

The background of the slide features a wooden gavel on the left and a miniature white house with a grey roof on the right, both resting on a wooden surface. The gavel has a brass band around its head. The house has a porch and a chimney.

Governmental Law Seminar

March 2, 2024



FAIR HOUSING & ZONING

Presented by
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Stark County Fair Housing Department
Stark County Regional Planning Commission

AGENDA



Fair Housing Law Overview

What Does Fair Housing Have to do With Zoning

Disability Rights

Reasonable Accommodation

Intentional & Unintentional Discrimination

Discrimination Can Be Costly

A photograph of a spiral-bound notebook with a light brown cover. The words 'FAIR HOUSING ACT' are printed in large, bold, red capital letters on the cover. The notebook is resting on a surface with an American flag pattern, showing stars and stripes. A silver and gold fountain pen lies diagonally across the bottom of the notebook.

**FAIR
HOUSING
ACT**



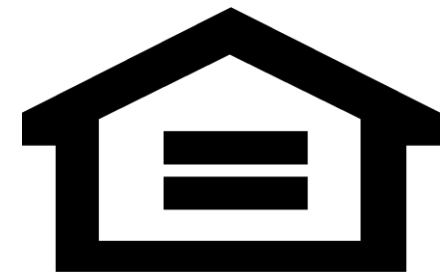
April 11, 1968
President Johnson Signs the
Civil Rights Act of 1968

APRIL PROCLAIMED AS

FAIR HOUSING MONTH

56
year

Commemorating the
Fair Housing Act



EQUAL HOUSING
OPPORTUNITY

7



- ♦ **RACE** (African American, White, Asian)
- ♦ **COLOR** (shade of skin color)
- ♦ **SEX** (gender and persons who experience sexual harassment)
- ♦ **RELIGION** (Christianity, Islam, Buddhism)
- ♦ **NATIONAL ORIGIN** (Mexican, American Indian, Pacific Islander, Alaskan Native, Russian, Chinese, Other)
- ♦ **FAMILIAL STATUS** (Families with children under 18 years old)
- ♦ **DISABILITY** (A person with a physical or mental impairment)

PROTECTED CLASSES

FAIR HOUSING AND ZONING

What does the FHA have to do with Zoning?



WHAT DOES THE FHA HAVE TO DO WITH ZONING?

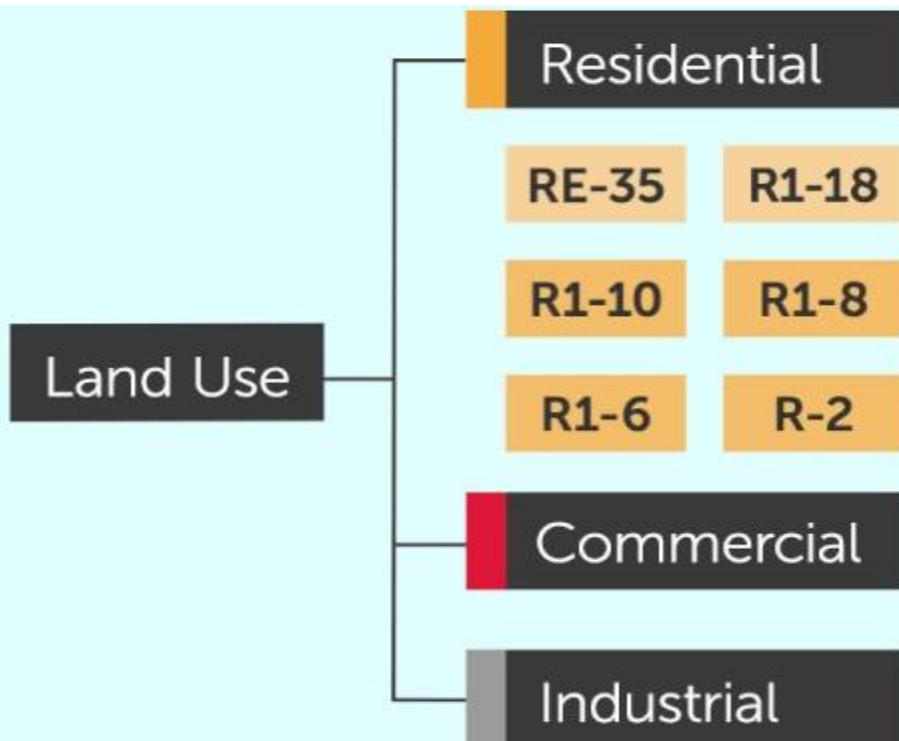


The Act prohibits local government from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.



FEDERAL FAIR HOUSING LAW

- Covers all housing transactions: rental, sales, appraisal, lending, **zoning**, home insurance, advertisement, development, **land use**, etc.



ZONING

- Avoid exclusionary zoning - restrictions based on who will be living there. Is a protected class affected? (Excludes certain types of land uses from a given community, especially to regulate racial and economic diversity).
- Avoid restricting affordable housing because of the disability or race of residents, e.g. Sussex County, Del. (Keeps affordable housing out of neighborhoods through land use and building code requirements).
- Avoid restricting group home, shelters, or supportive housing because residents have mental disabilities.



THE FAIR HOUSING ACT MAKES IT UNLAWFUL TO...

- Enforce an ordinance that require groups of up to four unrelated disabled persons to reside only in certain zones, such as medical or commercial zones, when up to four unrelated non-disabled persons can live in any zoning district.



THE FAIR HOUSING ACT MAKES IT UNLAWFUL TO...

- ❑ Require neighbor notification or a public hearing only for the development of affordable housing or group homes, but not other types of residential development.
- ❑ Take action against, or deny a permit for a home because of the disability of individuals who live or would live there.

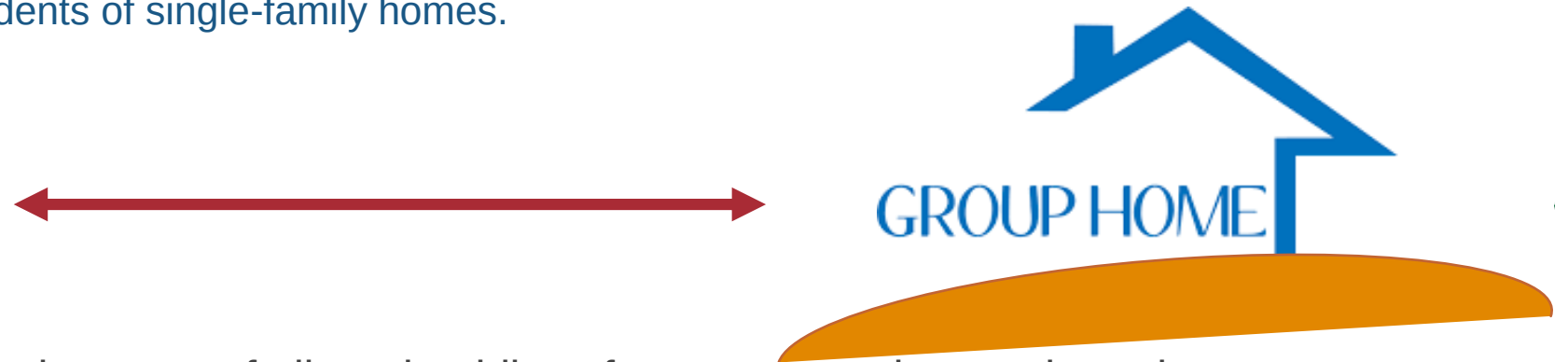
Example: Denying a building permit for a home because it was intended to provide housing for persons with mental illness.



THE FAIR HOUSING ACT MAKES IT UNLAWFUL TO...

- ❑ Impose restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals.

Example: Requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.

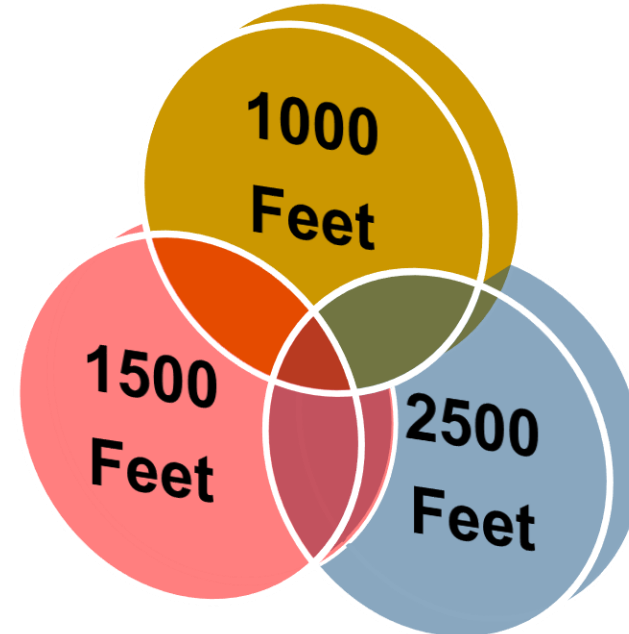


- ❑ Impose restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class.

Example: Requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.

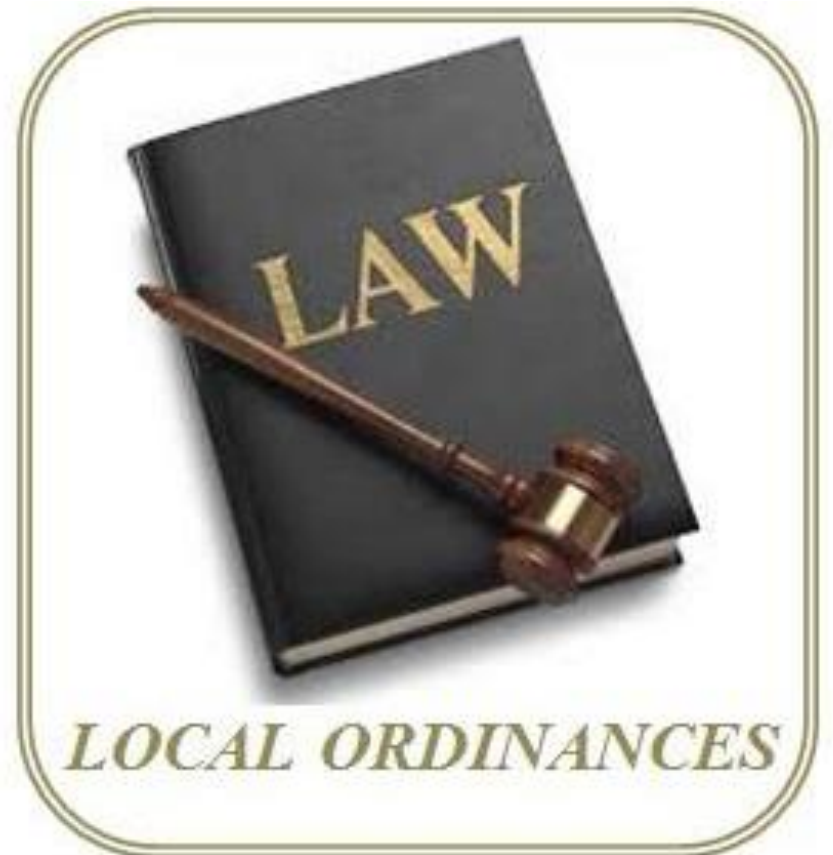
THE FAIR HOUSING ACT MAKES IT UNLAWFUL TO...

- Enforce an ordinance that requires group homes of up to four unrelated disabled persons to maintain a certain distance from other such homes – 1,000 feet, 1,500 feet, 2,500 feet – while groups of up to four unrelated non disabled persons do not have any similar limitation.



THE FAIR HOUSING ACT MAKES IT UNLAWFUL TO...

- ❑ Utilize land use regulations or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons.
- ❑ Refuse to make reasonable accommodations, for persons with disabilities, in land use and zoning regulations, policies and procedures.
- ❑ Enact or implement land use rules, ordinances, policies or procedures that restricts or deny housing opportunities or make unavailable or deny dwellings to persons because they are a member of the protected class.





RIGHTS



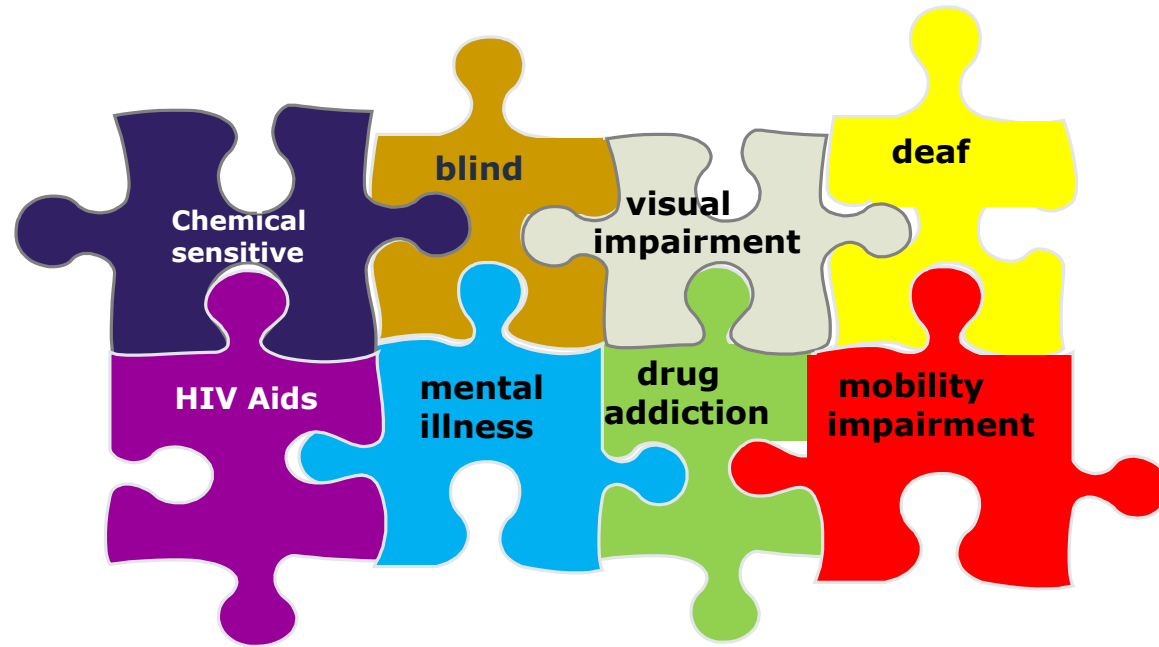
Disability Defined

Federal law defines a person with a disability as:

- Any person who has a physical or mental impairment that substantially limits one or more major life activities;
- has a record of such impairment; or
- regarded as having such impairment.



A PHYSICAL OR MENTAL IMPAIRMENT INCLUDES.....



Reasonable



Disability



REASONABLE ACCOMMODATION

A change, exception, or adjustment to a rule, policy, practice, ordinance or service that may be necessary to afford a person with a disability equal enjoyment of the property.

Four rolled-up blueprints are lying on a table. The blueprints are unrolled at the ends, showing architectural drawings with lines and text. The word 'ZONING' is overlaid in large, bold, black letters. Below it, the word 'And' is in a smaller, bold, black font. Below that, the words 'Reasonable Accommodation' are in a bold, black font. The background is a blurred image of the blueprints.

ZONING

And

Reasonable Accommodation

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

WHAT IS REASONABLE?

Must be practical and feasible

Must not cause an undue financial burden

Must not fundamentally alter the zoning scheme

Must be necessary/essential for use & enjoyment of dwelling



Unless a municipality can prove that an accommodation request is unreasonable according to the above criteria, the municipality must grant the accommodation.

EXCEPTIONS

- Direct threat. The FHA does not require a tenancy that would be a “direct threat” to the health or safety of other individuals, or result in substantial damage to the property of others, unless a reasonable accommodation could eliminate the threat.
- Drug use. The current use of illegal drugs is excluded from the definition of disability.

- Waive setback requirement so resident can install a wheelchair accessible front walk
- Grant exception for group home where an ordinance prohibits more than five unrelated people from living together
- Allow installation of higher fence for individual with mental health disability to relieve anxiety from outside stimulation



EXAMPLES

of

**Reasonable
Accommodations**



Can land-use and zoning laws or practices violate the Fair Housing Act if the locality did not intend to discriminate against persons on a prohibited basis?



Intentional Discrimination vs. Unintentional Discrimination

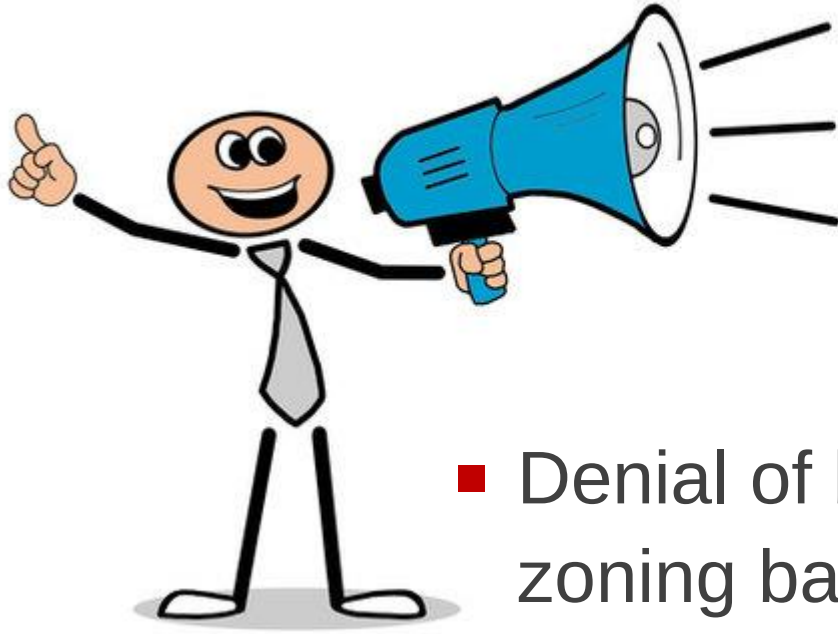
Intentional Discrimination

- Disparate Treatment
- Persons in a protected class are deliberately treated differently.

Disparate Impact

- Use of policy/rule results in having a **discriminatory effect** even if not intended
- It creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic.





For Example!

Intentional Discrimination

- Denial of building, renovation, special use permit or re-zoning based on objections to residents of the development or home
 - Based on race, national origin, familial status, or disability

Example: developer denied zoning to build racially diverse subsidized multifamily housing in white area of town



For Example!

Intentional Discrimination

- Writing discrimination into the ordinance, code, procedure or policy
- Treating a member of a protected class differently than someone who is not a member of that protected class (different treatment because of membership in the protected class)
- Law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits.



FOR EXAMPLE

- State and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that neighbors may have about prospective residents.
- **Example:** A city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class whose presence, the community fears, will increase crime and lower property values.





Path Stone Housing Corp. V. Whitehall Township, PA

Whitehall Township agreed to pay **\$375,000** to settle allegations that Whitehall discriminated Based on race, national origin, family status, and disability when it denied a proposal to construct 49 units of affordable multifamily housing in the Township.

Residents opposed the project complaining that an apartment building would crowd and change the makeup of the neighborhood.

Whitehall Zoning Hearing Board denied the project on the basis that there was inadequate parking.

Disparate Impact

EXAMPLE

unintentional discrimination
discriminatory effect

- Ordinance, policy or practice that is not overtly discriminatory but has the effect of discriminating against people of a protected class
- Ordinance defining the number of unrelated individuals who can live together (discriminatory effect on individuals with disabilities who are more likely to need to live in a group setting with people to whom they aren't related)





For Example!

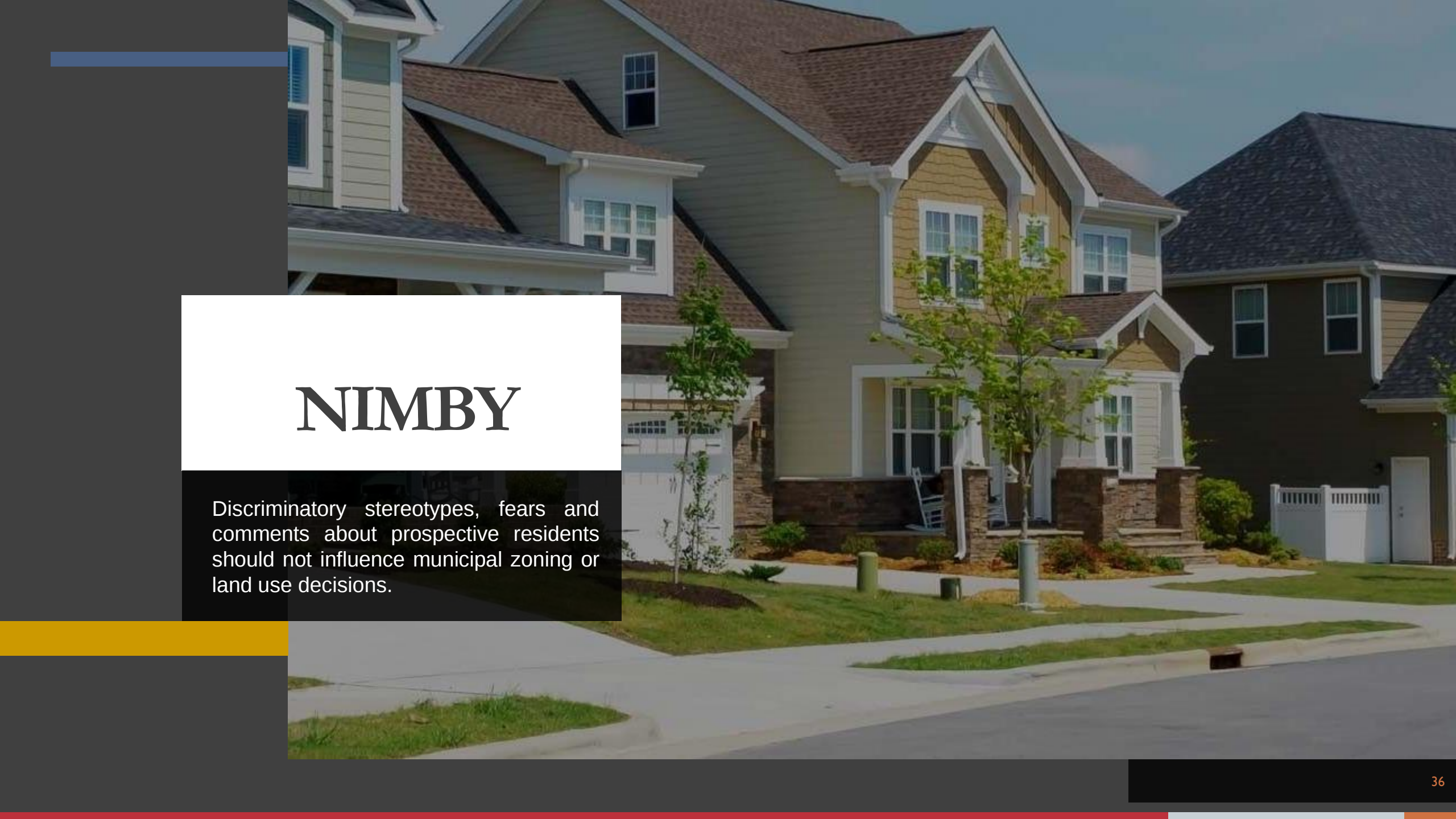
Disparate Impact

Prohibiting low-income or multifamily housing. It may have a discriminatory effect or impact on persons because of their membership in a protected class.



- Burdensome or expensive process for resident to apply for a conditional use (discriminatory effect on individuals with disabilities who are more likely to need to request a conditional use)
- Requiring group homes include only persons who are mobile and capable of exiting a building and following instructions

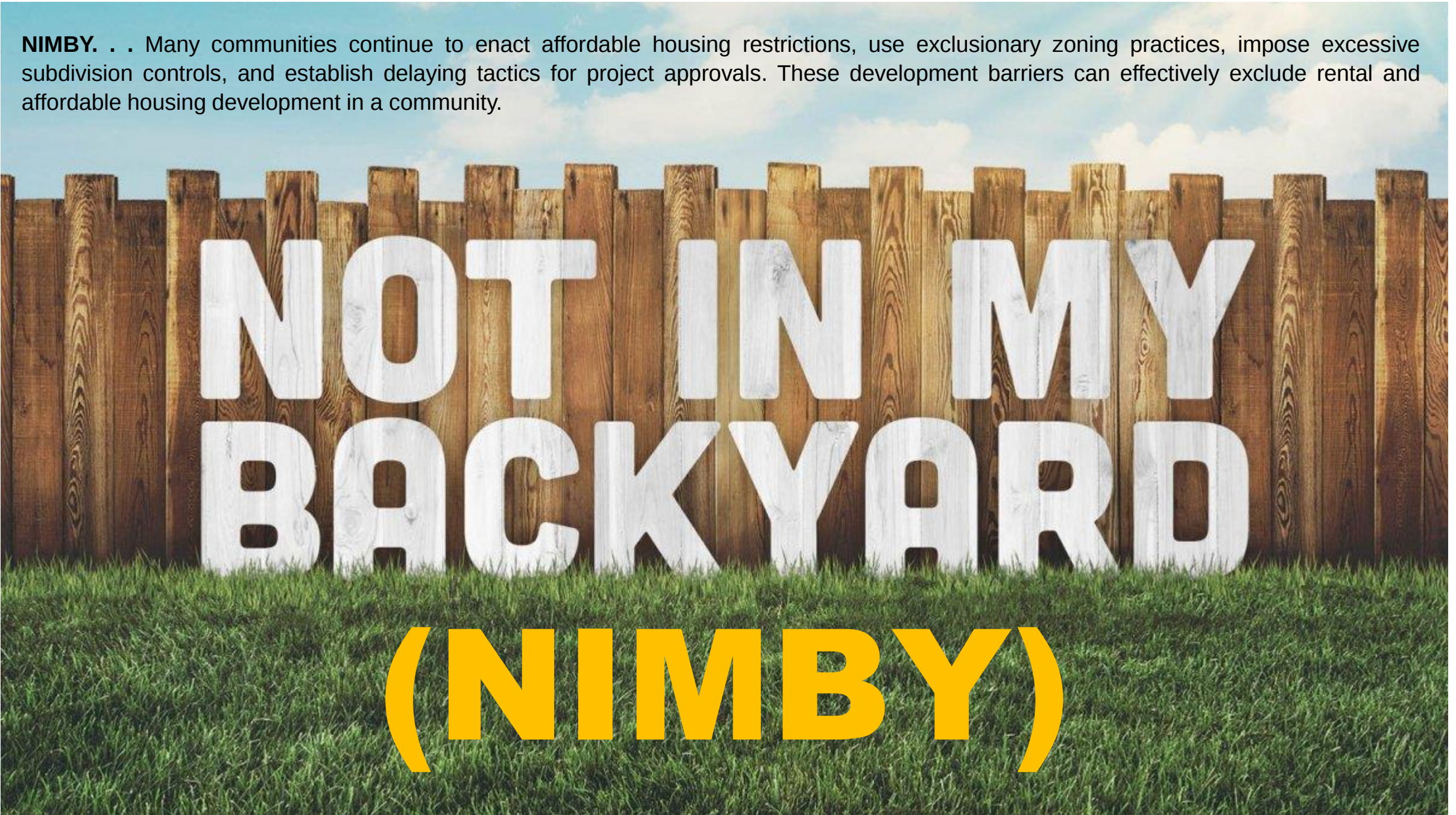
Group 
 HOMES



NIMBY

Discriminatory stereotypes, fears and comments about prospective residents should not influence municipal zoning or land use decisions.

NIMBY. . . Many communities continue to enact affordable housing restrictions, use exclusionary zoning practices, impose excessive subdivision controls, and establish delaying tactics for project approvals. These development barriers can effectively exclude rental and affordable housing development in a community.

A photograph of a wooden fence made of vertical planks, with the words "NOT IN MY BACKYARD" painted in large, white, block letters across its center. The fence is set against a blue sky with light clouds. In the foreground, there is a lush green lawn.

NOT IN MY
BACKYARD

(NIMBY)



WORLD NEWS

Word • Business • Finance • Lifestyle • Travel • Sport • Weather

Cromwell Connecticut

October 2021

Relman Colfax Law Firm obtained a precedent-setting **\$5.2 million** jury verdict in a case involving the Town of Cromwell's discrimination against a group home for men with mental health disabilities. Gilead Community Services, a non-profit serving people with mental health disabilities in Connecticut since 1968, sought to open a six-person home in Cromwell, Connecticut. Responding to the discriminatory opposition of neighbors, Cromwell and three of its high-ranking officials waged a campaign that resulted in the closure of the home in August 2015.





**Discrimination in Zoning
Can Be Costly**

PROHIBITING MULTIFAMILY HOUSING

The Planning and Zoning Commission of Sussex County, Delaware agreed to pay \$750,000 to settle a lawsuit. Based on the assumption that subdivision's residents would be Latino and African-American, the county's planning and zoning commission denied land use approval for a 50-lot affordable housing subdivision.

Discrimination Can Be Expensive





Discrimination based on disability is prohibited under the law. Recovering drug addictions is covered under the Fair Housing Act.

Your Choice! Your Right! Your Home!

DISCRIMINATION IS COSTLY

EXPRESS NEWS

February 2011

Dalton Township, Michigan agreed to pay **\$62,500** to settle a lawsuit alleging that the township discriminated against a group home for persons recovering from drug and alcohol addiction.





New Orleans

WORLD NEWS

Word • Business • Finance • Lifestyle • Travel • Sport • Weather

City of New Orleans, Louisiana

October 2023

Relman Colfax Law Firm filed a lawsuit in federal court against the City of New Orleans, Louisiana on behalf of Stanton Square, LLC, a housing developer. The lawsuit alleges that the Defendants delayed, prevented, and otherwise interfered with Plaintiff's attempts to construct a multi-family affordable housing apartment complex in the City of New Orleans. The apartment complex would help alleviate the need for affordable housing, particularly among African Americans, Hispanics, and families with children. Despite the property at issue being zoned for this purpose, the City Council placed an immediate moratorium on the issuance of permits for multi-family housing. The complaint challenges the moratorium. The complaint also alleges that the City Council's action was influenced by a discriminatory campaign from the English Turn Property Owners' Association and other groups, and that the campaign included coded discriminatory language and negative stereotypes about minorities and lower-income families with children.

DISCRIMINATION IS COSTLY

A case in Toledo resulted in the city paying \$95,500 to settle allegations that they violated the Fair Housing Act by refusing to grant operating permits to two organizations that operate group homes providing assisted living arrangements for elderly disabled residents.



DISCRIMINATION IS COSTLY

DAILY NEWS

MILLION DOLLAR ZONING POLICY

A federal jury awarded \$1 million to an Albany, New York builder who sought to build a development with 50-60 affordable units. Evidence showed the city blocked the builders proposed development and rezoned the site where such a development would be prohibited.

\$\$\$\$\$\$\$\$\$\$\$\$\$\$



- Relief in the public interest
- Punitive damages
- Civil penalties
- Government monitoring
- Attorneys' fees Injunctions
- Loss of tax credits

PENALTIES

for
Violating the FHA





CONCLUSION

IF YOU...

- ✓ impose restrictions on group homes because residents have mental disabilities
- ✓ require additional studies or procedures when considering a development that may be occupied by members of the protected classes (i.e., studies that do not get imposed on other types of development)
- ✓ deny land use approval for affordable housing because of the disability or race of residents
- ✓ require notification or a public hearing **only** for the development of homes which might target protected classes
- ✓ impose restrictions on housing because of alleged public safety concerns that are based on stereotypes



IF YOU...

- ✓ reject a proposed housing development in response to neighbors' fears that certain protected classes will occupy such housing.
- ✓ require group homes of up to four unrelated disabled persons to maintain a certain distance from other such homes
- ✓ refuse to allow an exception or variance to a setback requirement as a reasonable accommodation for a disabled resident
- ✓ delay or temporarily suspend an activity
- ✓ have burdensome or an expensive process for resident to apply for a conditional use
- ✓ refuse to make reasonable accommodations for persons with disabilities, in land use and zoning regulations, policies and procedures

DISCRIMINATION SAYS...

NIMBY



The Fair Housing Law Says...

**Your Choice! Your Right!
Your Home!**

Live Anywhere You Can Afford!



FAIR HOUSING...

IT'S NOT JUST
WORDS,

IT'S NOT AN
OPTION,

IT'S THE
LAW!





OTHER RESOURCE



**JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT AND THE DEPARTMENT OF JUSTICE**

**STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE
APPLICATION OF THE FAIR HOUSING ACT**

<https://www.justice.gov/opa/file/912366/download>

OTHER FAIR HOUSING RESOURCES



- ❖ HUD/DOJ Joint Statement “Group Homes, Local Land Use & the Fair Housing Act”
<https://www.justice.gov/crt/joint-statement-department-justice-and-department-housing-and-urban-development>
- ❖ Reasonable Accommodations Under the Fair Housing Act
<https://www.hud.gov/sites/documents/huddojstatement.pdf>
- ❖ Reasonable Modifications Under the Fair Housing Act
https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf
- ❖ Accessibility (Design & Construction) Requirements for Covered Multifamily Dwellings Under the Fair Housing Act
<https://www.hud.gov/sites/documents/JOINTSTATEMENT.PDF>



Thank You!

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