



## Housing Update No. 79

February 2014

### Big Win for Tenants Living in Foreclosed Homes

#### Tenants Living in Foreclosed Homes Can Enforce their Rights Under the PTFA

Nativi v. Deutsche Bank Nat'l Trust Co., No. H037715 (January 23, 2014). Tenants in foreclosed homes have enforceable rights against subsequent purchasers, the Court of Appeal has held.

In a lengthy published opinion deciding numerous issues of first impression, the Court of Appeal ruled that: 1) the federal Protecting Tenants at Foreclosure Act preempts state common law and requires that a bona fide lease survives foreclosure; 2) a bona fide tenant can avail herself of these protections even if the unit at issue is an illegal one; 3) one can file an affirmative state court suit based on state law causes of action alleging violation of the PTFA, even though there is no federal private right of action - it is not only an eviction defense.

The decision was a victory for Rosario Nativi and her son against Deutsche Bank and American Mortgage Servicing. The Nativis, long-time tenants in a garage unit in Sunnyvale, had continuously paid rent, unaware that their landlord had stopped paying the mortgage, a not uncommon situation for renters in foreclosed homes. When they returned from out-of-town travel, they found their belongings tossed out and destroyed. Police, apparently acting on orders from an agent of the Bank, ordered them to leave. When informed of the situation, the Bank itself refused to help the Nativis and threatened them with litigation. The Court of Appeal reversed summary judgment against the Nativis, holding that the Bank is potentially liable for refusing to assist the Nativis in returning to their home.

The Nativis were represented by Western Center on Law and Poverty, Bay Area Legal Aid, Alborg Veiluva & Martin LLP, and Jenner and Block.

An amicus brief was filed by the National Housing Law Project, National Low Income Housing Coalition, National Law Center on Homelessness and Poverty, AARP, National Fair Housing Alliance, and California Reinvestment Coalition.

If you have **questions** regarding the rights of tenants at foreclosure, please contact Madeline Howard at [mhoward@wclp.org](mailto:mhoward@wclp.org).

## Litigation and Local Advocacy

### Relief from Default Judgments is Indeed Available

SRO Housing v. Dyce, BV 030540 (Jan. 22, 2014).

The Appellate Division, in a case certified for publication, held that tenant could obtain relief from forfeiture pursuant to Civil Code section 1179 after default judgment was entered. Trial court had ruled against tenant under the reasoning that "such relief is only available from a judgment upon trial under [section] 1174." The Appellate Division stated that nothing in section 1179 precluded the trial court from exercising its discretion to provide such relief.

Defendant was represented by the Eviction Defense Network.

### USDA Must Follow its Own Rules

Turner v. Vilsack, 2013 WL 6074114 (D. Or. Nov. 18, 2013)

Three residents of a subsidized Section 515 Rural Rental Housing development secured a preliminary injunction precluding Rural Development (RD) from foreclosing on a 36-unit project in McMinnville, Oregon. The injunction was issued against Secretary of Agriculture Thomas Vilsack and several RD officials for failing to: properly advise the residents that the agency categorized the development as unsuitable for retention in the 515 program; assist them in relocating to other housing prior to foreclosure; and provide them with an opportunity to appeal the RD decisions. The development has been operated by RD for over 16 years under a receivership order.

The residents were represented by the Oregon Law Center, which was assisted by the National Housing Law Project.

## California State Legislation and Administrative Actions

### Budget: Return of Redevelopment?

Governor Brown released his proposed state budget on January 9th. Few details were released, and the significance for housing lies in the details. The budget proposes revamping the Infrastructure Financing District (IFD) Law, a little-used local development tool that has been on the books for 20 years. It has not been used much because it requires 2/3rds voter approvals to create a district or issue bonds. The budget proposes to reduce the approval thresholds to 55 percent, and to clarify that a broader range of developments, including affordable housing, are eligible for funding.

However, the proposal also says that litigation with the state regarding the old redevelopment agencies must be concluded before a city or county could form an IFD under the new rules. Again, no details are available, but presumably the locals would have to dismiss their pending cases (over 150 and counting) to use the

funding flow available. First, the amount of property tax that would be diverted to the IFD would be set utilizing a base year number equal to the assessed value of the parcels when the district is formed. Thus, unlike long-established redevelopment areas, fewer dollars would be available to support projects. Second, no diversion of school property taxes is permitted under IFD law, and other taxing entities (e.g., special districts) have the choice of opting out.

A potential bright spot in the budget can be found in Cap and Trade. To support sustainable communities strategies, the budget proposes \$100 million for the Strategic Growth Council (SGC) to use for SB 375 implementation, which includes affordable housing. A coalition of advocates have been working with the SGC to make sure housing has a strong role in sustainable communities strategies.

The Budget also proposes using an additional \$80M in Cap and Trade revenues to fund the existing weatherization program at the Department of Community Services and Development. Funds would go to low-income households, both single-family and multi-family. The budget envisions leveraging federal and other funding sources.

Also in the budget is \$11.3M to bump up the Integrated Services for Mentally Ill Parolees program that provides wraparound services, including supportive and transitional housing. The number of slots would go up to 900 from 600.

All of these proposals will be the subject of legislative hearings throughout the spring. A final budget is expected on or near the June 15th deadline, with the Governor having until June 30th to sign or veto appropriations.

#### **Permanent source bill on track**

The bill to create a dedicated source of state funding for affordable housing, SB 391 (DeSaulnier), awaits the final push toward enactment in 2014. The bill needs to pass Assembly Appropriations, and then be approved by a 2/3rds vote of the full Assembly before being sent to the Governor. Housing advocates remain optimistic, and the statewide campaign continues at full force. The bill is projected to raise \$300M to \$750M per year for housing programs, through a \$75 recording fee surcharge on most documents.

#### **New bills readied**

New bills must be introduced by the end of February. Several housing bills are being prepared, including measures to address "Ellis Act" evictions, housing requirements for IFDs (separate from the budget proposal; see above), and others. We will have a full report on the new crop of bills soon after the deadline.

#### **Judicial Council Moves Toward Increased Access to Interpreters**

On January 23, 2014, the Judicial Council of California made explicit that court

thus authorizing trial courts to request reimbursement for costs related to court interpreters for all appearances in domestic violence cases, family law cases in which there is a domestic violence issue, elder or dependent adult abuses cases, and for indigent parties in civil cases. Courts have the discretion to determine the method of implementation for providing interpreters to indigent litigants according to local needs. The Council is currently developing a language access plan for the judicial branch; public hearings will be held to get broader public input in late February and early March. To read more about the Council's meeting and upcoming public hearings visit the Council's website or contact Claudia Menjivar at [cmenjivar@wlcp.org](mailto:cmenjivar@wlcp.org).

### **Atkins to be next Speaker**

Housing advocates were cheered by the selection of Toni Atkins (D-San Diego) to be the next Speaker of the Assembly. She has long been a champion for affordable housing, and was able to get the bill (AB 1229) to reinstate authorization of local inclusionary rental ordinances through the Legislature last year. Unfortunately, the Governor did veto the bill. The Senate will be led by Kevin de León, who has been sensitive to poverty issues and problems faced by disadvantaged communities. Both transitions will occur after the budget process is completed.



### **National Housing Law Project's Federal Update**

Click [here](#) for the full report.

### **January Appropriations Brings Much Needed Financial Relief to Housing Programs**

In mid-January, Congress agreed on an Omnibus Appropriations providing increased funding to implement the December budget agreement. HUD and RD affordable rental housing programs will see increases from the funding levels imposed by the sequester and Continuing Resolutions for FY 13 and the first quarter of this fiscal year. Most programs were restored to pre-sequester levels; RD Rental Assistance funding received an additional boost. The bill includes numerous policy provisions, some of which benefit tenants and preserve affordable housing.

### **Guidance to Help Housing Authorities Address Voucher Funding Shortfall**

HUD PIH Notice 2013-28: Guidance on the Use of Outside Sources of Funds in the Housing Choice Voucher Program: On December 16, 2013, HUD released guidance to Public Housing Authorities on the use of outside sources of funds for Housing Assistance Payment expenses in the voucher program. The Notice lists acceptable sources of money for housing authorities to use to pay its portion of voucher assistance in light of recent budget shortfalls. The Notice also lists funds

that are prohibited from being used to augment the HCV program, including HOME funds, net proceeds from Public Housing demo/dispo, Central Office Cost Center (COCC) funds, State funds, donations from philanthropic parties, and Mod Rehab admin fee reserves emanating from the Housing Certificate Fund. These funds can only be used to prevent the termination of current HCV participants. However, before a PHA may use these outside sources, a PHA must get confirmation from HUD that a shortfall exists and then approval.

### **Opportunity for Advocates to Provide Input on VAWA Certification Form**

HUD Seeks Comments on Revising VAWA Certification Form: On December 26, 2013, HUD's Office of Public and Indian Housing requested public comments on the HUD-approved certification form (HUD 50066) that survivors of domestic violence, dating violence and stalking can use to certify their status as victims under the Violence Against Women Act. This certification allows survivors to claim housing protections afforded by VAWA in public housing and Section 8 voucher units. The notice indicates that HUD will update HUD-50066 to include only items required by VAWA 2013. At a later date, the agency will issue a new form that will be used for all the HUD programs covered by VAWA 2013. Among other issues, HUD requests comments regarding ways in which the quality, utility and clarity of the form can be enhanced. Comments are due February 24, 2014. HUD's notice is available [here](#).

### **Advocates Submit Comments to USDA Nondiscrimination Rule**

The USDA proposed amendments to its nondiscrimination regulation, 7 CFR Part 15d. The proposed regulation will require standardized data collection of USDA program applicants' race, ethnicity, and gender, and will prohibit discrimination on the basis of political belief and gender identity. The USDA civil rights office will also be required to offer alternative dispute resolution services to complainants when the office deems it appropriate. This proposed regulation only applies to USDA-conducted programs. The National Housing Law Project, as well as the National Fair Housing Alliance, submitted comments on behalf of numerous legal services organizations. The proposed rule can be found at [78 Fed. Reg. 78788](#).

### **Mel Watt Heads Federal Housing Finance Agency**

On January 6, 2014, Mel Watt was sworn in as the head the Federal Housing Finance Agency (FHFA). The FHFA regulates Fannie Mae and Freddie Mac, companies that oversee most of the nation's mortgages. Housing advocates hope that Mel Watts will help foster increased housing opportunities for low and middle-income Americans through such acts as funding the National Housing Trust Fund. At his swearing in ceremony, Mr. Watts spoke of challenges he has faced finding decent, safe, and affordable housing and his desire to alleviate those barriers for other Americans.

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

## **Fair Housing Laws and Litigation Conference**

San Diego - February 13, 14

This two day conference will feature speakers discussing topics relating to building strategic bridges to health, education, and human rights. Registration rates vary; 12 hours of MCLE provided. Register [here](#).

## **Representing Homeowners and Tenants Under the Homeowners Bill of Rights**

Fresno - February 25

The HBOR Collaborative presents free training on the nuts and bolts of representing homeowners and tenants under California's Homeowner Bill of Rights (HBOR). Both trainings will cover HBOR basics and provide practical tips for representing clients. The training will cover the interplay of HBOR with NMS, CFPB servicing rules, and the Protecting Tenants at Foreclosure Act. It will also discuss HBOR's attorney fee provisions. Registration is free; 5 hours MCLE. Register [here](#).

## **Job Openings**

Housing California seeks a [Sustainable Communities Coordinator](#) to work on issues around the intersection of housing, transportation, and land-use planning.

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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.**