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Supreme Court decision - Disparate impact

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Dear IREM members & affiliates, In a somewhat surprise ruling, the U.S. Supreme Court upheld the disparate-impact claim against the Texas Department of Housing and Community Affairs (Department), a tax-credit distribution agency for the federal government, by Inclusive Communities Project Inc. (ICP), a non-profit agency that assist low-income families in obtaining housing. ICP asserted that the department had manifested continued segregation patterns by allocating too many tax credits to minority areas over pre-dominantly white areas.

"Relying on statistical evidence, the district court concluded that the ICP had established a prima facie showing disparate impact. After assuming the department's proffered non-discriminatory interests were valid, it found that the Department failed to meet its burden to show that there were no less discriminatory alternatives for allocating the tax credits."

Disparate Impact is derived from the Federal Fair Housing Act (FHA), which was adopted to combat racial segregation in 1968. "Under the FHA it is unlawful to "refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to a person because of race" or other protected characteristic, Â§804(a)." According to the theory of Disparate Impact, certain practices or policies in housing, employment, or other areas which are not overtly discriminatory may nonetheless be discriminatory if they result in an adverse impact on persons of a protected class. As the consequences of the Supreme Court's decision are considered, it is fair to say that HUD will be reviewing its policies. All real estate management companies should review their tenant selection plans and procedures as more information becomes available.

IREM and its members are committed to upholding the highest standards of real estate management practices and legal compliance. If you have any questions, we suggest you consult qualified legal counsel.

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