

ANNOUNCEMENTS

WCLP is excited to announce that **Maria Palomares** will be joining our housing team this month!

Maria has worked in legal services since 2009. Her work has focused on ensuring low income housing is preserved through impact litigation, policy advocacy and trainings. Prior to joining Western Center, Maria served as a staff attorney at Neighborhood Legal Services of Los Angeles County specializing in cases involving housing, language access, and civil rights issues. Most recently, she was the lead attorney in *Miles v. L.A.S.C.* challenging the court's reduction of unlawful detainer courtrooms which denied access to hundreds of poor people and individuals with disabilities. She was also one of the attorneys on *The Community Action League v. City of Lancaster*, which challenged racial discrimination against participants in the Section 8 Housing Choice Voucher Program in the Antelope Valley. Maria has worked extensively with the Housing Authority of the County of Los Angeles and the Housing Authority of the City of Los Angeles, successfully advocating for an improved limited English proficiency policy and reasonable accommodation policy. She helped write both of the housing authorities' current LEP and RAC policies. Maria is a graduate of Southwestern Law School and received her B.A. from the University of California Los Angeles. Welcome Maria!



LITIGATION AND LOCAL ADVOCACY

Landlord Tenant

Appellate Division holds that motion to quash is proper method to challenge improper service of eviction notice

Borsuk v. Superior Court, 2015 WL 4538383 (Cal. App. Dep't Super. Ct. July 22, 2015)
Tenant filed a motion to quash service of summons alleging that she was not properly served with the three-day notice because it was left on the ground near her home. The trial court denied her motion and she filed a petition for writ of mandate. After a detailed analysis of the *Delta Imports Inc. v. Municipal Court* decision, the Appellate Division held that a motion to quash was the proper method for the tenant to challenge faulty service of the notice.

Homeowners and tenants state a claim against Deutsche Bank for wrongful eviction based on dual-tracked foreclosure

Barragan v. Deutsche Bank Nat. Trust Co., No. CV 15-02614, 2015 WL 3617104 (C.D. Cal. June 9, 2015)
Homeowner and tenants jointly sued Deutsche Bank for wrongful foreclosure, wrongful eviction and Homeowner Bill of Rights violations. Deutsche Bank foreclosed on the property in September 2014 while a loan modification request was pending. Held: tenants could state a claim for wrongful eviction against the Bank under the Protecting Tenants at Foreclosure Act (PTFA) and Code of Civil Procedure section 1161b. The decision does not analyze the impact of the PTFA's December 2014 sunset, but appears to assume that the PTFA applies because the foreclosure took place in 2014. The homeowner's wrongful eviction claim based on his allegations of wrongful foreclosure also survived.

There is hope after lockout! Unpublished Appellate Division decision reverses UD judgment against tenant, orders trial court to restore tenant to position he occupied before execution of the writ

Rubalcaba v. Daley, 2015 WL 4543050 (Cal. App. Dep't Sup. Ct. June 22, 2015)
Finding that a three-day notice lacking a phone number and hours when rent could be paid was defective and could not support an unlawful detainer, the Appellate Division reversed the trial court's judgment. The Appellate Division then ordered the trial court to conduct a restitution hearing, implying that restoring the tenant to possession would be proper under Code of Civil Procedure section 908.

Subsidized Housing

Sixth Circuit Court of Appeal holds that fees paid by Section 8 tenants are rent

Velez v. Cuyahoga Metro. Housing Authority, 2015 WL 4569450 (6th Cir. 2015)
After their one-year leases expired, plaintiff voucher-holders became month-to-month tenants. Their leases provided for an additional "month-to-month fee" after the initial lease term. The Cuyahoga Housing Authority was aware of the fees and did not count them when calculating the tenants' Housing Assistance Payment. The tenants filed a 42 USC §1983 claim against the Housing Authority alleging that the fees were "rent" and seeking injunctive relief and damages. The trial court found that the fees were not rent and granted summary judgment against the tenants. Reversing the trial court, the Six Circuit relied on federal regulations governing the program, which provide that rent is "[t]he total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for."

Federal wetlands protections provide a legal hook to preserve mobilehome park for low-income residents

Carson Harbor Vill., Ltd. v. City of Carson, No. B250111, 2015 WL 4600066 (Cal. Ct. App. July 31, 2015)

Carson Harbor Village applied to convert its mobilehome park into a subdivision. The Park includes 17 acres of protected wetlands which constitute the only open space in the City. The City denied the Park's conversion application as inconsistent with the City's general plan open space provisions, but the trial court found that inconsistency with the general plan was not a proper ground to deny conversion. The Court of Appeal reversed, finding that the City was required to reject the application once it determined that the conversion was inconsistent with the general plan. The decision follows years of litigation after the City denied the Park's application because the conversion was a thinly-veiled attempt to avoid rent control and displace low-income tenants. The opinion includes a helpful explanation of the general plan process and various land use laws.

Fair Housing

HACLA and cities of Lancaster and Palmdale settle fair housing claims for \$2 million ***U.S. v. HACLA et al*, CV-15-5471 (C.D. Cal.)**

The Department of Justice settled claims that LA Housing Authority and the cities of Lancaster and Palmdale targeted African-American Section 8 tenants for unfair enforcement of program rules. The parties entered into settlement agreement wherein HACLA and the cities agreed to broad reform. The district court will retain jurisdiction to enforce the agreement. Kudos to Neighborhood Legal Services, Public Council, the Community Action League, the NAACP, Gary Blasi, and everyone who worked on this case. The DOJ press release discussing the settlement is here:

<http://www.justice.gov/opa/pr/housing-authority-los-angeles-county-and-cities-lancaster-california-and-palmdale-california>

Connecticut District Court finds refusal to insure landlords that rent to Section 8 tenants may constitute race discrimination under the FHA

Viens v. America Empire Surplus Lines Ins. Co., 14-cv-00952-JBA, D. Conn. June 23, 2015)

Plaintiff landlords rented to Latino and African-American Section 8 voucher holders. America Empire cancelled their insurance policies or increased premiums because the landlords had Section 8 tenants. The Court denied the insurance company's motion to dismiss the landlord's Fair Housing claims, finding that the landlords had standing to enforce the Fair Housing rights of their tenants and that the landlords themselves were injured by the discrimination. The court also found that insurance transactions are covered by section 3605 of the FHA.

Marin public housing tenant's section 1983 and FHA claims dismissed for failure to state a claim

Arceneaux v. Marin Housing Authority, F.Supp.3d, 2015 WL 3396673, (N.D. Cal. May 26, 2015)

Plaintiff's daughter was attacked multiple times near her public housing unit and shots were fired at her home. She requested an immediate transfer but the property manager

only offered her applications for waiting lists. Several months later her son was shot and killed outside her home. The housing authority then provided her a voucher to move, but ultimately terminated the voucher 6 months later. She brought a section 1983 suit alleging wrongful death, retaliation under the Fair Housing Act, and discrimination under the ADA. The Court dismissed plaintiff's claims without leave to amend, finding that she asserted no federally enforceable right under section 1983 and that there was no special relationship or facts to show defendants placed her in danger such that they could be held liable for thirty-party violence.

Pro se tenant's FHA claims for failure to reasonably accommodate survive motion to dismiss

Bezi v. Camacho, 2015 WL 4380280 (C.D. Cal. July 9, 2015)

A Housing Choice Voucher tenant with disabilities sued the Anaheim Housing Authority and her landlords for failure to accommodate her disability. The tenant suffered from physical disabilities that limited her mobility, and requested a downstairs unit and an accessible parking space. Despite the availability of downstairs units and accessible parking, the landlord refused. After multiple rounds of 12(b)(6) motions, defendants filed a motion to dismiss the pro se tenant's seventh amended complaint alleging FHA violations. After noting that despite the heightened pleading standard established by *Ashcroft v. Iqbal*, it must "construe the allegations of the complaint liberally" because the tenant lacked an attorney, the court held that the tenant stated a claim against the housing authority and private defendants for failure to accommodate her disability under 42 USC §3604 and §3617.

Demolished public housing may be rebuilt in segregated neighborhoods

McCardell v. HUD, 2015 WL 4496176 (5th Cir. July 23, 2015)

The Galveston Housing Authority demolished several public housing developments that the City declared unfit for occupancy after Hurricane Ike. After being sued by Lone Star Legal Aid over its inadequate relocation plan, the Housing Authority agreed to provide replacement units for all displaced residents. It then obtained approval from HUD for its plans to build mixed-income developments at the original public housing sites. A community organization, public housing tenants, and a resident of the low-income neighborhood where the housing was being built filed suit, alleging that the proposed sites would segregate residents. The trial court dismissed all plaintiffs except the neighborhood resident. On appeal, the 5th Circuit held that the resident could assert neighborhood standing under the Fair Housing Act because the planned redevelopment would deprive her of the benefits of an integrated community. However, no relief was available because the state defendants were shielded by the 11th Amendment and remaining defendants were protected by the safe harbor provision of 42 U.S.C. § 1437p(d), which allows housing authorities to rebuild demolished public housing on the original site as long as the new housing contains fewer public housing units than the original. The Court further held that it lacked authority to second-guess HUD's determination that the redevelopment site did not create "undue concentration of assisted persons in areas containing a high proportion of low-income persons."

[Scroll down to the federal update from NHLP for more on fair housing...](#)

Session Begins Final Push

The Legislature returned this month from its 4-week summer recess. Four more weeks remain before final adjournment on September 11. The Governor will then have until October 11 to sign or veto bills.

Bill highlights

Fair Housing: [SB 600](#) would prohibit discrimination based on citizenship, language, or immigration status. It is before the Assembly.

Finance: Three of the bills in Speaker Toni Atkins' affordable housing package are in the Senate Appropriations Committee: [AB 35](#) (increase by \$300M the state's low income housing tax credit); [AB 1056](#) (redirect funds to housing for parolees), and [AB 90](#) (mechanism for distributing federal housing trust fund dollars). This year's permanent source bill, [AB 1335](#), remains on hold while the Speaker attempts to put the votes together (2/3rds majority is required to pass).

Land Use: [SB 593](#) is dead for the year. It would have imposed 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 Assembly Appropriations. [SB 328](#), also in Approps, would require notice to tenants when a landlord applies do-it-yourself pesticides. [SB 396](#) would have created a process for a prospective tenant to appeal a rental application rejection based on a criminal record. It is dead for the year. [SB 7](#), this year's water submeter bill, is also likely dead. The bill does not include tenant protections.

Tax Increment/Redevelopment: As part of the budget, the Governor proposed [AB 113](#) to further revise the wind-down process. The bill may be heard this month. [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 in the Senate.

Western Center and co-sponsors' bills

[AB 551](#) would take the first steps in establishing rights and responsibilities for bed bug infestations in residential rental property. The bill is in the Senate, and the subject of further negotiations. It is co-sponsored with CRLAF. [AB 447](#) would prohibit insurers from refusing to insure landlords who rent to Section 8 and other subsidized tenants. The bill had to be narrowed but has reached the full Senate. It is co-sponsored with CRLAF and 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. The quite-complex provisions will be refined over the fall with the bill expected to move forward next year. [SB 477](#) would add mobilehomes to the low-income senior/disabled property tax postponement program that was revived last year. The bill is before the Senate Appropriations Committee.

[AB 418](#) was signed by the Governor in July! Effective January 1, 2016, it will 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.

[For our complete legislative update click here.](#)

FEDERAL UPDATE FROM THE NATIONAL HOUSING LAW PROJECT



U.S. Supreme Court Affirms FHA Disparate Impact Theory! On June 25, 2015, the U.S. Supreme Court held, in a 5-4 decision, that disparate impact claims are cognizable under the Fair Housing Act (FHA) in its decision in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015). Justice Kennedy delivered the opinion for the Court. The Court finds that recognizing "disparate-impact claims is consistent with the FHA's central purpose," and that disparate impact "plays a role in uncovering discriminatory intent" by allowing plaintiffs "to counteract unconscious prejudices and disguised animus..." However the opinion also notes that claims premised only on statistical disparities "must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity." The opinion can be found at: http://www.supremecourt.gov/opinions/14pdf/13-1371_8m58.pdf. [Click here for NHLP's detailed summary.](#)

Since the *Inclusive Communities Project (ICP)* decision, there have been several notable developments in the courts including *City of Los Angeles v. Wells Fargo & Co.*, 2015 WL 4398858 (C.D. Cal. July 17, 2015). The City of Los Angeles brought suit against Wells Fargo, alleging lending discrimination in violation of the federal Fair Housing Act. The City alleged that, since 2004, Wells Fargo engaged in predatory and discriminatory mortgage lending. The court determined that the City failed to provide evidence of a significantly disproportionate effect on minorities regarding the high-cost loans because there was not a statistically significant difference between the percentage of these loans being issued to minority and white borrowers. Additionally, the court noted that the City failed to identify an actual policy that created the disparity, as required under *ICP*. The court reasoned that the City's argument that Wells Fargo's "inadequate monitoring policies" resulted in the disparate issuance of high-costs loans to minority borrowers is not a policy, rather a *lack* of a policy. The court added that employing a policy that would "monitor relevant data" and "correct the disproportionate issuance" of high-costs loans to minority borrowers would create racial quotas that are explicitly forbidden by *ICP*. The court granted Wells Fargo's motion for summary judgment. An appeal has been filed.

HUD Issues Final AFFH Regulation. On July 16, 2015, HUD published its Final Rule concerning the obligation by HUD grantees to affirmatively further fair housing (AFFH).

The Final Rule introduces a new fair housing planning framework that will be incorporated into the Consolidated Plan/PHA Plan processes. Major provisions include replacing the analysis of impediments (AI) with the assessment of fair housing (AFH); HUD review of the AFH; the provision of data by HUD that will better inform fair housing planning; promoting regional thinking about fair housing; and facilitating community participation/input regarding fair housing planning. A copy of the final regulation can be found here: <https://www.federalregister.gov/articles/2015/07/16/2015-17032/affirmatively-furthering-fair-housing>.

HUD Issues Revised AFFH Assessment Tool Notice for Public Comment. On July 16, HUD published a notice concerning the revised AFFH Assessment Tool for entitlement jurisdictions in the Federal Register. The Tool requires the funding recipient to answer a series of questions concerning fair housing issues. These questions require responses that use a mix of data and other available information. This Assessment Tool will be mainly used by entitlement jurisdictions and PHAs who are joining with entitlement jurisdictions to submit their AFHs. A copy of the preamble to the revised Assessment Tool can be found here: <https://www.federalregister.gov/articles/2015/07/16/2015-17463/affirmatively-furthering-fair-housing-assessment-tool-solicitation-of-comment-30-day-notice-under>

The revised Assessment Tool itself can be found here: http://www.huduser.org/portal/affht_pt.html#affhassess-tab.

Small Area Fair Market Rents. On June 2, 2015, HUD issued an Advanced Notice of Proposed Rulemaking seeking comment on using Small Area Fair Market Rents (SAFMRs) to improve voucher utilization for Section 8 Housing Choice Voucher participants in low-poverty neighborhoods where rents are generally higher, and thus unaffordable for many Voucher families. SAFMRs would be tied to zip codes in order to more closely align FMRs to the actual market rents in the area. (Currently, FMRs are geographically-based, with the same FMR applying across a metropolitan area/nonmetropolitan county.) Accordingly, while the FMRs for higher-cost areas would rise under SAFMRs, the FMRs for certain higher-poverty areas would decrease. HUD has also provided hypothetical SAFMRs for all metro areas [on its website](#). NHLP submitted comments in response to the notice. NHLP's comments can be found here:

<http://www.regulations.gov/#!documentDetail;D=HUD-2015-0051-0076>. Read the notice here: <http://www.regulations.gov/#!documentDetail;D=HUD-2015-0051-0001>.

Equal Access Rule and Multifamily Housing. On July 13, 2015, HUD issued Notice H-2015-06, entitled "Program Eligibility in Multifamily Assisted and Insured Housing Programs in Accordance with HUD's Equal Access Rule." The notice "provides guidance on how the Equal Access Rule applies to Multifamily insured and assisted housing." The Equal Access Rule, issued in 2012, prohibits discrimination in HUD-assisted housing on the basis of sexual orientation, marital status, or gender identity. Read the notice at: <http://portal.hud.gov/hudportal/documents/huddoc?id=15-06hsgn.pdf>.

VAWA 2013 Proposed Rule. On June 1, 2015, NHLP, as part of the national VAWA

Housing Workgroup, submitted lengthy comments to HUD concerning the agency's proposed rule implementing the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Over 80 national, state, and local advocacy organizations endorsed the letter. Among other issues, the Workgroup provided detailed feedback on HUD's proposed model emergency transfer policy; documentation requirements to claim VAWA protections; confidentiality; lease bifurcation and reasonable times to establish eligibility for covered housing programs; HUD's proposed VAWA rights notice; and changes to program-specific regulations. The proposed rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-01/pdf/2015-06781.pdf>. The Workgroup's comments are available at <http://www.regulations.gov/#!documentDetail;D=HUD-2015-0028-0061>. Language access advocates submitted a separate [letter](#) urging HUD to, among other actions, provide translated versions of the Notice of VAWA rights. Please contact Karlo Ng at NHLP, kng@nhlp.org with any questions.

[Click here](#) for the full federal update from NCLP.

NOTABLE RESEARCH AND REPORTS

The Center for Budget and Policy Priorities (CBPP) posted new state fact sheets on federal rental assistance focusing on the Housing Choice Voucher Program. Fact sheets and data are here: <http://www.cbpp.org/research/housing/national-and-state-housing-data-fact-sheets>

The National Low Income Housing Coalition (NLIHC) released ***Out of Reach 2015***. The report finds that the hourly wage a person working 40 hours per week would need to earn in order to afford a modest, two-bedroom rental unit based on nationwide averages is **\$19.35**. *Out of Reach 2015* is available at http://nlihc.org/sites/default/files/oor/OOR_2015_FULL.pdf.

The Insight Center for Community Economic Development released a new study highlighting the depth and breadth of poverty in the Bay Area and offers "research-grounded strategies for implementing a pro-prosperity agenda." Read the report: [***Promoting Family Economic Security in the San Francisco Bay Area Region.***](#)

Expanding Opportunity: Talking about HUD's Affirmatively Furthering Fair Housing Regulations provides tips on communicating about HUD's new rule from the National Fair Housing Alliance and the Opportunity Agenda. [This memo](#) will equip you to communicate about the AFFH rule with a range of audiences in a variety of contexts. It contains messaging tips, relevant themes, and media guidance to develop your own communications before and after announcement of the rule."

Eva Rosen's ***Rigging the Rules of the Game: How Landlords***

Geographically Sort Low-Income Renters, based on the author's in depth interviews with landlords and tenants in Baltimore available [here](#).

The Incidence of Housing Voucher Generosity proposes a strategy for improving Housing Choice Voucher holders' access to housing with no net increase in cost. Authors Collinson and Ganong find that "setting ZIP code-level rent ceilings causes rent increases in expensive neighborhoods and decreases in low-cost neighborhoods, with little change in aggregate rents." [Read it here: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799)

Priced Out 2014 is the Technical Assistance Collaborative and the Consortium for Citizens with Disabilities Housing Task Force's latest report addressing the gap between SSI benefits and housing costs. Here: <http://www.tacinc.org/knowledge-resources/priced-out-findings>

Paul Jargowsky's report ***Architecture of Segregation: Civil Unrest, the Concentration of Poverty and Public Policy*** finds that "we are witnessing a nationwide return of concentrated poverty that is racial in nature, and that this expansion and continued existence of high-poverty ghettos and barrios is no accident. These neighborhoods are not the value-free outcome of the impartial workings of the housing market. Rather, in large measure, they are the inevitable and predictable consequences of deliberate policy choices." Report available here: <http://apps.tcf.org/architecture-of-segregation>

UPCOMING TRAININGS

Bankruptcy Basics for Low-Income Clients 2015 PLI San Francisco and webcast, Sep. 15, 2015. Register [here](#).

Providing Legal Assistance in the Aftermath of Disaster (includes sessions on tenant and homeowner rights) PLI SF and webcast, September 24, 2015. Register [here](#).

Representing Clients with Mental Disabilities and Challenging Behaviors, PLI San Francisco, September 25, 2015, 9am. Register [here](#).

Representing the Pro Bono Client: Advocacy Skills for Administrative Hearings 2015, PLI San Francisco and webcast October 2, 2015, 9am. Register [here](#).

Benchmark College of Advocacy, October 16-23, Pajaro Dunes. More information at:

[COA 2015](#)

Benchmark Housing Law Overview, November 19-20, San Francisco. More information at: **[HLO 2015](#)**

National Housing Law Project's HJN Conference, December 10-12, Oakland, California. More information at: www.nhlp.org.

Benchmark Public Benefits Overview, December 17-18, San Francisco. More information at: **[PBO 2015](#)**

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