



Housing Update No. 88
May 2016

Announcements

Save the Date for *Advocacy and Training Day for New Advocates*
Monday, June 13, 2016 from 10:00 a.m. to 4:00 p.m.

This training is intended for newer legal services advocates and summer law clerks at legal services organizations.

A flyer about the training is [here](#). It will be held at The California Endowment's Los Angeles, Oakland, and Sacramento offices and conducted via videoconference, with Western Center advocates at each location. There is a \$10.00 fee to cover lunch expenses; MCLE credit will be provided. Registration is now open.

**Save the Date for the Central Valley Housing Task Force
July 22, 2016 10am-4pm, Fresno
Look for registration details in June.**



Anna Krieger, Lili Vo Graham, and Deborah Thrope at Impact Fund's annual class action conference

Litigation and Local Advocacy

Court grants tenants' motion to intervene to defend Santa Monica's ordinance prohibiting discrimination against Section 8 recipients

AAGLA v. Santa Monica

Tenants Together and two individual tenants filed a motion to intervene in this Apartment Association challenge to Santa Monica's anti-discrimination ordinance. Intervenors are represented by Western Center and LAFLA. For more on efforts to ban Section 8 discrimination, see the Legislative Update below.

SCOTUS denies cert for CBIA v. San Jose decision, leaving in place California Supreme Court ruling upholding inclusionary zoning

California Bldg. Indus. Assn. v. City of San Jose, 61 Cal. 4th 435 (2015), cert. denied sub nom. *California Bldg. Indus. Ass'n v. City of San Jose, Calif.*, 136 S. Ct. 928 (2016)

In an opinion concurring in the Court's summary denial of certiorari, Justice Thomas suggested that SCOTUS should take up the question of whether *Nollan/Dolan* analysis applies where a legislative action is challenged as an unconstitutional taking. Our prior discussion of the California Supreme Court Opinion is [here](#).

Landlord in material breach case files petition for review, depublication request

Boston LLC v. Juarez 245 Cal. App. 4th 75 (2016), *review filed* (Apr. 6, 2016)

In the last [Housing Update](#) we reported on the Second District Court of Appeal decision finding that a landlord may not evict a tenant for an immaterial breach. The landlord has since petitioned the California Supreme Court for review and requested depublication of the decision. Stay posted for more in our next Housing Update.

Appellate Division reverses judgment, finding Notice to Pay Rent Defective for Failing to Identify Person to Pay

Roberta Stevens Villas, LTD v. Preston, No. BV 031303 (Cal. App. Dep't Super. Ct. March 18, 2016)

At trial tenant moved for judgment on the pleadings because the notice failed to identify a person to pay and only demanded that she "make check payable to Roberta Stephens Villas at the manager's office." Judgment was ultimately entered for landlord. In an unpublished decision, the Appellate Division reversed, holding that CCP §1161 must be strictly complied with and plaintiff's failure to include an actual person to pay rendered the notice defective. Sarah Truesdell of Public Counsel represented the tenant.

Macy v. City of Fontana, 244 Cal. App. 4th 1421, 1425 (2016), *as modified* (Mar. 23, 2016), *review filed* (Apr. 5, 2016)

Virginia Macy and community groups sued the Fontana Redevelopment Agency and the City of Fontana for violations of the Community Redevelopment and Dissolution Laws. The trial court dismissed the City from the case and plaintiffs appealed, arguing that the City assumed liability by being a party to the redevelopment agreement and benefiting from funds that should have gone to affordable housing. The Court of Appeal affirmed, holding that a municipal entity cannot be held separately liable for the refusal of the City's former redevelopment agency to comply with its affordable housing duties. The Court also held that because the agreement was validated, any challenge to the terms was barred, and in dicta, questioned whether preexisting claims based on low and moderate income housing fund remain viable in light of the Dissolution Law. Plaintiffs, represented by WCLP, PILP, Kirkland Ellis, and Briggs Law Corp., have filed a petition for review in the California Supreme Court.

Court of Appeals upholds ruling against mobilehome owners

Schermer v. Tatum, 245 Cal.App.4th 912 (2016)

Mobilehome residents filed a class action against mobilehome park owners, alleging unconscionable leases and other unfair practices. The trial court sustained park owners' demurrer without leave to amend, finding that the class claims against the owners of 18 different parks were too individualized and did not meet community of interest requirement for class actions.

Fair Housing

Ninth Circuit holds City violated Fair Housing Act by refusing to rezone to allow higher density housing

Avenue 6E Investments LLC v. City of Yuma Arizona, ----F.3d---, 2016 WL 1169080 (9th Cir. 2016)

The City of Yuma ignored its own planning experts and denied plaintiff developers' request for higher density zoning, acquiescing to racially charged NIMBY opposition. In reversing the district court's dismissal of plaintiffs' disparate treatment claim, the court discusses racial code words and finds that "the presence of community animus can support a finding of discriminatory motives by government officials, even if the officials do not personally hold such views." The fact that the City did not completely bar all higher density housing or restrict its development to one area did not immunize it from liability; the zoning decision's *contribution* to making housing unavailable to members of a protected class was enough (emphasis in original). The court also found that the City "cannot defeat a showing of disparate impact on a minority group by simply stating that other similarly priced and similarly modelled housing is available in the general area." Great decision, worth a read. Elizabeth and Chris Brancart represented the plaintiffs.

Landlord liable for refusing tenant's reasonable accommodation request to keep a support cat

Castellano v. Access Premium Realty, ----F.3d---- (E.D. Cal. April 15, 2016)

Landlord issued an eviction notice demanding that a tenant with disabilities get rid of her cat, then denied her requests for reasonable accommodation. In granting the tenant's motion for summary judgment, the court reasoned that "[a]ny determination that an emotional support animal poses a threat of harm to others or would damage the property of others must be based on an individualized assessment of the specific animal's actual conduct." The court also found that the landlord's delay in granting the accommodation and continued efforts to evict the tenant constituted refusal of her reasonable accommodation request. Todd Espinosa represented the tenant, and

also represents the tenants in *Bischoff v. Brittain*, 2016 WL 1734779 (E.D. Cal. May 2, 2016), where the Eastern District Court recently granted his motion for partial summary judgment on tenants' FHA claims. Our prior summary of this case is [here](#).

Second Circuit holds that City's zoning decision constituted disparate treatment under the FHA and HUD's disparate impact rule is entitled to deference

MHANY Management Inc. v. County of Nassau, ---F.3d---2016 WL 1128424 (2nd Cir. 2016)

Garden City rezoned public land for sale to a private developer. Rather than rezone it for multifamily housing as its own planning experts recommended, the City rezoned for single family dwellings in response to NIMBY public comments. Plaintiffs' expert demonstrated that the lower-density zoning would result in a reduced number of minority residents. The district court entered judgment for plaintiffs and ordered the City to rezone. Held: 1) plaintiffs had standing even if they could not definitively prove that housing for a larger number of minority residents would be built but for the zoning decision; 2) the City could not moot plaintiffs' claims with a feigned plan to build a courthouse at the site; 3) the City was liable for intentional discrimination because it "knowingly acquiesced to race-based citizen opposition" and 4) the district court should have applied the burden shifting analysis from HUD regulations in determining liability for disparate impact.

Legislative update from our Sacramento team

Legislative Session in Full Swing

The Legislature has been working away at the hundreds of bills introduced this year. First-house policy committee deadlines have now passed and fortunately all of Western Center's sponsored bills made it through and all but one of the housing-related bills that we opposed died. The next major deadlines are the fiscal committee deadline on May 27 and the deadline for bills to move out of their house of origin by June 3.

It has been the biggest year for housing in the Legislature in recent memory, with most of the action on the Assembly side. Assemblymembers introduced an unprecedented number of housing-related bills, many of them focused on finding

additional funding sources for affordable housing and on removing barriers to increased housing construction, both market rate and affordable. In addition, a group of Assembly Democrats is championing a \$1.3 billion General Fund ask to fund affordable housing programs and address homelessness.

The Senate has taken a leadership role on homelessness, proposing the “No Place Like Home” initiative, which among other things includes a \$2 billion bond to construct housing for chronically homeless individuals with mental illness.

While many good bills continue to move through the process, **AB 2003** (Lackey), **AB 2312** (Gatto), **AB 2391** (Steinorth), **AB 2760** (Mathis), and **SB 1142** (Moorlach), all of which would have significantly impaired tenants’ rights, are dead for the year. Three of them died without ever having had a hearing and two were voted down in policy committees.

Western Center and co-sponsors' bills

AB 2819 (Chiu) would change the game with respect to the unlawful detainer masking period, keeping records private in UD lawsuits unless judgment is entered in favor of the landlord within 60 days. It is co-sponsored with CRLAF. **SB 1053** (Leno) would add vouchers to the state’s source of income discrimination statutes, ensuring that landlords cannot deny applicants or evict current tenants simply because they receive rental subsidies. It is co-sponsored with the National Housing Law Project and the Non-Profit Housing Association of Northern California (NPH).

AB 2502 (Mullin and Chiu) would overturn the *Palmer* decision, once again allowing local governments to require the inclusion of affordable rental units in market-rate housing developments. It is co-sponsored with CRLAF and NPH. **AB 2501** (Bloom) would clarify several aspects of State Density Bonus Law to make it more difficult for exclusionary local governments to avoid compliance. It is co-sponsored with CRAF, the California Housing Consortium, and the California Apartment Association.

AB 2556 (Nazarian) would clarify the critically needed no-net-loss and replacement housing provisions that were added to density bonus law in 2013. It is co-sponsored with CRLAF.

Our two-year bills will both be up for policy committee hearings again in June. **AB 551** would take the first steps in establishing rights and responsibilities for bed bug infestations in residential rental property. It is co-sponsored with CRLAF. **AB 587** would create a tax abatement program for mobilehomes for which title was never properly transferred, giving homeowners a path to bringing title current without paying years of back taxes. It is co-sponsored with CRLAF and the Golden State Manufactured-Home Owners League

For our complete legislative update click [here](#).



Madeline Howard and Bob Newman at the Impact Fund Conference.

Conferences, Trainings

June 2, 2016 9am, Practising Law Institute and Webcast, *Public Interest Boot Camp* All-day training geared towards summer clerks, including discussion of diversity, ethics, language access, and working with clients with disabilities. Click [here](#) for more information.

July 22, 2016 9am, Practising Law Institute and webcast, *Representing the Pro Bono Client: Consumer Law Basics* The morning sessions of this all-day training might be helpful for housers looking for a basic overview of consumer credit laws. The afternoon includes a session on mortgage servicer litigation. Click [here](#) for more information.

June 13, 2016 Western Center on Law & Poverty's litigation training day, live in Oakland, L.A., and Sacramento. Flyer [here](#), registration is now open.

July 22, 2016 Housing Task Force Fresno, 10am-4pm. Registration and location details in June.

Research and Resources

Health in Housing: Exploring the Intersection between Housing and Health Care. Portland researchers found that affordable housing reduced Medicaid costs by allowing participants to access primary care services rather than relying on the emergency room. Full report at: <http://bit.ly/210g5IW>

In ***Housing Agency Waiting Lists and the Demand for Housing Assistance***, Public and Affordable Housing Research Corporation provides sobering statistics on the number of families (2.8 million) on Housing Voucher waiting lists and lists for public housing. <http://bit.ly/1L6aY1Y>. While millions wait for subsidized housing (or cannot even get on to the closed waiting lists) people of color are increasingly living in low-opportunity neighborhoods of concentrated poverty. ***Brooking Institute report*** with maps here: <http://www.brookings.edu/research/reports2/2016/03/31-concentrated-poverty-recession-kneebone-holmes>

Childhood environment and gender gaps in adulthood is Raj Chetty's report on why the American Dream is not happening. Summary and link to full paper at: <http://fivethirtyeight.com/features/rich-kids-stay-rich-poor-kids-stay-poor/>

For a look at how the other side perceives efforts to achieve race equity through disparate impact analysis see **The Kudzu of Civil Rights Law: Disparate Impact Spreads Into Educational “Resource Comparability”** available on the federalist society's website at: <http://www.fed-soc.org/publications/detail/the-kudzu-of-civil-rights-law-disparate-impact-spreads-into-educational-resource-comparability>



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