

## WCLP and CRLAF Host Statewide Housing Policy Summit



WCLP and CRLAF's Housing Policy Summit drew over a hundred housing advocates to engage with one another regarding issues affecting housing for families with low incomes.



## Litigation and Local Advocacy

### Advocates File Lawsuit Against City for Denying Year-Round Emergency Shelter

In *York v. City of Fullerton*, Western Center, together with Legal Aid Society of Orange County, filed suit on behalf of several homeless members of the Fullerton community, challenging the City's discriminatory failure to approve an emergency shelter and multiservice center, and failure to properly zone for emergency shelters "by right" in compliance with SB 2 (2007). The city's refusal of the project violated the recommendation of its own task force on homelessness and mental health services. The case of first impression seeks to enforce SB 2 and fair housing laws, and secure residents' access to needed emergency shelter services.

### Failure to buy renters insurance cannot justify eviction

*NYC v. MCO*, 117 Cal. App. 4th 988 (2013)

A tenant's failure to buy renters insurance as required in her lease was not a material breach of the lease justifying eviction, the Appellate Division of the Los Angeles Superior Court has held.

**Unduly burdensome density bonus ordinance struck down**  
[Latinos Unidos v. County of Napa](#), 217 Cal.App.4th 1160 (2013)

Napa County's density bonus ordinance conflicts with the state Density Bonus Law, the Court of Appeal has held. A density bonus awards inclusion of affordable units in a housing development by permitting the developer to increase the density of the project. The court held that the county ordinance, required the developer to include a higher percentage of affordable units than Government Code §65915 requires to obtain a density bonus.

Plaintiffs were represented by Craig Castellonet and Michael Rawson, Public Interest Law Project; Ilene J. Jacobs, California Rural Legal Assistance; Scott Chang, Relman, Dane & Colfax PLLC, Reed N. Colfax; David Grabill, and; Jeffrey Hoffman.

**Anti-deficiency protections apply to borrower who sells house to third party, Court of Appeal holds**

[Coker v. JP Morgan Chase Bank, N.A.](#), 218 Cal.App.4th 1, 5 (2013)

A borrower, behind on her mortgage, sold her house, with the approval of the lender, for a price that was less than the balance owed. The Court of Appeal held that the anti-deficiency protections of Code of Civil Procedure §580b applied, preventing the lender from suing the borrower for the difference.

**Defamation claims against tenant partially upheld**

[Bently Reserve L.P. v. Papaliolios](#), 218 Cal. App. 4th 418 (2013)

Tenants: it's okay to call your former landlord a "sociopathic narcissist." Everybody is entitled to an opinion. But if you post to the internet a claim that the landlord caused the deaths of three tenants, that may be going too far, especially when two of them are still alive. So held the Court of Appeal in an opinion which applied traditional defamation rules to Yelp reviews.

**Tenant with initial fee waiver cannot be denied jury trial for failure to post fees**

[Kim v. De Maria](#), 218 Cal.App.4th Supp. 1 (2013)

An indigent tenant is entitled to seek waiver of jury fees and expenses at the outset, thus precluding the need to post jury fees later, the Los Angeles Superior Court Appellate Division has held. The appellate court thus held that the trial erred by denying a tenant the right to a jury trial.

**Court of Appeal holds warranty of habitability only applies to tenants who know they are injured**

[Henderson v. Los Alamos Apartments, L.P.](#), 218 Cal.App. 4th 1000 (2013)

The Court of Appeal in one opinion managed to make bad law on warranty of habitability, class actions, and the Los Angeles REAP program.

The court, affirming a denial of class certification in a suit against a slumlord, held that common issues did not predominate because the habitability violations, such as faulty elevators and fire safety defects, did not affect every tenant equally, especially those who did not notice the defects. In addition, the court held that tenants could not prevail on claims under REAP, LA's program which, among other things, restricts the amount of rent owed to proven slumlords. The Court of Appeal held that REAP permits tenants to "voluntarily" pay the full rent.

The tenants have petitioned for review, and numerous letters have been submitted to the California Supreme Court in support of review and depublication.

### **Never on a Sunday? Not so fast, says Court of Appeal**

[Dromy v. Lukovsky](#), 219 Cal.App.4th 278 (2013)

"Normal business hours" now include weekends, the Court of Appeal has held. The court thus ruled Civil Code §1954(b), which permits a landlord to enter a dwelling unit to exhibit the premises to prospective or actual purchasers during "normal business hours" permits a landlord to do so on weekend days between 1 and 4 p.m.

### **Retaliatory eviction statute trumps litigation privilege, Court of Appeal holds**

[Banuelos v. LA Inv., LLC](#), 219 Cal.App.4th 323 (2013)

A cause of action for retaliatory eviction (Civ. Code §1942.5) is not barred by the litigation privilege of Civil Code §47, the Court of Appeal has held. The court applied the retaliatory eviction statute because it was more specific than the litigation privilege law, and to deny application would render the statute inoperable.

### **PTFA does not confer private right of action in federal court, 9th Circuit holds**

[Logan v. U.S. Bank Nat. Ass'n](#), 722 F.3d 1163, 1165 (9th Cir. 2013)

The Protecting Tenants at Foreclosure Act does not create a private right of action, the Ninth Circuit has held. The decision was long expected by tenant attorneys, who had already shifted their focus to state courts. The PTFA, which preserves bona fide leases that would otherwise be terminated by foreclosure and guarantees tenants without leases 90 days notice before eviction, is used as a defense to unlawful detainer actions. Tenants are also seeking to redress violations of the PTFA in affirmative state court suits based on breach of quiet enjoyment and similar claims.

### **But State Law May Provide the Answer**

[Rose v. Bank of America](#), 57 Cal.4th 390 (2013)

The California Supreme Court held that a claim of unlawful business practice under the state's unfair competition law can be based on violations of a federal statute, even after

long as the state law is not expressly preempted.

## California State Legislation and Administrative Actions

### **Governor signs housing element, mobilehome, and tenant domestic violence bills; vetoes needed inclusionary fix**

As we reported last month, the Governor signed several priority housing bills sponsored by Western Center and others. However, he vetoed the bill that would have restored the ability of localities to enact inclusionary rental housing ordinances. If you have not seen it already, [click here](#) for our full end-of-the-year report on all California housing legislation.



## National Housing Law Project's Federal Update

Click [Here](#) for Full Report.

### **Sequestration and the HUD Budget**

[HUD has posted data regarding the financial condition of local public housing authorities' voucher programs](#)

This data can help advocates better assess the financial condition of their local public housing authority. Some housing authorities have substantial reserves; others do not. In addition, HUD has [posted](#) a listing of the 2013 renewal funding award data and voucher utilization data.

### **Continuing Resolution expires on January 15, 2014**

The Congressional Budget Conference Committee began negotiations on next year's budget and has a December 13 deadline to issue a report on FY14 federal spending. Until an agreement is reached, the government will continue to operate under sequester level funding. If a housing authority in your area is taking cost-saving measures as a result of the sequester, please report the issue to NHLP.

### **Violence Against Women Act**

[HUD recently issued a notice on the overview of the applicability to HUD programs of the Violence Against Women Reauthorization Act of 2013 \(VAWA 2013\)](#)

78 Fed. Reg. 47,717-47,722 (Aug. 6, 2013).

VAWA 2013 expands the number of HUD programs subject to the statute's protections - HUD's notice highlights the key changes made by the law, lists which HUD programs are newly covered, overviews key provisions, and advises of HUD's plans to issue rules or guidance on this new law. Read NHLP and the Shriver National Center on Poverty Law's comments [here](#).

[HUD Assistant Secretary for Public and Indian Housing Issued a Letter to PHAs Regarding VAWA 2013 Implementation](#)

On September 30, 2013, HUD sent a [letter](#) to public housing authorities regarding the implementation of VAWA 2013. The letter provides some clarity on the agency's August VAWA notice. Specifically, the letter details which housing provisions under VAWA 2013 are and are not self-executing pending additional HUD guidance or rulemaking. The letter further tells PHAs to update their Administrative Plans and Admissions and Continued Occupancy Plans according to VAWA 2013's enhanced protections. It also reminds PHAs as well as owners and managers of Section 8 housing that they must continue to provide VAWA protections as provided by HUD's regulations implementing VAWA 2005. This letter can be useful in advocacy with PHAs, owners, and managers concerning immediate implementation of many of VAWA 2013's housing safeguards.

### **HUD Releases Proposed Affirmatively Furthering Fair Housing Rule**

78 Fed. Reg. 43,709-43,743 (July 19, 2013).

The proposed rule defines "affirmatively furthering fair housing" and replaces the Analysis of Impediments process with the new Assessment of Fair Housing. In addition, under the new rule, HUD will provide data to program participants to assess fair housing needs.

The Poverty & Race Research Action Council has posted comments to the rule, including those submitted by NHLP as well as Western Center [here](#).

### **HUD Revises Multifamily Housing Handbook**

HUD Handbook No: 4350.3 REV-1, CHG-4, Issued 8-7-2013.

HUD made Change 4 to its Handbook "Occupancy Requirements of Subsidized Multifamily Housing Programs", which provides informal guidance for the operation of federally subsidized multifamily housing. The update includes information on use of the Enterprise Income Verification (EIV) system; Violence Against Women Act (VAWA) requirements; Supplemental Information to Application for Federally Assisted Housing; and Rent Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Final Rule and requirements relating to admission of individuals subject to State lifetime sex offender registration requirements.

### **Final HOME Program Rule Published**

78 Fed. Reg. 44628 (July 24, 2013).

HUD's final rule regarding the HOME program includes a number of changes to requirements for Community Housing Development Organizations, manufactured homes, eligible costs, and more. The National Low Income Housing Coalition has developed a summary of the changes, available [here](#).

## **Conferences, Trainings, and Webinars**

### **Affordable Housing: Reality Series**

*Davis, CA - November 15*

Public Interest Law Project, Western Center on Law and Poverty, California Rural Legal

Assistance Inc., and Legal Services of Northern California will discuss housing element and redevelopment advocacy -- critical changes & new tools to increase affordable housing. Registration is \$20; MCLE provided.

**Subsidized Housing Basics, Part 1: Low-Income Housing Tax Credit and Rural Development Multifamily Housing Programs**

*Webinar - November 20*

In this 90 minute webinar, the National Housing Law Project will cover frequently asked questions regarding the aforementioned housing programs, including tips for telling what program a client is in; who is eligible for each program; how the admissions process works; how much rent clients pay; rules regarding evictions; and helpful resources. Registration is free.

**California MCLE Marathon 2013: Current Developments in Legal Ethics - Substance Abuse - Elimination of Bias in the Profession**

*San Francisco and Webcast - December 2*

The Practising Law Institute presents a day-long training on the highly sought after topics legal ethics, substance abuse, and elimination of bias. 6 hours MCLE; \$695.

**Publications**

Emily Werth, [The Cost of Being "Crime Free": Legal and Practical Consequence of Crime Free Housing and Nuisance Property Ordinances](#), Sargent Shriver National Center on Poverty Law (August 2013).

National Law Center on Homelessness and Poverty, [Cruel, Inhuman, and Degrading: Homelessness in the United States under the International Covenant on Civil & Political Rights](#) (Sept. 2013)

Rebekah Levine Coley, *et. al.*, [Poor Quality Housing Is Tied to Children's Emotional and Behavioral Problems: Parents' stress from living in poor quality and unstable homes takes a toll on children's well-being](#), MacArthur Foundation (Sept. 2013).

Daniel Flaming *et. al.*, [Getting Home: Outcomes from Housing High Cost Homeless Hospital Patients](#), Economic Roundtable (Sept. 2013)

National Low Income Housing Coalition, [Housing Instability Among Our Nation's Veterans](#) (Nov. 2013).

Will Fischer, [Rental Assistance Helps More Than 300,000 Veterans Afford Homes, but Large Unmet Needs Remain Housing Vouchers for Some Veterans at Risk Unless Congress Provides Funding Above the 2013 Levels](#), Center on Budget Policy and Priorities (Nov. 2013).

**Job Announcements**

California Rural Legal Assistance, Inc. is hiring for [several attorney positions](#). Cover letter and resume should be submitted to [hr@crla.org](mailto:hr@crla.org).

Public Counsel seeks a [Director of Litigation](#). Applications and inquiries should be directed to Sarah James or Becky Klein at [ImpactLitigation@PhillipsOppenheim.com](mailto:ImpactLitigation@PhillipsOppenheim.com).

Sacramento Housing Alliance seeks an [Executive Director](#). Please submit a resume, cover letter and salary requirement or range to [hr@sachousingalliance.org](mailto:hr@sachousingalliance.org).

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