



Housing Update No. 89
July 2016

Announcements

Save the Date!

Western Center and CRLAF
Third Biennial Housing Policy Summit

November 3-4, 2016

Litigation and Local Advocacy

Costa Mesa enjoined from taking further steps to replace residential motel with luxury housing

Kennedy Commission v. City of Costa Mesa

An LA Superior Court granted tenant's motion for preliminary injunction, ruling that the luxury developer would have to provide relocation benefits to the low-income tenants of the motel before the project could proceed.

LA tenant entitled to fees under REAP program's fee shifting clause where landlord dismisses before trial

Intelligent Invs. Corp. v. Miguel Gonzales, No. BV 031101, 2016 WL 3902664 __Cal.Rptr.3d__(Cal.App.Dep't Super. Ct. Jun. 14, 2016)

The Appellate Division reversed the trial court's denial of the tenant's motion for attorney fees, holding that the Rent Escrow Account Program (REAP) fee-shifting provision entitled the tenant to fees after the landlord dismissed the case before trial. While Los Angeles' REAP ordinance does not define "prevailing party," the court found that the tenant prevailed because he maintained possession, thus defeating the plaintiff's primary purpose in filing the action. Claudia Medina of BASTA represented the tenant.

LA Appellate Division publishes decision protecting pro bono attorneys' right to fees

Crasnick v. Marquez, No. BV 031459, 2016 WL 3402451, __ Cal. Rptr. 3d __ (Cal. App. Dep't Super. Ct. May 24, 2016)

The trial court granted tenant Marquez's motion for summary judgment, and subsequently, his motion for attorneys' fees in this UD action. Marquez had a retainer agreement with Deepika Sharma, his attorney at Public Counsel, which provided that any attorney fees would be payable to her. While the fee motion was pending, the landlord filed another UD and obtained a default judgment. The LA Superior Court Appellate Division affirmed the trial court's decision denying the landlord's request to use the default judgment to offset the fee award. The opinion contains helpful language about the importance of pro bono counsel for indigent tenants. Public Counsel, Western Center on Law & Poverty, and a coalition of tenants' organization submitted a publication request, which was granted by the court.

Federal court denies mobilehome park owner's claims that relocation requirements are an unconstitutional taking, while local government launches effort to take the park by eminent domain

The low-income residents of Buena Vista Mobilehome Park in Palo Alto have been fighting to save their homes since the owner applied to close the park in 2012. After the City approved the owner's closure application subject to payment of relocation benefits, residents filed suit in state

court, alleging that the relocation benefits were inadequate to allow them to remain anywhere near Palo Alto, and that the City's approval violated fair housing and other laws. The owner subsequently filed a separate suit in federal court alleging that the relocation benefit requirement is an unconstitutional condition. The City's motion to dismiss that suit was granted (*Jisser v. City of Palo Alto*, No. 5:15-CV-05295-EJD, 2016 WL 3456696 (N.D. Cal. June 24, 2016)) and the owner, represented by the Pacific Legal Foundation, appealed to the Ninth Circuit. At the same time, the City of Palo Alto, the County of Santa Clara, and the Housing Authority of the County of Santa Clara approved an MOU to appropriate at least \$29 million dollars to purchase the park, and if offers to purchase are denied, for the Housing Authority to take the park by eminent domain. Meanwhile the Buena Vista Mobilehome Park Residents Association's lawsuit against the City is still pending in state court, with a hearing expected in the fall. The Association is represented by Law Foundation of Silicon Valley, Western Center on Law & Poverty, and Sidley Austin.

Cal. Supreme Court denies petition for review in redevelopment case

Macy v. City of Fontana, 244 Cal. App. 4th 1421 (2016), as modified (Mar. 23, 2016), review denied (June 8, 2016)

The California Supreme Court denied plaintiffs' petition for review, leaving in place the Court of Appeal decision dismissing the City from the case. Our full summary of the Court of Appeal's decision is [here](#).

Cal. Supreme Court holds that vexatious defendants may appeal without prefiling approval

John v. Chan, 63 Cal. 4th 91 (2016)

The California Supreme Court held that where a vexatious litigant is a defendant, she may appeal without meeting prefiling requirements normally applied to limit vexatious litigants' excessive court filings.

Fair Housing

District Court grants partial summary judgment in fair housing suit against Santa Clara Housing Authority

Huynh v. Harasz, No. 14-CV-02367-LHK, 2016 WL 2757219 (N.D. Cal. May 12, 2016)

The Santa Clara Housing Authority denied 100% of tenants' reasonable accommodation requests for an additional bedroom, unless the bedroom was for medical equipment or a live-in aide. Tenants with disabilities filed a class action alleging FHA, FEHA, ADA, and Section 504 claims. In granting plaintiffs' motion in part, the court found that defendants' alleged blanket

reasonable accommodation policy would violate fair housing and disability discrimination laws. The court denied the motion in part because it found a genuine dispute of material fact as to whether the Housing Authority actually had a blanket policy.

City of Hesperia enjoined from enforcing “Crime Free Rental Housing Program”

Victor Valley Family Res. Ctr. v. City of Hesperia, No. EDCV1600903ABSPX, 2016 WL 3647340, ___F.3d___ (C.D. Cal. Jul. 1, 2016)

A group home operator and residents challenged two ordinances, one of which prohibits certain types of group homes, and another that creates a “Crime Free Housing Program” that allows the police to order landlords to evict tenants who have “engaged in criminal activity.” The court granted a preliminary injunction, finding that plaintiffs are likely to prevail on the merits of their equal protection and due process claims. The court also found that the statute of limitations on plaintiffs’ facial challenge to the ordinances did not begin to run until the City began enforcement against them.

Landlord attorney’s fair housing claims dismissed

Creason v. Singh, 2013 WL 6185596 (N.D. Cal. Nov. 26, 2013), *aff’d*, 2016 WL 2961589, ___ Fed. Appx. ___ (9th Cir. May 23, 2016)

Kimball Tirey attorney Jane Creason settled a UD by allowing the tenant to remain in her home. She didn’t want to take the case to trial because the tenant had a valid defense to the UD; the incident that led to the eviction was domestic violence against the tenant. Although the landlord agreed to the settlement, Kimball Tirey fired Creason for allowing the tenant to stay. Creason filed suit, alleging retaliation under the Fair Housing Act. The Ninth Circuit affirmed the district court’s decision dismissing the case for failure to state a claim.

Federal court refuses tenants’ request to enjoin unlawful detainer action; Anti-Injunction Act bars relief for FHA claims

Hernandez v. Winstar Properties, Inc., No. 2:16-CV-04697-ODW-KS, 2016 WL 3869830, ___F.3d___ (C.D. Cal. Jul. 15, 2016)

A group of tenants received massive rent increases and subsequently, unlawful detainers for nonpayment of rent. They brought FHA claims in federal court alleging that building owners targeted immigrant tenants for rent increases and requesting an injunction to stop the unlawful detainers. Held: the Anti-Injunction Act barred the requested relief.

Seventh Circuit denies low-income African American tenants’ FHA claims, finding that tenants would be better off after displacement

City of Joliet, Ill. v. New West, LP, 2016 WL 3361519, ___ F.3d ___ (7th Cir. Jun. 17, 2016)

This FHA decision follows more than a decade of litigation over two HUD-subsidized buildings where ninety-five percent of the tenants are African American. The City sought to condemn the buildings and redevelop them into unsubsidized housing. Approximately one-third of the residents were offered replacement housing, and the remaining two-thirds received vouchers. The Court affirmed the district court’s decision finding no FHA violation, characterizing the condemnation as a single decision, not a policy, and finding that residents would be “better off”

after condemnation. The court also affirmed the district court's finding that residents would have no problem using Section 8 vouchers in the predominately-white city.

Supreme Court to decide consolidated FHA cases on predatory lending

Wells Fargo & Co. v. City of Miami, Fla., No. 15-1112, 2016 WL 853263 (U.S. Jun. 28, 2016) & ***Bank of Am. Corp. v. City of Miami, Fla.***, No. 15-1111, 2016 WL 853246 (U.S. Jun. 28, 2016)

SCOTUS will review these two 11th Circuit decisions addressing standing and causation under the FHA. The City of Miami filed suit against both banks, alleging discriminatory lending practices which resulted in excessive numbers of foreclosures against Latino and African-American homeowners. More information is available on SCOTUSblog at

<http://www.scotusblog.com/case-files/cases/bank-of-america-corp-v-city-of-miami/>

Minnesota tenants' claims that refusal to accept Section 8 violates the FHA survive motion to dismiss

Crossroads Residents Organized for Stable & Secure ResidencieS (CROSSRDS), v. MSP Crossroads Apartments LLC, No. CV 16-233 ADM/KMM, 2016 WL 3661146 (D. Minn. Jul. 5, 2016)

The Minnesota District Court denied defendants' motion to dismiss plaintiff's FHA claims in this class action. New owners of an unsubsidized affordable housing complex raised the rent and announced they would demand Social Security numbers from all tenants, would no longer accept Section 8 vouchers, and would impose a two person per bedroom maximum occupancy standard. These policies had the effect of excluding voucher tenants, people with disabilities, undocumented immigrants, and families with children. Held: plaintiffs stated a claim for disparate treatment and disparate impact under the FHA

Legislative Update From Our Sacramento Team

Legislative Session Nearing its End

The 2015-2016 legislative session is nearing a close. When the Legislature returns from summer recess on August 1, it will have until the end of the month to complete work on the bills that are still alive before adjourning on August 31.

Fortunately most of Western Center's sponsored bills are still moving, but unfortunately, two did not make it beyond their first house:

- **SB 1053** (Leno), which would have added vouchers and other rental subsidies to the state's source of income discrimination statutes, and
- **AB 2502** (Mullin and Chiu) which would have overturned the *Palmer* decision, once again allowing local governments to require the inclusion of affordable rental units in market-rate housing developments.

Stay tuned for future plans on both of these important issues.

Since our last Housing Update, the Legislature passed and the Governor signed the budget for the 2016-2017 fiscal year, as well as several budget trailer bills that provide authorizing legislation for key pieces of the budget. The most significant win for housing was the passage of a \$2 billion bond, backed by revenues from the Mental Health Services Act, to construct housing for chronically homeless individuals with mental illness.

While many good bills continue to move through the process, several bills – **AB 2003** (Lackey), **AB 2312** (Gatto), **AB 2391** (Steinorth), **AB 2760** (Mathis), and **SB 1142** (Moorlach) – that 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 Still Moving

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 GSMOL.

AB 2819 (Chiu) would change the game with respect to the unlawful detainer masking period, keeping records private in UD lawsuits unless judgement is entered in favor of the landlord within 60 days. It is co-sponsored with CRLAF.

AB 2501 (Bloom) would clarify several aspects of State Density Bonus Law to make it more difficult for exclusionary local governments to avoid complying with the law.

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

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

Trainings and Events

Western Center and California Rural Legal Assistance Foundation Third Biennial Housing Policy Summit - November 3-4, 2016, Sacramento – registration opening soon

Reentry in California – Overcoming Legal Barriers to Community Reintegration 2016

(Free) PLI, August 12, 9am live and webcast from San Francisco. Register at:

http://pli.edu/Content/Seminar/Reentry_in_California_Overcoming_Legal_Barriers/_N-4kZ1z11i28?ID=259725

Residential Mortgage Servicing Update: What You Need to Know as We Approach the

End of HAMP (Free) August 17, 9am PLI San Francisco. Register at:

http://pli.edu/Content/Seminar/Residential_Mortgage_Servicing_Update_What/_N-4kZ1z10qqv?ID=286225

Bankruptcy basics for low income clients, September 15, 9am PLI webcast and live in San Francisco. Register at:

http://pli.edu/Content/Seminar/Bankruptcy_Basics_for_Low_Income_Clients/_N-4kZ1z11i27?ID=259728

Representing the Pro Bono Client: Advocacy Skills for Administrative Hearings 2016

(Free), September 22, 2016, PLI webcast and live in San Francisco. Register

at: PLI http://pli.edu/Content/Seminar/Representing_the_Pro_Bono_Client_Advocacy/_N-4kZ1z11i26?ID=259734

Research and Resources

On housing segregation in Baton Rouge and how it has contributed to state violence against black people: <http://www.nytimes.com/2016/07/12/opinion/the-city-where-i-live-and-where-alton-sterling-died.html? r=0>

No surprises here – a recent FINRA Investor Education Foundation study found that, while Americans as a whole are experiencing less financial stress, certain groups, including women and people of color, are not benefiting equally from the improvement in the economy. Summary and link to full survey from Public Citizen [here](#).

Research paper on the impact of including unenforceable terms in leases, based on a Boston sample [here](#).

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