

## Announcements



### **Western Center on Law and Poverty welcomes Alex Prieto**

We are very excited to welcome Alex Prieto to our litigation team! Alex is our new senior litigator and will work on cases in all of WCLP's practice areas. Prior to joining Western Center, Alex was a staff attorney at Neighborhood Legal Services of Los Angeles County, where he defended the rights of low-income clients in landlord-tenant, employment, and public benefits cases. Previously, Alex was a clerk for the Hon. Margaret M. Morrow in the U.S. District Court for the Central District of California and the Hon. Susan Kenny of the Federal Court of Australia in Melbourne. Alex has a J.D. from University of California, Berkeley School of Law, where he was Articles Editor for the California Law Review, and a B.A. from New York University.

Welcome Alex!

## Save the Date

### WCLP Annual Litigation Skills Training

July 5, 2017

The California Endowment, Sacramento and Los Angeles\*

## Litigation and Local Advocacy

### Landlord Tenant

#### **Landlord may not evict Section 8 tenant for nonpayment of housing authority's rent portion**

***Scott v. Kaiuum***, 8 Cal.App.5th.Supp. 1 (Jan. 4, 2017)

Fresno Housing Authority abated Section 8 payments for Candy Scott after her landlord failed multiple housing quality standards inspections. After the Housing Authority stopped paying, the landlord demanded that Ms. Scott pay the Housing Authority's portion of the rent and filed an unlawful detainer. The trial court entered judgment for the landlord. The appellate division reversed, finding that federal regulations prohibited the owner from evicting the tenant for nonpayment of the Housing Authority's rent portion. The Court further found that since the tenant only owed her portion of the rent, the three-day notice overstated the amount of rent due, and that the landlord was prohibited from demanding rent under Civil Code section 1942.4 because of the ongoing habitability issues in the unit. Congratulations to Marcos Seguro of CCLS, who represented the prevailing tenant.

#### **Post-foreclosure owner may serve eviction notice before recording title, Court of Appeal holds**

***Dr. Leevil, LLC v. Westlake Health Care Center***, \_\_\_\_ Cal.App.5th\_\_\_\_, 2017 WL 895808 (Mar. 7, 2017)

The Court of Appeal held that a post-foreclosure owner could serve an eviction notice before perfecting title, and the eviction was proper under Code of Civil Procedure section 1161a as long as the owner perfected title before actually removing the tenant. The decision expressly overrules ***U.S. Financial, L.P. v. McLitus***, 211 Cal.Rptr.3d 149 (Cal.

App. Dep't Super. Ct. 2016), *as amended* (Dec. 2, 2016), which held that service of the three-day notice marks the start of an unlawful detainer action and therefore owners must have recorded title prior to serving a notice.

**Bankruptcy court holds that lease signed after landlord filed for bankruptcy is void, leaving tenant with no rights**

*In re Shay* (Bankr. C.D. Cal., Jan. 13, 2017, No. 2:12-BK-26069-RK) 2017 WL 150043  
After filing for bankruptcy, landlord leased rooms to tenant. The bankruptcy trustee ordered the rented property sold, and the tenant filed a motion in bankruptcy court asserting her right to possession. Held: during bankruptcy proceedings, the trustee has sole authority to administer assets of the bankruptcy, so the property owner had no authority to enter into a lease with the tenant. Tenant's lease was therefore void and unenforceable, and tenant had no due process rights or other rights to the property.

**San Francisco tenant bound by waiver of claims in owner move-in agreement**

*Geraghty v. Shalizi*, 8 Cal.App.5th 593 (2017)

After acquiring the building where tenant lived in a rent-controlled unit, the new landlord told tenant he wanted to move in, and suggested a move-out deal in lieu of an owner-move in eviction. Tenant, whose rent was \$938 per month, signed a written agreement to move out of the apartment in exchange for a \$25,000 lump sum payment. The agreement waived all of tenant's rights to sue. The landlord renovated the unit, moved in, and shortly thereafter moved out and re-rented the unit for \$3,700 per month. Held: tenant could not rescind his agreement, and the release of claims in the written agreement was enforceable under San Francisco's rent ordinance.

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## Fair Housing

**Housing Choice Vouchers: Local anti-discrimination ordinance not preempted by FEHA; still constitutional**

*AAGLA v. City of Santa Monica*

A Los Angeles Superior Court judge upheld the City of Santa Monica's local ordinance prohibiting landlords from discriminating against tenants who use rental assistance vouchers (primarily from the federal Section 8 program). The Apartment Association of Greater Los Angeles and a group of landlords had filed a lawsuit against the City alleging that the Ordinance was preempted by the Fair Employment and Housing Act, was an unconstitutional impairment of contract pursuant to the federal and state constitutions, and interfered with the freedom to contract. The court granted summary

judgment in favor of the City and Interveners, holding that the plain language of FEHA's express preemption provision excluded the Ordinance from its purview, and that the Ordinance was constitutional. Legal Aid Foundation of Los Angeles and Western Center on Law and Poverty represented interveners, Tenants Together and individual tenants.

### **Tenants challenging gentrification on fair housing grounds survive motion to dismiss**

***Martinez v. Optinnis Properties*** (S.D. Cal., Mar. 14, 2017, No. 2:16-cv-08598-SVW-MRW) 2017 WL 1040743

Plaintiff tenants and organizations that assist tenants filed this fair housing suit against landlords for engaging in a campaign to displace tenants in protected classes, including Latinos, families with children, and people with disabilities, and mark newly renovated to young white wealthy people. The facts are familiar; landlords failed to address rampant habitability issues and harassed tenants to force them to vacate despite local eviction protections. The district court denied the landlords' motion to dismiss, allowing tenants to proceed on their fair housing, UCL, habitability, retaliation, and various other claims. Kudos to Public Counsel and Brancart & Brancart, who represented the tenants.

### **Landlord violated Fair Housing laws by evicting tenants for operating family day care**

***Rana v. Gu*** (N.D. Cal., Nov. 14, 2016, No. C 16-05589 WHA) 2016 WL 6679779

Tenants sought permission from their landlord to operate a small family day care in their home. Landlord refused and issued a 60-day notice a week later. After Project Sentinel, a fair housing organization, assisted the tenants with a letter to the landlord, landlord issued another termination notice and then claimed she needed to evict the tenants to conduct renovations. The district court granted tenants' motion for preliminary injunction, prohibiting landlord from proceeding with eviction, finding that the tenants were likely to succeed on their federal and state claims of discrimination. Congratulations to Tom Zito and Diana Castillo of Law Foundation of Silicon Valley, who represented the tenants.

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## **Land Use**

### **Affordable housing set-asides do not survive Dissolution Law, Court of Appeal holds**

***Covarrubias v. Cohen***, 3 Cal.App.5th 1229 (2016)

The Court of Appeal held that the obligation of redevelopment agencies to set aside 20% of their tax increment revenue did not survive the Dissolution Law, which abolished

redevelopment agencies and tax increment. The court rejected the plaintiffs' argument that the set-aside requirement was an "enforceable obligation" that the Dissolution Law specified could still be funded with property tax revenue.

### **Judgments requiring annual set-asides of tax increment cannot be funded, Court of Appeal holds**

***Cuenca v. Cohen***, 8 Cal.App.5th 200 (2017)

The Court of Appeal held that while judgments are "enforceable obligations" under the Dissolution Law, a judgment requiring a redevelopment agency to set aside 20% of its tax increment for affordable housing cannot be funded. Since the Dissolution Law abolished tax increment financing, there is no pie to carve a 20% piece out of, the court reasoned.

### **Court of Appeal rejects challenge to mobile home rent increase**

***Rampersad v. City of Thousand Oaks*** (Mar. 3 2017, No. No. 56–2011–00408151–CU–WM–SIM) 2017 WL 959200 (unpublished)

The Court of Appeal in an unpublished decision rejected a challenge by mobilehome tenants to a rent increase. The court ruled that most of the lawsuit was barred by the 90-day statute of limitations set out in Government Code 65009(c)(1)(E) for suits "to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit." Since the base rent was set through a permit, the court applied the 90-day statute to a modification of that permit.

The Court of Appeal also rejected the tenants' Fair Housing Act claims, reasoning that there was no evidence that the park owner was discriminating against the elderly tenants based on their disabilities.

### **SF's latest Ellis Act ordinance invalidated**

***Coyne v. City and County of San Francisco***, Cal.App.5th, 2017 WL 1057315 (Mar. 21, 2017)

San Francisco violated the Ellis Act, Gov. Code 7060, by requiring landlords to pay tenants relocation expenses equal to the difference between their current rents and market rents for two years. The Ellis Act prohibits local governments from refusing to let landlords exit the rental business. Though the statute permits cities to mitigate the adverse effects of Ellis Act evictions, the court concluded that the "Rental Payment Differential obligation imposes a prohibitive price on the ability of landlords to exercise their rights under the Ellis Act."

### **Mobilehome rent control ordinance prohibited by prior ballot initiative survives challenge**

***Brookside Investments, Ltd. v. City of El Monte***, 5 Cal.App.5th 540 (2016), *review denied* (Mar. 1, 2017)

In 1990, El Monte enacted an initiative ordinance repealing existing mobilehome rent control and prohibiting the City Council from adopting mobilehome rent control measures in the future or spending tax money on such measures. In 2012, the City Council sponsored a ballot initiative to repeal the ordinance and, when the ballot measure passed, enacted mobilehome rent control. A mobilehome park owner challenged the City's actions. The Court of Appeal upheld the trial court's ruling in favor of the City, finding that state law expressly permits local legislative bodies to seek voter approval to repeal an ordinance passed by initiative and that the City's actions were not prohibited by the 1990 ordinance.

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## Discovery

**Cal. Supreme Court holds that government employees cannot shield communications from disclosure by using personal accounts**

***City of San Jose v. Superior Court***, 2 Cal.5th 608 (Mar. 2, 2017)

The California Supreme Court held that when a government employee uses a personal email account to discuss public business, those communications are subject to disclosure under the California Public Records Act.

## Legislative Update From Our Sacramento Team

### 2017 Housing Bills Sponsored by WCLP and CRLAF

**AB 72 (Santiago and Chiu)** would appropriate one-time funds to the Office of the Attorney General to assist in the enforcement of state housing laws, such as Housing Element Law, the Housing Accountability Act, the No Net Loss Zoning Law, and others. Co-sponsored by Western Center, the California Rural Legal Assistance Foundation, and the California Housing Consortium.

**AB 291 (Chiu)** would enact significant protections for immigrant tenants, including prohibiting

landlords from threatening to call immigration authorities and codifying an affirmative defense to evictions based on immigration status. Co-sponsored by Western Center and California Rural Legal Assistance Foundation.

**AB 571 (E. Garcia)** would create more flexibility in the state Low-Income Housing Tax Credit program's farmworker set-aside. Co-sponsored by the California Rural Legal Assistance Foundation and the California Coalition for Rural Housing.

**AB 686 (Santiago)** would establish an obligation for California state, regional, and local governments to affirmatively further fair housing in their decisions related to housing and community development. The obligation would be modeled on, and enhance, the obligation found in the federal Fair Housing Act of 1968. Co-sponsored by Western Center, National Housing Law Project, and Public Advocates.

**AB 1397 (Low)** would strengthen state Housing Element Law by limiting the reliance of local governments in meeting their RHNA obligations on sites that do not have a realistic capacity for housing development, including sites that are too small or too large, sites that have been recycled across multiple Housing Elements, and sites not served by water and wastewater. Co-sponsored by Western Center, the California Rural Legal Assistance Foundation, and Public Advocates.

**AB 1505** (Bloom, Chiu and Gloria) would overturn the *Palmer* decision and restore the ability of local governments to fully implement local inclusionary policies. Co-sponsored with the California Rural Legal Assistance Foundation, the California Housing Consortium, Housing California, and the Non-Profit Housing Association of Northern California.

**AB 1521** (Bloom and Chiu) would strengthen the state's Affordable Housing Preservation Law by requiring that rental housing with expiring state and/or federal subsidies and/or affordability protections be offered for sale first to qualified preservation purchasers at market value, requiring the state to monitor compliance, and providing affected tenants with the right to enforce the law. Co-sponsored by Western Center, the California Coalition for Rural Housing, the California Housing Partnership, and the California Rural Legal Assistance Foundation.

**SB 136** (Leyva) would create a technical assistance set-aside in the Mobilehome Park Resident Ownership and Rehabilitation (MPRRP) program. Co-sponsored by the California

Rural Legal Assistance Foundation and the California Coalition for Rural Housing.

**SB 166** (Skinner) would amend the existing No Net Loss Zoning Law to better ensure that when sites identified for housing in a jurisdiction's housing element develop with fewer units than were anticipated or at a higher income level, or with no housing at all, the jurisdiction continues to maintain an ongoing supply of sites available to meet the unmet need for housing for all income levels. Co-sponsored by Western Center, the California Rural Legal Assistance Foundation, and Public Advocates.



*Trainers extraordinaire Claudia Medina, Erin Katayama, Laurance Lee (on screen), Lauren DeMartini and Navneet Grewal at PLI for the Eviction Defense Training*

## Research and Resources

- Check out the Opportunity Agenda's [Vision, Values, and Voice](#) toolkit. It includes messaging guidance for those working on Criminal Justice, Immigration, Racial Justice, and Economic Opportunity issues.
- In [this letter](#) published by the Brookings Institute, Richard V. Reeves and Dayna Bowen Matthew suggest specific steps for the Trump administration to reduce racial inequalities and explain how HHS and HUD can use the power of their agencies to further goals of racial justice.
- The NLIHC report addresses the lack of affordable housing. Read *The Gap: A Shortage of Affordable Homes* at: <http://nlihc.org/research/gap-report>.
- The Center on Budget and Policy Priorities' (CBPP) updated [Chart Book: Federal Housing Spending is Poorly Matched to Need](#) shows once again how federal housing policies benefit rich people at the expense of the poor.

## Trainings

State Bar Real Property Section, [Ninth Annual Fair Housing and Public Accommodations Symposium](#), Thursday, April 13, 2017, 8:30 a.m. - 4:30 p.m. at the State Bar's San Francisco Office, 180 Howard Street, San Francisco (\$55 nonprofit registration fee)

PLI, [Working with Immigrants: The Intersection of Basic Immigration, Housing, and Domestic Violence Issues in California 2017](#) (Free), May. 1, 2017, Practising Law Institute, San Francisco and webcast

PLI, [Public Interest Boot Camp 2017](#), May 31, 2017, Practising Law Institute, San Francisco and webcast

PLI, [Representing the Pro Bono Client: Consumer Law Basics 2017](#), June 9, 2017,

San Francisco and webcast

**WCLP's Litigation Skills Training**, July 5, 2017, The California Endowment, Los Angeles and Sacramento. \*Unfortunately due to renovations at the TCE's Oakland training space, we will not have a live training in the Bay Area this year.

Want to brag about a case or share a loss? Announce an upcoming training? Please contact Madeline at [mhoward@wclp.org](mailto:mhoward@wclp.org) with updates or other items for inclusion in our Housing Update.