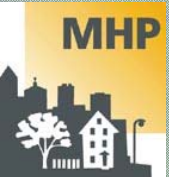




Affordable Housing Trust Training

September 16, 2016



Trust Training?



Massachusetts Housing Partnership

MISSION

Use private investment to bring **more affordable housing** to Massachusetts

- Privately-funded public non-profit organization
- Work with communities, non-profit, for-profit developers

Lending

- Over \$1B for over 22,000 units
- Affordable rental

ONE Mortgage

- First time homebuyers
- Fixed-rate, one-time subsidy

Community Assistance

- Technical assistance
- 40B program

MHP's Community Assistance

MISSION To increase the supply of affordable housing by **fostering local leadership** and **providing technical support** to municipalities, non-profits and local housing authorities

- Direct technical assistance to municipalities, housing authorities and non-profits
- Grant programs to support trainings, 3rd party technical assistance & non-profit collaboration
- Workshops & trainings
- 40B technical assistance grants
- Publications
- Special initiatives & policy



The Importance of Diverse Housing

Housing is crucial to the economic vitality of our local communities, regions and state.



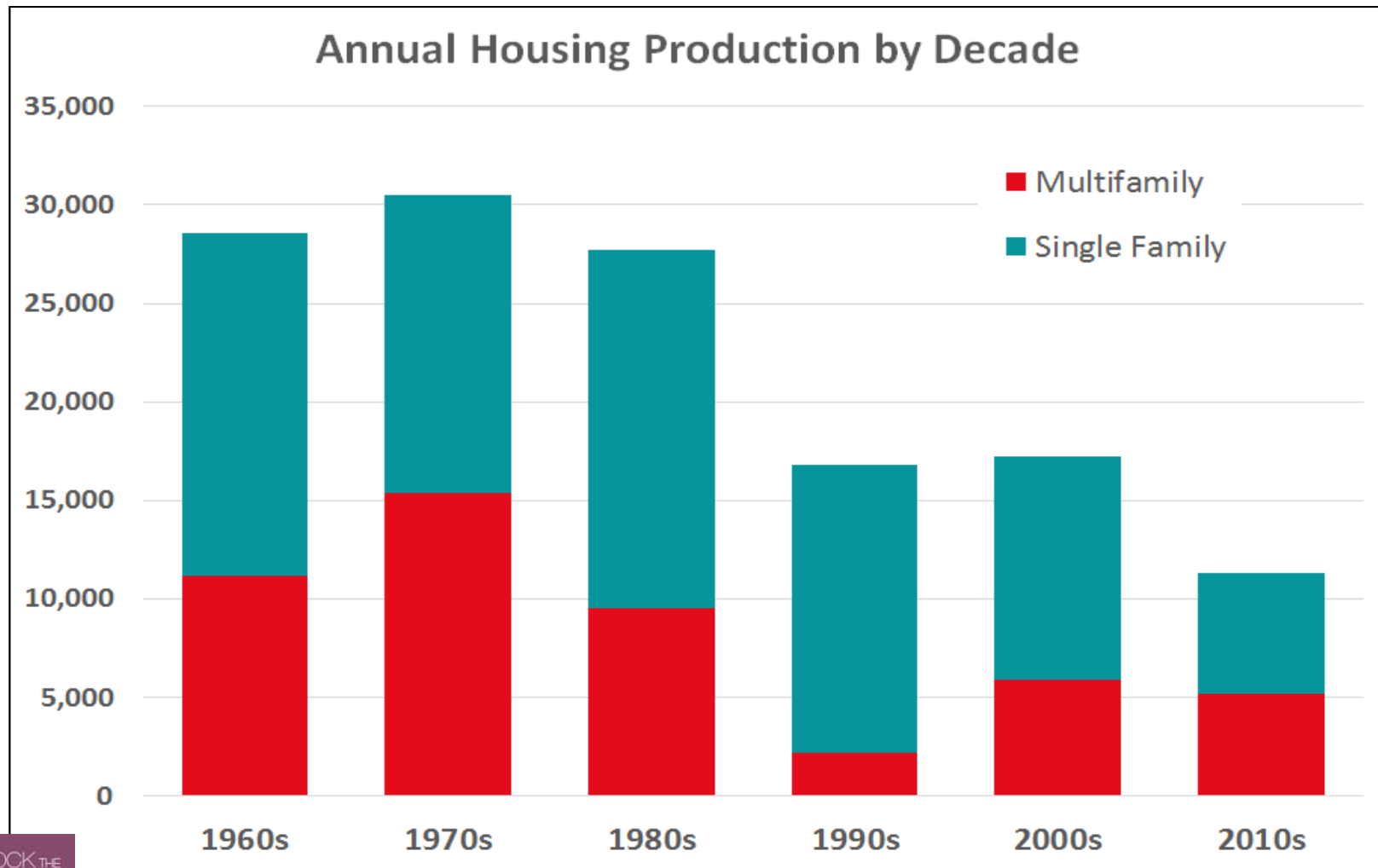
Local
workforce

↓ Traffic/↑
air quality



↑ Jobs/econ
development

We are allowing less housing production now than at almost any point in recent history.



The State of the MA Housing Market

Massachusetts has a total of 2.55 million households

Massachusetts has 1.57 million owners that make up 62% of all households.

Owners have a median household income of \$94,000

Massachusetts has 0.98 million renters that make up 38% of all households.

Renters have a median household income of \$38,000



1.3% ownership vacancy rate

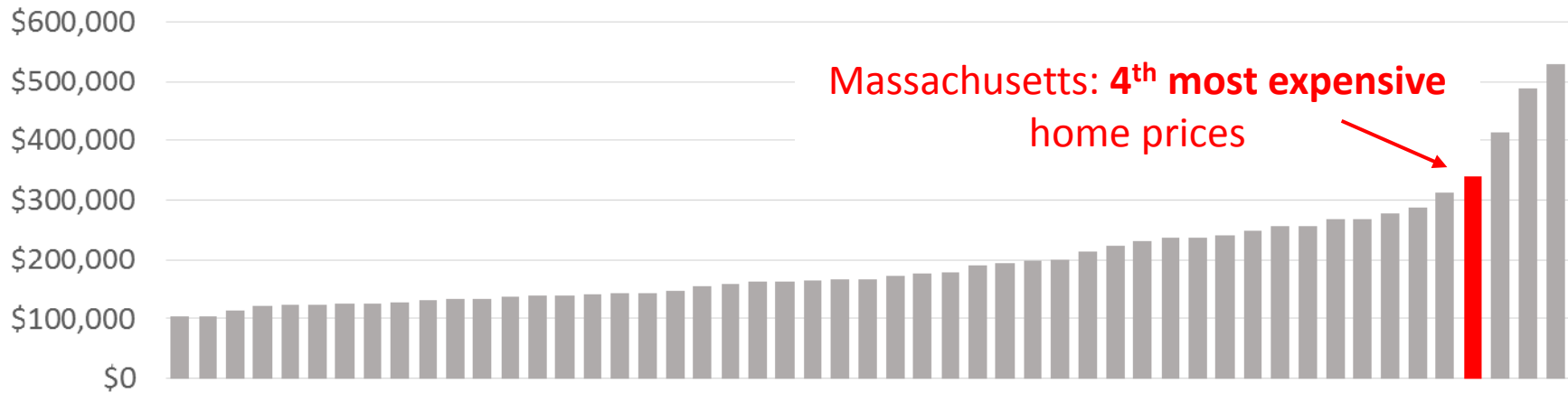
Both markets have extremely low vacancy rates.

4.0% rental vacancy rate

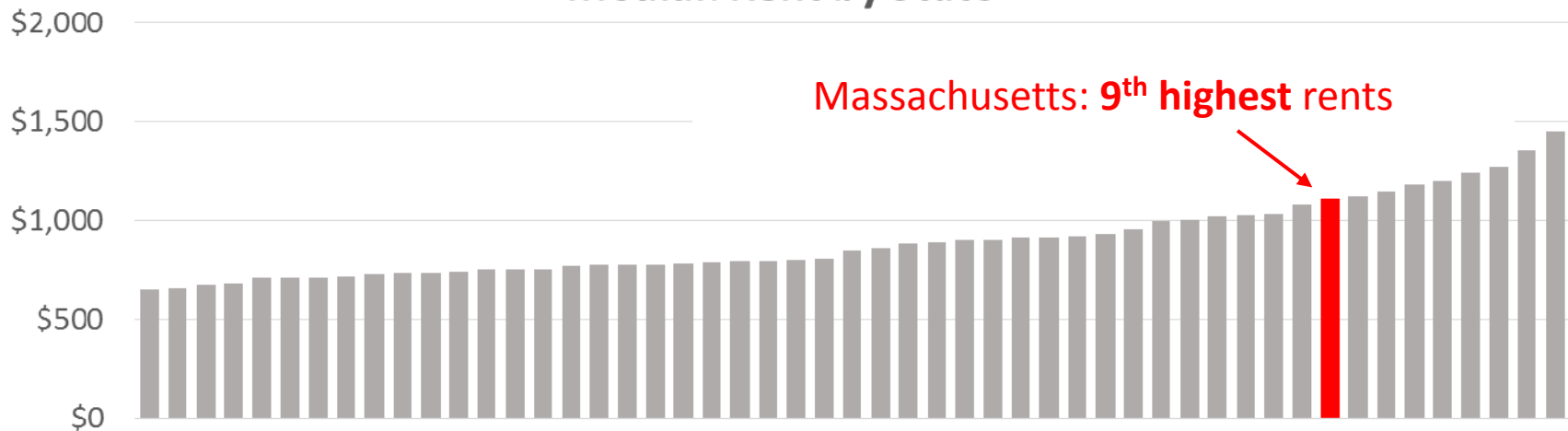
These low rates put upward pressure on housing costs.

Housing Costs Among Highest in Nation

Median Home Price by State



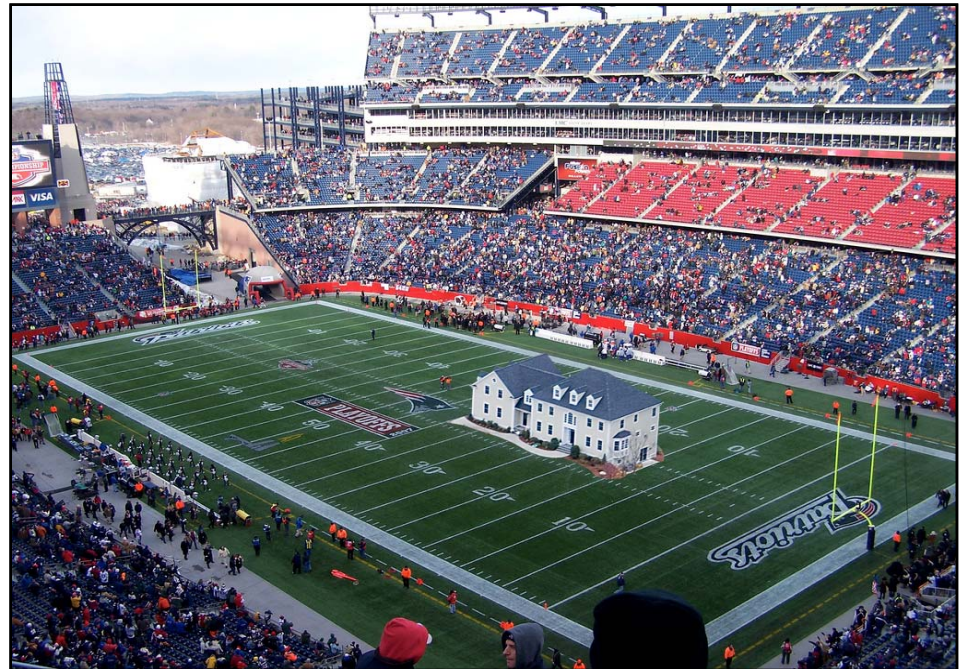
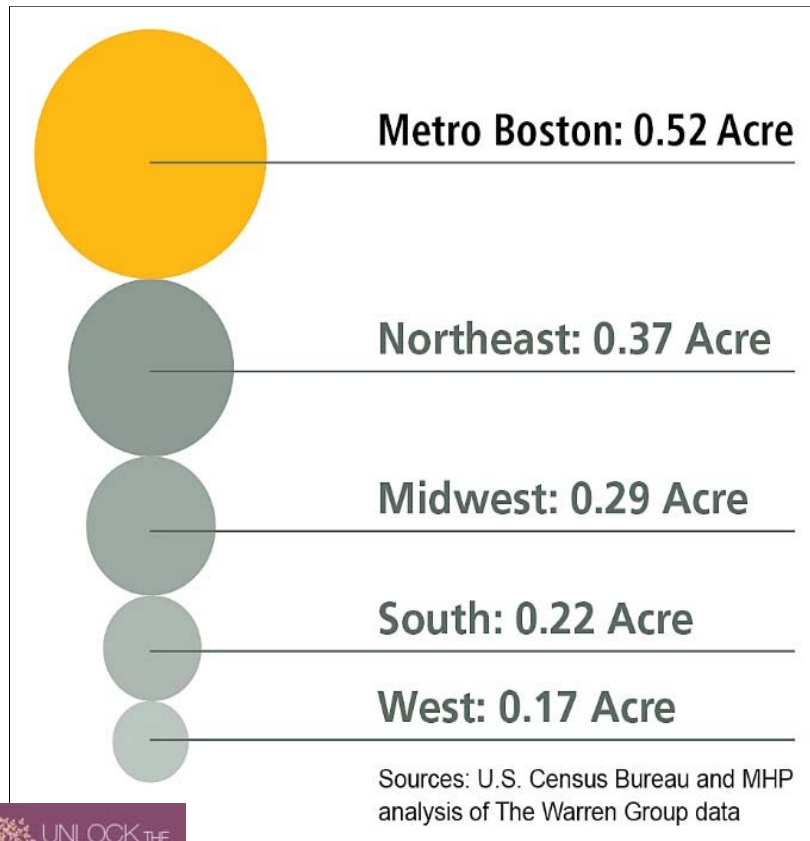
Median Rent by State



Zoning rules and local approval process often make it difficult to build the housing we need.

Greater Boston
median lot size:

Greater Boston
average lot size:



Shifting Demographics

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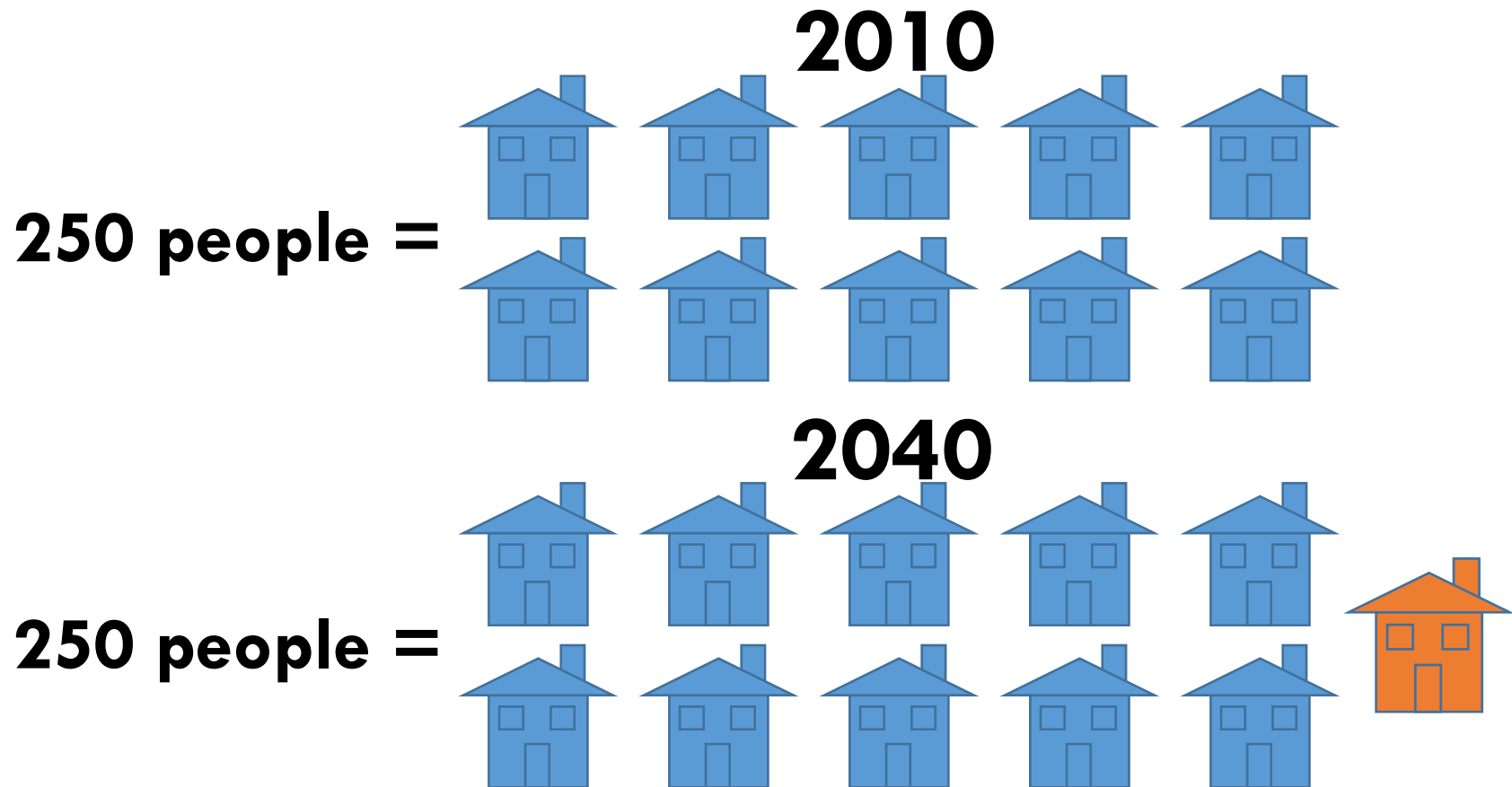
Baby boomer retirements may slow Mass. economic growth

- Baby Boomers comprise 49% of labor force*
- One million workers born before 1970 will retire by 2030 (39% of labor force)*
- Many are choosing to age in place or downsize
- Where will the younger replacement workers that we need live?

*Source: MAPC Population Projections 2014
Headline from Boston Globe, Feb 17, 2016

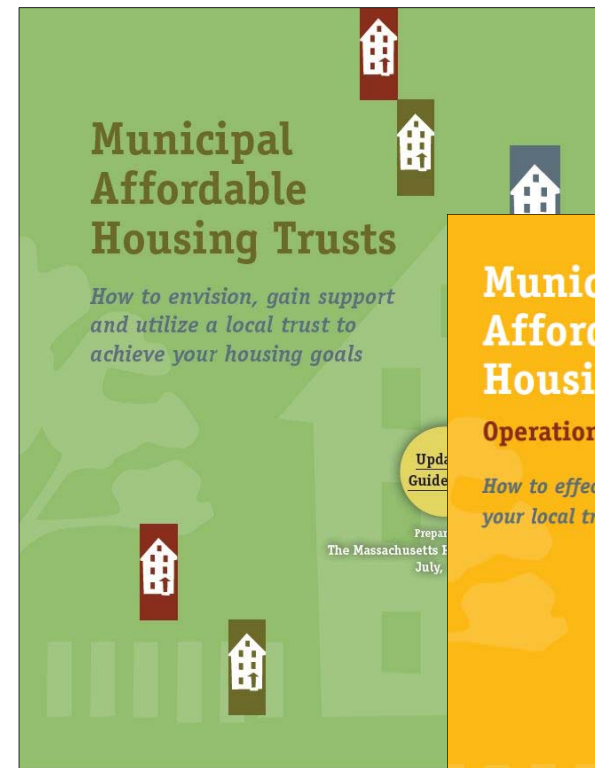
Decreasing Household Size

Same number of residents form more households and will need more housing units



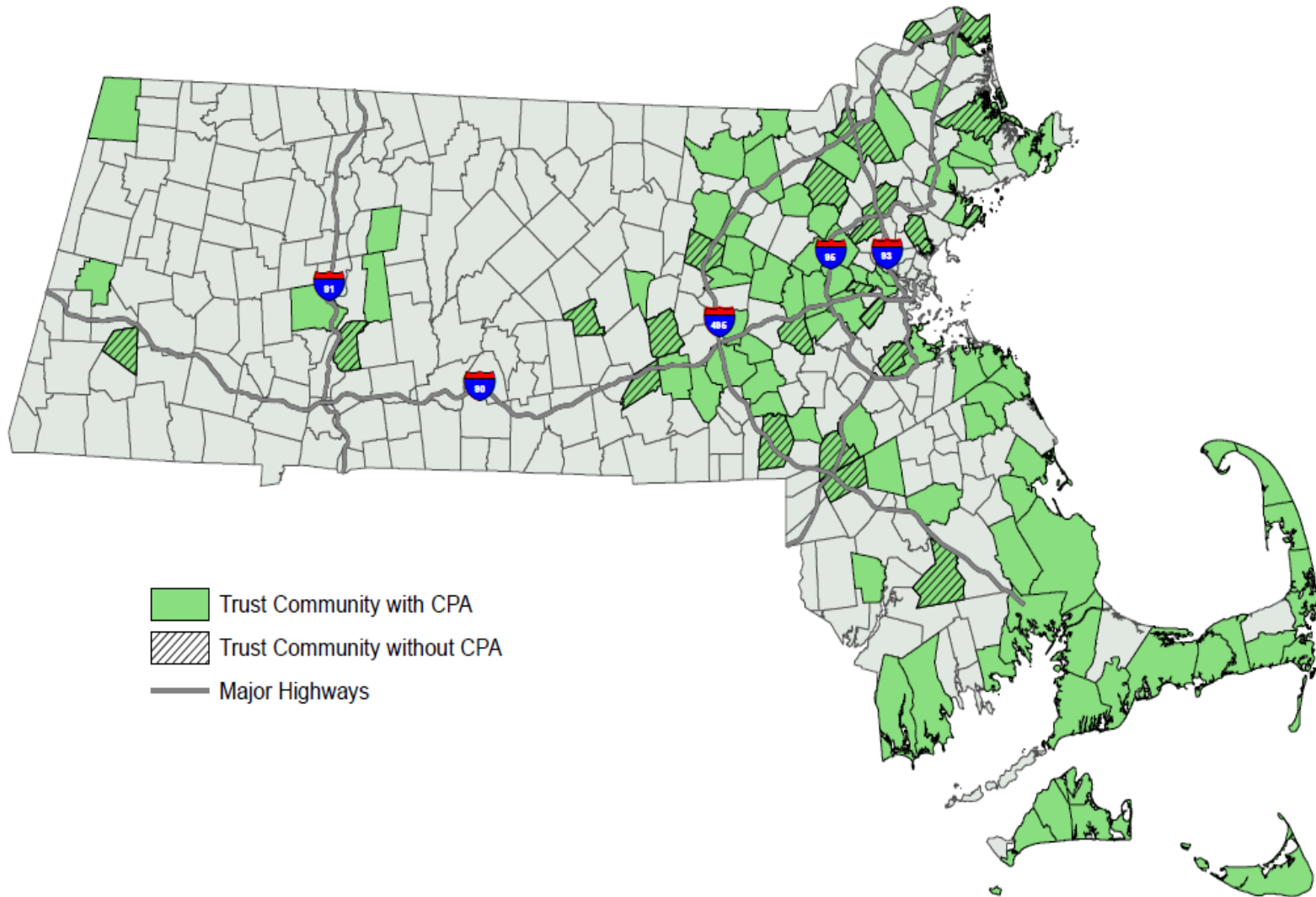
What is a Municipal Affordable Housing Trust (MAHT)?

- Public entity
- Created by local legislative body
- Create & preserve affordable housing
- Led by Board of Trustees



**Subject to public procurement (Ch. 30b),
conflict of interest and public meeting laws**

Trusts Across the State



Trust Statute – MGL Ch.44, Sec 55c

PURPOSE

“...to provide for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households...”

- Limited scope
- Low and moderate income only

Changes to Statute – H. 4565

1. Expands allowable activities for MAHTs to match those of community housing as defined by CPA.

Changes to Statute – H. 4565

2. Clarifies that **all** rules and restrictions of CPA (Ch.44b) **remain in force** after transfer to MAHT.

Changes to Statute – H. 4565

3. Requires trusts to track CPA funds separately and annually account for funds in CP-3 report to DOR.

Changes to Statute – H. 4565

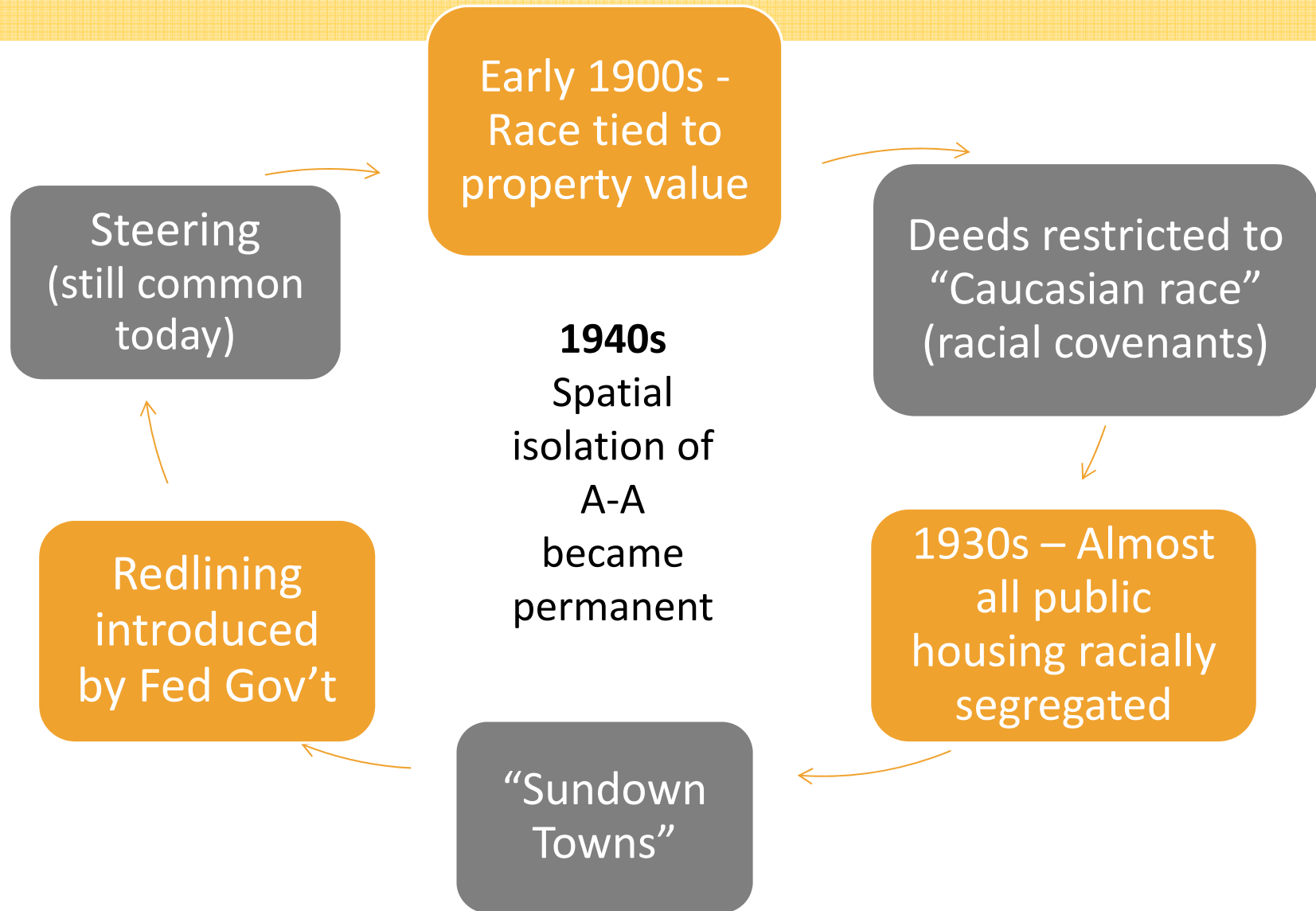
4. Authorizes MAHTs to execute grant agreements.

Trusts & Fair Housing

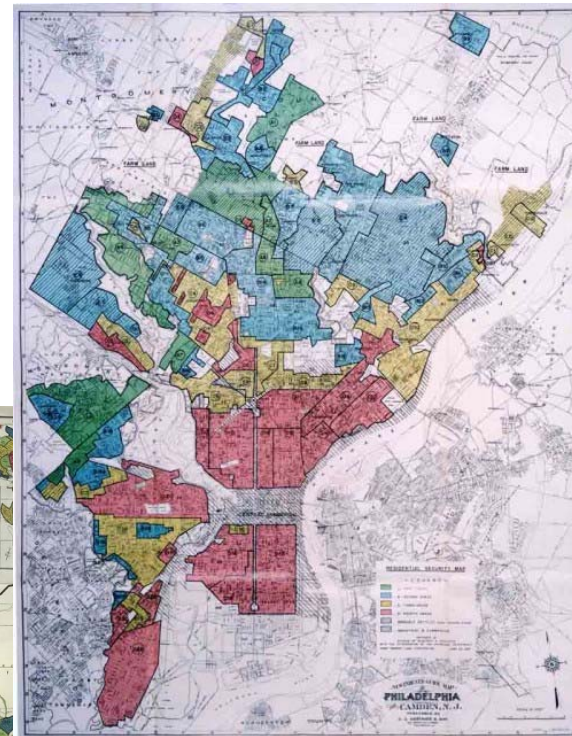
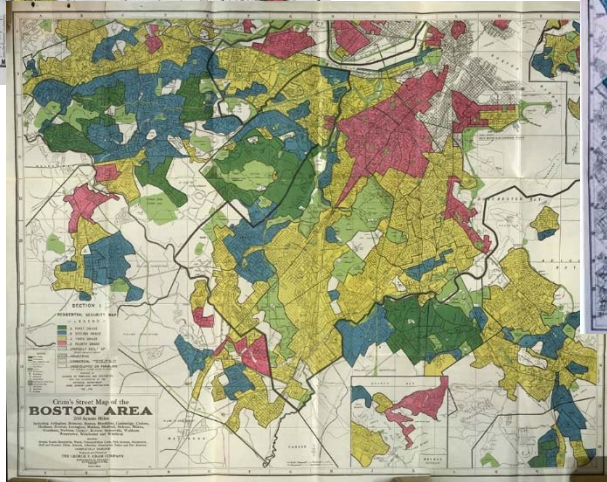
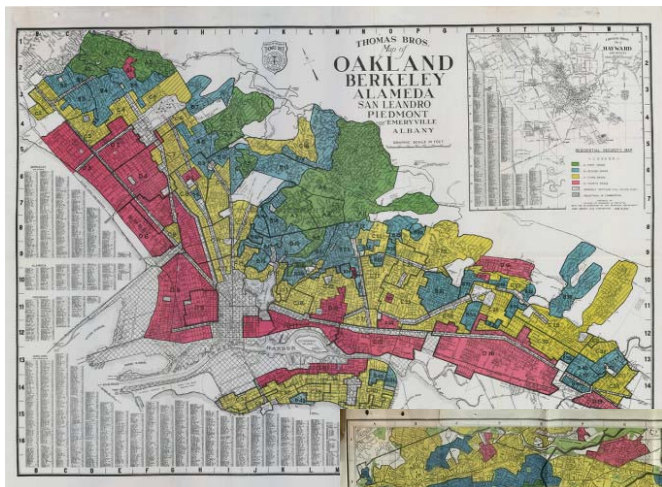


SCAN HERE FOR
MORE INFO

(un)Fair Housing race



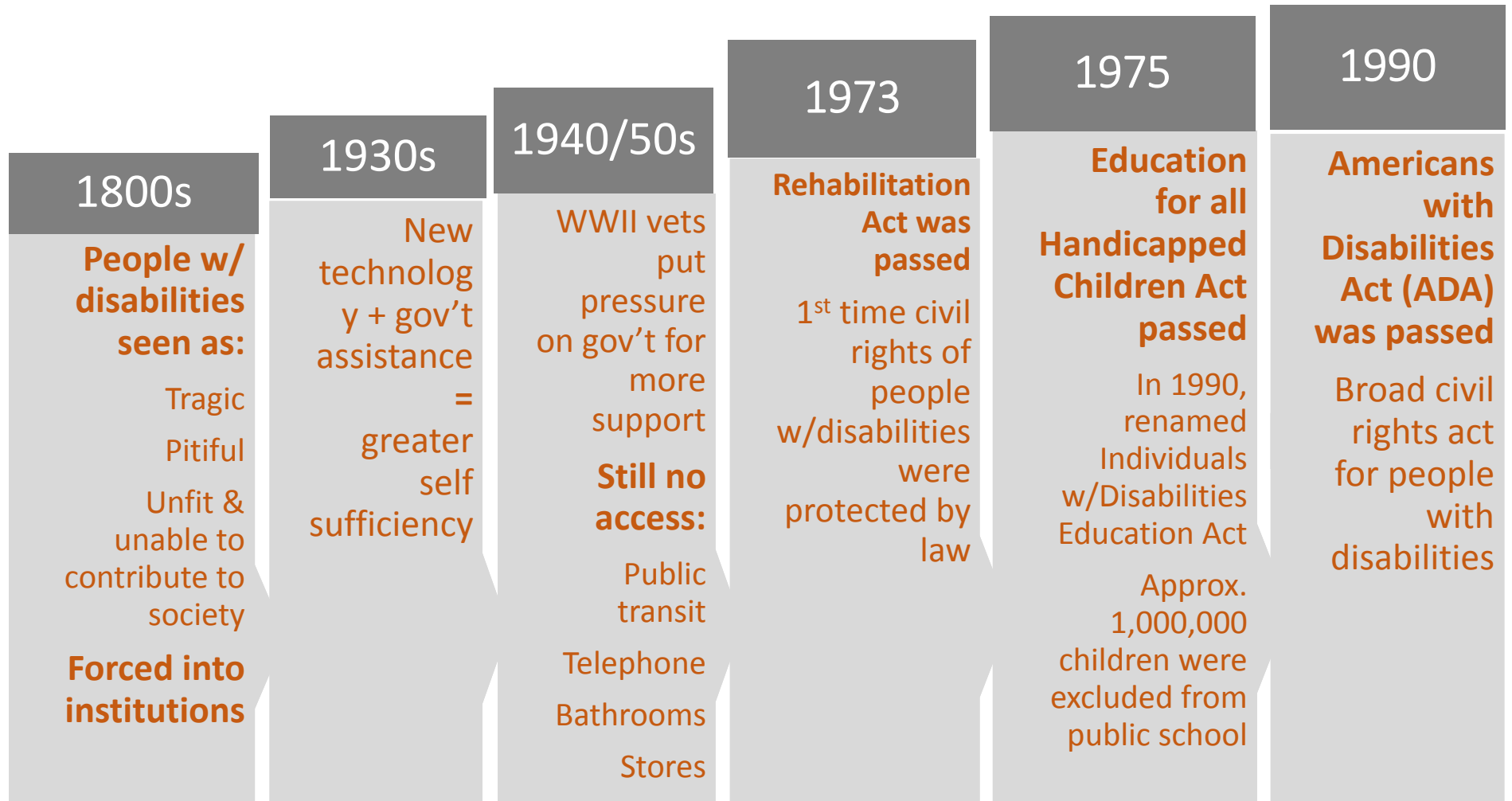
Federal Government institutionalized racism and segregation -- REDLINING



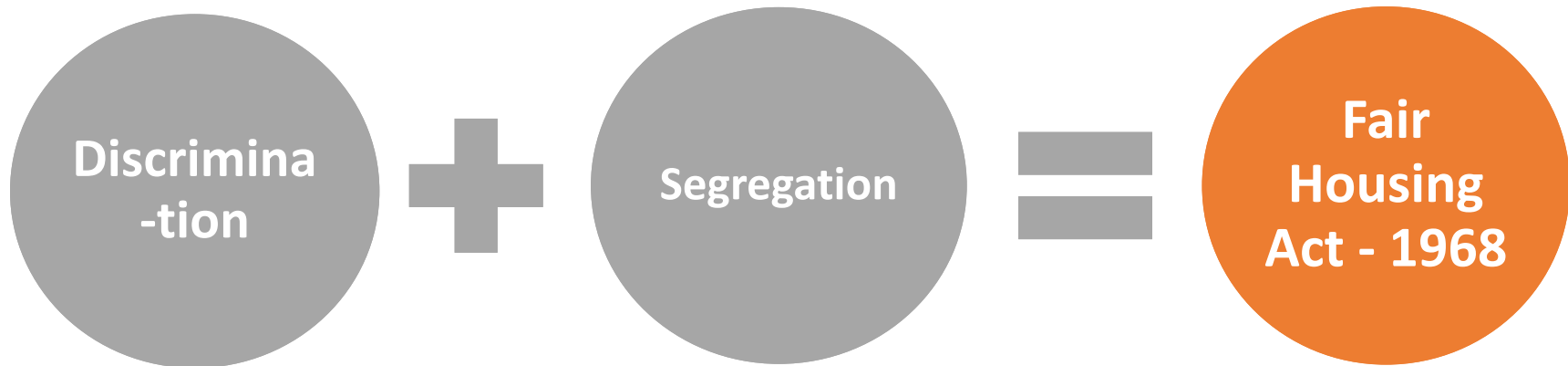
Home Owners'
Loan Corporation



(un)Fair Housing disability



(un)Fair Housing



Policy efforts to reverse discrimination

1968 Federal Fair Housing Act

1969 MA Chapter 40B

1977 Community Reinvestment Act



What housing is covered?



Exempt in some cases:

- Owner-occupied buildings, up to 4 units
- Single family sale or rental w/o broker
- Housing operated by organization or private club w/occupancy limited to membership

Two Primary Fair Housing Concepts



Disparate Income

“Discriminatory Effect”



Affirmatively Further Fair Housing

Obligated to FH

Discriminatory Effect Rule

Three Part Burden Shifting Test

Is it likely that policy or practice will negatively impact members of a protected class?

Is the policy or practice necessary to achieve substantial, legitimate, non-discriminatory interests?

Is there a less discriminatory alternative that would meet the same interests?

Disparate Impact

- Local plans or zoning bylaws prioritize studio and 1-bedroom units, restricting the number of bedrooms by unit rather than by development or lot.
-
- A town is predominately white and decides to advertise new affordable housing units with flyers at the local library, community center and Town Hall.
-
- Planning or zoning that mandates or prioritizes townhouses.

Key Case on Disparate Impact

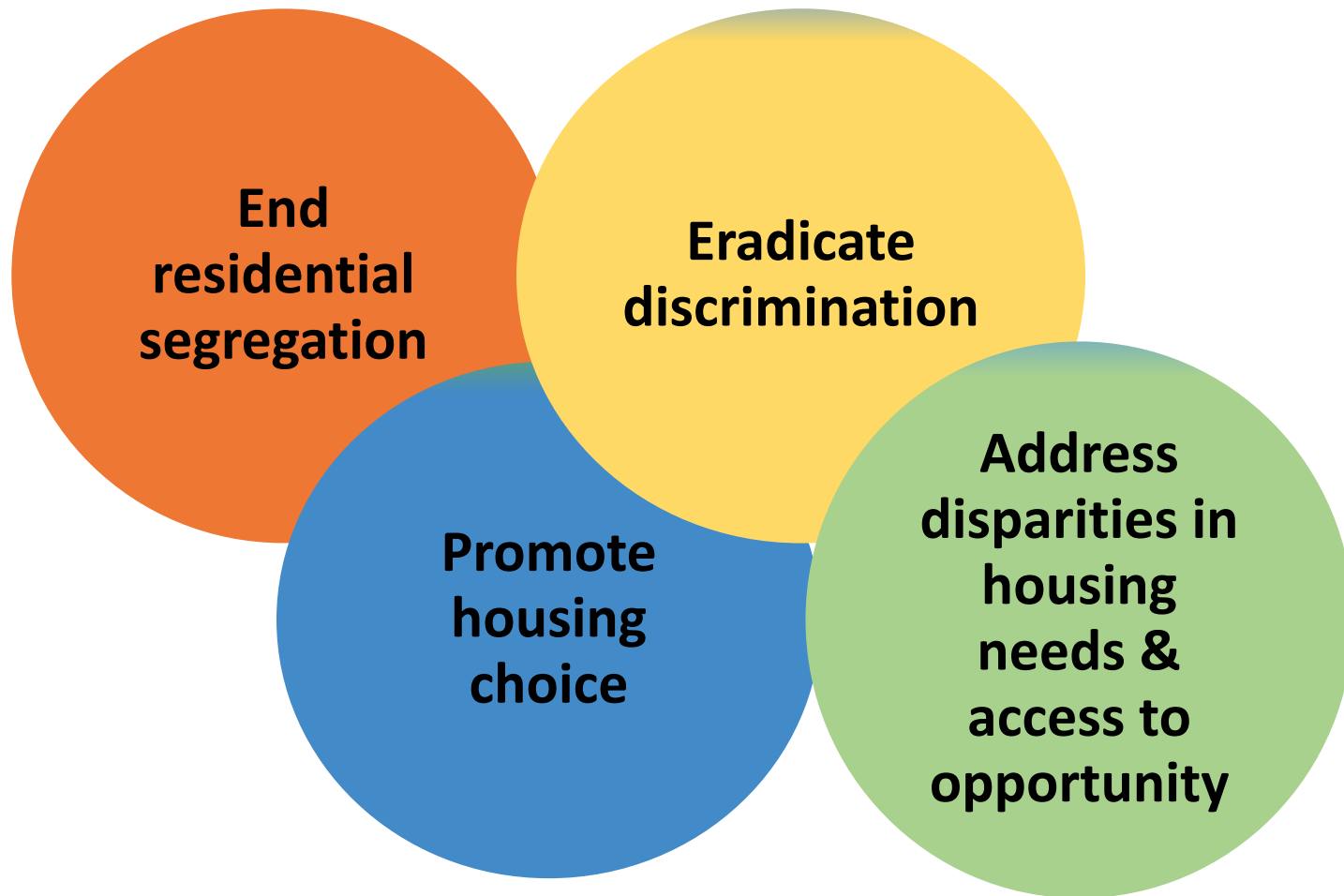
Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc. (2015)

- Texas' allocation of Low Income Housing Tax Credits in racially and ethnically concentrated areas, causing disparate impact on racial/ethnic minorities – Supreme Court upheld the disparate impact theory of discrimination under FHA.
- The Supreme Court noted that the FHA recognizes disparate impact and that the purpose of the FHA “was ... to eradicate discriminatory practices within a sector of our Nation’s economy.”

***Texas Department of Housing & Community Affairs
v. The Inclusive Communities Project, Inc. (2015)***
(continued)

- The court specifically identified “**zoning laws and other housing restrictions**” as “unfairly ... exclud[ing] minorities from certain neighborhoods without any sufficient justification” as a core example of disparate impact and a practice that the FHA sought to prevent.
- If the defendant offers a legitimate business justification, a plaintiff must prove that “there is ‘an available alternative ... practice that has less disparate impact and serves the [entity’s] legitimate needs.”

Obligation to Affirmatively Further Fair Housing



How to Affirmatively Further FH



Affirmative Fair Marketing

- Follow DHCD's marketing & resident selection plan guidelines
- Market to those least likely to apply

Zoning

- Consider ways that zoning may be creating disparate impact

Diverse Housing Options

- Multi-family AND single family
- Rental AND homeownership
- Family AND senior

Key Case in AFFH

U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County (2009)

- Consideration merely of need for affordable housing for low-income households is inadequate (county certified AFFH but failed to address racial/ethnic segregation in its Analysis of Impediments to Fair Housing and to take steps to overcome it).
- \$30 million settlement with U.S. government included remedy for development of 750 units of affordable housing in 31 mostly White communities over 7 years.

Eligible Activities for Trusts

The basics and lessons learned



Key Powers

- Accept and receive real property or \$
- Purchase and retain real or personal property
- Sell, lease, convey and property at public auction or private contract
- Execute deeds, assignments, transfers
- Employ advisors and agents
- Borrow \$ to mortgage & pledge trust assets as collateral
- Manage or improve real property

Trust Accomplishments

Grants for new
production

Homebuyer
down payment
& principal buy-
down

Land
acquisition

Rental
assistance

Pre-
development
assistance

Habitat for
Humanity

Housing plans
& housing
staff

Affordable Housing

Using CPA funds

Acquire

Create

Preserve

Support



Acquire

Cromwell Court Apartments -- Barnstable



- 124 units of affordable family rental housing
- Built in 1973. Acquired and rehabilitated in 2011.
- \$500,000 CPA funds

Create



Small Scale Production

Thankful Chase's Pathway
Harwich, MA
12 family rental units
Opened in
Developer: Cape Community Development
Partnership



Paradise Pond
Northampton, MA
12 family rental units
Opened in 2007
Developer: HAP Housing



Butternut Farm
Amherst, MA
26 family rental units
Opened in 2011
Developer: HAP Housing



Baker Street Apartments
Foxboro, MA
20 family rental units
Opened in 2005



Dennis

- Melpet Farm- new construction
- Disposition town owned land
- 27 affordable townhouses, 1-, 2-, 3-bedroom units
- 60% AMI, family rental housing
- \$475,000 CPA funds



Re-use



Ames Shovel Works
Easton
113 rental
(family housing)



Stevens Corner
North Andover
42 rental
(family housing)



Rockport HS Apartments
Rockport
31 rental
(age restricted)

Preserve



Amherst

Rolling Green affordable units preserved



- 41 units protected
- \$1.25M bonded with CPA funds

Support with CPA Funds



**Predevelop-
ment**

**Down-Payment
Assistance**

**Rental
Assistance**

Lessons Learned

Trust statute does not define “low and moderate income”

- Advice: Consult definitions commonly used in state/federal programs

BEWARE: CPA area median income (AMI) numbers may differ from HUD numbers

- Advice: Be clear about income numbers necessary per funding source or program.

Lessons Learned

“Support” activities allowable only with CPA funds

- Advice: Clearly document different funding sources

Be clear with parameters of fund distributions

- Advice: Execute grant agreements for all distribution of funds

Trust is a municipal entity

Should the trust decide to undertake development **it is complicated**

Trusts are **subject to state procurement and disposition statutes** as well as public construction and design laws

Anti-aid Amendment to MA Constitution

- Public funds cannot be given or loaned to organizations for their private purposes
- Needs to have public benefit
- Payment after service rendered

Restriction

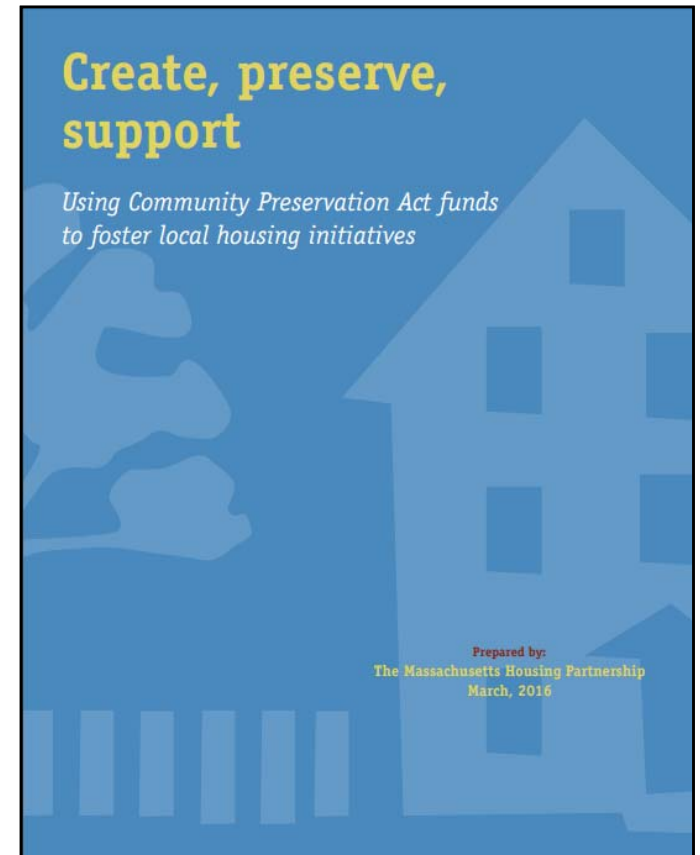
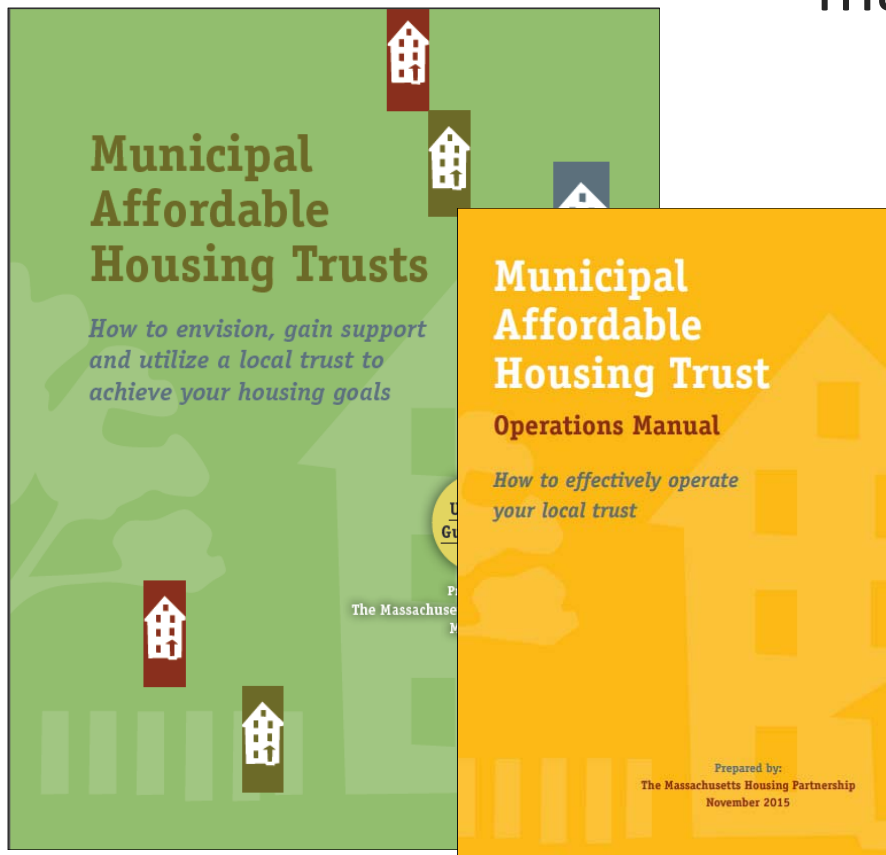
Lease
agreement

Recapture

MHP Online Resources

On our website:

<http://www.mhp.net/community/publications-and-materials>



Questions?



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www.mhp.net

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