



Disparate Impact Doctrine in Fair Housing

What is Disparate Impact?

Disparate Impact is a legal doctrine under the Fair Housing Act which means that a policy or practice may be considered discriminatory if it has a disproportionate “adverse impact” against any group based on race, national origin, color, religion, sex, familial status, or disability.

When a policy has a discriminatory effect and it is unjustified or unnecessary, the disparate impact approach says it must be set aside in favor of a policy that is both fair and effective. However, if there is a justifiable reason for the policy and no other policy could achieve the same goal with a less discriminatory effect, the challenged policy will stand.

The Disparate Impact doctrine has been used for more than four decades to ensure that covert discrimination has no place in America’s housing market. All but one federal appellate court have ruled in favor of applying the disparate impact standard in housing discrimination case.

Examples of the Disparate Impact Doctrine in Practice:

- An apartment complex requires that tenants have full-time jobs. This requirement will bar people with disabilities from living in the apartment complex, even though they can afford the rent because of other means of financial support. The complex could instead consider all forms of income rather than just employment.
- A city decides to only approve permits to develop luxury condominiums, and that has the effect of excluding most or all people of color in that region. If the city cannot show a valid reason for its policy, or if a more fair and effective alternative is available, then the policy would have to be set aside under the disparate impact approach.

Despite the strong precedent favoring the disparate impact analysis, on October 2, 2014, the United States Supreme Court agreed to take up the question of whether disparate impact will remain a safeguard against covert discrimination in housing.

In *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, it was alleged that the Texas Department of Housing and Community Affairs (TDHCA) disproportionately allocated tax credits to projects in minority-populated areas, thus also disproportionately denying tax credits to projects in mainly white neighborhoods – in violation of the Fair Housing Act’s prohibition against racial discrimination.

The district court held that TDHCA produced no evidence to show that there were no less-discriminatory alternatives and the judgment was affirmed by the Fifth Circuit. The U.S. Supreme Court is set to hear oral arguments later this month.

This fact sheet was based on the National Fair Housing Alliance publication titled, “Disparate Impact: Safeguarding Civil Rights.” To view this document, please [click here](#).