

Affirmatively Furthering Fair Housing: Requirements for Local Governments



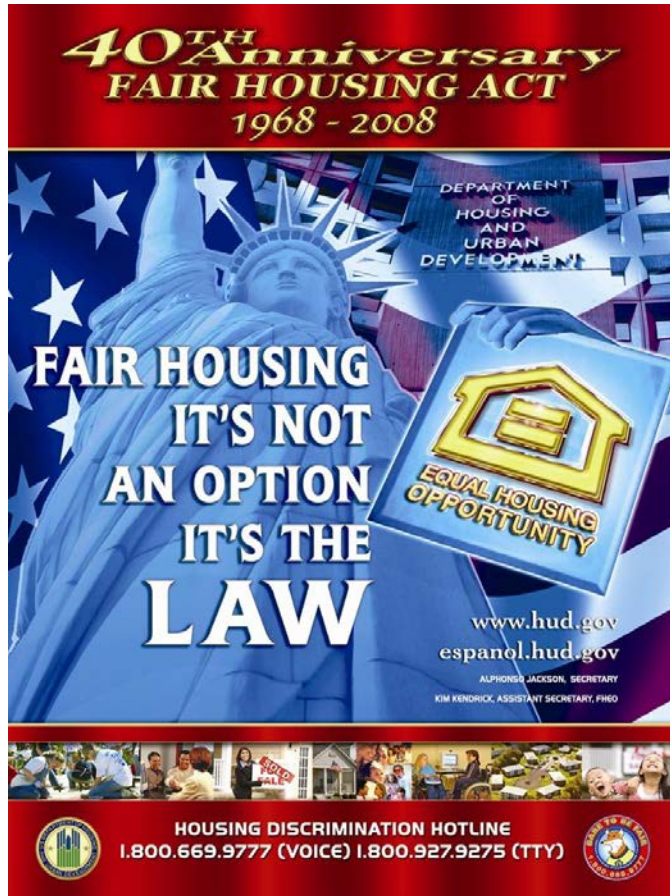
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EQUAL HOUSING
OPPORTUNITY

FEDERAL FAIR HOUSING ACT



- What Type of Property is Covered?
- Who is Protected?
- What Actions are Prohibited?

FAIR HOUSING ACT GOALS

- **Increase housing choice & opportunity**
- **Non-discrimination**
 - Race
 - Color
 - Religion
 - National origin
 - Sex/gender
 - Disability
 - Familial status
 - **Affordable housing (NC only)**
- **Ending segregation (including people w/ disabilities)**
 - Affirmatively Furthering Fair Housing

NC FHA ADDS AFFORDABLE HOUSING AS A PROTECTED CLASS FOR LAND-USE DECISIONS

§ 41A-4(g) “It is an unlawful discriminatory housing practice to discriminate in land-use decisions or in the permitting of development based on..... the fact that a development or proposed development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income. It is not a violation of this Chapter if land-use decisions or permitting of development is based on considerations of limiting high concentrations of affordable housing.”

WHAT IT MEANS

Government bodies involved in land-use planning and regulation cannot refuse approval or otherwise discriminate against proposals *because* they include affordable housing.

- At a minimum, this law covers decisions by zoning boards, planning boards, county commissions and municipal councils.
- Probably also applies to municipal utilities, highway and other transportation planning, and soil and water districts.

FAIR HOUSING APPLIES TO ZONING DECISIONS AND PRACTICES

- **FHA prohibits a broad range of activities, including restrictive zoning.**
- **Zoning Bds, municipalities, and other gov't entities that take actions in violation of FHA will be liable**

REASONABLE ACCOMMODATIONS

- **Changes in “rules, policies, practices, or services when ... necessary to afford ... equal opportunity to use & enjoy” a dwelling**
- **Can require proof of covered disability**
- **Change must be related to disability**
- **Can be requested at any time**
- **Not “reasonable” if “undue burden” on housing provider or “fundamental alteration” of provision of housing**

REASONABLE ACCOMMODATION AND ZONING

FHA mandates that zoning officials “change, waive, or make exceptions in their zoning rules to afford PwD the same opportunity to housing as those who are without disabilities.”

Hovsons Inc. v Township of Brick, 89 F.3d 1096, 1104 (3d Cir. 1996)

REASONABLE ACCOMMODATIONS: EXAMPLES

- Allow nursing home to operate in mixed residential zone
- Waive minimum side yard requirement
- Variance to allow facility for people with disabilities in commercial/industrial district
- Allow 8-person home (vs. 6-person)
- Exception to dispersion requirement



AFFH: HUD OBLIGATIONS

- **Administer programs “in a manner affirmatively to further the policies” of the Fair Housing Act**
 - 42 U.S.C. § 3608(e)(5)
- **Do “more than simply refrain from discriminating;” must also “assist in ending discrimination & segregation”**
 - NAACP v. Sec. of HUD, 817 F.2d 149 (1st Cir. 1987)

AFFH: GRANTEE OBLIGATIONS

- **CDBG grants “shall be made only if the grantee certifies” that**
 - “the grant will be conducted and administered in conformity with” the FHA
 - “the grantee will affirmatively further fair housing.”
 - 42 U.S.C. § 5304(b)(2)
- **Also applies to HOME, ESG, HOPWA, NSP funds**
- **Applies to PHAs**
- **Applies to subgrantees/subrecipients**

AFFH: WHAT HAS BEEN REQUIRED?

- **No regulatory definition of AFFH**
- **Fair Housing Planning Guide Req'ts**
 - Analysis of Impediments to Fair Housing Choice (AI)
 - Take appropriate actions to overcome effects of any impediments identified
 - Maintain records reflecting analysis & actions taken
 - www.hud.gov/offices/ftheo/images/fhpg.pdf

AFFH: WHAT HAS BEEN REQUIRED?

- **Fair Housing Planning Guide (cont'd)**
 - Affordable housing vs. fair housing activities
 - Not enough to build or rehab low/mod housing
 - Where is it being built?
 - Is it contributing to segregation or promoting integration?
 - Primarily symbolic activities not enough
 - E.g. FH poster contests

ADC v. WESTCHESTER

- **County received > \$52 million from 2000-06**
 - Certified that they were AFFHing
- **County AI did not ID any impediments based on race, color, national origin & did not mention housing discrimination or segregation**
- **County Response**
 - Race is not required to be considered
 - Income is a better proxy than race for determining needs

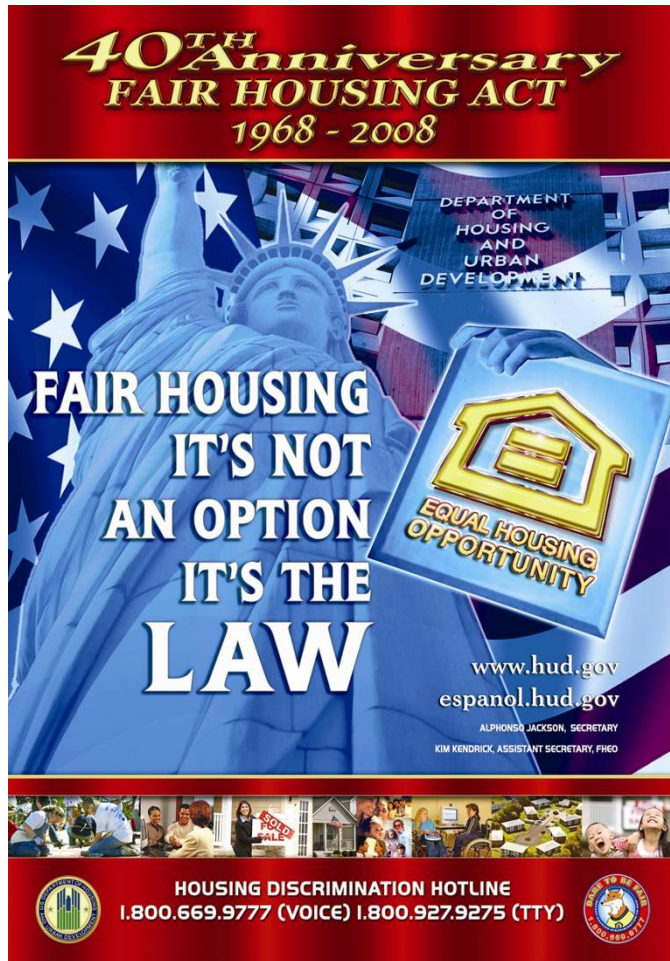
ADC v. WESTCHESTER: COURT RULINGS

- **FHA goal = end discrimination & segregation**
- **Must consider race in AI & AFFH**
- **AFFH is not “mere boilerplate formality”**
- **Must take “appropriate” actions & maintain records**
- **Westchester made > 1,000 “false or fraudulent” certifications**
 - “Utterly failed” to meet obligations
- **Need to consider where affordable housing is placed**

ADC v. WESTCHESTER: SETTLEMENT AGREEMENT

- **County to develop 750 affordable units**
 - 660 in predominantly white cities
 - <3% African American and <7% Latino
- **Conduct new AI to comply w/ Planning Guide**
- **Return \$30 million to HUD**
- **Supply additional \$30 million for integrative units**
- **Pay \$7.5 to ADC/\$2.5 million atty's fees & costs**
- **HUD has withheld additional \$\$ from County for failure to comply**
- **County spent huge amounts of time and money addressing deficiencies and fighting in court**

QUESTIONS?



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This seminar provides general information. For legal advice, please consult an attorney.