



Housing Update No. 74 October 2, 2012

Governor Signs Tenant and Mobilehome Bills, Plus Other Housing Legislation

Governor Brown signed into law several important measures regarding tenant rights, mobilehome resident rights, and making the resident park purchase program more usable, among others. See the [California legislative section below](#) for details.

Welcome to KeAndra Dodds, New WCLP Housing Fellow



Join us in welcoming KeAndra Dodds, who began her Irmas Fellowship with Western Center in September. She provides education, training, and evaluates potential litigation on Transit Oriented Development and the California Sustainable Communities and Climate Protection Act (SB 375). She aims to mitigate the risk of gentrification and the displacement of low income and people of color communities, and to promote and preserve affordable housing near public transit. KeAndra

received her J.D. from the University of Southern California Gould School of Law. She can be reached at kdodds@wclp.org, or (213) 235-2626.

Conferences, Trainings, and Webinars

WCLP Annual Legislative Meetings

Next Week: Wednesday, October 10, 10 am - 1 pm • WCLP Office, Los Angeles

Northern California: Late October (TBA) • WCLP Office, Sacramento

Join us to discuss problems you are seeing in your practice, along with a discussion of potential legislative solutions. We will also be discussing 2013 legislative proposals, as well as a brief legislative report on the 2102 session. To RSVP or for more info, contact Michael Moynagh at mmoynagh@wclp.org or (916) 282-5116.

[Post-Redevelopment Workshops - "Moving Forward"](#)

October 9 • Carson

October 10 • Ontario

October 16 • Pleasanton

October 18 • Citrus Heights

Presented by the California Redevelopment Association and the California Association for Local Economic Development, these workshops will cover: What Tools Successor Agencies Have Available Under Current Law; Property and Cash Management: How to Treat them; Local Economic Development Programs; Due Diligence Review; Meet and Confer Process.

[Conducting and Litigating Fair Housing Audits](#)

October 4 • Oakland

This **free** training (including free lunch and continental breakfast) provided by Bay Area Legal Aid includes: (1) how to design and conduct a successful audit with discussion of site selection, tester preparation, and reporting, as well as analyzing test results for violations and suggestions for follow-up; and (2) how to litigate discrimination discovered in an audit, including a discussion of best practices from actual litigated cases and recommendations from leading experts in fair housing. 5 hours MCLE. Presented by Anne Houghtaling, Executive Director of the HOPE Fair Housing Center in Chicago, and Scott Chang, Associate at Relman, Dane, and Colfax.

Tax, Credit and Other Financial Consequences of Foreclosures, Short Sales and Mortgage Loan Principal Forgiveness

October 10, 9am - 12:30pm • Webinar and in-person in San Francisco

This **free** training is chaired by Maeve Elise Brown, Director, Housing and Economic Rights Advocates and presented by the Practising Law Institute. The training will provide an overview of the financial issues - including tax and credit consequences - homeowners may face after a foreclosure, short sale or loan modification. Tax experts will explain the fundamentals of how cancelled mortgage debt is treated under state and federal tax law, and provide insights into changes in tax law that may take effect as early as next year. Practitioners will discuss what types of personal liability homeowners may still face following a foreclosure, short sale or deed-in-lieu, and will use case examples to illustrate the credit impact of various forms of mortgage delinquency resolution. Panelists will also outline legal strategies for addressing these issues through bankruptcy, fair debt collections and fair credit reporting claims. Three hours MCLE.

LAAC Foreclosure Webinars

October 16, Noon - 1 pm • Webinar

October 30, Noon - 1 pm • Webinar

The October 16th webinar, [*Defending Post-Foreclosure Evictions*](#), will focus on notice requirements under federal and state law, local just-cause for eviction laws, and rights for Section 8 voucher holders. [*Litigation Strategies*](#) on October 30th will cover homeowners, including Civil Code 2923.5, breach of loan modification agreements, the tender rule, and the newly-enacted state Homeowner Bill of Rights. Presented by Kent Qian, National Housing Law Project. One hour MCLE each.

College of Advocacy - Benchmark Institute

October 19-26 • Watsonville

This week-long training provides lawyers, advocates and legal assistants with a unique opportunity to become part of a close and committed legal community working together to effectively represent low-income people and their communities. The College offers diverse substantive and skills training, specifically geared toward developing the extraordinary competence, caring and commitment necessary to helping our clients. 51 hours MCLE, including 1 hour of elimination of bias.

Rural Housing Summit

October 25-26 • Asilomar Conference Center, Pacific Grove

Hurry - Registration prices increase on October 5th! This conference brings together housers and planners to examine rural issues and develop a strategic action plan for the upcoming year and beyond. Participants will explore and identify opportunities to improve the living conditions of rural California families.

Consumer Rights Advocacy for Domestic Violence Survivors

October 25 • Seattle, WA

Consumer advocacy can be powerful tool for achieving economic security for survivors, who may face collection actions for debt incurred or coerced by their abusers, credit damage, risk of identity theft and homelessness, and other financial difficulties as a result of abuse. This one-day intensive training is presented in conjunction with the National Consumer Law Center's annual conference. Workshop topics include: Housing Rights and Foreclosure Defense for Survivors.

Superior Court Boot Camp

October 25-26 • Los Angeles

Early Bird registration ends October 4th! Motion and trial practice in Superior Court. Learn from judges, staff attorneys and expert litigators. Presented by Pincus Professional Education. 9 hours MCLE; partial scholarships available for nonprofit attorneys.

LAAC Traveling Training

November 1-2 • Riverside

Legal Aid Association of California Traveling Training is for advocates interested in learning diverse substantive issues, skills, and hot topics from presenters from 19 California Support Centers and others. Topics range from housing to immigration, school discipline to statewide advocacy updates. For more info: Patrick Fodell at pfodell@laaconline.org.

Litigation and Local Advocacy

Homeless enjoy Fourth Amendment right against city's seizure of their possessions, 9th Circuit holds

[Lavan v. City of Los Angeles](#), ___ F.3d ___, 2012 WL 3834659 (9th Cir. Sept. 5, 2012)

The Fourth and Fourteenth Amendments prohibit the seizure and destruction of property temporarily abandoned by homeless people in Skid Row, the Ninth Circuit has held. The court upheld an injunction which prohibits city workers from seizing property absent a reasonable belief that the property is abandoned or threatens health and safety. Property that is seized may not be destroyed unless it has been stored in a secure place for at least 90 days.

Tenant who defeats landlord's action is entitled to fee under lease, but not tenant who unsuccessfully cross-complains, Court of Appeal holds

[Zintel Holdings, LLC v. McLean](#), ___ Cal.App.4th ___, 2012 WL 4077509 (Sept. 18, 2012)

The best rental bargain in Southern California turns out to be on North Palm Drive in Beverly Hills, where two tenants won their lawsuit to keep their rent at \$200 per month . . . for two apartment units. The landlord sued to invalidate or reform the lease and the tenants prevailed. The tenants moved for attorneys' fees based on a lease provision. The Court of Appeal held that the tenant who unsuccessfully cross-complained against the landlord was not entitled to fees because there was no prevailing party. But the tenant who successfully defended against the landlord and did not cross-complain was awarded fees.

Court of Appeal permits *qui tam* suit alleging fraudulent securing of fees waivers

[Mao's Kitchen v. Mundy](#), ___ Cal.App.4th ___, 2012 WL 3900740 (Sept. 10, 2012)

A litigant can potentially bring a False Claims Act suit alleging that a litigation opponent has filed a fraudulent request for a fee waiver, the Court of Appeal has held in an opinion that could become the poster child for "bad facts make bad law."

The bad facts in this case were the 200 or so requests for fee waivers filed by the same litigant in suits alleging ADA wheelchair access violations. The litigant apparently failed to report that he had secured \$65,000 in settlements and thus could afford to pay court fees.

The Court of Appeal permitted one of the defendant restaurants to file a *qui tam* cross-complaint seeking reimbursement to the court under the federal False Claims Act.

The Harriett Buhai Center for Family Law, Public Counsel, and Western Center, represented by David Ettinger of Horvitz & Levy, have submitted a letter asking the court to grant rehearing or modify the decision. They point out that there already is a mechanism under the Government Code to recoup money when fee waivers are incorrectly granted; fee waiver information is confidential so a litigation opponent should not be bringing such a suit; and the opinion has potential to deprive indigents of access to the court if their opponents, such as landlords, threaten to sue them for allegedly false claims.

California State Legislation and Administrative Actions

Legislative Year Ends: Advances made in Landlord-Tenant, Mobilehomes. Redevelopment? Not so much.

Consult our [2012 California Legislation Final Report](#), for a comprehensive review of the more than 100 housing-related bills in the session. Unless otherwise noted, signed bills will take effect on January 1, 2013. Highlights (and lowlights) of the year are presented below.

- **Landlord-Tenant:** The Governor signed three foreclosure-related bills: [AB 2610](#) will require a 90-day notice under state law for all tenants following a foreclosure; there is no "bonafide" tenancy requirement as is in federal law. Longer fixed term leases must be honored, unless the landlord can show that the rent paid is substantially below-market. Also, tenants may bring a right to possession claim at any time, regardless of whether a claim form was served or not. [AB 1953](#) will prevent a new property owner who fails to inform tenants of the change in ownership (as required under current law, Civil Code Section 1962) from issuing a 3-day notice to pay rent or quit. Under the bill, 3-day notices would not be proper, nor could an eviction action be filed, but landlords could sue for the rent in small claims court or regular court. [SB 1191](#) will require owners of 1-4 unit buildings in foreclosure to notify prospective tenants of that fact.

The Governor also signed several other tenant bills. [SB 1055](#) co-sponsored by Western Center and CES will prohibit landlords from requiring online rent payments or payments through automatic deductions. Tenants may agree to pay online, and may withdraw consent at any time. A similar measure, [AB 1679](#), will allow a tenant to consent to having his/her security deposit returned via electronic funds transfer, and the accompanying documentation to be emailed. [SB 1403](#) will expand existing law that permits tenants who are victims of domestic violence to terminate a tenancy to include victims of elder abuse, and adds protective orders to the list of documents that may be used by the tenant as evidence of the underlying abuse.

[AB 2521](#) will allow tenants 48 hours after ending the tenancy to collect property left behind without penalty. A compromise measure, it will also increase the amount of abandoned property a landlord may keep without a public sale to \$700 (current law, enacted in 1982 and never adjusted for inflation, is \$300). [AB 1825](#) will allow a court to expand its mailed notice to defendants in eviction cases to provide contact information about lawyer referral programs operated by nonprofit local bar associations. The requirement to provide contact information for a legal aid organization remains in place. [SB 1229](#) will prohibit landlords from requiring that tenant pets be de-clawed or de-voiced (e.g., surgically altering a dog so that it cannot bark). Landlords may still prohibit pets altogether, other than service animals.

The Governor vetoed [SB 744](#), an industry bill which would have allowed water submeter

manufacturers to self-certify the accuracy of the meters, which are used in multi-family rentals and mobilehome parks. Western Center opposed the bill. [AB 2044](#) sought to loosen requirements for serving any unnamed tenants in eviction actions with a prejudgment claim of right to possession forms (i.e, an Arrieta claim) by allowing any person to serve the form, rather than just registered process servers. Western Center and others opposed the bill, and the bill died in committee.

• **Mobilehomes:** The Governor signed 4 bills that aid mobilehome park residents. [AB 1797](#) will make HCD's Mobilehome Park Resident Occupancy Program more useful and usable by authorizing HCD to offer an interest rate below 3% on loans, provide technical assistance, and include the cost of the assistance as part of the loan principal. The program helps resident organizations to purchase parks, thus preserving them and keeping spaces affordable. [AB 2150](#) will require a plain-language summary of mobilehome park rights and responsibilities to be distributed to residents each year. [AB 1938](#), will expand the existing prohibition on park management passing through various fines, fees, or damages assessed by a court for violations of the Mobilehome Residency Law to also cover violations of the Mobilehome Park Act and amounts assessed by enforcement agencies. It also closes a loophole in current law that may have prevented homeowners from exercising their right to rescind a rent-control-exempt lease within 72 hours. [AB 1830](#) sponsored by CRLA Foundation, will authorize the Public Utilities Commission, if it finds that a mobile home park has overcharged residents for utilities, to order the park to reimburse current and former tenants for the overcharge.

An industry bill signed by the Governor, [AB 2272](#) will allow park owners to file injunctions against residents for lease violations as limited civil cases. Under current law, parks seeking lease enforcement must either file a UD as a limited case, or file an injunction as an (expensive) regular civil case. Western Center helped insert a 3-year sunset into the bill. Please contact us if you discover any problems with its use.

Another industry bill, [AB 317](#), would have drastically rolled back mobilehome park rent control protections. It was successfully resisted by Western Center and CRLAF and was amended to become a benign bill. [SB 1173](#) was opposed as well, and failed in Senate Judiciary Committee. It would have required automatic pass-throughs to mobilehome park residents of the full amount of any new or increased government-imposed fees.

• **Redevelopment:** Western Center and other housing advocates were able to secure changes in [AB 1484](#), the redevelopment dissolution clean-up bill, making clear that redevelopment housing obligations survive and continue. The bill as enacted: (1) Clarifies that successor housing agencies must follow the Community Redevelopment Law in carrying out their duties; (2) Protects unencumbered housing funds derived from the sale of bonds; (3) Requires repayment of various past loans from agency Low-Mod Housing Funds; and (4) Creates a new source of money for housing by directing that 20% of funds from repayments of loans between the city/county and and the former agency must be directed to housing. The bill became effective June 27, 2012. Advocates were unable to save the unencumbered balances in existing agency Low- and Moderate-Income Housing Funds, estimated at between \$1B and \$2B. A further clean-up bill, [AB 1585](#), went through many iterations before finally simply clarifying that housing successor entities are subject to the administrative costs caps contained in the current Community Redevelopment Law.

Meanwhile, no less than 3 different schemes for what was being called "Redevelopment 2.0" were vetoed by Governor Brown. [SB 214](#) would have removed the two-thirds voter approval requirement to form an Infrastructure Finance District (IFD), which like redevelopment, uses

property tax increases (aka "tax increment") to fund its activities. (The voter requirement is seen as the block to forming IFDs.) [SB 1156](#) would have allowed the creation of new agencies (with no voter requirement either) to use tax increment to help create sustainable communities pursuant SB 375. [AB 2144](#) would have also authorized new "infrastructure and revitalization districts," patterned on IFDs, but with a 55% voter requirement. The Governor's veto messages all indicated that he wants to wait for the dust to settle more on redevelopment wind-down before considering new or expanded tax increment financing. For the same reason, he vetoed [AB 345](#), a redo of last year's SB 450, co-sponsored by Western Center and CRLA Foundation, which would have required, among other things, that 25% portions of the housing funds be spent each for extremely-low, very-low, and low-income households, and establish a cap on certain administrative costs.

• **State Housing Programs/Finance:** [SB 1220](#), which would have established a state permanent source for housing funds via a \$75 fee to record most real property documents, fell 2 votes short in the Senate on a party-line vote. A new bill will be introduced next year.

[AB 1532](#) will establish procedures for AB 32 cap-and-trade revenue, expected to be \$2B to \$12B. The bill was amended on the last day to provide that funding could be used "for sustainable infrastructure projects, including, but not limited to, transportation and housing." There is no further elaboration in the bill. [SB 1572](#), a similar measure that did not pass, would have divided the revenue with 8% going to HCD for energy-efficient rental housing for low-income or very-low-income households, and 4% to the the Department of Community Services to further fund the existing Weatherization Assistance Program (WAP), with half of that WAP money set aside for multi-family rentals. [SB 535](#) did pass; it will set aside a portion of the AB 32 funds for low-income communities.

Governmental reorganization was in the air this year in Sacramento. When the dust settled, CalHFA was folded into the Department of Housing and Community Development (HCD), which itself became part of the new Business, Consumer Affairs, and Housing Agency.

In addition to AB 1797 (see above in Mobilehome section), other bills were signed that make changes in HCD programs. [AB 1699](#) will provide a mechanism for owners of older HCD-financed affordable housing developments to seek restructuring of financially troubled developments in need of rehab. The bill will allow rent increases on some households, but amendments obtained by Western Center will cap increases for ELI households at 5% a year, and prohibit any increase that will result in the household paying more than 50% of their income for rent. [AB 232](#) will repeal extra state requirements for CDBG small cities grants awarded by HCD. The change gives extra flexibility in awarding grants, which now will only be subject to federal rules. [AB 1672](#) will make the Prop. 1C parks-housing program more usable by, among other things, basing eligibility on permits issued rather than completions. [AB 1951](#) and [AB 1585](#) both will re-direct funds in undersubscribed HCD programs to other, oversubscribed programs.

• **Homeowner/Foreclosures:** Two identical bills ([SB 900](#) and [AB 278](#)) were signed into law. The bills: (1) Ban "dual track" foreclosures (i.e., banks must render a decision on a loan modification application before starting a foreclosure); (2) Give homeowners a private right of action for injunctive relief and damages; (3) Establish civil penalties for recording or filing multiple unverified documents; and (4) Require a single point of contact for borrowers. The bills were part of Attorney General Kamala Harris's "Homeowner Bill of Rights," her package of sponsored bills that also included AB 2610 (see tenant section).

Several other bills were also signed. [SB 980](#) extends existing law, which was to sunset, to

prohibit loan modification companies from charging an up-front fee for their services. [SB 1069](#) will prohibit "deficiency judgments" on re-finances of home purchase loans; thus, lenders who foreclose cannot sue a borrower if the foreclosure sale proceeds fall short of the amount owed. [AB 1599](#) will require foreclosure notices to include a summary of the notice in the 5 "Civil Code 1632 languages": Spanish, Chinese, Vietnamese, Tagalog, and Korean.

The national mortgage settlement earmarked \$410M to the Attorney General's office for foreclosure mitigation, a portion of which could have been used, under the terms of the settlement for legal assistance or foreclosure counseling. However, the Governor's budget directed that the money be used to fund existing positions at the Department of Justice.

- **Land Use:** The budget provided funding for 5 new positions at HCD's housing element review division, helping to restore staffing for reviews (cut last year by the Governor). The restored slots will prepare HCD for a coming onslaught of housing elements reviews. Western Center and other housing advocates worked closely with budget staff and the administration to advocate for the funding.

[AB 542](#) died in the Senate. Sponsored by Napa County, the bill in its original form was opposed by Western Center and CRLAF, as it would have cut a hole in density standards in housing element law. The amended bill would have clarified the process for local governments to argue for a density lower than the default densities established in the law, but some local governments remain opposed. [AB 904](#) was this year's version of AB 710, which generally would have prohibited cities from requiring more than 1 parking space per unit in defined transit areas. The bill died, but is likelt to return again next year. It continues to concern housing advocates. Although displacement of tenants from rent controlled units are restricted, protections are less than ideal, and how the bill would interact with density bonus law is unclear.

- **Fair Housing:** As part of the State reorganization, the Fair Employment and Housing Commission was abolished. Its functions will be merged into a supposedly separate division of the Department of Fair Employment and Housing. Advocates will need to monitor any problems with everything now under one roof.

[AB 2822](#) would have made it harder for plaintiffs to sue for civil rights violations, including fair housing claims, was amended by the author (Berryhill) before its first scheduled hearing and became a totally different bill (a "gut-and-amend"), after much opposition surfaced. The bill would have narrowed the grounds for standing to sue, as well as imposing other new procedural hurdles.

- **Homeless:** [SB 1571](#), signed by the Governor, creates the School Supplies for Homeless Children Fund as a voluntary contribution fund, funded by a check-off box on income tax returns. The existng Emergency Food for Families Fund is the currently the second most popular check-off, generating approximately \$600,000 annually.

Publications

[***Locating Affordable Housing Near Transit: A Strategic Economic Decision, Reconnecting America***](#) Policy Brief

This policy brief compiles recent research to demonstrate that one of the most economically efficient strategies for providing public services is to ensure that housing near public transportation is affordable to people with a range of incomes.

[Alone Without A Home: A State-By-State Review of Laws Affecting Unaccompanied Youth](#), **[National Law Center on Homelessness & Poverty](#)**

This 251-page report reviews the state of current law in 12 key issue areas that affect the lives and future prospects of unaccompanied homeless youth in all 50 U.S. states and 6 territories. The report offers an overview of the range of approaches taken by states and their relative prevalence, and reveals significant differences in many cases. The report also provides recommendations for policy change in each of the areas.

[Making Subsidized Rental Housing a Platform for Improved Health for Vulnerable Populations](#), **[Abt Associates](#)**

Evidence suggests that access to housing subsidies can contribute to positive health outcomes. This paper explores nine proposed changes to federal housing and health care programs that could provide better support vulnerable populations and wider access to services.

Employment Announcements

[Staff Attorney, Homelessness Prevention Project](#)
[Inner City Law Center](#)

ICLC is currently searching for a full-time Staff Attorney in its Homelessness Prevention Project focusing on eviction defense litigation. This position is part of a three year pilot program where ICLC represents low-income parties in eviction defense cases under the Sargent Shriver Civil Counsel Act. The Staff Attorney will provide legal counsel, advice, and representation to low-income individuals facing eviction, and will work with an eviction defense team including attorneys and paralegals handling caseloads related to unlawful detainer matters. In addition to carrying their own case load, the Staff Attorney will also work closely with volunteer attorneys from private law firms who are providing pro bono representation to clients facing eviction. This includes case assessment, litigation and advocacy on behalf of our clients seeking to avoid eviction and homelessness.

[Contract Housing Attorney](#)
[Centro Legal de la Raza](#)

Centro Legal is seeking a part-time contract housing attorney to provide assistance in representing tenants in administrative hearings before the City of Oakland Rent Adjustment Program. Duties will include: Assisting with intake and assessment to low-income Oakland tenants; Giving advice and counsel to low-income Oakland tenants with potential rent adjustment claims; Providing legal representation to low-income Oakland tenants with rent adjustment claims in administrative hearings before the City of Oakland Rent Adjustment Program; Negotiating settlement agreements with landlords regarding rent adjustment claims; and Assisting low-income tenants with pro per rent adjustment claims. Applicants are encouraged to apply as soon as possible.

[Bilingual \(Spanish\) Housing Attorney](#)
[Bay Area Legal Aid](#)

This position in BALA's downtown San Jose office will focus on housing litigation, including eviction defense, fair housing and enforcing the rights of tenants in foreclosed properties. It involves the following duties: representation of low-income tenants in eviction trials held in Superior Court; identification and pursuit of affirmative fair housing litigation; conducting community outreach and training; working in collaboration with other practice areas to provide holistic legal services to clients; and addressing systemic issues in areas that uniquely effect our clients' housing rights through use of impact litigation and policy work. Applicants are

encouraged to apply before October 12, 2012.

Member, PUC Low-Income Oversight Board
California Public Utilities Commission

Not a paying gig (except for travel expenses), the Low-Income Oversight Board (LIOB) serves as a liaison between the PUC and low-income ratepayers and representatives. The position is one of five members selected by the Commission who with expertise in the low-income community and who is not affiliated with any state agency or utility. The position is for a two-year term. The LIOB holds four to five meetings annually with additional meetings and/or conference calls as necessary. The Board alternates meeting locations between northern, central, and southern California. Deadline to apply is October 19th.

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Western Center leads the fight
in the courts, counties and capital
to secure housing, healthcare and a strong safety net
for low-income Californians.