



## Housing Update No. 82 October 2014

### Register Now!

#### **Darrell Steinberg to Keynote WCLP/CRLAF Housing Policy Summit**



Senate President Emeritus Darrell Steinberg will be the keynote speaker and open the Western Center/CRLAF Housing Policy Summit November 6th and 7th in Sacramento. The biennial summit will gather advocates from across the state to chart the roadmap for WCLP/CRLAF housing policy advocacy at the Capitol for the next two years.

Register [here](#) by October 24.

#### **Litigation and Local Advocacy**

##### **Fee waivers must be granted to all public benefit recipients, Court of Appeal holds**

*C.S. v. W.O.*, 230 Cal.App.4<sup>th</sup> 23 (2014)

A judge may not take away a public benefit recipient's fee waiver just because she borrowed money to pay for a transcript. The litigant in a family law case was initially granted a fee waiver on the basis of receipt of CalWORKs, food stamps and Medi-Cal benefits. When the trial court heard that the litigant had paid for an expedited transcript to appeal one of the court's rulings, the court revoked the fee waiver despite the litigant's explanation that she had to borrow money from friends and families to pay for the transcript. The Court of Appeal reversed, holding that Government Code §68632(a) requires a court to grant fee waivers for public benefit recipients, regardless of the ability to borrow money.

The Los Angeles Center for Law and Justice, the Legal Aid Association of California, and other legal services and public interest programs filed an amicus brief in support of the litigant

##### **On three-day notice, a web address is not good enough**

*Foster v. Williams*, 229 Cal. App. 4th Supp. 9 (Cal. App. Dep't Super. Ct. 2014)

The Appellate Division reversed a judgment against a tenant in an unlawful detainer action because the three-day notice to pay or quit was insufficient as it did not include a physical address to which the tenant could send rent. The notice had only listed a web address.

##### **Failure to check a box does not waive habitability defense**

*Boyd v. Carter*, 227 Cal. App. 4th Supp. 1, (Cal. App. Dep't Super. Ct. 2014), as modified (July 2, 2014).

On appeal, the court reversed an unlawful detainer judgment, holding that the trial court erred in

prohibiting testimony regarding a breach of the warranty of habitability solely because defendants had failed to check a box asserting that defense. The court further held that the trial court erred in finding nonpayment of rents where defendants paid the rent due.

Appellant was represented by Jason Tarricone, Community Legal Services of East Palo Alto.

### **Park owner prohibited from charging illegal rents**

*Cruz v. Sierra Corporate Management, Inc.*, San Mateo Super. Ct. No. Civ. 528792

The owners of a Redwood City mobilehome park have illegally induced residents to sign leases that provide for conflicting amounts of beginning rents which rise dramatically and unexpectedly after two to three years, a San Mateo County Superior Court judge has ruled. Judge George Miram ruled that plaintiffs are likely to win on the merits, stating that the leases were "unintelligible" adhesion contracts which must be construed against the owner. The court issued a preliminary injunction prohibiting charging rents higher than the lower rents the tenants initially paid and were led to believe would be the base rents governing their tenancy, subject to modest cost of living increases. The injunction also prohibits park management from telling tenants who are unnamed members of the plaintiff class that they will have to pay attorneys' fees if the suit is unsuccessful; and from inducing tenants to waive their statutory rights.

Plaintiffs are represented by: Shirley Gibson, Legal Aid Society of San Mateo County; Navneet Grewal, Richard Rothschild, Western Center on Law and Poverty; Ara Jabaghourian, Brian Schnarr, Cotchett, Pitre & McCarthy.

### **City correctly denied mobilehome conversion where tenants were unanimously opposed**

*218 Properties, LLC v. City of Carson*, 226 Cal. App. 4th 182, as modified on denial of reh'g (June 13, 2014), review denied (Aug. 13, 2014)

Two mobilehome park owners successfully petitioned for a writ of mandate against City of Carson for denying their application to convert a mobilehome park to resident ownership. On appeal, the court reversed in part and affirmed in part, holding that the City correctly denied the conversion application where park residents were near unanimous in their opposition to the conversion. In the second park, only about a third of the residents responded to the survey, and while the majority opposed it, some supported it. The court found that other facts indicated the conversion was bona fide and thus the City abused its discretion by basing a denial on the tenant survey. The court further held that the City's failure to allow the park to amend its Tenant Impact Report or to raise the issue prior to its City Council appeal precluded it from relying on that report as a basis for denial.

### **Mobilehome park owner has standing under Fair Housing Act to challenge discrimination against families**

*El Dorado Estates v. City of Fillmore*, 765 F.3d 1118 (9<sup>th</sup> Cir. 2014)

A mobilehome park owner, whose subdivision application was delayed for years, has standing to contend that the delay was prompted by the defendant city's fear that the park would be converted from senior to family housing, the Ninth Circuit has held. The court did not reach the merits of the discrimination claim.

### **\$3.3 million settlement for public housing tenants receives preliminary approval**

*Galindo v. Housing Authority of the City of Los Angeles*, Civ. No. 12-2449 (C.D. Cal.)

A federal district judge has preliminarily approved a \$3.3 million class action settlement for Los Angeles public housing tenants who were illegally charged for garbage removal. The settlement provides that most of the tenants will be compensated by the Housing Authority of the City of Los Angeles, which for several years failed to pay tenants a \$24 per month allowance provided for by federal regulations. The court had previously certified the plaintiff class, consisting of more than 9,000 tenants, and issued partial summary judgment on the tenants' federal claims. The court also suggested that the tenants were likely to prevail on state law contract claims, as their leases stated that the housing authority would take care

of rubbish removal.

Class Members are represented by Robert Newman, Navneet Grewal, Western Center on Law and Poverty; Tiffany Ikeda, Jennifer Sklenar, Arnold & Porter LLP; James Grow, National Housing Law Project; Erika Diaz, Gladys LaTorre, Los Angeles Center for Law and Justice.

### **Court Rules HUD Must Provide Further Explanation Regarding Applicability of Disparate Impact Rule**

*Property Casualty Insurers Assoc. of America v. Donovan*, \_\_\_ F. Supp. 2d \_\_\_, 2014 WL 4377570 (N.D. Ill. Sept. 3, 2014)

The court granted partial summary judgment to the insurance industry "on its claims that HUD's application of the Disparate Impact Rule to homeowners insurance was arbitrary and capricious" and granted partial summary judgment to HUD on the industry's claims that the burden-shifting framework in the Rule was not valid. The industry had sought a safe harbor in the Rule and the court found that HUD failed to provide a "reasoned explanation" for its decision to reject the safe harbor. The court also concluded that HUD's response to insurance industry comments about how the nature of insurance entitles the industry to a safe harbor was arbitrary and capricious. The court ultimately remanded the case instructing HUD to provide further explanation for its position on the Rule's application. The court also held that the industry "provided no basis for the Court to invalidate HUD's burden-shifting approach."

### **Certiorari Granted in Disparate Impact Case.**

In what appears to have become an annual tradition, the U.S. Supreme Court, on October 2, granted *certiorari* to petitioners in *Texas Dept. of Hous. & Comm. Affairs v. The Inclusive Comm.* The Texas Department of Housing and Community Affairs sought the Court's review on two questions: (1) whether disparate impact claims can be brought under the Fair Housing Act (FHA); and (2) if these claims can be brought, what burden-shifting framework for analyzing such claims should be used. **Importantly, the Court will only consider the first question, namely, whether disparate impact claims are cognizable under the FHA.** The Supreme Court docket for the case (No. 13-1371) is now available [here](#).

## **California State Legislation and Administrative Action**

### **Cap-and-Trade program design moving forward**

The state budget allocated major dollars for affordable housing that contributes to greenhouse gas reduction. The [Strategic Growth Council](#) has been charged with designing the guidelines for the [Affordable Housing and Sustainable Communities Program](#). They have released a [draft of the guidelines](#) for public review with comments due on Oct. 31st. In the interim, SGC is hosting workshops across the state to solicit feedback on the guidelines.

While SGC is in the process of developing program guidelines, Cal EPA is responsible for two crucial components of final program implementation. Critically, Cal EPA has yet to determine the definition of disadvantaged communities. Further, the Air Resources Board is finalizing how certain important factors are scored in applications. Despite many unresolved issues, SGC expects to have the guidelines approved by Dec. 11th.

### **Legislative session ends**

The two-year session ended on September 30th with the Governor taking final action on bills. Below are highlights; also [see our chart](#) with summaries of all of the 100+ housing bills that were active this year.

### **Landlord-Tenant bills**

**AB 1513(Fox)**, sponsored by the California Association of Realtors, was signed into law. As enacted, it sets up a 3-year pilot program in Palmdale, Lancaster, and Ukiah. It would direct law enforcement to remove any persons found on a property, if an owner has filed a declaration with the law enforcement agency that the property is vacant and agrees to hire private security which would verify every three

days that the property is vacant. The bill requires a TRO-type proceeding, but tenants would have only three days to respond to "nail-and-mail" notice - in practice, posting only. Even as amended, the bill remains a worry as most pilots end up being eventually applied statewide. Advocates will be looking to monitor the pilot closely.

[AB 2747 \(Judiciary Committee\)](#) was also signed. The bill includes an update to the right to possession forms, which are now inaccurate with regard to tenants in foreclosed properties, as a result of the protections enacted in AB 2610 in 2011. The bill also subjects certain water agencies to shut-off protections enacted generally in SB 120 in 2008.

[AB 2310 \(Ridley-Thomas\)](#) and [AB 2485 \(Dickinson\)](#) will extend two pilot programs that allow specified city attorneys to evict for certain nuisances if landlords refuse to do so. AB 2310 allows Los Angeles, Long Beach, and Sacramento to continue to evict for weapons and ammo violations, while AB 2485 does the same for Oakland and Sacramento with respect to drug violations. Both bills terminate the authority in 2019. Both bills contain tenant protections that are stronger than those contained in "social nuisance" local ordinances that many localities have enacted in the last few years. On the other side of the coin, [AB 319 \(Campos\)](#), also enacted, will preclude a social nuisance ordinance from requiring a landlord to evict a domestic violence survivor because they contacted law enforcement for assistance.

Late agreement among most stakeholders was not enough to get [SB 411 \(Wolk\)](#), fka SB 750, enacted. The bill would have enacted tenant protections for landlord-operated water submeters and explicitly allowed monthly administrative fees. [AB 1434 \(Yamada\)](#) also died. It would have directed the Department of Community Services & Development to develop a plan for a Low-Income Water Rate Assistance Program. Both tenants and homeowners would be included, with the income cut-off at 200% of the Federal Poverty Level.

### Land use bills

Three significant land use bills were signed. [AB 1537 \(Levine\)](#) will lower the default densities (Mullin Densities) for Marin County (not a misprint). The bill generated from rancorous local opposition to higher density housing in Marin County. Western Center and CRLAF opposed the bill on at least two grounds. First, Marin County failed to use the already available feasibility analysis which jurisdictions can use to lower densities. Second, the bill risks of setting a terrible precedent of allowing NIMBY opposition - one of the reasons fair share housing laws exist - to change state housing element law.

[AB 1690 \(Gordon\)](#) will delete the requirement that a local government that fails to identify adequate sites in its housing element must adopt a rezoning program that rezones at least 50% of its affordable housing sites on land designated for residential use.

[AB 2222 \(Nazarian\)](#) helps preserve existing affordable units. Under existing law, a person or entity proposing to develop a residential project, or seeking approval to convert apartments to a condominium project, qualifies for a density bonus if the proposed project has a specific percentage of units set-aside for affordable housing. This bill will prohibit an applicant from receiving a density bonus, incentive, or concession if a proposed housing development or condominium project is located on property where dwelling units have, at any time in the five-year period preceding the application, been occupied by very low- or low-income households or subject to rent control.

### Redevelopment, infrastructure, and tax increment bills

Several Administration-approved "Redevelopment 2.0" bills were signed into law: [SB 628 \(Beall\)](#), [AB 229 \(J Perez\)](#), and [SB 614 \(Wolk\)](#). Each are modeled on the existing but little-used (due to voter approval requirements) Infrastructure Financing District (IFD) law. The bills neither require housing production nor funds to replace demolished housing. Minimal relocation and replacement requirements are included in each bill. Bills with more robust housing requirements fell by the wayside, including [SB 1 \(Steinberg\)](#) (not sent to the Governor) and [AB 2280 \(Alejo\)](#) (vetoed).

Bills to allow the proceeds of issued bonds for housing were vetoed: [SB 1129 \(Steinberg\)](#) and [AB 2493 \(Bloom\)](#).

## Homelessness

[AB 1733 \(Quirk-Silva\)](#), signed, will allow homeless persons to obtain DMV ID cards and birth certificates without charge.

## Code enforcement

Also enacted, [SB 1167 \(Hueso\)](#) amends the State Housing Law to provide that if a dwelling is substandard due to an infestation of insects, vermin, or rodents, the enforcement agency's order shall include a requirement that the owner abate any other substandard conditions causing the infestation.



## National Housing Law Project's Federal Update

For the Complete Federal Report, [click here](#).

## HUD Publishes Long-Awaited Demo-Dispo Rule

On October 15, 2014 HUD published a [proposed rule](#) that would amend the regulations governing public housing demolition and disposition requests found at 24 C.F.R. part 970. The proposed rule increases HUD's oversight of the demolition and disposition of public housing and adds clarification to the existing regulations. NHLP is convening a working group to draft comments on the proposed rule. If interested, please contact Deborah Thrope, [dthrope@nhlp.org](mailto:dthrope@nhlp.org).

## HUD Implements New Enforcement Procedures for Tenant Participation Rules

On September 4, 2014, HUD issued [Notice H 2014-12](#), "Implementation of Tenant Participation Requirements in accordance with 24 CFR Part 245" which supercedes Notice H 2012-21 and implements new enforcement procedures for tenant participation requirements in HUD-subsidized multifamily housing. The Notice reaffirms HUD's commitment to tenant participation and describes the enhanced appeal procedure when an owner violates 24 C.F.R. Part 245, the tenant participation rules for HUD multifamily programs.

## Draft Fair Housing Tool Available for Public Comment

On September 26, HUD issued a notice under the Paperwork Reduction Act seeking comment on a template that forms the basis for the future Assessment of Fair Housing (AFH). The AFH is a cornerstone of the Affirmatively Furthering Fair Housing Proposed Rule, issued by HUD last year. The AFH document will be used by HUD program participants to examine barriers to fair housing choice in a given area, while considering HUD-provided and local data on a range of issues, as well as considering public input. The draft AFH template itself currently features a series of questions on a variety of fair housing issues. Comments on the template are due **November 25, 2014** (as this notice provides for a 60-day comment period). The notice can be found [here](#). The draft of the actual template can be found [here](#). Note: A subsequent draft of a similar template to be used by PHAs will be issued separately, for 30 days of public comment. Advocates interested in participating in a working group to draft comments can contact Renee Williams, [rwilliams@nlp.org](mailto:rwilliams@nlp.org).

## Conferences, Trainings, and Webinars

### LAAC Traveling Training

October 24, 2014 - Sacramento, CA

Join state support center experts presenting workshops on diverse substantive issues, skills, and hot topics. MCLE credit available. Register [here](#).

### Practising Law Institute: California Trial Evidence

October 20, 2014 - San Francisco and Webcast

Admissibility, expert witnesses, and more. Join experienced trial lawyers for this valuable training.

Scholarships available for attorneys at nonprofits. MCLE credit available. Register [here](#).

## Publications

### **[The Divided City: And the Shape of the New Metropolis](#)**

University of Toronto

To better understand the relationship between class and geography, this report charts the residential locations three major workforce classes in a dozen US cities, including Los Angeles and San Francisco. The report draws on a 2009 study, [The Complementarity between Cities and Skills](#), which found a strong correlation between productivity and metropolitan area population, with implications for rural development.

### **[2014 Southern California Multifamily Rent Forecast](#)**

University of Southern California, Lusk Center

Much reported in the media. The 2012 forecast was below actual rent increases in the last 2 years.

### **[What Happens to Housing Assistance Leavers?](#)**

Urban Institute

The study includes findings on the number of people who left housing assistance and analysis of why they left assistance; analysis and comparison of those leaving for positive versus negative reasons and relate how families in both situations describe leaving assistance.

### **[Are San Francisco's Low-Income Residents Moving Up or Moving Out?](#)**

Federal Reserve Bank of San Francisco

Since 2008, San Francisco has experienced a net loss of approximately 30,000 individuals with incomes less than \$35,000. Even with this net loss of low-income individuals, the percentage of lower-wage occupations in the area increased by 1 percent, indicating that despite no longer being able to live in the city, many lower-income individuals are still working there.

### **[Location Affordability in Large U.S. Cities](#) and [Housing Affordability Versus Location Affordability](#)**

Citizens' Budget Commission, New York

These two reports analyze housing and transportation costs together, comparing high-rent areas with good and affordable public transit with lower-rent areas where low-income households must rely on vehicles. Combined costs can be comparable.

### **[Backyard Homes & Local Concerns](#)**

Mukhija, et. al., UCLA Luskin School of Public Affairs

This study examines "granny flat" regulations in Los Angeles County and local opposition to these backyard homes. The authors provide recommendations regarding how to reduce opposition while incentivizing the creation of more such housing.

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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.**





Western Center on Law & Poverty | 3701 Wilshire Blvd., Suite 208 | Los Angeles | CA | 90010