

PRIVATE ENFORCEMENT OF HUD'S DECENT, SAFE AND SANITARY REGULATIONS

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EQUITABLE DEVELOPMENT INITIATIVE

LONE STAR LEGAL AID

HOUSTON , TEXAS

WHAT IS THE EQUITABLE DEVELOPMENT INITIATIVE?

LSLA's Equitable Development Initiative is a project that seeks to create safe, healthy and affordable communities where people have the opportunity to thrive. It focuses on fair treatment and making sure everyone can participate in and benefit from the decisions that shape their neighborhoods. The project revolves around three initiatives:

- Environmental Justice
- Fair Housing
- Community Advocacy

SECTION 8 PROJECT BASED HOUSING

- Section 8 Project Based Housing is authorized by Section 8 of the Housing Act of 1937.
- “For the purpose of aiding low-income families in obtaining a **decent** place to live and of promoting **economically mixed** housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section” 42 USC sec. 1437f
- Section 8 assistance may be “tenant-based” or “project-based”. In project-based programs, rental assistance is paid for families who live in specific housing developments or units. With tenant-based assistance, the assisted unit is selected by the family. The family may rent a unit anywhere in the United States in the jurisdiction of a PHA that runs a voucher program.
See 24 CFR 982.1(b)(1)

HOW DOES A PRIVATE OWNER ACQUIRE A PROJECT BASED ASSISTANCE CONTRACT?

- HUD may grant assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an Agreement. 24 CFR 983.52
- A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of PHA selection the units substantially comply with HUD's housing quality standards

SECTION 8 PROJECT BASED HOUSING MUST BE DECENT, SAFE AND SANITARY

- HUD housing must be decent, safe, sanitary and in good repair. Owners ...must maintain such housing in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of the HUD housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations. 24 CFR 5.703
- All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. ...The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. ... 24 CFR 5.703(f)



FAILURE TO MAINTAIN DECENT, SAFE AND SANITARY CONDITIONS

- If HUD notifies the owner that he/she has failed to maintain a dwelling unit in decent, safe, and sanitary condition, and the owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the contract, or Regulatory Agreement, if any, including abatement of housing assistance payments (even if the family continues to occupy the unit) and rescission of the sale. If, however, the family wishes to be rehoused in another dwelling unit, HUD shall provide assistance in finding such a unit for the family. 24 CFR 886.323(f)

DECENT, SAFE AND SANITARY CONDITIONS AND COMPLIANCE WITH HAP CONTRACT

- The mandate to maintain decent, safe and sanitary housing for HUD tenants is also a material term under the housing assistance payment contract executed between the property owner and HUD.
- The regulations provide that “the owner shall maintain and operate the project so as to provide decent, safe, and sanitary housing and the owner shall provide all the services, maintenance, and utilities which he or she agrees to provide under the contract and the lease. Failure to do so shall be considered a material default under the contract and Regulatory Agreement, if any.” 24 CFR 886.323

HUD AND ITS DUTY TO AFFIRMATIVELY FURTHER FAIR HOUSING

- HUD has the duty to affirmatively further fair housing under the Fair Housing Act and under its own regulations. HUD's own regulations provide that "a program participant's strategies and actions must affirmatively further fair housing and may include various activities, such as developing affordable housing, and removing barriers to the development of such housing, in areas of high opportunity; strategically enhancing access to opportunity, including through: Targeted investment in neighborhood revitalization or stabilization; preservation or rehabilitation of existing affordable housing; promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and improving community assets such as quality schools, employment, and transportation." 24 CFR 5.150

HUD AND ITS DUTY TO AFFIRMATIVELY FURTHER FAIR HOUSING, CONT'D.

- Court's have analyzed HUD's mandate not only to comply with the FHA but to affirmatively further fair housing. It was most notably examined in N.A.A.C.P. v. Sec'y of Hous. & Urban Dev., 817 F.2d 149 (1st Cir. 1987)
- The NAACP sued HUD based on various acts and omissions related to **HUD's** administration of its Community Development Block Grant (CDBG) and Urban Development Action Grant (UDAG) programs in the City of Boston.

N.A.A.C.P. V. SEC'Y OF HOUS. & URBAN DEV. 817 F.2D 149 (1ST CIR. 1987)

- In 1983, the district court after trial found, as factual matters, that Boston has a history of racial discrimination in housing; that Boston suffers from a shortage of low-income family housing; that a higher proportion of black than white families are renters and a higher proportion of black than white renters are families with children ...that Boston's neighborhoods are racially separate; and that “at least in part [as] the result of the lack of safe, desegregated housing in white neighborhoods” black families find it difficult to move out of black areas.
N.A.A.C.P. v. Sec'y of Hous. & Urban Dev., 817 F.2d 149, 151 (1st Cir. 1987)
- The district court further determined that the city nor **HUD** had sought to obtain or to provide UDAG funds for low-income housing; and that **HUD** had not obtained from the city the assessment of “any special needs of identifiable segments of the lower income population” that **HUD** regulations then required. Id. at 151.
- However, the district court ruled that it could not provide relief on these findings because it did not have the authority to review the “affirmatively furthering” mandate. Id. at 151

N.A.A.C.P. V. SEC'Y OF HOUS. & URBAN DEV.
817 F.2D 149 (1ST CIR. 1987)

- The First Circuit asserted that under the FHA, Congress intended no special private right of action against the federal government. *Id.* at 154
- Court then discussed the substantive claim under the FHA. HUD argued that FHA applied only when “*only* when **HUD** engages in discriminatory conduct.” The Court disagreed.
- It asserted that, “that the court is empowered to order a remedy either for an act or a related omission of the sort here present.” *Id.* at 161. In other words, these claims are reviewable under the APA.

COPPERTREE VILLAGE APARTMENTS- HOUSTON, TEXAS



- HUD funded low income rental housing project
- HUD provides approximately 2.6 million in annual rent subsidies for 263 units
- The complex also receives Low Income Housing Tax Credits from the Texas Dept. of Housing and Community Affairs.

HIGH MINORITY CONCENTRATION AND HIGH POVERTY



- Complex is located in a predominately minority census tract (0% White non-Hispanic; 85% Black and 12% Hispanic)
- 38% of people living within the census tract are living below poverty including 63% of children under the age of 6

OBSCENELY HIGH RATES OF CRIMINAL ACTIVITY

- In 2016, there were 567 calls to local police department. In 2018, that number increased to 767.
- This included 53 calls for shots fired and weapons related disturbances, 54 calls for theft, burglary or robbery and 61 calls for personal assaults.
- There is no gate to the property and the guard shack at the entrance is not utilized.
- This information was detailed in an MOR inspection report.



MOLD IS PERVASIVE THROUGHOUT THE COMPLEX

- The 2018 Management Onsite Review inspection, conducted by HUD's contract administrator cited mold in various areas of the complex.
- Mold is a violation of HUD's decent, safe and sanitary regulations.



CLIENT STORIES

Ms. Potts is an elderly Coppertree Village Apartments tenant. Her apartment is in deplorable conditions. The ceiling has partially collapsed and plaster fragments drop to the floor. A ruptured pipe soaked the unit in water, saturating the carpets and damaging furniture beyond repair. Ms. Potts' electrical outlets malfunction and emit sparks when an appliance is connected. The toilet does not flush properly as the water tank is broken. Ms. Potts is forced to manually operate the tank's mechanism in order to get the water to flush. Black mold is rampant throughout the unit and the smell is so persistent in one of the bedrooms that it cannot be occupied. In addition to the dreadful conditions present within Ms. Potts' unit, she is highly apprehensive about the crime in the area. She has been subjected to two robbery attempts. Both incidents occurred in the evening as she walked through the complex to her unit after arriving home from work. She was able to escape the first incident by running away from her would-be assailant. She escaped the second incident by screaming for help and one of her neighbors assisted her.

CLIENT STORIES

Ms. Winn is a project-based Section 8 voucher recipient and has been a resident of Coppertree Village Apartments since 2017. She lives there with her two-year-old child. Mold has rampantly spread in the bathroom and is present in other areas of the unit. Moreover, she previously struggled with electrical issues within the unit. In the wake of Hurricane Harvey, the electricity did not function in Ms. Winn's unit for a couple weeks. As a result, she left the apartment until the electricity was operating properly. However, when she moved back into her unit, she discovered it was infested with maggots. The maggots were entrenched in the carpets as well as certain areas of the kitchen. She advised management of the issue but they did not respond. Ms. Winn ultimately attempted to kill the maggots herself but has been unable to completely eradicate the problem. Subsequent to the maggot problem, Ms. Winn's unit was plagued with bedbugs. When that issue was reported to management, they stated that they could not identify that problem. Additionally, Ms. Winn feels increasingly uneasy about the criminal activity present in the area. She describes hearing gunshots almost weekly and is often fearful of the possibility of stray bullets injuring herself or her children.

CLEAR VIOLATIONS OF HUD'S DECENT SAFE AND SANITARY REGULATIONS

- Our complaint argues that the conditions at Coppertree Village Apartments, Houston, Texas impose imminent health and safety hazards in violation of 24 CFR 5.703
- The conditions are open and obvious. Also, the owners have had a significant amount of time to cure the deficiencies but failed to do so.
- As HUD has the obligation to provide units that are decent, safe, sanitary and in good repair, HUD has the obligation to make sure that the owners' property are compliant with HUD's housing quality standards. If not, HUD has the obligation to issue housing choice vouchers so that these tenants can find sanitary places to live in safer neighborhoods

PRIMA FACIE CASE OF DISCRIMINATION



- Plaintiffs are Black. Coppertree is located in a 0% White Non-Hispanic census tract. The units are comprised of 87% African American tenants
- The living conditions that adversely affect the Plaintiffs and other Coppertree Village tenants are factors that adversely affect the health, safety, and general welfare of residents

PRIMA FACIE CASE OF DISCRIMINATION

- HUD does provide similarly situated, predominantly White non-Hispanic low income tenants in majority White non-Hispanic census tracts with PBRA housing that is free from conditions that adversely affect the health, safety, and general welfare of the area residents.
- These properties are located in The Woodlands, Texas.
- Not only are the properties free from health and safety issues, but many of the complexes offered numerous amenities to their tenants.
- Use factors set forth in Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252 (1977).



NOTICE OF DEFAULT DUE TO FAILURE TO MAINTAIN DECENT, SAFE AND SANITARY CONDITIONS

- 2018 Appropriations Act provides that HUD may provide tenant protection vouchers for families in units under a Section 8 contract funded under the “Project-Based Rental Assistance” account where the owner has received a Notice of Default and the units pose an imminent health and safety risk to residents. (HUD Notice PIH 2018-09)
- Coppertree Village received two Notices of Default from HUD in October 2018, based on a failing REAC score (31c) and a sub par MOR inspection report.



ARBOR COURT APARTMENTS- HOUSTON, TEXAS



COMPLEX STATS

- Arbor Court Apartments is a U.S. Department of Housing and Urban Development funded low-income rental housing project.
- Project Based Rental Assistance Program (PBRA)
- 232 2-bedroom units
- Tenants pay 30% of income as rent
- Arbor Court lies in a US Corps of Engineers designated floodway. The area is designated to absorb water from the adjacent Greens Bayou during flood events.

Arbor Court flooded twice in the last 3 years, first in April of 2016 and again during Hurricane Harvey in August 2017

<https://abc13.com/home/lawsuit-tax-money-paying-for-apartments-that-keep-flooding/3865659/>





CLIENT STORIES

- Daija lived at Arbor Court with her two children, a 4 year old and a newborn when Hurricane Harvey hit. The family lost everything, including clothes, toys, washer/dryer, crib and furniture. The stayed in a shelter and with extended family for 5 months before returning to the complex. She is currently on the 2nd floor with the children and depended on donations to refurnish her apartment.
- Sharobin has lived at Arbor Court since 2014. Her children were 3 and 8 years old when Harvey hit. They lost all furniture, electronics and the sole family vehicle in flooding in 2016. In 2017 the family lived on 2nd floor at Arbor Court but Sharobin lost the replacement vehicle she purchased when the property flooded again.
- Dinah is 67 years old and disabled. She has lived at Arbor Court for over 20 years. Her first floor apartment flooded in 2016 and she lost all personal belongings. In 2017, the apartment flooded again and Dinah moved in with her daughter who also resides at Arbor Court. She has mobility problems, needs a walker and has difficulty making it to the upstairs apartment. She sleeps in a chair due to lack of space in the unit. Receiving less than \$800 a month in disability benefits, she cannot afford to live anywhere else.

CURRENT CONDITIONS

- City of Houston Fire Marshall red-tagged the property as a fire hazard. City of Houston denied a rebuilding permit so the entire first floor is vacant. All residents and leasing office are currently located on 2nd floor. No permit to rebuild the gutten 1st floor can be issued.
- Property has numerous health and safety hazards:
- Flood plain, poor drainage
- Widespread mold, insect/vermin infestation
- High-crime area

NEIGHBORHOOD CHARACTERISTICS

- Predominantly minority census tract.
- 3% White, 50.5% Black, 44.5% Hispanic
- 48.9% of population lives below poverty line
- 66% of children under 18 live below poverty line

LEGAL CLAIMS

- Projects in predominantly white areas are substantially higher quality
- HUD is violating Fair Housing Act and 5th Amendment
- Federal law prohibits funding of low-income housing that perpetuates racial segregation and does not contribute to housing and community revitalization
- HUD has legal and contractual obligation to provide tenants with decent, safe, sanitary units
- Must comply with housing quality standards and provide housing in good repair
- Must determine whether property owner has failed to maintain property in accordance with required housing quality standards

DISPARATE TREATMENT BASED ON TENANT RACE

- Similar projects in majority white areas are in much better condition
- Majority white complexes are located in safer neighborhoods, low crime rates and with available public community services, including pools, game rooms, tennis courts and event spaces
- Rents are comparable to those at Arbor Court
- White tenants in adjoining suburb live in habitable conditions and are free of flooding

PBRA IN THE WOODLANDS, TEXAS



PBRA IN THE WOODLANDS, TEXAS



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PBRA IN THE WOODLANDS, TEXAS



FOUNDATION FOR CLAIMS

- HUD must “inspect or cause to be inspected the contract units and related facilities at least annually and at such other times... as may be necessary to assure that the Owner is meeting its obligations to maintain the units in Decent, Safe and Sanitary condition, including the provision of the agreed-upon utilities and other services. [HUD] shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.” 24 C.F.R. § 886.323(d).

HUD OBLIGATIONS

- Owner in default of obligation to provide habitable units → HUD must require a remedy. 24 C.F.R. § 886.323(e).
- HUD must provide vouchers, assist tenants in finding a new home and refuse to renew contract with property owner.
- To challenge HUD's renewals of PBRA actions - must show that decision is arbitrary, capricious, an abuse of discretion, not in accordance with law, contrary to constitutional right and short of statutory right.

NO LEGITIMATE, NON-DISCRIMINATORY REASON FOR HUD ACTIONS

- HUD's refusal to provide residents with equal living conditions perpetuates racial segregation in PBRA and Houston
- 42 or 44 PBRA projects in Houston are in predominantly minority census tracts
- The other 2 are restricted to elderly tenants
- This segregation primarily affects black tenants as they form the majority of project residents
- Long history of discriminatory decisions
- Arbor Court was in a flood plain based on a FEMA flood plain map since 1985. HUD entered into a contract in 1991, against its own regulations.
- Property flooded in 2016 and 2017 - still no tenant vouchers

HUD MUST AFFIRMATIVELY FURTHER FAIR HOUSING

- Duties include: address disparities in housing needs and access to opportunity
- Overcome segregated housing and create integrated & balanced areas
- Avoid concentrating low-income tenants in segregated, minority tracts
- Comply with civil right and fair housing laws
- Take meaningful action to overcome history of de jure segregation
- Proactive enforcement of housing laws, including issuing housing choice vouchers to victimized tenants and ending contracts with substandard property owners
- Injunctive relief, attorney fees, assistance with relocation

HOW DO YOU FIND CLIENTS??



- Community organizing
- Allocate a few organizers per complex to really form relationships with the tenants to establish trust.
- Coordinate and keep tenants informed with consistent tenant meetings.

POTENTIAL PITFALLS

- Retaliation against tenants, including minor lease violations up to and including terminations/evictions
- Excessive fees for minor repairs
- Enforcement of previously ignored or obscure lease provisions.



QUESTIONS? COMMENTS?

