show identification of legal residency. The lawsuit claims the landlord only recently began enforcing the policy.

MHI reminds all community owners that having while policies are important to risk mitigation, they must be uniformly enforced.

MOBILE HOME RESIDENTS AND CITY OF RICHMOND REACH SETTLEMENT IN DISCRIMINATION LAWSUIT

Future code enforcement to be more responsive to vulnerable residents' needs; language access plan to help City residents access services.

Richmond, Virginia, May 10, 2016 – Thirty-three current and former mobile home park residents have reached a negotiated settlement to their housing discrimination lawsuit against the City of Richmond. The residents, represented pro bono by the Legal Aid Justice Center and the law firm of Crowell & Moring LLP, had alleged that an aggressive housing code enforcement campaign violated their civil rights. Under the terms of the settlement, the City of Richmond will institute policies that will help minimize the displacement of mobile home residents in future enforcement activities and will better serve residents who are not fluent in English.

“This settlement is a positive outcome for our clients and for all mobile home park residents in the City of Richmond,” said Marie Diveley, Crowell & Moring senior counsel. “The City has agreed to take important steps that will not only benefit vulnerable mobile home park residents, but will also ensure that limited English speakers can access City services without unnecessary language barriers.”

The suit, which was filed in federal court in Richmond last August, alleged that the City violated the civil rights of the residents by targeting mobile home parks, where residents are mainly Latino, for aggressive code enforcement with the expectation that scores of vulnerable families would likely be displaced. According to the lawsuit, the City also refused to provide adequate interpretation and translation services for the limited English proficient residents, in violation of federal civil rights laws.

Under the terms of the settlement agreement the City will: work with a non-profit partner organization to assist mobile home park residents in addressing maintenance code violations prior to park-wide inspections; provide notices of code violations and appeal forms in Spanish to residents who are proficient in Spanish but not English; institute a language-access plan pursuant to federal civil rights guidelines and train City employees on their obligations under the plan; arrange for Fair Housing Act training for certain departments of City government; and provide modest monetary assistance to the plaintiffs, for repair or relocation, and to assist more generally with repairs in mobile home parks. With the agreement, the City also acknowledges that mobile homes play an important role in the affordable housing supply of Richmond.

“This settlement is the culmination of a long process of negotiation to address serious concerns on both sides,” according to Phil Storey, the Legal Aid Justice Center’s lead attorney on the case. “We are pleased that the City and the residents were able to reach a mutually agreeable resolution, thanks to assistance from Mark Rubin and VCU’s Center for Consensus Building.”



For more information, questions, or to get copies of past Updates, contact MHI’s General Counsel, Rick Robinson, at rrobinson@mfghome.org.

