

Housing and Community Development

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Housing and Community Development

Cases and Materials

Fourth Edition

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Dedication

We proudly dedicate this Fourth Edition of *Housing and Community Development* to our esteemed colleague, and friend Daniel R. Mandelker, Howard A. Stamper Professor, Washington University School of Law. His deep interest in the subject, extraordinary professional dedication, and outstanding scholarship have influenced all of us. He has inspired us as a role model and has served as our mentor.

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Preface to the First Edition (1981)

Housing and community development programs present fascinating and complex problems for lawyers concerned with the quality of urban life. This book, the first comprehensive treatment of this field in over a decade, presents a systematic overview of these programs and the policy issues they raise. Its authors have brought to these materials a wealth of personal and academic experience, which they hope will enliven its presentation and encourage their colleagues to consider this important area of public concern.

The core of the book is the central chapters on the key housing and community development programs. Chapter 3 considers housing subsidies, and concentrates on the federal housing programs. The chapter is organized by program type, and covers the extensive rental housing assistance programs and the more modest programs subsidizing home ownership. A subsidy matrix at the beginning of the chapter presents the basic policy choices any housing subsidy program must make, and provides an introduction and focus for the program material. A concluding section examines alternatives to existing subsidy programs, and points the way to reexamination and change. Chapter 7 continues and expands this examination of future policy alternatives.

Chapter 4 examines state landlord-tenant laws, state and local rent controls, and condominium conversion. It also considers the constitutional due process rights of tenants in subsidizing housing. The focus is on the lower income tenant in the housing market, and program strategies that can strengthen his bargaining position and improve his access to rental housing.

Chapter 5 is the key chapter on community development and revitalization. The opening section examines housing rehabilitation and housing maintenance programs undertaken under local housing codes. The next section considers the theoretical framework for community development. It includes discussion of urban blight as the urban redevelopment triggering concept and targeting issues in community development programs. Federal community development and Urban Development Action Grant programs next receive attention, and the chapter concludes with an examination of displacement problems and the federal Uniform Relocation Act.

Chapter 6 examines problems of race and class, focusing on equal opportunity issues arising under equal protection doctrine and the Federal Fair Housing Act. A concluding section considers growth management and environmental control problems as they affect the availability of housing for lower income groups.

Two introductory chapters raise policy and legal problems common to all of the housing and community development programs. Chapter 1 considers the housing deprivation problem, alternative strategies for a social response to this problem, and the "right to housing" as a constitutional and statutory protection of access to housing service.

Chapter 2 discusses the legislative and administrative process through which Congress and public agencies formulate housing and community development policy. This chapter also examines the role of the courts in implementing and reviewing housing and community development programs. A final section reviews intergovernmental relationships between federal and local governments.

The casebook makes numerous references to R. Montgomery & D. Mandelker, *Housing in America: Problems and Perspectives* (2d ed. Michie/Bobbs-Merrill, 1980). This book, a collection of essays and editorial comment on housing and community development policy and programs, provides necessary background material on the issues considered in the casebook. The authors recommend *Housing in America* for assignment along with the casebook materials. Material in *Housing in America* that supplements the casebook is indicated when appropriate.

Teachers faced with time limitations can consider a number of alternatives for assigning the materials in this book. The professor who focuses on the key programs will concentrate assignments in the program chapters. The teacher who wishes to provide a broader overview will concentrate on the first two and final chapters with selected assignments from the program material. Coverage of the principal federal programs is possible if the instructor concentrates on public housing, the subsidized rental housing programs, and the federal community development program.

Only selected footnotes from the cases and other reprinted material have been reproduced. These have not been renumbered. Insertions within reprinted materials have been placed in brackets.

References to statutes and federal regulations appear throughout the casebook. A pocket-part statutory supplement containing the major federal housing and community development legislation is also included. No dates are given for citations to federal and state statutes and to the Code of Federal Regulations. These citations are current as of the date of publication. The casebook authors regularly make assignments to the statutes so that students can explore the statutory detail of federal programs. The teacher whose time is limited may prefer to place less emphasis on the statutory material.

A word is in order on the problem of change in this fast-moving area of the law. While change is inevitable, the essential elements of federal housing and community development legislation enjoy remarkable public consensus. Program detail may change, but the critical issues remain and require resolution by any national administration, whatever the specifics of its program strategy. Program changes that require revision will be covered in supplements and in revisions to the statutory material.

The authors welcome you to this challenging area of social concern. It is filled with critical policy and legal issues which society must continue to resolve in the years ahead.

The Authors

Preface to the Second Edition (1989)

The authors have undertaken the challenge of revising and updating the Housing and Community Development casebook. In doing so the authors have drawn upon teaching experiences in using the First Edition. The book contains the same basic format of the First Edition. It may be surprising to many that the authors determined to shorten the book. Through teaching experiences the authors realized that in some cases the book had more detail than could be effectively handled and which made the book peculiarly susceptible to obsolescence.

The Second Edition is a “core” book. Much of the detail in programs, statutes and regulations—always in a state of flux—has been omitted. Users of the book may wish to supplement its text with handouts of the most recent program detail from the regulations, statutes, or reports from services that report on current developments in the field.

Chapter 1 continues to take a “perspectives approach” to housing and community development matters. It explores major policy issues that frame the consideration of housing and community development issues, problems, and programs.

Chapter 2 looks at the institutional setting in which housing and community development is played out. It considers the way national policy is determined and implemented. It examines the roles of the agencies that implement policy and programs. It analyzes the role of courts as protectors of individual rights and as forums for challenging the execution of programs in ways the advocate believes to be at odds with statutory mandates and constitutional prescriptions.

Chapter 3 continues coverage of major housing approaches, through a Matrix as a principal conceptual and organizing device, and through selected coverage of programs to illustrate attempted solutions. Chapter 3 has been expanded in its coverage of state activity and contains a new section on the role of non-profits in the housing arena. The authors also have included limited treatment of the changes wrought on housing investment and production incentives by the Tax Reform Act of 1986. A cautionary note is in order: the tax material is only introductory in nature.

In Chapter 4 the authors retain material that examines tenant protections and the “consumerism” issues in private, public, and quasi-private “assisted” housing.

The detail with which the Federal community development program is addressed in Chapter 5 has been reduced. Yet sufficient coverage is retained to provide a serious appreciation of the range of possibilities, issues, problems and shortcomings of the Federal programs.

Chapter 6 continues to explore the major problems of access to housing. It examines both governmental duties and limitations as well as protections against discrimina-

tion in the private market. It explores changes made by the 1988 amendments to the Federal Fair Housing Act and some of the intractable issues of attempting to maintain stable racially integrated living environments through various sorts of “managed occupancy” techniques.

Chapter 7, which was entitled: “Policy Alternatives for the Future: Out of the Maze,” has been deleted from the Second Edition. That chapter, as the title suggested, was an attempt to marshal material on possible future directions. Instead, in the Second Edition, coverage throughout the book points to possible future directions—to correct problems in present programs, to make the housing and development effort more effective and complete, as well as, to address problems that are not addressed or not addressed adequately by ongoing programs.

Some of the authors teach the course in a seminar format which allows students to pursue additional depth on the topics covered through individual research papers. Others have taught from the casebook in a regular classroom format, sometimes with the option of student papers which explore specific topics in greater depth for extra credit. Indeed, one co-author teaches the course as a housing discrimination class commencing with Chapter 6, and proceeding through the chapters emphasizing social equity and discrimination issues and applications.

The materials in the casebook are edited for student use. Accordingly, state cases cite only unofficial reporters. United States Supreme Court cases cite only United States Reports. In reproducing cases and other matter, the authors have not noted with elisions when material has been deleted, except in instances when clarity requires elisions, for example, when part of a sentence has been deleted. Also, in reproducing cases and other material, many citations and all string citations have been deleted, except when, in our judgment, the citations were especially pertinent. In a similar vein, most footnotes in all materials have been deleted without notation. When footnotes are included, their original numbering has been retained.

The casebook does not contain reproduction of the statutory or regulatory materials which may be cited, except when a particular excerpt is being discussed. The authors found that it was necessary to reproduce pertinent current materials on a yearly basis at the time the courses were taught to be sure the most current materials were available. The authors commend that course to others. Current materials, both statutes and regulations, can generally be found in the four volume Housing and Development Reporter, published in loose leaf form and updated bi-weekly by Warren, Gorham & Lamont, Inc., 210 South Street, Boston, Massachusetts, 02111. Congressional, executive and other governmental developments are reported on a weekly basis in Housing Affairs Letter, published in newsletter format, by CD Publications, 8555 16th Street, Suite 100, Silver Spring, Maryland, 20910. Periodically, however, resort to current versions of the Code of Federal Regulations will be required. For new, pending or proposed regulatory changes the Federal Register may need to be consulted.

As with the First Edition, the authors continue to welcome you to this challenging area of social concern. The critical policy and legal issues continue to demand attention for the years ahead.

The Authors

Preface to the Third Edition (1999)

Again we have undertaken the challenge of revising and updating the Housing and Community Development text. This Third Edition continues the basic format of prior editions.

Although the exact content that should comprise “housing and community development” as a discipline might be regarded as unsettled, if not unstable, the concept of a “core” book has worked reasonably well for nearly two decades. We continue that concept in the Third Edition. We have continued to emphasize broad themes and to omit much of the detail in programs, statutes, and regulations—which are always in a state of flux. For users of the book who choose to focus on more specific aspects of a policy or program, we still recommend supplementing the text with handouts of the most recent program detail from the regulations, statutes, or reports from services that cover current developments in the housing and community development field.

Chapter 1 continues to take a “perspectives approach” to housing and community development issues, problems, policies, and programs. This chapter highlights some of the basic policy issues that frame the choices that are available to policy makers and advocates.

Chapter 2 examines the institutional setting in which housing and community development is played out. It considers the context in which national policy is determined and implemented. It explores the roles of the agencies that implement policy and programs. It analyzes the role—powers and limitations—of courts as protectors of individual rights and as forums for challenging the execution of programs in ways the advocate believes to be at odds with constitutional requirements or statutory mandates.

Chapter 3 continues coverage of major housing approaches, through a Matrix as a principal conceptual and organizing device, and through selected coverage of programs to illustrate attempted solutions. Chapter 3 has expanded coverage in this Third Edition by adding coverage of the Federal response to homelessness.

Chapter 4 continues to examine tenant protections and the “consumerism” issues in private, public, and quasi-private “assisted” housing. We have added coverage of the intractable and special problems of and response to drug activity in public housing.

Chapter 5 continues to cover the legal and policy origins and underpinnings of community revitalization. It continues to examine the broad outline of the Federal community development program.

Chapter 6 continues to explore the major problems of access to housing, although its title has been changed to “Fair Housing” to more clearly reflect the dominance of the statutory protections against housing discrimination and the concomitant demise of constitutional grounds in the most frequently occurring instances of discrimination. It has

been reorganized to highlight themes of governmental duties, on the one hand, and protections in the marketplace, on the other. It expands the topics to include coverage of protections for families with children, persons with disabilities, and on the basis of sex. Coverage is added on discrimination in financing and lending.

We continue to believe that this “coursebook” is adaptable for diverse course formats: (a) seminars that allow consideration of selected topics through in-depth research papers; (b) writing courses that permit or require additional coverage through the preparation of papers that have varying characteristics; (c) “problem oriented” discussion and analysis small-section courses; (d) regular classroom courses with Socratic dialogue and discussion; (e) specialized courses focussing on a particular or limited set of topics, such as housing programs (emphasizing Chapters 1 and 3), community development (emphasizing Chapters 1 and 5), or fair housing (emphasizing Chapters 1 and 6); as well as (f) interdisciplinary courses, for example, law and planning or law and public policy.

The materials in the casebook are edited for student use. Accordingly, for state cases we cite only unofficial reporters. For United States Supreme Court cases we cite only United States Reports. In reproducing cases and other matter, we have not noted with elisions when material has been deleted, except in instances when clarity requires elisions (for example, when part of a sentence has been deleted). Also, in reproducing cases and other material, many citations and all string citations have been deleted, except when, in our judgment, the citations were especially pertinent. In a similar vein, most footnotes in all materials have been deleted without notation. When footnotes are included, their original numbering has been retained.

When we cite Federal statutes (especially those enacting programs discussed in the book), we have cited the current official reporter—United States Code (U.S.C.), except when otherwise noted. We do not normally include dates on statutory cites unless the date is pertinent to the discussion. For the Code of Federal Regulations we have noted the version that we have cited. Generally that will be the 1998 version, except when historical materials are cited, in which case the date of that regulation is cited. In reprinted cases, articles, and other materials, we have left the citation form as it appears in the original work.

We have not reproduced in the book statutory or regulatory material that we cite, except when a particular excerpt is being discussed. Statutory and regulatory materials change frequently (even when the substance is carried forward—as is frequently the case with the Code of Federal Regulations). We have found that annual preparation of supplements containing current statutes and regulations is advisable to assure that these materials are up-to-date. We recommend that course to others. Current materials—statutory, regulatory, and political developments—can be found in the multi-volume Housing and Development Reporter, published in loose leaf form and updated weekly by West Group, 610 Opperman Drive, Eagan, MN 55123-1396 (800-728-4880). Congressional, executive, and other governmental developments are reported weekly in Housing Affairs Letter, in newsletter format, by CD Publications, 8204 Fenton Street, Silver Spring, Maryland, 20910 (301-588-6380). Periodically, however, one must consult current versions of the Code of Federal Regulations for current program regulations. For new, pending or proposed regulatory changes the Federal Register will have to be consulted.

As with the First and Second Editions, we continue to welcome teachers and students to this challenging area of social concern and political activity. The critical policy questions and legal issues continue to demand attention for the years ahead.

Preface to the Fourth Edition (2010)

The Fourth Edition presents a fresh and comprehensive look at housing and community development law and policy with full coverage of the foreclosure crisis and its aftermath, exploring housing policies and neighborhood revitalization strategies to address the new urban reality. It also discusses the issue of sustainability and the relationship between community development, housing, and climate change. The book contains materials covering housing policy and litigation; tenants rights in the private and public spheres; urban redevelopment, including a comprehensive look at *Kelo v. New London*, including its setting and aftermath; and a completely revised section of the book covering neighborhood investment and revitalization. The materials on fair housing and discrimination reflect many recent debates, including school desegregation, affirmative action, subprime and other variations of predatory lending, and other issues touching on race, class, national origin, gender, disability, and discrimination against families with children.

We believe the edition is being published at the perfect time to debate the exciting current urban, suburban, and rural issues of housing, transportation, and community design and development. The Fourth Edition continues the basic format of prior editions.

Chapter 1 continues to take a “perspectives approach” to housing and community development problems and programs. Special attention is paid to the 2007-2010 housing market collapse and resultant foreclosure crisis, as well as the persistent problem of homelessness and international perspectives on the “right to housing” debate. This chapter highlights some of the basic policy issues that frame the choices available to policy makers and advocates.

Chapter 2, discussing the legislative process, the administration of federal programs, the litigation of housing and community development issues, the intergovernmental workings in the field, including the relation of states, the federal government, and private developers and stakeholders.

Chapter 3 has been reorganized to focus greater attention on responses to the foreclosure crisis and on the distinguishing characteristics of demand side and supply side programs, as well as direct and indirect subsidies. The Matrix of Subsidy Alternatives, which remains the principal conceptual and organizing device for the chapter, has been modified by revising the examples to reflect representative 2010 cost estimates and by adding additional programs such as the Low Income Housing Tax Credit and the newly authorized National Affordable Housing Trust Fund. Major housing approaches are discussed, with special emphasis on federal initiatives. The HOPE VI program, which was introduced in the Third Edition, receives expanded coverage in this edition. State and local programs also are discussed. Emphasis is on current programs, housing policy after the mortgage crisis, and includes governmental policy responses.

Chapter 4 continues to examine tenant protections and the “consumerism” issues in private, public, and quasi-private “assisted” housing. Coverage reflects the intractable and special problems of and response to drug activity in public housing.

Chapter 5 has been substantially expanded in several respects, while retaining its focus on the federal, state and local legal mechanisms by which community development and revitalization activities may enhance and compromise the quality of life in U.S. communities. The chapter attends to two important themes: (1) the vigorous embrace by state and local governments for programs of tax incentives, direct financial assistance, and regulatory relief, by which to promote and capture economic growth, and (2) an equally vital and diverse movement of grass-roots and policy advocates engaged in development projects and policies to assure that low-wealth communities share in direction and resulting benefit from public expenditures for community development. New material in the chapter includes contemporary legal approaches to reclaim depopulated urban neighborhoods; the coordination of public and private investment in urban, rural, and disaster-stricken areas; and a new section on the powers, justifications and contested limits of governmental takings for economic development projects. Chapter 5 concludes with emerging issues in “sustainable community development,” including transit policy, ‘green’ building, and community benefits/equitable development theory and practice. The chapter continues to cover the legal and policy origins and underpinnings of community revitalization. It continues to examine the broad outline of the Federal community development program. The Fourth Edition explores housing policies and neighborhood revitalization strategies to address the new urban reality. It also discusses the issue of sustainability and the relationship between community development, housing, and climate change. The new and extensive materials on urban redevelopment includes a comprehensive look at *Kelo v. New London*, including its setting and aftermath and the dilemma of utilizing redevelopment for economic development goals and its need for densification, brownfield redevelopment, infill development, and the need to modernize transportation. The chapter includes a completely revised section covering neighborhood investment and revitalization.

Chapter 6 continues to explore the major problems of fair housing, reflecting the dominance of the statutory protections against housing discrimination and the concomitant demise of constitutional grounds in the most frequently occurring instances of discrimination. It has been reorganized to highlight themes of governmental duties, on the one hand, and protections in the marketplace, on the other. It expands the topics to include coverage of protections for families with children, persons with disabilities, and on the basis of sex. Coverage is added on discrimination in financing and lending. The materials reflect many recent debates, including school desegregation, affirmative action, subprime and other variations of predatory lending, and other issues touching on race, class, national origin, gender, disability, and discrimination against families with children.

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