

Having trouble viewing this email? [Click here](#)



Housing Update No. 84 May 2015

New Legislative Advocacy Team Begins Work

Western Center is pleased to announce that Anya Lawler has joined Western Center as our new Legislative Advocate for housing. Anya has over 15 years of experience working in policy at the state level, including a decade as a committee consultant in the Legislature. Her primary expertise is in housing and land use issues, including housing element law, housing finance, homelessness, and mobilehomes. She played a key role in shaping a number of the programs funded through Proposition 1C and helped ensure ongoing funding for affordable housing from cap and trade funds. She is particularly interested in sustainable development issues and ensuring that low-income communities benefit from state policies aimed at reducing greenhouse gas emissions through more compact development patterns. Welcome Anya!

Brian Augusta, WCLP's Legislative Advocate for housing for the last 3 years, is moving on, but fortunately not very far from us. In his new work he will advocate on behalf of CRLA Foundation, where he began as a legislative advocate 8 years ago. Brian will also be advocating for other affordable housing groups, including the California Coalition for Rural Housing, Rural Community Assistance Corporation, and Golden State Manufactured-home Owners Association. We will still see him around, so he is both coming and going. Good luck!



Save the Dates

WCLP Advocacy Skills Training Day

Monday, July 6, 2015

Los Angeles, Oakland and Sacramento (connected via
videoconference)

10am to 4pm

A training day devoted to advocacy and litigation skills
targeted to newer legal services advocates and law clerks

Topics will include interviewing skills; making a record; settlement negotiations, and administrative hearings. MCLE credit will be provided. Training is free, \$10 fee to cover lunch & expenses.

Space is limited! Registration will be required. Information on how to register and the training agenda will be circulated later this month.

WCLP Housing Task Force

Tuesday, July 21, 2015

San Jose

10am to 4pm

Legislative Updates
Advocate Roundtable
Substantive Training

Space is very limited! Please RSVP to Amanda Smith at asmith@wclp.org by July 15. Location details will be provided to registrants.

Coming later this summer: WCLP Housing Task Force Sacramento, August 2015
Details in the next [Housing Update](#). Scroll down for more upcoming trainings.

Litigation and Local Advocacy

California Supreme Court issues two rulings on sex offender registration and residency restrictions making it easier to require a criminal defendant to register but finding residency restrictions unconstitutional when applied without regard to individual circumstances

People v. Mosley, 60 Cal. 4th 1044 (2015) People convicted of certain crimes are automatically required to register as sex offenders, but even if the conviction does not require registration, a judge may order registration upon a finding that the crime was sexually motivated and the defendant is a risk to the public. The Court found that even though registered sex offenders are prohibited from living in certain areas, registration and the residency requirements are a "non-punitive regulatory device" and are not punishment. The Court therefore held that a judge may make the factual findings underlying the discretionary decision to order registration. Taking these factual determinations away from the jury did not violate the 6th Amendment of the U.S. Constitution which has been interpreted to require "a jury determination, beyond reasonable doubt, of any fact that increases the penalty for a crime beyond the prescribed statutory maximum," the Court held.

In re Taylor, 60 Cal. 4th 1019 (2015) The Court found "Jessica's Law," imposing residency restrictions on people registered as sex offenders, unconstitutional as applied to petitioners in this habeas corpus proceeding. The Court held that residency restrictions prohibiting registered sex offenders from living near schools or places where children gather may still be applied when based on an individual determination about the particular registrant. Applying the deferential rational basis test, the Court explained that the restrictions "greatly increased

the incidence of homelessness" among registrants, and "hindered their access to medical treatment, drug and alcohol dependency services, psychological counseling and other rehabilitative social services available to all parolees, while further hampering the efforts of parole authorities and law enforcement officials to monitor, supervise, and rehabilitate them in the interests of public safety. It thus has infringed their liberty and privacy interests, however limited, while bearing no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators, and has violated their basic constitutional right to be free of unreasonable, arbitrary, and oppressive official action." The court's reasoning was based in part on a mapping analysis that showed that the buffer zone around schools and parks barred registrants from 97% of rental housing.

Court approves multimillion dollar settlement: 4,000 LA public housing tenants win rent reimbursement, attorneys' fees

Galindo v. Housing Authority of the City of Los Angeles

More than 4,000 Los Angeles public housing tenants will benefit from a \$3.3 million final settlement approved in federal court. The settlement will compensate the tenants for having to pay fees for garbage pickup which, under federal law and the terms of their leases with the Housing Authority of the City of Los Angeles, were supposed to be paid for by the housing authority. HACLA will also pay \$1.25 million in attorneys' fees to plaintiffs' attorneys, WCLP, Los Angeles Center for Law and Justice, NHLP and Arnold & Porter.

Motel residents win injunction preventing enforcement of ordinance that would have forced them to move every 30 days

Dadey vs. Costa Mesa

In 2014, Costa Mesa passed an ordinance prohibiting tenants from staying longer than 30 days in a motel, forcing them to move from the only affordable housing in the city. An Orange County Superior Court judge issued a preliminary injunction prohibiting enforcement of the ordinance against current residents until the City develops a relocation plan to assist those tenants who are being displaced. Plaintiffs are represented by WCLP, Public Law Center, and Haynes and Boone.

Property management company compelled to disclose all three day notices served to fair housing plaintiffs in familial status discrimination case

***Lawrence v. Hoban Mgmt., Inc.*, 2015 WL 1260601 (S.D. Cal. Mar. 17, 2015)**

Fair housing plaintiffs rely on discovery to establish statistical evidence of the discriminatory impact of housing providers' conduct. In this case plaintiffs brought claims for familial status discrimination under the Fair Housing Act against a property management company alleging it enforced rules prohibiting children from playing outside. The management company refused to provide plaintiffs with documentation they needed to show that the company evicted families for letting children play outside. The court granted plaintiffs' request to compel disclosure of all three day notices served to tenants in the last two years. However the court denied plaintiffs' motion to compel disclosure of the telephone numbers for all tenants with children on privacy grounds.

Evidentiary sanctions against insurance company accused of discrimination for refusal to insure Section 8 landlords

***Jones v. Travelers Cas. Ins. Co. of Am.*, 2015 WL 848603 (N.D. Cal. Feb. 5, 2015)**

In an ongoing case against Travelers Insurance for refusing to insure landlords who rent to Section 8 tenants, defendant failed to provide data about losses on its policies for properties

with Section 8 tenants and then belatedly produced the data after the close of discovery. Defendant also falsely told plaintiffs, represented by Brancart and Brancart, that it had no data regarding losses on apartments with Section 8 tenants. Finding that the failure to comply with discovery rules was prejudicial, the court ordered any portions of defendant's expert reports based on the withheld data stricken.

Former homeowners may sue bank under FDCPA, UCL for misleading letters attempting to collect unenforceable debt

Alborzian v. JPMorgan Chase Bank, N.A., 235 Cal. App. 4th 29 (2015)

When a homeowner has two loans on her home and the senior lienholder forecloses but does not collect enough to cover the debt, the junior lienholder may not enforce the remaining debt against the homeowner. Despite this rule, JP Morgan Chase sent former homeowners threatening letters about the \$60,000 they "owed" the bank on their 2nd mortgage and made harassing phone calls about the debt. The trial court sustained the banks' demurrer without leave to amend but on appeal the Court held that the borrowers could sue under the Fair Debt Collection Practices Act and California's Rosenthal Fair Debt Collection Practices Act and Unfair Competition Law. California law was amended in 2013 to prohibit collection of legally unenforceable debts, but for homeowners like plaintiffs with loans executed prior to 2013, there was no clear bar to debt collection attempts by junior lienholders even though the debt was unenforceable. The court found that the bank's letters were deceptive under the FDCPA and therefore actionable. The bank's boilerplate disclaimer did not save it from liability. The decision contains helpful language regarding the FDCPA and standing under the UCL.

Austin Apartment Association appeals decision upholding ordinance prohibiting Section 8 discrimination

Austin Apartment Ass'n v. City of Austin, No. A-14-CA-1146-SS, 2015 WL 918504 (W.D. Tex. Feb. 27, 2015)(appeal filed March 5, 2015)

The City of Austin enacted an ordinance prohibiting landlords from refusing to rent to prospective tenants on the basis of source of income, which is defined to include housing vouchers. The Austin Apartment Association sued to enjoin enforcement of the ordinance, alleging that it is preempted by federal law and constitutes a regulatory taking and due process violation under the federal and state constitutions. The District Court denied the Association's motion, finding that the Ordinance is not preempted by federal law and that it advances congressional purposes by increasing the number of houses and apartments available to voucher holders. The Apartment Association has filed an appeal in the Fifth Circuit. Fred Fuchs of Texas Rio Grande Legal Aid is representing the intervenors in the suit.

Plaintiffs with hearing disabilities settle case against D.C. Housing Authority

Plaintiffs with hearing disabilities settled their ADA and FHA claims against the Washington D.C. Housing Authority with the Authority's agreement to implement program-wide changes and monitoring. Among other things DCHA will notify clients with hearing impairments that they are entitled to sign language interpreters, conduct individualized assessments to determine what services each client needs, install video remote interpreting services to provide immediate access to sign language interpretation, establish grievance procedures, and track requests for interpretation services to confirm compliance with the new policies. The agreement also requires DCHA to pay \$350,000 in monetary relief. Plaintiffs were represented by Relman, Dane & Colfax and the Legal Aid Society of the District of Columbia. For more information click [here](#).

U.S. Supreme Court Updates

Supreme Court grants petition for cert in Fair Credit Reporting Act case

Robins v. Spokeo, Inc., 742 F.3d 409, 413 (9th Cir. 2014) *cert. granted*, No. 13-1339, 2015 WL 1879778 (U.S. Apr. 27, 2015)

The 9th Circuit held that plaintiff had standing to pursue Fair Credit Reporting Act claims despite his lack of actual injury because the statutory cause of action does not require proof of actual damages where violation is willful. The Court found that it was permissible for Congress to elevate plaintiff's injuries to confer Article III standing because the plaintiff alleged Spokeo violated his individual rights and the statutory right protected against individual harm. Like "an individual's personal interest in living in a racially integrated community," plaintiff's interests in his credit information were personal and concrete. Spokeo petitioned the U.S. Supreme Court for review, and many anti-consumer organizations filed briefs in support.

Supreme Court denies HUD's petition for cert, leaving in place decision requiring HUD to use competitive bidding process for contracts to administer Section 8 funds

U.S. v. CMS Contract Management Services, Inc. 2015 WL 70573 (U.S. Apr. 20, 2015)

On April 20, 2015, the Supreme Court declined to review *U.S. v. CMS Contract Management Services*, 745 F.3d 1379 (Fed. Cir. 2014). The case concerned whether or not agreements HUD entered into with local and state public housing authorities to administer Section 8 funds constituted procurement contracts subject to federal competitive bidding processes. The U.S. Court of Appeals for the Federal Circuit ruled against HUD and determined that the agreements are procurement contracts because their principal purpose was to procure administrative services. In statements made last year HUD suggested it will take at least 18 months to get the procurement process and implementation tools in place. (Thanks to NHLP's Katherine Brady for this summary. Her full summary available [here](#).)

Supreme Court ignores longstanding precedent to find no private right to enforce Medicaid Act against state officials

Armstrong v. Exceptional Child Ctr., Inc., 135 S. Ct. 1378 (2015)

Plaintiff healthcare providers sued to force Idaho's Department of Health and Welfare to raise reimbursement rates to comply with federal law, which requires that payments be high enough to ensure that there are enough providers for everyone who needs care. A long line of cases has recognized courts' equitable power to enjoin state action which does not comply with federal law (*e.g. Ex Parte Young*), but, in an opinion authored by Scalia including quotations from the federalist papers, the court dismissed plaintiffs' arguments and found that Supremacy clause does not allow private enforcement. In a 5 to 4 opinion with Justice Breyer concurring, Scalia wrote that plaintiffs could not enforce the Medicaid Act despite its total lack of a remedial scheme. The court held that the Medicaid Act itself also precluded private enforcement because Congress provided that the sole remedy for violation would be federal withholding of Medicaid funds (nevermind that this would result in more severe hardship for the low-income people needing care).

California State Legislation and Administrative Action

Speaker Atkins move affordable housing package forward

Assembly Speaker Toni Atkins has introduced a set of four affordable housing bills, which are moving forward. [AB 1335](#) is this year's version of a dedicated source for housing funding. The big news is that the Realtors have moved from opposition to support, greatly increasing its

chances for passing. [AB 35](#) would increase the state's low income housing tax credit by \$300M, to \$375M total. [AB 1056](#) would create the "Second Chance Program," with housing and services for offenders with mental illness or substance abuse problems. And [AB 90](#) would create a structure for expected federal housing trust fund dollars allocated to California.

Bill highlights

The new legislative year is finishing up its first round of committee hearings. Those bills listed as dead could theoretically be heard next year, though that rarely happens and usually a new bill is introduced. Housing bills of note:

Fair Housing: [SB 600](#) would prohibit discrimination based on citizenship, language, or immigration status. It will be heard in Judiciary Committee this week.

Foreclosures: [AB 244](#) would allow widows and heirs to be considered for a loan modification. The bill is likely dead, but could still technically be heard in committee this week.

Homeless: [SB 608](#), the "Right to Rest" bill, died in Senate Transportation and Housing.

Land Use: [AB 744](#) would require local govts to eliminate minimum parking requirements if a development receives a density bonus and meets specified criteria (e.g., near a major transit stop). [SB 593](#) would impose reporting requirements on short-term rental facilitators (e.g., AirBNB) as to location of the rentals, so that local govts can monitor local zoning and collect hotel taxes.

Landlord-Tenant: [SB 655](#) would add mold not caused by a tenant to the list of conditions rendering a building substandard. It is before the full Senate. [SB 328](#) is in Judiciary committee this week. It would require notice to tenants when a landlord applies do-it-yourself pesticides. [SB 396](#) would create a process for a prospective tenant to appeal a rental application rejection based on a criminal record. It is in Appropriations Committee. [SB 7](#), this year's water submeter bill, passed the Senate, though currently without its tenant protections. At the moment, it only mandates submeter installation in new rental housing projects.

Two bills that are dead: [SB 364](#), which would have created anti-speculation provisions for Ellis Act evictions in San Francisco, and [AB 205](#), which would have extended last year's pilot program to fast-track alleged squatters (who are often legitimate tenants) to more cities and counties.

Tax Increment/Redevelopment: As part of the budget, the Governor has proposed "[trailer bill](#)" language to reverse the Department of Finance's losses in the courts over redevelopment wind-down. The bill would impact on-going housing obligations. A new version is expected to be released later this week. [AB 2](#), which would create a new type of tax increment financing district with housing production, finance, and displacement requirements similar to redevelopment law, is before the full Assembly. [AB 313](#) is also before the full Assembly. It would clarify and strengthen the relocation and replacement housing requirements in "Enhanced Infrastructure Finance Districts," which were authorized last year.

Western Center and co-sponsors' bills advance

Western Center is sponsoring or co-sponsoring several bills this year. [AB 551](#) would take the first steps in establishing rights and responsibilities for bed bug infestations in residential rental property. The bill will be heard in Assembly Judiciary Committee this week. [AB 447](#) would prohibit insurers from discriminating or refusing to insure landlords who rent to Section 8 and other subsidized tenants. The bill is before the full Assembly and is co-sponsored with Housing California.

[AB 587](#) and [SB 477](#) are co-sponsored with CRLA Foundation and GSMOL. [AB 587](#) would create a tax abatement program for mobilehomes where title was never properly transferred, while [SB 477](#) would add mobilehomes to the senior/disabled property tax postponement program that was revived last year. Both bills are in Appropriations committees.

Finally, [AB 418](#) would extend current law allowing domestic violence and other survivors to vacate a rental early based on a report from a health care professional or counselor; it also reduces the survivor's rent obligation to 14 days (current law is 30). The bill is co-sponsored with the CA Partnership to End Domestic Violence and the National Housing Law Project.



National Housing Law Project's Federal Update

Thanks to Katherine Brady from NHLP for the federal update below. Go [here](#) for detailed discussions and for additional updates, including an update on the Housing Trust Fund and a recent letter advocating repeal of the one-strike rule.

MTW Update. HUD is currently evaluating Moving to Work (MTW) programs and negotiating contract extensions with participating Housing Authorities. Some issues advocates are raising with HUD include: limiting the time period of the extension contracts, providing explicit evaluation criteria in all contracts and expansion of MTW demonstrations prior to the planned evaluations. There are many opportunities for local advocates to get involved. For more information, please contact Stephen Knight at sknight@nhlp.org.

Equal Access Rule and appropriate placement for transgender individuals On February 20, 2015, HUD's Office of Community Planning and Development issued Notice CPD-15-02 concerning the appropriate placement of transgender individuals in single-sex emergency shelters and other facilities. Shelters receiving HUD funding are subject to the Equal Access Rule's nondiscrimination requirements, but temporary emergency shelters with shared bathrooms or sleeping areas may still inquire about a person's sex. A copy of Notice CPD-15-02 is available at: <https://www.hudexchange.info/resources/documents/Notice-CPD-15-02-Appropriate-Placement-for-Transgender-Persons-in-Single-Sex-Emergency-Shelters-and-Other-Facilities.pdf>

Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs. On April 1, 2015 HUD published a proposed rule to implement the Violence Against Women Act Reauthorization of 2013 (VAWA 2013) and expand its protections beyond public housing and Section 8 to include all HUD housing, USDA rural housing, and tax credit properties. The proposed rule would amend HUD regulations to include "sexual assault" as an action covered by VAWA protections; establish a definition for "affiliated individual" based on the statutory definition and establish what documentation requirements should be required of a tenant seeking an emergency transfer to another assisted unit, among other things. If you are interested in participating in the comment process, please contact Karlo Ng at kng@nhlp.org. A copy of the proposed rule can be found at: <http://portal.hud.gov/hudportal/documents/huddoc?id=5720p02vawa2013proprule.pdf>

Conferences, Trainings and Webinars



California Eviction Defense 2.0 trainers at PLI, March 2015. Front row: Maria Palomares, Navneet Grewal, Leah Simon-Weisberg. Back row: Christian Abasto and Denise McGranahan.

Tuesday May 12, 9:00am [Working with immigrants: The intersection of basic immigration, housing and domestic violence issues in California 2015](#), at PLI live in San Francisco and webcast (Free)

Friday June 5, 9:00am, [Protecting Domestic Violence Survivors and Children in California: Pro Bono Representation in Low-Income Domestic Violence Restraining Order Cases 2015](#) at PLI live in San Francisco and webcast (Free)

Tuesday July 14, 9:00am, [Foreclosure Litigation: Real World Solutions That Work For Both Sides 2015](#), at PLI live in San Francisco and Webcast (Free)

Research and Further Reading

Check out this article examining the (limited) effectiveness of the Section 8 program in reducing segregation in housing: [Patterns of Housing Voucher Use Revisited: Segregation and Section 8 Using Updated Data and More Precise Comparison Groups](#).

The Technical Assistance Collaborative (TAC) and the National Low Income Housing Coalition (NLIHC) have released [Creating New Integrated Permanent Supportive Housing Opportunities for ELI Households: A Vision for the Future of the National Housing Trust Fund](#). The report highlights important innovations in affordable housing financing policy designed to benefit Extremely Low Income (ELI) households, including people with significant and long term disabilities who need Permanent Supportive Housing. Access the TAC and NLIHC reports [here](#).

[Housing Landscape 2015](#), a recent report released by the National Housing Conference discusses the increasing unaffordability of housing nationwide.

The Legislative Analyst's Office released [California's High Housing Costs: Causes and Consequences](#) on March 17 to provide the Legislature an overview of the state's housing markets.

[Ending Child Poverty: California](#) presents eight recommendations for how California can reduce child poverty by investing in programs that work.

The National Low Income Housing Coalition's Report on the Affordable Housing Gap is [here](#).

California Housing Partnership Corporation's April report *The Critical Role of Housing Access and Affordability in Reducing Poverty* finds that since 2000, rents in California have increased by 21% while renters' incomes have declined by 8% (when inflation is taken into account). Full

report here:

<http://www.chpc.net/dnld/2015StatewideHousingNeedReportFINAL.pdf>

Copyright 2015 Western Center on Law & Poverty. Permission is granted to copy and share this publication with LSC- and IOLTA-funded organizations. For other permissions, please contact us at mhoward@wclp.org

**Western Center leads the fight
in the courts, counties and capital
to secure housing, healthcare and a strong safety net
for low-income Californians.**



This email was sent to ngrewal@wclp.org by cwebmaster@wclp.org |
[Update Profile/Email Address](#) | Rapid removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).



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