



Housing Update No. 77

July 2013

Western Center Announces First Annual Housing Policy Summit!

Join Western Center and CRLAF at our first annual Housing Policy Summit. We plan to bring together the legal services community and local, regional and statewide groups working on housing policy for a one-and-a-half day summit. Participants will discuss emerging trends and priorities regarding housing policies that affect low-income Californians, and discuss long- and short-term statewide housing policy priorities.

Save the Date: Oct. 24th - 25th, Sacramento

Announcements

Join Western Center for our Bay Area Housing Task Force meeting!

Thursday, August 1st - 10am to 4 p.m.

Agenda

1. State and Federal Legislative Updates
2. Writ Training with Dick Rothschild, Director of Litigation at Western Center
3. Roundtable Discussion with Experienced Attorneys

Please RSVP to Marilyn Harris at mharris@wclp.org by July 26.

More details and location (Oakland, on BART line) to be sent to those who RSVP.

3.5 hours of free MCLE will be provided.

Got Bed Bugs?

Or your clients? Please fill out this [survey](#) to help us assess the obstacles to living in a bed bug free home our clients face. For questions, contact rwilliams@nhlp.org or dmcgranahan@lafla.org.

Tiffany M. Ikeda receives Western Center's Rock Star award



Tiffany received the award for her pro bono work on a case against the Housing Authority of the City of Los Angeles.

Litigation and Local Advocacy

LA Superior Court permitted to proceed with forcing long-distance travel to unlawful detainer trials

Miles v. Wesley; Union de Vecinos v. Los Angeles Superior Court

The Los Angeles Superior Court has closed 21 out of the 26 courtrooms that used to hear unlawful detainer trials, including every courtroom in the San Fernando Valley. Tenants have been forced to travel up to 30 miles to file their papers and later for trial.

Plaintiffs in *Miles v. Wesley* filed suit in federal court, contending that the court's actions violated the Americans with Disabilities Act, among other laws. The District Court denied a TRO and dismissed the case on abstention grounds, and plaintiffs have appealed.

In *Union de Vecinos*, an overlapping group of tenants and tenants rights groups then sought an original writ in the state Court of Appeal, arguing that the Superior Court had violated statutes and court rules specifying required procedures proposed local rules. The Court of Appeal denied a stay but asked for opposition. In the meantime, the Superior Court engaged in the local rules process, causing the Court of Appeal later to dismiss the writ petition as moot.

Plaintiffs are represented in both cases by Neighborhood Legal Services, Legal Aid Foundation of Los Angeles, Disability Rights Legal Center, and Western Center on Law and Poverty.

Indigent tenant cannot be denied jury trial for jury fees that were waived, court holds

Munoz v. Silva, 216 Cal.App.4th Supp. 11 (2013)

A tenant who secures a waiver of jury fees cannot be denied a jury trial because she then fails to post those fees, the Los Angeles Superior Court, Appellate Division has held. The court reasoned that nothing in the earlier or amended versions of Code of Civil Procedure §631, which require advance posting of jury fees, was intended to override the constitutional right to jury trial or the right of an indigent litigant to obtain the benefits of a fee waiver.

The opinion was initially unpublished, but letters from legal services advocates successfully urged publication of this important, first-impression issue.

Inclusionary ordinance must be upheld if reasonably related to public welfare. Court

of Appeal holds

California Building Industry Association v. City of San Jose, Cal.App.4th, 2013 WL 2449204 (June 6, 2013).

Litigants mounting a facial challenge to inclusionary housing requirements must show that the ordinance bears no reasonable relationship to public welfare, the Court of Appeal has held. The court thus reversed a judgment which had invalidated a San Jose ordinance requiring that 15% of the units in large developments must be set aside for below-market housing, unless the developer pays an in lieu fee. The Court of Appeal rejected an argument that the ordinance could be upheld only if the city could prove that the ordinance was justified to mitigate harms caused by the development. Rather, the focus must be on the relationship to the public welfare. The court remanded to reconsider evidence based on the new standard of review.

Non-profit housing organizations, represented by the Public Interest Law Project and pro bono attorneys, intervened on behalf of the City and participated in the appeal.

Nail and mail service okay after five unsuccessful attempts at personal service, Court of Appeal holds

Stanford University v. Ham, 216 Cal.App.4th 330 (2013)

Code of Civil Procedure §415.45 permits posting an unlawful detainer summons and mailing to the last known address after five unsuccessful attempts at personal service, the Court of Appeal has held.

Mobilehome rent ordinance upheld against multiple challenges

MHC Financing Ltd. Partnership v. City of San Rafael, 714 F.3d 1118 (9th Cir. 2013)

We'll let the first paragraph of Ninth Circuit Judge Sidney Thomas's opinion summarize this one: "As Yogi Berra observed, 'it's deja vu all over again' as we are being 'called upon to consider, yet again, a takings challenge to mobile home rent control laws.' . . . In this appeal, we consider whether San Rafael's mobilehome rent regulation violates the park owners' substantive due process rights, constitutes a regulatory taking under *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), or runs afoul of the 'public use' requirement of the Fifth Amendment under the standards articulated in *Kelo v. City of New London*, 545 U.S. 469, 125 (2005). We conclude that the regulation passes muster against all of these challenges."

Voucher termination reversed: HA failed to prove unauthorized occupant resided in unit

Dominguez v. Baldwin Park Housing Authority, CA BS138646 (Cal Sup. Court, Los Angeles, April 4, 2013).

The court reversed a voucher termination decision because the housing authority failed to

prove that the voucher holder had an unauthorized occupant living with her. Discrediting the evidence proffered by the housing authority, the court cited Cal Evid. Code § 416 and noted that the agency had the power to produce stronger and more satisfactory evidence, but did not do so. On the other hand, the court determined petitioner's evidence credible because she consented to a special inspection by the housing authority and offered to provide written confirmation from the parole officer that the individual did not live with her and had only minor discrepancies.

Supreme Court to hear case attacking viability of Fair Housing Act disparate impact claims

Township of Mt. Holly v. Mt. Holly Garden Citizens in Action, 658 F.3d 375 (3d Cir. 2011) (cert. granted June 10, 2013)

A key tool for preventing segregation - disparate impact claims under the Fair Housing Act - is at risk. While every court of appeals considering the question has found that the FHA prohibits policies that have a discriminatory effect, and HUD issued regulations explicitly stating so, the Supreme Court will consider just that question: "Are disparate impact claims cognizable under the Fair Housing Act?" In this case, the Court of Appeals for the Third Circuit found that residents had presented a prima facie case demonstrating that the Township's targeting of their neighborhood for demolition and replacement with high cost housing would unfairly burden people of color and could prevail if Mt. Holly could have obtained the same legitimate end goals with a less discriminatory alternative policy. The Supreme Court granted cert.

[Advocates file lawsuit against the the Federal Housing Finance Agency for failing to contribute to National Housing Trust Fund](#)

Responding to the recent financial crisis, the The Housing and Economic Recovery Act of 2008 established a National Housing Trust Fund designed to ensure a source of financing for affordable housing and mandated that a certain amount of profits from Fannie Mae and Freddie Mac transfer to the fund. However, the statute also allowed the Director of the FHFA to temporarily suspend this requirement, which he did. Now, despite having about \$1.4 trillion in new business in 2012, the agency has continued its suspension of the mandate to transfer funds to the trust fund. The National Low Income Housing Coalition, the Right to the City Alliance, and four individual plaintiffs have filed suit against Acting FHFA Director Edward DeMarco to enforce this obligation. Plaintiffs are represented by Charles Elsesser of Florida Legal Services, Inc.

Tenants obtain settlement against major landlord for sexual harassment

Low-income tenants and the Coalition for Economic Survival obtained a settlement against the tenants' landlord and his employees for engaging in a pattern of sexual harassment including quid pro quo demands for sexual favors in exchange for waived rent. The landlord, his employees, and others will have to undergo sexual harassment and fair housing training, among other provisions.

Plaintiffs were represented by the Legal Aid Foundation of Los Angeles and Brancart & Brancart.

California State Legislation and Administrative Actions

Dedicated housing fund source moves forward

[SB 391](#) (DeSaulnier), this year's bill to establish a dedicated permanent source for affordable housing funding, passed the Senate and now awaits action in Assembly committees. The bill would establish a \$75 real estate document recording fee, with proceeds expected to raise \$500M per year for state affordable housing programs. After supporting last year's version of the bill, the Realtors are now in active opposition, despite the provision in the bill carried over from last year that exempts sales transactions from the bill. To pass this year, SB 391 must pass the committees and both the Assembly and Senate by September 13. The Governor would then have one month to sign or veto it. If the bill cannot garner enough votes, it can be considered next year during the final year of the two-year legislative session.

Most of WCLP/CRLAF bill package on track

Western Center and CRLA Foundation are co-sponsoring a package of housing and tenant bills this year, many with other groups. Most are still moving forward in 2013:

- [AB 1229](#) (Atkins) would overturn the *Palmer* case and clarify that inclusionary zoning ordinances may include a rental housing component. The bill passed the Assembly, and the Senate committee, and is now before the full Senate. Llandlord groups and the builders remain fiercely opposed, and the vote will be very close. The bill is co-sponsored with NPH and the San Diego Housing Federation.
- [AB 325](#) (Alejo) is also before the full Senate. It is designed to fix the *Pleasanton* case, which overturned decades of law on the statute of limitations to challenge a housing element, and imposed a 90-day limit. It is vital that it happens this year, as many jurisdictions are going through the housing element update process over the next two years. The bill is co-sponsored with Housing California.
- [SB 612](#) (Leno) would allow a survivor of domestic abuse or human trafficking to terminate a long-term lease with a form statement from a health practitioner or counselor. The bill is co-sponsored with the California Partnership to End Domestic Violence and the National Housing Law Project. The bill passed both houses and is expected to be signed by the Governor in early August.
- [SB 750](#) (Wolk) would require water submeters (i.e., meters operated and usage billed by the landlord) in new multifamily rental housing and establish a regulatory scheme for their use. Negotiations are continuing. The bill is co-sponsored with the National Resources Defense Council.
- [SB 510](#) (Jackson) would clarify existing law governing conversions of mobilehome parks from rental parks to resident ownership. Under current law, a survey of residents is required; park owners argue that the local government may not take the survey into account when deciding on whether to approve the conversion. The bill will be heard next month in Assembly committee. Park owners are bitterly opposed. The bill is co-sponsored with GSMOL.
- [SB 603](#) (Leno) would have: (1) required interest payments on security deposits; (2) required deposits to be kept in an insured account; and (3) removed the requirement that a deposit be held in a bank account in the state of California.

Despite removing the first two provisions, the bill could not gain enough votes to pass the Senate. It will be eligible for a re-hearing in January. The bill is co-sponsored with Tenants Together.

Many bills address redevelopment and new tax increment funding

With the demise of redevelopment, a host of bills have been moving in two general categories. Bills dubbed "Redevelopment 1.0" bills are intended to clarify and fill in gaps for successor agencies and housing successor agencies. Housing advocates are working to ensure that the bills do not prejudice the nearly 100 lawsuits that are challenging various aspects of the redevelopment wind-down, including the extent of housing obligations.

There are over a dozen "Redevelopment 2.0" bills, which seek to revive the mechanism of property tax increment (TI) financing to promote local development. One bill of note is [SB 1](#) (Steinberg), which would use TI to fund SB 375 Strategic Growth projects. SB 1 incorporates the housing provisions of redevelopment law into its requirements, and also includes a 25% set-aside of TI for housing, as well as no-net-loss provisions for existing housing. Housing advocates are working to incorporate the same provisions into the other bills. SB 1 has passed the Senate as is slated to be heard in Assembly Local Government Committee next month.

Complete bill report out soon

Over 150 housing bills were introduced this year. Watch for our complete summary, which will be sent later this month.



National Housing Law Project's Federal Update

NHLP welcomes new staff

The National Housing Law Project is pleased to announce the addition of two new staff members. Deborah Thrope, formerly with the Law Foundation of Silicon Valley, will lead the IOLTA and Equal Access Fund team and work on a range of fair housing issues including disability, domestic violence and formerly incarcerated individuals. Brittany McCormick will work on implementation of the California Homeowner Bill of Rights, with a focus on foreclosure and mortgage lending issues.

Congress reauthorizes Violence Against Women Act, expands housing protections

VAWA 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013)

In addition to maintaining current housing protections, the reauthorized Violence Against Women Act extends protections to survivors living on tribal land as well as LGBT and immigrant survivors and survivors of sexual assault. Moreover, VAWA will now cover the

Key substantive changes include: allowing survivors, upon bifurcation of a lease, to remain in the unit to establish eligibility or time to find new housing; providing survivors with emergency unit transfers; and notifying applicants and tenants of VAWA housing rights at three critical junctures. Notably most all VAWA housing provisions are now consolidated at 42 U.S.C. § 41411 (2013).

NHLP held a webinar on VAWA 2013 and the materials and a recording will be available at <http://www.nhlp.org/node/1484> or by request to [Karlo Ng](#).

HUD issues guidance on housing individuals and families experiencing homelessness through the Public Housing and Housing Choice Voucher programs

HUD Notice PIH 2013-15 (June 10, 2013)

Recognizing the importance of expanding housing opportunities for families experiencing homelessness, this notice provides strategies that PHAs can pursue through the Public Housing and voucher programs. This Notice provides guidance on HUD policies and program regulations related to the following topics: waiting list management and preferences; admissions policies regarding criminal activity, substance use/abuse, and rental history; program termination and eviction policies; and project-basing vouchers for Permanent Supportive Housing. This notice could be used to support advocacy on behalf of the homeless.

HUD explains requirements regarding assistance and service animals for persons with disabilities.

HUD issued FHEO Notice 2013-01 (April 25, 2013), which explains certain obligations of housing providers under the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act with respect to animals that provide assistance to individuals with disabilities.

Converting HUD and PHA properties to the Rental Assistance Demonstration (RAD) program may help assure long-term affordability.

RAD has two components. One is for conversion of public housing to project-based Section 8 or to project-based vouchers. The second component provides an opportunity for owners of properties with Rent Supplement, RAP, and Mod Rehab assistance to convert expiring rental assistance contracts to 15-year Project Based Voucher (PBV) contracts. HUD only received authority to do second component conversions for Fiscal Years 2012 and 2013, which means the demonstration sunsets on September 30, 2013. Owners of such units in your jurisdiction may be considering conversions. In most situations conversion will help assure the long term viability of the property. But advocates need to ensure that tenant protections are maintained. For more information on what properties might be eligible for such conversions go to <http://preservationdatabase.org/>. For more information regarding RAD go to <http://portal.hud.gov/hudportal/HUD?src=/RAD>. For letters from advocates and NHLP regarding tenant protections go to <http://www.nhlp.org/node/1850>.

Conferences, Trainings, and Webinars

Re-Entry Issues: Overcoming Employment and Housing Challenges Due to a Prior Arrest or Conviction

San Francisco and Webcast - August 16

This Practising Law Institute seminar will overview the collateral consequences of arrests and convictions and discuss the remedies, rights and protections available in the housing & employment contexts and more. Registration is free; 3 hours of MCLE credit provided.

Class Action Training Institute

San Francisco - September 18-20

The Impact Fund provides a three-day intensive training on class action litigation designed to teach student litigation, strategy, and practical skills for a range of class actions. Registration is \$250 for non-profits; MCLE credit provided. Applications must be received by August 2.

College of Advocacy

Watsonville - October 11-18

The Benchmark Institute's weeklong training teaches lawyers, advocates, and legal assistants advocacy and leadership skills while overviewing poverty law issues. Registration tbd; MCLE provided.

Housing Justice Network Conference

San Francisco - October 16-17

The National Housing Law Project hosts the national meeting of housing advocates for low-income residents. Attendees will participate in sessions on current developments in the federal housing programs, discuss strategies for representing the interests of low-income residents, and exchange ideas on litigating, advocating, and organizing. Registration rates vary; MCLE provided. Register [here](#).

Publications

Douglas Rice, *Sequestration Could Deny Rental Assistance to 140,000 Low-Income Families Cuts Come at Time of Rising Need for Housing Assistance and Will Exacerbate Homelessness*, Center on Budget and Policy Priorities (April 2, 2013).

<http://www.cbpp.org/files/4-2-13hou.pdf>

California Housing Partnership Corporation, et. al., *Why Cap-and-Trade Auction Proceeds Should Fund Affordable Homes Near Transit* (June

2013). http://www.chpc.net/dnld/TOD_Housing_Program_WhitePaper_Final.pdf

Job Announcements

Public Law Center, Orange County's pro bono law firm, is searching for a Lead Attorney for its Housing Unit. Interested applicants should Please submit Resume, Cover Letter and Writing Sample to Christian Abasto, at cabasto@publiclawcenter.org.

<http://www.publiclawcenter.org/general.php?category=About+Us&headline=PLC+Job+Opportunities>

The City of West Hollywood seeks a full-time Rent Stabilization and Housing Manager. Applications are due July 26.

<http://www.weho.org/index.aspx?page=298>

The California Housing Partnership Corporation seeks a Sustainable Housing Program Associate to work on increasing effectiveness and access to energy efficiency programs for low-income housing. The position is for immediate hire. Applications should be submitted to Megan Kirkeby, Sustainable Housing Policy Manager, via email at

mkirkeby@chpc.net. <http://www.chpc.net/dnld/SusHsngProgramAssoc20130708.pdf>

To have your organization's job announcements included in our next Housing Update, send them to us at ngrewal@wclp.org.

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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.**