

Fair Housing & CPA

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Goals of This Session:

- Provide a framework of the applicable laws for Community Preservation Act Funds
- Provide practical applications of Affirmatively Furthering Fair Housing and Disparate Impact (a.k.a. Discriminatory Effect)

Key Fair Housing Laws

Key Federal statutes:

- ✓ Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended)
- ✓ Title VI of the Civil Rights Act of 1964, as amended
- ✓ Section 504 of the Rehabilitation Act of 1973, as amended
- ✓ Americans with Disabilities Act of 1990, as amended

Key State statutes:

- ✓ Massachusetts fair housing law (M.G.L. Chapter 151B)
- ✓ Massachusetts public accommodation law (M.G.L. Chapter 272, section 98)
- ✓ Massachusetts lead paint law (Chapter 111, section 199A)

Protected Classes of Persons

Federal Fair Housing Act

- Race
- Color
- National Origin
- Religion
- Sex
- Disability/Handicap
- Familial Status; Children

M.G.L. 151B

- Marital Status
- Age
- Sexual Orientation
- Gender Identity
- Military Status
- Public Assistance/
Housing Subsidy
- Genetic Information
- Ancestry

Two Primary Fair Housing Concepts to Know

1. Obligation to Affirmatively Further Fair Housing (HUD Final Rule)

2. Disparate Impact (recent Supreme Court Decision)

- **A.k.a. Discriminatory Effect**

Who is Obligated?

Federal Government



State Government (DHCD) – ALL Programs



Municipality with any Federal or state \$ (CPA)

All housing and Community Dev Programs

Including Community Preservation Act



All programs funded by CPA

Obligation to Affirmatively Further Fair Housing

The concept of furthering fair housing includes:

- The Fair Housing Act's purposes of ending residential segregation, promoting housing choice and eradicating discrimination
- Addressing disparities in housing needs and access to opportunity



Obligation to Affirmatively Further Fair Housing

Affirmative fair marketing and resident selection is necessary and integral to affirmatively furthering fair housing efforts.



Practical Applications of AFFH

- Market to all those least likely to apply. Who is that in your community/region?
- Develop affordable housing on town-owned land
- Include family-sized units in all developments

Local Preference

- Must be approved by DHCD or other Subsidizing Agency
- Only categories allowed:
 - *Current residents*
 - *Employees of the town or a business based in town*
 - *Have children in school system*
- **Durational Residency is never allowed**

Local Preference

- Town must supply Subsidizing Agency with documentation of the need – per Guidelines within 3 months of 40B permit
 - *Documentation must be relevant to the proposed housing*

Helpful website to document need:

[www.housing.ma](http://www.housing.ma.gov) (MAPC)

Local Preference

- Local preference is only applicable at initial pull at lottery
- If initial “winner” does not go forward, replacement is from **open pool**
- Wait list is from **open pool**

Disparate Impact / Discriminatory Effect

Supreme Court Ruling – What does it mean?

A policy, action, or practice can have a discriminatory effect *even if* there is no discriminatory intent.

Disparate Impact / Discriminatory Effect

Three Part Burden Shifting Test:

1. Is it likely that policy or practice will negatively impact members of a protected class?
2. Does the policy or practice have a necessary and manifest relationship to legitimate, non-discriminatory interests, **and**
3. Is there a less discriminatory alternative that would meet the same interests?

Using 3-Step Analysis

A community releases a RFP for town-owned land for a developer to build affordable housing...

1. ...for veterans.
2. ...for a 55+ development.
3. ...for teachers.
4. ...for recent local high school or college graduates.

Disparate Impact: CPA Examples

The town's CPC recommends funding:

- A program for down payment and closing cost assistance that mandates the buyer is a local resident
- Only single-family housing
- Developments in only one section of town
- Senior affordable housing only
- Only developments of townhouses
- Programs that are advertised only in the local paper

MHP's Community Assistance Team

Our Mission: To increase the supply of affordable housing by fostering local leadership and providing technical support to municipalities, non-profits and local housing authorities

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