Disparate Impact

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HOPE Fair Housing Center
HOPE Fair Housing Center

- Established in 1968.
- Headquartered in DuPage County.
- Civil rights organization.
- Non-profit 501(c)(3).
- Multiple programs designed to achieve equal opportunity in Northern and North Central Illinois.
HOPE’s Service Area
ICP v. TDHCA – LIHTC Location
The Federal Fair Housing Act

• Title VIII of the Civil Rights Act of 1968 and the Fair Housing Amendments Act of 1988 together are called the Fair Housing Act (FHA)

• The FHA prohibits housing discrimination based on certain protected classes
The Seven Federally Protected Classes

- Race
- Color
- National Origin
- Religion
- Sex
- Handicap (Disability)
- Familial Status
Note on State and Locally Protected Classes

• Some state and local jurisdictions prohibit housing discrimination based on additional protected classes
• Depending on the jurisdiction, additional protected classes may include
  - Source of income
  - Sexual orientation
  - Age
  - And others

Illinois adds age (40+), marital status, sexual orientation, military status, military discharge status and victims of domestic violence
Types of Discrimination

• Overt
  o Blatant unfair treatment of someone because of their membership in a protected class

• Disparate Treatment

• Disparate Impact
Disparate Treatment

- Application of practices, policies, and procedures in an inconsistent fashion
- May be intentional or unintentional
- Inconsistency in the application of policies and procedures will result in disparate or differing treatment
Disparate Impact

• Policy or practice that may appear neutral on its face but, when applied, has a disadvantageous impact on a group of people protected under fair housing law and the policy is not justified by a business necessity
Disparate Impact Claim

1. Facially neutral practice or policy that
2. Has a disproportionate effect (impact) on members of a protected class
3. The housing provider has the opportunity to provide evidence of a legitimate, nondiscriminatory justification (can’t be hypothetical or speculative)
4. Plaintiffs have an opportunity to demonstrate the existence of a less discriminatory alternative practice that achieves the same objective
Example

• I only want to rent to people with naturally blue or green eyes (no brown or hazel).
• Impact?
Blue/Green Eyes

Brown Eyes
Justification?

• I just find in my experience that people with blue or green eyes pay their rent on time more.
  • Legitimate?
  • Less discriminatory alternative? Maybe get rid of the policy
Disparate Impact Case

- **U.S. v. Luther Burbank Savings (2012) (CA)**
  - $400,000 minimum loan amount policy
  - Disparate impact on the basis of race and national origin
  - Luther must invest in a $1.1 million special financing program, invest in partnerships with community-based organizations that provide credit and financial services
  - Spend $300,000 for outreach to potential customers and $150,000 on consumer education
  - Conduct fair lending training for employees
  - Prohibited from establishing a similar minimum loan amount policy
Types of Disparate Impact Cases

• Exclusionary zoning and other land-use restrictions by local jurisdictions to impede housing
• Urban renewal, code enforcement activity
• Residency preferences
• Screening documents landlords use that include source of income, citizenship status, criminal background?
• Mortgage underwriting standards that result in less favorable treatment of people of color, or neighborhoods of color
• Home insurance standards that impact communities of color
ICP v. Treasury & OCC

- ICP alleges that Treasury and OCC violated their duty to affirmatively further fair housing by knowingly, consistently, and repeatedly allowing and approving investments in LIHTC units that intentionally perpetuates racial segregation. Treasury administers the LIHTC program, and OCC administers the program that prohibits national bank ownership of LIHTC projects unless those investments are designed primarily to promote the public welfare, including the welfare of low and moderate-income communities or families (such as by providing housing, services, or jobs). Neither Treasury nor OCC have any regulations related to the perpetuation or elimination of racial segregation.