

**Announcements**

Western Center is happy to welcome our newest legislative advocate, Jith Meganathan, who will join our team in January 2016. Jith previously worked as a staff attorney at Central California Legal Services in Tulare and Kings Counties. He collaborated with Western Center on two important bills to protect low-income debtors from wage garnishment. For his work on one of the bills, as well as on a successful federal Section 1983 lawsuit on behalf of the family of a child with autism, Jith received CCLS's Staff Member of the Year award in 2011. From 2010-2012, Jith was also on the Board of Directors of the Legal Aid Association of California. From 2012-2014, Jith served as the final law clerk for the Hon. Lawrence K. Karlton, Senior U.S. District Judge for the Eastern District of California, who was nationally renowned for his work on prisoner, civil rights, and environmental cases. He has since served as law clerk to U.S. Magistrate Judge Kendall J. Newman and U.S. District Judge Dale A. Drozd, both of the Eastern District of California. Jith is a graduate of Harvard Law School and Stanford University. Welcome Jith!



This is also the first issue of the Housing Update since our dear colleague Mike Moynagh retired after 16 years of dedicated service to California's most vulnerable residents. Among his many accomplishments, Mike helped to pass the bill that established tenants' right to 60 days' notice when they are evicted without cause, and the series of bills providing victims of domestic violence, sexual assault and trafficking with enhanced tenancy protections. We miss Mike and wish him well in retirement.



## **Waiver means waiver; tenant may not bring affirmative suit against landlord after signing UD stipulation waiving all claims**

***Needelman v. DeWolf Realty Co.***, 239 Cal. App. 4th 750 (2015), *as modified on denial of reh'g* (Aug. 18, 2015), *review filed* (Sept. 18, 2015)

A tenant entered an unlawful detainer stipulation allowing for future entry of judgment via ex parte application on twenty-four hours' notice, and waiving all claims against landlord. After the judgment was entered, tenant sued the landlord for wrongful eviction. Held: res judicata bars tenant's claims, and ex parte provision in stipulation did not violate due process. The court rejected tenant's arguments that res judicata should not apply in unlawful detainer cases where claims were not actually litigated.

## **Landlord may not evade rent control where tenant "voluntarily" vacates after service of an owner-move in notice**

***Mak v. City of Berkeley Rent Stabilization Bd.***, 240 Cal.App.4th 60 (2015)

Berkeley landlords served their tenant of 28 years with a 60-day notice claiming that their son would move into the property. Landlords then paid the tenant to vacate with an agreement stating that the 60-day notice was withdrawn and that the tenant was not vacating because of the notice. The landlords promptly re-rented the unit for double the rent; their son did not move in. The landlords argued that under Costa-Hawkins, they were free to raise the rent because the tenant vacated voluntarily. The Court of Appeal held that the landlords' "subterfuge was properly rejected."

## **Landlord may evict tenant for immaterial breach of lease, LA Appellate Division holds**

***Boston LLC v. Juarez***, No. BV030948, 2015 WL 5771040 (Cal. App. Dep't Super. Ct. Oct. 1, 2015)(Transferred to the Court of Appeal Oct. 14, 2015)

Like most leases, tenant's lease contained a provision reciting that "any failure of compliance" allows owner to forfeit and a provision requiring tenant to obtain renter's insurance. Fifteen years after the lease was signed, the landlord issued a three day notice alleging failure to obtain renter's insurance. One week later,

the tenant obtained insurance. Despite longstanding precedent providing that a breach must be material to justify forfeiture, the appellate division found that the trial court's decision to disallow evidence of the materiality of the breach and tenant's substantial compliance was proper under the lease's forfeiture clause. The court also found that any error in refusing to allow tenant to present a retaliation defense was not prejudicial, but elected not to decide whether the forfeiture clause also rendered the retaliatory eviction defense inapplicable.

Robert Reed and Jessica Schibler of Public Counsel represent the tenant and will continue to do so in the Court of Appeal, which sua sponte transferred the case on October 14.

### **\$750 fee cap in lease reasonable and enforceable, Appellate Division holds**

***511 S. Park View, Inc. v. Tsantis***, No. BV 031134, 2015 WL 5783212 (Cal. App. Dep't Super. Ct. Sept. 15, 2015)

The trial court granted prevailing tenant's motion for attorney fees and awarded \$12,375 despite a lease provision limiting fees to \$750. Held: the trial court erred in awarding more than \$750 despite reasonableness language in the contract and Civil Code section 1717. Ignoring the practical effect of the cap, which allows landlords to collect \$750 for a default judgment but protects them from significant fee awards when they take meritless cases to trial, the appellate division found that the cap was enforceable. The court also found that the cap was consistent with Civil Code section 1717, which gives the court the power to award "reasonable" fees in an action on a contract containing a fee clause. After his request for publication was granted, the tenant's attorney petitioned for the case to be transferred to the Court of Appeal on October 16.

### **Court of Appeal to review propriety of Delta motions challenging improper service of the notice**

The last Housing Update described ***Borsuk v. Superior Court***, 2015 WL 4538383 (Cal. App. Dep't Super. Ct. July 22, 2015), where the appellate division held that a motion to quash was the proper method to challenge

improper service of the notice to quit. The Court of Appeal transferred the case sua sponte on August 31st. Oral argument is set for November 12, 2015.

### **Subsidized tenant entitled to summary judgment where landlord failed to provide minimum notice required by lease**

***Long Beach Brethren Manor, Inc. v. Leverett***, 239 Cal.App.4th Supp. 24 (Cal. App. Dep't Super. Ct. 2015)

The appellate division affirmed the trial court's grant of summary judgment to a subsidized housing tenant, finding there was no triable issue of material fact as to plaintiffs' failure to give 30 days' notice as required by the lease. The decision turned on the lease language, which stated that the tenant was entitled to either 30 days' notice or notice of state law, whichever is later. The landlord argued that the language should be interpreted to allow a 3-day notice for nuisance in accordance with state law, since such notice would allow the landlord to serve the notice "later." The appellate division disagreed and found that the language was logically interpreted to require the longer notice period.

Anna Levine-Gronningsater and Jenifer Wiseman of Legal Aid Foundation of Los Angeles represented the tenant.

### **Tenant wins damages and attorneys' fees against Section 8 landlord who demanded side payments**

***United States v. Baran***, 2015 WL 5446833 (C.D. Cal. Aug. 28, 2015)

The District Court granted a default judgment against a Section 8 landlord in a False Claims Act case, awarding \$619,447 to the U.S. Government with 27% qui tam share allocated to the tenant plus \$6000 in punitive damages. Defendant landlord had demanded side payments from the tenant totaling thousands of dollars. The Court also awarded attorneys' fees and costs under the False Claims Act, 31 U.S.C. § 3730(d)(2) and Civ. Code 1942.5(g).

Paul J. Estuar and Shayla Renee Myers of Legal Aid Foundation of Los Angeles represented the tenant.

## **Superior Court holds settlement agreement entered after redevelopment dissolution enforceable; Department of Finance ordered to authorize payment to displaced residents**

### ***Limon v. Department of Finance***

Residents of a Garden Grove mobile home park sued for replacement housing and relocation after the City's redevelopment agency displaced them. After redevelopment dissolution, the successor agency settled residents' claims by agreeing to pay additional relocation, provide replacement housing and pay attorneys' fees, but the Department of Finance (DOF) denied payments required by the settlement. Public Counsel, the Public Interest Law Project and Norton Rose Fulbright, LLC, brought suit against DOF on the residents' behalf. In June 2015 the Sacramento Superior Court found that the settlement is an enforceable obligation and issued a writ of mandate directing DOF to approve payments. DOF did not appeal.

## **Sorry mobilehome park owners, rent control is STILL not an unconstitutional taking**

***Rancho de Calistoga v. City of Calistoga*, \_\_\_\_ F.3d \_\_\_\_ 2015 WL 5158703 (9th Cir. Sept. 3, 2015)**

In affirming the district court's dismissal of yet another mobile home park owner's constitutional challenge to a rent control ordinance, the Ninth Circuit opined: "Fifth Amendment takings challenges to mobile home rent control laws are ubiquitous in this and other circuits. Quoting Yogi Berra, we have previously characterized these claims as "deja vu all over again." . . . Each time a court closes one legal avenue to mobile home park owners seeking to escape rent control regimes, the owners, undaunted, attempt to forge a new path via another novel legal theory."

## **Discrimination**

## **Ninth Circuit finds abstention proper in case challenging consolidation of LA's unlawful detainer courts**

***Miles v. Wesley*, \_\_\_\_ F.3d \_\_\_\_ 2015 WL 5202560 (9th Cir. Sept. 8, 2015)**

Tenants with disabilities and non-profits brought suit alleging that the LA Superior Court's plan to centralize unlawful detainer proceedings in five hub courts violated the ADA, the Rehabilitation Act, the FHA, and the First, Fifth and Fourteenth Amendments. The district court dismissed on abstention grounds, and the Ninth Circuit affirmed, finding that the requested injunctive relief would constitute improper interference with the state's judicial system. Plaintiffs have petitioned for rehearing en banc.

Plaintiffs are represented by WCLP, Neighborhood Legal Services, Disability Rights Law Center and Legal Aid Foundation of Los Angeles.

### **Patrons with physical disabilities entitled to partial summary judgment on ADA and Unruh claims against business lacking accessibility features**

***McCarty v. Humphrey***, 2015 WL 5435160 (E.D. Cal. Sept. 15, 2015)

The district court granted partial summary judgment to plaintiffs with physical disabilities on their ADA and Unruh act claims against an office complex that lacked accessibility features. Decision includes detailed discussion of ADA requirements. The court notes that the ADA "was enacted on the understanding that discrimination against the disabled is most often the product, not of invidious animus, but rather of thoughtlessness and indifference -of benign neglect."

## **Legislative Update**

### **Session Adjourns for the Year**

The regular legislative session adjourned for the year on September 11 and the deadline as passed for the Governor to act on all bills that were sent to his desk. He signed a number of housing-related bills into law, including two that were co-sponsored by Western Center, which take effect on January 1 unless otherwise noted. Unfortunately, he also vetoed several key bills, and a number of other bills of interest to Western Center failed to make it to his desk. The Legislature returns on January 4 for the second year of the session. There are a number of two-years bills that could still move next year, and members will also introduce hundreds of new measures.

## Bill Highlights

**Fair Housing:** The Governor signed [AB 447](#), which prohibits insurers from refusing to insure landlords who rent to Section 8 and other subsidized tenants. Western Center co-sponsored the bill with CRLAF and Housing California. [SB 600](#) prohibits discrimination based on citizenship, language, or immigration status. The Governor signed the bill into law.

### **Finance:**

Three of the bills in Speaker Toni Atkins' affordable housing package made it to the Governor: [AB 35](#) (increase the state's low-income housing tax credit by \$100 million); [AB 1056](#) (redirect funds to housing for parolees), and [AB 90](#) (mechanism for distributing federal housing trust fund dollars). The Governor vetoed [AB 35](#), but signed the other two bills into law. This year's permanent source bill, [AB 1335](#), remains on hold and while technically still eligible to be voted on next year, appears unlikely to move due to the 2/3 vote threshold required for passage.

**Land Use:** The Governor signed [AB 744](#) into law. The bill reduces parking requirements for affordable, senior, and special needs housing projects located near transit under the state's Density Bonus Law.

**Landlord-Tenant:** [SB 655](#) adds mold not caused by a tenant to the list of conditions rendering a building substandard. [SB 328](#) requires notice to tenants when a landlord applies do-it-yourself pesticides. Both were signed into law. [SB 7](#), this year's water submeter bill, failed passage on the Assembly floor but could be resurrected next year.

**Tax Increment/Redevelopment:** The Governor signed [SB 107](#) into law. This budget trailer bill further revises the dissolution process for former redevelopment agencies. It took effect immediately upon being signed. After several prior vetoes of similar measures, the Governor also signed [AB 2](#), which creates a new type of tax increment financing district with housing production, finance, and displacement requirements similar to redevelopment law.

## 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 will be the subject of further negotiations and refinement before being taken up for a vote next year. It is co-sponsored with CRLAF.

[AB 587](#) and [SB 477](#) are co-sponsored with CRLAF and Golden State Manufactured-Home Owners League. [AB 587](#) would create a tax abatement program for mobilehomes where title was never properly transferred and would make changes to the mobilehome registration and titling system. The quite-complex provisions will be refined over the fall, with the bill expected to move forward next year. [SB 477](#) would have added mobilehomes back to the low-income senior/disabled property tax postponement program that was revived last year. The bill was held on suspense in the Senate Appropriations Committee and is unlikely to move next year.

[AB 418](#), co-sponsored with the CA Partnership to End Domestic Violence and the National Housing Law Project, was signed into law back in July. It makes permanent provisions 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).

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

### Federal Update from National Housing Law Project

[For the full NHLP update please click here.](#)

#### I. **LEGISLATIVE UPDATE**

**FY2016 Budget Stalled in Congress.** Uncertainty remains high around the FY2016 budget process. On September 30, Congress passed and the President signed a Continuing Resolution that funds the federal government at existing levels through Dec. 11. The CR passed the House of Representatives by a vote of 277-151, with many Republican members opposed. The Dec. 11

CR expiration, a Nov. 3 debt limit deadline, and the resignation of Speaker John Boehner are all contributing to an ongoing uncertainty around federal spending plans for the fiscal year that began on Oct. 1.

The House of Representatives passed a FY16 Transportation, Housing and Urban Development appropriation bill in June (H.R. 2577) that would lead to deep cuts for HUD, adhering to sequester spending caps in the 2011 Budget Control Act; for its part, the Senate bill all but eliminates the HOME program with a cut to just \$66 million from \$900 million (for more details, see NHLP's August 2015 Federal Update). The White House has promised to veto either bill. For more information, please contact Stephen Knight at 415-546-7000 [sknight@nhlp.org](mailto:sknight@nhlp.org).

## **II. FAIR HOUSING/EQUAL ACCESS**

**HUD Issues Long-Awaited Proposed Harassment Regulation.** On October 21, 2015, HUD published its proposed harassment regulation, entitled "[Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act](#)," 80 Fed. Reg. 63,720.

Importantly, the proposed regulation is not limited to sexual harassment, but covers harassment based on membership in the other Fair Housing Act protected classes as well. Furthermore, the proposed rule clarifies the direct or vicarious liability of housing providers and others for all FHA violations, including harassment. The proposed rule provides formalized standards for analyzing claims of harassment and definitions for "quid pro quo" and "hostile environment" harassment. The proposed rule adopts a "totality of circumstances" standard for determining whether a hostile environment claim exists under the FHA. There is a 60-day comment period, with comments due on December 21, 2015. For more information contact Renee Williams, [rwilliams@nhlp.org](mailto:rwilliams@nhlp.org).

## **III. ADDITIONAL HUD NOTICES**

### **Final Portability Rule**

On August 20, 2015, HUD published the long-awaited final portability rule, "[Housing Choice Voucher Program: Streamlining the Portability Process](#)," 80 Fed. Reg. 50,564 (August 20, 2015). The rule revises the portability regulations

for the Section 8 Housing Choice Voucher (HCV) program with the goal of streamlining the portability process for PHAs while reducing burdens associated with the portability process on participating families. HUD hopes that by eliminating administrative hurdles, more families will take advantage of the ability to live in areas with greater employment and educational opportunities. In the final rule, HUD recognizes the benefits of families moving to low-poverty communities. HUD also aims to improve the porting process for survivors of domestic violence, dating violence, sexual assault, and stalking, who must often relocate quickly to a home away from an abuser. The new regulations went into effect on September 21, 2015.

### **Proposed Fair Market rents**

HUD recently published the 2016 proposed fair market rents in the federal register, "[Proposed Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program and Other Programs; Fiscal Year 2016](#)," 80 Fed. Reg. 53,817-53,886 (Sept. 8, 2015). You can search for 2016 FMRs on HUD's website. For questions regarding these HUD notices contact Deborah Thrope, [dthrope@nhlp.org](mailto:dthrope@nhlp.org)

### **IV. RAD**

On October 7, 2015, Congressmember Maxine Waters submitted a [letter](#) to the U.S. Government Accountability Office (GAO) requesting that the GAO review the impact of HUD's Rental Assistance Demonstration (RAD) program on public housing tenants. Congressmember Waters' request for a GAO review seeks to ensure that tenants' rights are properly protected during and after RAD conversions and that RAD's reliance on private capital does not deplete the nation's stock of public housing. In order to ensure that tenant rights are maintained and enforced, local tenant advocates should contact their PHAs and participate in planning conversations for RAD conversions. For more information about RAD advocacy, please see NHLP's RAD Advocacy Guide [here](#). For more information contact Jessie Cassella, [jcassella@nhlp.org](mailto:jcassella@nhlp.org)

**Center on Budget and Policy Priorities'** updated report finds that Housing Choice Vouchers help low income children achieve long term positive change. Read the report updated 10/7/2015 [here](#).

In September the **U.S. Census Bureau released the 2014 Supplemental Poverty Measure (SPM)**. Instead of using a poverty threshold based on the cost of a minimum diet in 1963, the SPM uses consumer expenditure data, and defines the poverty threshold based on the mean of what two-child families around the 33rd percentile of the expenditure distribution spend on food, clothing, shelter and utilities, with adjustments. According to SPM data, federal housing subsidies lift approximately 2.8 million people out of poverty. Check it out [here](#) .

***Bootstraps Are For Black Kids: Race, Wealth, and the Impact of Intergenerational Transfers on Adult Outcomes.*** Insight Center for Community Economic Development's new report finds that "black parents demonstrate an outsized commitment to using their limited resources to invest in their children's education." Read it [here](#).

The **National Law Center on Homelessness and Poverty** is collecting information about the experiences of renters in foreclosed properties. If you work with clients living in foreclosed properties, the Law Center would like to hear from you. Access the survey [here](#).

### Upcoming Trainings

**National Low Income Housing Coalition's 2016 Policy Forum** will take place in Washington D.C. on April 3-5, 2016. The theme of the 2016 Forum is Overcoming Housing Poverty, Achieving Housing Justice. More information [here](#).

**National Housing Law Project's Housing Justice Network Conference** is in Oakland this year, December 10-12, 2015. [Register here](#).

***Advocating for Veterans: The Basics on VA Benefits, Discharge Upgrades and Veteran Cultural Competency 2015***(Free). November 10, 2015 9:00am, PLI San Francisco and Webcast. Register [here](#).

***Providing Respectful and Culturally Competent Services to LGBT Clients.*** PLI, November 18, 2015, 10:00am, Webcast only. Register [here](#).

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in the courts, counties and capital  
to secure housing, healthcare and a strong safety net

