

# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

David Jerome Alt  
Attorney at Law  
[David.j.alt@altandassociates.com](mailto:David.j.alt@altandassociates.com)  
[www.altandassociates.com](http://www.altandassociates.com)

Main Office:  
2102 BUSINESS CENTER DRIVE  
SUITE 130  
IRVINE, CA 92612

**June 25, 2015**

## **DISPARATE IMPACT UPHELD BY** **SUPREME COURT**

For those of us who have been following the Disparate Impact saga in the mortgage lending industry for the past several years, that saga is finally over, at least for now. It ends in a clear defeat for the mortgage lending industry from the point of view of cost, risk, liability and uncertainty.

For those of you not quite up on the issue, let us briefly summarize. The issue breaks around claims of disparate impact (discrimination) under the Fair Housing Act (FHA). Overt discrimination is obviously illegal. However, claims of discrimination under the theory of disparate impact are based on the concept that while certain acts are not discriminatory in themselves, never less discriminatory impact may flow from that conduct.

As it relates to the FHA, very little legislative or regulatory language (some would argue none) exists to support the position that the disparate impact should be a part of Fair Lending policy. That in fact, there is no legal authority for applying these policies to mortgage lending.

Today, at 10 am EST, in the case of Texas Department of Housing and Community Affairs vs. Inclusive Communities Project, The US Supreme Court handed down its decision and found sufficient authority in the FHA to support the regulatory policy of disparate impact.

In a 5-4 opinion written by Justice Anthony Kennedy, the opinion found that the Federal Housing Administration must play an important part in avoiding the grim prophecy that our “nation is moving toward two societies, one black, one white—separate and unequal.”

We in the industry will have to continue the search for Disparate Impact in our policies and operations and absorb the risks attendant to failure.

The decisions may be viewed on the SCOTUS website home page under “recent decisions”.

The **Lenders Update** is published via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States.

Only those persons who have personally requested this newsletter are on our distribution list.

SHOULD YOU NOT WISH TO CONTINUE TO RECEIVE THIS SERVICE,  
PLEASE JUST SEND US AN EMAIL TO “OP-OUT” AT:

[special@altandassociates.com](mailto:special@altandassociates.com)

ALSO, SHOULD YOU HAVE COLLEAGUES WHO WISH TO BE ADDED TO THIS COMPLIMENTARY SERVICE,  
PLEASE HAVE THEM E-MAIL US AT:

[special@altandassociates.com](mailto:special@altandassociates.com)

ALT & ASSOCIATES provides regulatory, compliance, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past three decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations.

If you have any questions please contact:

David J. Alt, Esq.

[David.j.alt@altandassociates.com](mailto:David.j.alt@altandassociates.com)

You may view previous issues on our website at:

[www.altandassociates.com](http://www.altandassociates.com)

*Who's Who in American Law*

*Martindale Hubble Pre-Eminent Attorney*