



# The Fair Housing Act and Affirmatively Furthering Fair Housing:

A tool to create communities  
of inclusion and equitable  
economic development.---By  
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## Urban Renewal and Revitalization Projects: The journey to economic recovery and development.

- Cities and Municipalities use urban renewal funds to revitalize neighborhoods, cure blighted conditions, tear down dilapidated housing by absent landlords, and develop affordable housing.
- Good thing? (Maybe)



# Gentrification

Gentrification is the process by which higher income people capitalize on decades of disinvestment in the inner city by moving into neighborhoods historically occupied by lower income people and displacing them.



## Community development that leads to gentrification may be a fair housing violation.

- Demolishment of neighborhoods.
- Increase in rents and home values in low and moderate income neighborhoods.
- Actual or imminent displacement of residents
- Eventually original residents are displaced along with their industries that serve lower income people, commercial enterprises, faith institutions and cultural traditions.

# Gentrification is a perfect opportunity:

- For housing advocates and lawyers to promote integration and community inclusion.
- An opportunity to advocate for affordable housing units.
- An opportunity to inform the city/government agency of its duty to affirmatively further fair housing.

# WHY?

- **Affordable housing** becomes scarce, traditionally resulting in displacement as the original residents struggle to afford the increasing rent and face potential eviction. Landlords begin renting to more affluent residents and the entire community begins to change. Amenities such as groceries rise in price, and the lifestyle becomes less and less affordable for original residents.
- **Segregation can occur or continue**, if minorities are pushed out of the neighborhoods and replaced by whites, this trend does nothing to integrate neighborhoods.

# Fair Housing Act

- “to promote the replacement of segregated ghettos with ‘truly integrated and balanced living patterns’ in hopes that this will ‘lead to the reduction of the deleterious effects of ghettos on the employment and education of the Americans trapped therein’ See, e.g., *United States v. Koch*, 352 F. Supp. 2d 970, 976-78 (D. Neb. 2004) (quoting *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972) and 114 CONG. REC. 3422 (1968)



## **The Heart of the Fair Housing Act (federal and state) is...**

- To promote integration and abolish segregated residential patterns.
- To abolish concentrations of poverty in a city.
- To provide economic opportunity for all residents by eliminating discrimination in housing.

# Federal and State Enforcement

- **Federal Fair Housing Act, Title VIII of the 1968 Civil Rights Act**, 42, U.S.C.C. 3601 et seq.
  - 1. Enforced by HUD (AFFH regulations)
  - 2. or program participants receiving HUD funding.
- **State Fair Housing Act-NC**. Gen. Stat. § 41A-1 et. Seq.
  - 1. Modeled by the federal FHA (key provisions)
  - 2. Administered by N.C. Human Relations Commission.

# Housing Discrimination is NOT A THING OF THE PAST.



# When revitalization and new housing is created...

- Housing Advocates and Lawyers need to ensure that the following things aren't happening:
  1. **Racial Steering**
  2. Racially motivated **exclusive zoning**.
  3. That people who are being displaced are being offered fair housing practices and not discrimination.
  4. That people wanting to move in or remain are experiencing fair housing practices and not discrimination. (Testers with the LANC Fair Housing Project)

# [The Fair Housing Act was Created.. ]

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- To end housing discrimination based on 7 protected classes (**race, color, religion, national origin, sex, disability, familial status**) or to end any other actions by individuals or governmental units which directly affect the availability of housing to protected classes.
- To promote diverse, inclusive communities.
- And to ensure that recipients of HUD, government funding, are Affirmatively Furthering Fair Housing (AFFH).

# **Duty Under the FHA to Affirmatively Further Fair Housing.**

FHA requires HUD to “administer [housing] programs...in a manner affirmatively to further the polices of [the Fair Housing Act]” including the general policy to “provide, within constitutional limits, for fair housing throughout the United States.” -42 USC §3608(e)(5).

# COUNTIES AND MUNICIPALITIES MUST AFFIRMATIVELY FURTHER FAIR HOUSING

- 42 U.S.C. §5304(b)(2): “Any grant under [CDBG program] shall be made only if the grantee certifies to the satisfaction of the Secretary that...the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] and the Fair Housing Act [42 U.S.C. 3601 et seq.], and the grantee will affirmatively further fair housing.”

# How can the FHA be a possible tool to stop Gentrification?

- Prohibits **Intentional Discrimination**

forbids “any person in a real estate transaction” to “refuse to engage in a real estate transaction” “because of race” or other protected characteristics. N.C. Gen Stat. §41A-4(a)(1) and Federal FHA’s § 3604(a)

- Prohibits **Disparate Impact**- or policies that have a discriminatory effect.

1. Include zoning laws or decisions.

2. Maybe community improvement decisions that displaced low income minorities because of lack of affordable housing. (maybe)

# 2013 HUD REGULATION DISPARATE IMPACT

- 24 C.F.R. § 100.500; Fair Housing Act's Discriminatory Effects Standard—challenge practices that have “a discriminatory effect or that “create, increase, reinforce, or perpetuate segregated housing patterns.”
- Plaintiff must prove that a challenged practice cause a disparate impact or segregated housing patterns based on protected characteristics. 24 C.F.R. § 100.500(c)(2)
- Burden then shifts to the defendant to demonstrate that the challenged practice “is necessary to achieve one or more substantial, legitimate, non discriminatory interests.” 24 C.F.R. § 100.500(c)(3).



*TDHCA vs. Inclusive Communities*, 135  
S.Ct. 2507 (2015)—

- Housing Advocates were nervous.
- Disparate Impact theory still exists.
- Hallelujah!
- Yet...don't shout or break out the champagne just yet.



# Two categories of disparate impact cases

- **Housing Barrier Cases**—which challenge policies that prevent the construction of housing for minority group members or deny minority households freedom of movement in the wider housing marketplace. (remove housing barrier) *City of Black Jack* case.
- **“Housing Improvement”** cases which challenge policies that are intended to improve the condition of housing and/or the surrounding neighborhood. (prevent a plaintiff’s displacement from existing housing, usually by altering or enjoining the policy meant to improve the housing or neighborhood)—(**harder to prove that community development or improvement does not involve a legitimate goal**) *Magner v. Gallagher*, 619 F.3d 823 (8th Cir.), *Township of Mt. Holly v. Mt. Holly Gardens Citizens in Action*, 658 F.3d 375 (3<sup>rd</sup> Cir. 2011)

# Neighborhoods of Inclusion



# HUD'S FINAL RULE (July 8, 2015)

- Intended to improve the obligation to “affirmatively further fair housing choice” (AFFH)
- Requires HUD to provide each jurisdiction with **national data on racial segregation, poverty concentration, and access to community assets such as education, transportation and jobs in order to facilitate regional planning efforts.**
- *May* make disparate impact theory less important as a tool for combatting government policies that entrench segregation.

[ So, maybe we can have our... ]



# Analysis of Impediments vs. Assessment of Fair Housing.

- Before jurisdictions didn't have to submit their AI to fair housing to HUD.
- Now they have to conduct an Assessment of Fair Housing (using the HUD prescribed Assessment Tool) that has to be reviewed by HUD. Included in participant's 5-Year ConPlan, Annual ConPlan or 5 year PHA Plan)
- Requires public participation in the creation of the ConPlan and the AFH.—meaningful community participation.

# Legal Aid's Partnership with Residents in Rocky Mount, Inc.

- Support economic development and revitalization projects.
- We remind the city of its duty to AFFH, as a recipient of HUD \$\$.
- Any new developments downtown, should incorporate affordable housing for low to moderate income persons.
- Housing Advisory Counsel-to create public participation. NEW AFFH/AFH rule
- Job set asides/Community Benefit agreements, with the developer.
- Use other equitable development tools to achieve fair housing practices.

# CONTACT INFORMATION

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