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Housing Update No. 83 February 2015

Save the Dates

Western Center Housing Task Force

March 13, 2015
Los Angeles
10am to 4pm

Legislative Updates
Advocate Roundtable
Substantive Training

Please RSVP to Marilyn Harris at mharris@wclp.org by March 6. Location details will be provided to registrants.

Coming this summer: Western Center's Housing Task Force in the Bay Area. Details in the next [Housing Update](#).



California Eviction Defense 2.0: Beyond the Basics of Protecting Low-Income Tenants 2015

March 11, 2015, 9am-4:45pm
Live in San Francisco with simultaneous webcast.
Register at pli.edu.

Housing Rights Center's 16th Annual Housing Rights Summit: Race, Place and Poverty

Thursday, April 16, 2015, 8am-5pm, Los Angeles
More information [here](#).

Housing California's 2015 Annual Conference

April 27-29, 2015, Sacramento More information [here](#).

Social Media for Non-Profit and Public Interest Organizations 2015

March 31, 2015, 9am-12:30pm San Francisco and webcast

Register at pli.edu

Announcements

New CA Fair Housing Working Group

NHLP and WCLP have begun moderating a statewide fair housing working group call. The first call took place on February 4. We are working to get a regular call up and running. If you're interested in joining the next call or would like to get more information about the group, contact Renee Williams rwilliams@nhlp.org or Navneet Grewal ngrewal@wclp.org.



DFEH's proposed regulations

DFEH drafted proposed housing regulations and is seeking advocate feedback. If you are interested in providing comments in collaboration with other organizations, please contact Nadia Aziz at the Law Foundation of Silicon Valley: nadia.aziz@lawfoundation.org.

Litigation and Local Advocacy

Landlord Tenant

Burien, LLC v. Wiley, 230 Cal.App.4th 1039 (2014)

The Court of Appeal held that the rent control exemption for units with certificates of occupancy issued after 1995 did not apply where there was a prior certificate of occupancy and tenants occupied the property before that date. Los Angeles' rent ordinance limits landlord's ability to increase rent. Costa Hawkins exempted units from local rent ordinance, including those where the certificate of occupancy was issued after 1995 and certain condos. The landlord converted the property to condominiums in 2009 and obtained a new certificate, then raised the rent arguing that units should be exempt because he obtained a new occupancy permit.

Mosser Companies v. San Francisco Rent Stabilization & Arbitration Bd., 233 Cal. App. 4th 505 (2015)

Tenants' son who lived in the apartment as a child and remained there after his parents left is an "original occupant" under the Costa-Hawkins Rental Housing Act, the Court of Appeal held. The Court found that San Francisco's rent control protections applied to the son's tenancy even though he was a minor when he moved in to the unit and not a party to the original lease.

Levin v. City and County of San Francisco, --- F.Supp.3d ---- (N.D. Cal. 2014)

The Ellis Act allows landlords to evict tenants despite just cause protection where the landlord

intends to remove the property from the rental market. Government entities may require landlords to mitigate the adverse impact of such evictions with extended notice periods and relocation benefits. San Francisco passed an ordinance in June 2014 attempting to address Ellis Act abuse by requiring owners to pay tenants relocation benefits totaling 24 times the difference between the apartment's rent and fair market rent for comparable units. Landlords sued San Francisco, alleging unconstitutional taking. The court granted landlords' request for declaratory and injunctive relief, finding the statute invalid on its face. Although the court found that the act satisfied the public use requirement, it found that the relocation payment, although intended to mitigate the impact of the unit's withdrawal from the rental market, did not meet the relevant nexus and proportionality requirements. Instead the court found that the ordinance forced individual property owners to pay tenants for a broad citywide problem. The decision is being appealed.

Kruger v. Reyes, --- Cal.Rptr.3d --- (Cal. App. Dep't Super. Ct. Dec. 17, 2014)

The Appellate Department reversed trial court's entry of judgment for the landlord finding that where commercial tenants deposited all the rent due in the landlord's bank account, they were not in default and were entitled to possession as a matter of law even though landlord returned some of the money. Court also held that tenants' appeal was not moot even though tenants had relinquished possession and only challenged money judgment.

City of Los Angeles v. Superior Court of Los Angeles Cnty., --- Cal.Rptr.3d--- (Cal. Ct. App. Feb. 10, 2015)

The Court of Appeal interpreted Los Angeles' relocation ordinance to mean that a single adult with a disability who did not require special care and was able to work did not qualify for enhanced relocation payments. The City found the tenant's room substandard and ordered the landlord to evict him. The City's own relocation services contractor determined that the tenant was a "qualified tenant" under LA's municipal code because of his mobility impairment. The trial court agreed, but the Court of Appeal issued a peremptory writ of mandate directing the trial court to vacate its judgment in tenant's favor, finding that a single person with a mobility impairment was not a "qualified tenant" and only a head of household with such an impairment would qualify for enhanced relocation benefits.

Nativi v. Deutsche Bank Nat'l Trust Co., 223 Cal. App. 4th 261 (2014).

Deutsche Bank and American Home Mortgage Servicing Inc. accepted plaintiffs' Civil Code section 998 offer of judgment after the Court of Appeal issued a lengthy published opinion ruling that: 1) the federal Protecting Tenants at Foreclosure Act preempts state common law and requires that a bona fide lease survive foreclosure and that the new owner step into the shoes of the former landlord; 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. Plaintiffs' motion for attorney fees is set for hearing on May 14, 2015.

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

Anti-SLAPP

Ben-Shahar v. Pickart, 231 Cal.App.4th 1043 (2014)

Landlord's special motion to strike denied where court found tenant's allegations were based on landlord's breach of the unlawful detainer settlement agreement. Since the eviction notice and filing of the unlawful detainer were not the sole basis for liability, the landlord's motion was denied.

Squires v. City of Eureka, 231 Cal.App.4th 577 (2014)

Anti-SLAPP motion granted against slumlords who sued the city for enforcing building safety laws alleging harassment and intentional infliction of emotion distress, among other things.

Fair Housing

Bischoff v. Brittain, 2014 WL 5106991 (E.D. Cal. 2014)

Plaintiff tenants granted a preliminary injunction against landlords for discriminatory conduct including threatening children with 30 day notices for playing. Among other things the defendant property manager alleged one of the parent-tenants violated the rental agreement because his three-year-old son had been "loud and boisterous" and upon seeing a tenant pregnant said "oh no, not another one!" Plaintiffs alleged violation of the Fair Housing Act, section 3604(b) for disparate treatment based on familial status and violation of the Unruh Act. Plaintiffs were represented by Todd Espinosa.

Allen v. City of Sacramento, 2015 WL 505359 (Cal. Ct. App. Feb. 6, 2015)

Homeless individuals sued the City of Sacramento after the city told them that camping in an industrial area violated a city ordinance and ultimately arrested them when they refused to leave. Plaintiffs claimed that the camping ordinance was unconstitutional on its face and that it was enforced in a discriminatory manner. The trial court sustained the City's demurrer as to all causes of action, but the Court of Appeal held that plaintiffs stated a cause of action for declaratory relief asserting an as-applied challenge based on equal protection.

Gonzalez v. Recht Family Partnership, --- F.Supp.3d ---- 2014 WL 7564713 (S.D. Cal. Dec. 30, 2014)

Disabled tenant granted preliminary injunction against landlord for failure to accommodate. Tenant's disability made it difficult for her to walk and she asked for a parking space. Landlord denied the request, forcing tenant to sleep in her car or stay in overnight diners when she could not find a parking space close to her unit.

Jesinoski v. Countrywide Home Loans, Inc., 135 S. Ct. 790 (2015)

Justice Scalia wrote the Supreme Court's decision in this Truth-in-Lending Act (TILA) case holding that a debtor may exercise the right to rescind by simply notifying the creditor of her intention to seek rescission. Prior decisions required debtors to file suit within the three-year period where rescission is permitted.

Click [HERE](#) for a complete listing of Significant Tenants' Rights Cases of 2014.

California State Legislation and Administrative Action

New California legislative sessions begins; new bills to be introduced soon

Lawmakers returned to Sacramento last month to embark on a new two-year session. While a some bills have been introduced, the deluge is expected on 2/27, the final day to introduce bills. Watch for a special edition of the Update next month on all the new bills.



National Housing Law Project's Federal Update

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

Supreme Court Hears Disparate Impact Case.

On January 21, the U.S. Supreme Court heard oral argument in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.* The Court previously granted certiorari on the question of whether disparate impact claims can be brought under the Fair Housing Act (FHA). A transcript and a recording of the argument are available at: http://www.oyez.org/cases/2010-2019/2014/2014_13_1371.

District Court Judge Vacates HUD Disparate Impact Rule.

American Ins. Ass'n v. HUD, ___ F. Supp. 3d. ___, 2014 WL 5802283 (D.D.C. Nov. 7, 2014). Insurance groups brought suit to challenge the issuance of HUD's Discriminatory Effects Rule, 78 Fed. Reg. 11,460 (Feb. 15, 2013). This rule acknowledges that disparate impact theory is a viable theory under the federal Fair Housing Act (FHA). The court cited statutory language, congressional intent, and existing case law to support its view that the FHA does not countenance disparate impact claims. Because the court concluded that HUD had exceeded its authority under the APA, the court granted the insurance group's motion for summary judgment, and vacated the Discriminatory Effects Rule. The U.S. government is appealing this decision, and has asked the D.C. Court of Appeals to hold the appeal in abeyance pending the Supreme Court's decision in *Inclusive Communities Project*.

PTFA not extended.

In 2009, President Obama signed into law the Protecting Tenants at Foreclosure Act (PTFA). The PTFA granted those tenants in foreclosed residential properties with a bona fide lease or tenancy the right to live out their lease term or, if certain exceptions applied, to be provided with at least 90 days' notice prior to eviction. While the PTFA was originally set to expire at the end of 2012, a provision of Dodd-Frank extended the Act two years. Further attempts to extend PTFA, however, were unsuccessful and it expired on December 31, 2014. California's protections for tenants in foreclosed properties, including Code of Civil Procedure section 1161b remain in effect.

Publications

Check out the Children's Defense Report "Ending Child Poverty Now" [here](#). It includes policy recommendations for using vouchers to support low income families with children, and lots of data on the impact of poverty on children's overall well-being.

For more data spend some time with PolicyLink's [National Equity Atlas](#) - a data tool that lets you look at key indicators of race equity (and inequity) including income inequality, housing

costs, and health.

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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.**



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