

Announcements

Goodbye

We are sad to announce that our dear colleague Maria Palomares has left Western Center to become an administrative law judge. Maria was recently honored as Southwestern Law School Legal Clinic's Alumna of the Year for her work preserving low income housing. We will miss Maria very much and wish her well in her next adventure!

Lili-Vo Graham, Dara Schur, Deb Collins, Navneet Grewal, and Maria Palomares at Western Center's Garden Party



Congratulations!

Congratulations to Fernando Gaytan, who was honored with the Legal Aid Association of California's 2016 Award of Merit. Nice work, Fernando!



Save the Date

California Eviction Defense: Protecting Low Income Tenants 2017, will take place on March 8, 2017, at PLI in San Francisco and webcast on March 8, 2017. Details below.

Litigation and Local Advocacy

Mixed causes of action are subject to anti-SLAPP, California Supreme Court holds

Baral v. Schnitt, 1 Cal. 5th 376 (2016)

Following the rule established in *Mann v. Quality Old Time Serv., Inc.*, 139 Cal. App. 4th 328 (2006), the Court of Appeal upheld the denial of an anti-SLAPP motion because all of the challenged causes of action were "mixed," meaning they were based on protected and unprotected activity. The California Supreme Court reversed, finding that mixed causes of action are subject to anti-SLAPP motions because the anti-SLAPP statute protects *conduct*, regardless of how that conduct is

framed in a cause of action.

Court of Appeal finds landlord's attorney protected by litigation privilege

Contreras v. Dowling, 2016 WL 6248437, __ Cal. Rptr. 3d __ (Oct. 26, 2016)

A landlord's attorney's representation of landlords who harassed and illegally entered tenant's unit was protected by the litigation privilege, the Court of Appeal held. Prior decisions in this same case found that the conduct of the landlords themselves was not protected activity.

Landlord's firm liable for FDCPA, Rosenthal Act violations

Gonzalez v. Law Office of Allen Robert King, No. 16-02231 SJO, 2016 WL 3638119, __ F. Supp. 3d __ (C.D. Cal. Jul. 6, 2016)

A tenant sued his landlord's attorney, alleging violation of state and federal debt collection laws after the landlord's attorney took a default judgment against the tenant despite an oral move-out stipulation. Held: the tenant stated a claim for violation of both the Fair Debt Collection Practices Act and California's Rosenthal Act. The court further held that the litigation privilege did not bar the tenant's claims, because it does not apply to federal claims, and applying the privilege to the Rosenthal Act would render the Act's protections meaningless.

Tenant's claims survive anti-SLAPP motion

Khuc v. Peninsular Investments Inc., No. 15-CV-02898-BLF, 2016 WL 3916519(N.D. Cal. Jul. 20, 2016)

Commercial tenant Dr [*sic*] Burrito alleged state law claims and federal racketeering violations against his landlord for raising the rent in violation of the lease and for threatening eviction. The Court of Appeal upheld denial of the landlords' anti-SLAPP motion, finding that Dr Burrito's claims were based on the rent increase, which was not protected activity. Although the complaint alleged threats of eviction, those allegations were only used to support Dr Burrito's federal claims, which are not subject to anti-SLAPP.

Tenants besieged by sewage and bed bugs get fees, landlords should write better briefs, Court of Appeal finds

Hjelm v. Prometheus, 3 Cal. App. 5th 1155 (2016)

Tenants displaced by bedbugs and raw sewage won a lawsuit against their landlord and were awarded fees. Landlords appealed. Held: the one-sided attorney fee provision in the tenants' lease was properly interpreted to mandate an award of fees under Civil Code § 1717. The court also provides a detailed description of how *not* to write an appellate brief.

Land Use

Court of Appeal holds Density Bonus Act is subordinate to Coastal Act

Kalnel Gardens, LLC v. City of Los Angeles, 3 Cal.App.5th 927 (2016)

After a developer received initial approval for a project that included affordable units

and height and set back variations pursuant to density bonus law, the developer's permits were rescinded when neighbors challenged the development under the Coastal Act. The developer sued and lost in trial court. Held: the Coastal Act takes precedence over the Density Bonus Act and Mello Act. The Court of Appeal also dismissed developer's appeal of its Housing Accountability Act claims, finding that the only route to challenge the trial court decision was a writ.

Inclusionary zoning law incorporating in-lieu fees does not violate the Constitution

616 Croft Ave, LLC v. City of West Hollywood, 3 Cal.App.5th 621 (2016)

Developer challenged City's inclusionary housing ordinance, alleging facial and as-applied takings claims. Held: the City's inclusionary ordinance requiring payment of an in-lieu fee for developers who did not build affordable units is constitutional as applied, and the facial challenge was time-barred. The decision relies on the reasoning set out in the California Supreme Court's decision in *California Bldg. Indus. Assoc. v. City of San Jose*, 61 Cal.4th 435 (2015), summarized [here](#) and [here](#).

Berkeley's affordable housing preservation ordinance survives Constitutional challenge

OPHCA LLC v. City of Berkeley, 2016 WL 6679560 __ Cal. Rptr. 3d __ (Nov. 14, 2016)

Berkeley passed an ordinance that imposes a fee for demolition of certain residential buildings to offset the loss of affordable housing. Plaintiff OPHCA alleged that the ordinance violated due process, worked an unconstitutional taking, and violated various other laws. The District Court rejected all of OPHCA's arguments, finding that the fee approximated the effects of the proposed demolition and was distinguishable from the relocation ordinance struck down in *Levin v. City of San Francisco*, 71 F.Supp.3d 1072 (N.D. Cal. 2014).

San Francisco's Ellis Act abuse ordinance struck down

San Francisco Apt. Assc. v. City and County of SF, 3 Cal.App.5th 463 (2016)

The Court of Appeal upheld the trial court decision granting a writ of mandate and enjoining enforcement of a San Francisco ordinance that attempted to rein in Ellis Act abuses. The California Apartment Association and other landlord groups filed the writ challenging the City's imposition of a 10-year waiting period on landlords seeking to merge units after Ellis Act evictions, successfully arguing that the ordinance was preempted by state law.

Fair Housing

Sober living homes' Fair Housing Act claims survive motion to dismiss

Yellowstone Women's First Step House Inc. v. City of Costa Mesa, No. SACV 14-1852 JVS, 2016 WL 6124509 (C.D. Cal. Oct. 17, 2016)

Plaintiff sober living homes sued the City of Costa Mesa for discrimination on the

basis of disability because the City passed a series of ordinances restricting group homes and harassed residents and staff. In addition to requiring a special use permit and restricting all group homes to 6 or fewer residents, the City conducted warrantless searches and staked out personal residences of staff. The court found that plaintiffs stated a claim for disparate impact and disparate treatment under the FHA, but dismissed the reasonable accommodation and Rehabilitation Act claims with leave to amend. Congratulations to Chris Brancart, who represented the plaintiffs.

African-American prospective tenants' Fair Housing Act challenge to NYC's neighborhood preference policy survives motion to dismiss

Winfield v. City of New York, No. 15CV5236-LTS-DCF, 2016 WL 6208564 (S.D.N.Y. Oct. 24, 2016)

African-American New York City residents brought Fair Housing Act claims against the City, alleging its "community preference" policy for affordable housing is intentionally discriminatory and has a disparate impact. Held: plaintiffs had standing to challenge the policy even though they hadn't yet applied for housing to which the policy applied, and stated a claim for violation of the FHA under a disparate impact and disparate treatment theory. The decision contains a useful discussion of standing and the pleading standard for disparate impact under *Texas Dept. of Housing and Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, ___ U.S. ___, 135 S. Ct. 2507 (2015)(ICP).

ICP finds limited success in continued efforts to address siting of LITC properties *Inclusive Communities Project, Inc. v. U.S. Dept of Treasury*, No. 3:14-CV-3013-D, 2016 WL 6397643 (N.D. Tex., Oct. 28, 2016)

In continuing efforts to attack government policies allowing LITC properties to be developed almost exclusively in low-opportunity neighborhoods, ICP brought suit against the U.S. Department of Treasury and the Office of the Comptroller of Currency for their role in perpetuating segregation in Dallas. ICP's original suit against the state housing agency was ultimately dismissed. (*Inclusive Cmty. Project, Inc. v. Tex. Dep't of Hous. & Cmty. Affairs*, 2016 WL 4494322 (N.D. Tex. Aug. 26, 2016). In the instant case, the District Court dismissed ICP's disparate impact claim against the federal agencies, finding that plaintiffs were actually alleging the lack of a policy and had not met the "robust causality" standard established by the Supreme Court. However, plaintiffs' affirmatively furthering claim under section 3608(d) survived the motion to dismiss.

Landlords' policy banning tenants with criminal records may still have an impact on African-American tenants, even if nearly all current tenants are African-American

Alexander v. Edgewood Management Corp., No. CV 15-01140 (RCL), 2016 WL 5957673 (D.D.C., Jul. 25, 2016)

Tenant sued subsidized housing landlords for wrongfully denying him admission based on a seven-year-old misdemeanor conviction and fifteen-year-old felony convictions that were later overturned, alleging that the landlord's criminal records policies have a discriminatory effect on African-Americans. The District Court denied landlords' motion to dismiss, finding that even if the landlords' other tenants are all African-American, the policy still has a disparate impact on individual African-Americans applying for housing.

Partial summary judgments for tenants of familial discrimination claims

Bischoff v. Brittain, No. 214CV01970-KJM-CKD, 2016 WL 4945430 (E.D. Cal. Sep. 16, 2016)

Prior updates have detailed the excellent advocacy in this fair housing case [here](#) and [here](#). In this most recent decision, the District Court granted plaintiffs' motion for summary judgment in part, finding that undisputed facts established liability against the property owners for FHA and Unruh Act violations. The court refused to award attorneys' fees at this stage however, finding the preliminary injunction and partial summary judgment orders are interlocutory.

Section 8 tenant prevails against harassing landlord

Patton v. Hanassab, No. 14CV1489 AJB, 2016 WL 4507022 (S.D. Cal. Aug. 29, 2016)

The District Court denied defendant landlord's motion for summary judgment against a Native American Section 8 tenant with a disability who alleged a pattern of harassment and unlawful eviction attempts.

Interested in Fair Housing issues? Join our working group to discuss the Department of Fair Employment and Housing's draft regulations. Contact mhoward@wclp.org for more information.

Legislative Update From Our Sacramento Team

Housing Advocates gather for Western Center and CRLAF's Housing Policy Summit



Western Center on Law & Poverty and California Rural Legal Assistance Foundation sponsored eight bills to improve housing outcomes for our low-income clients, analyzed over 150 housing-related bills, and commented on dozens of proposals in the areas of land use, affordable housing finance, mobilehomes, climate change, landlord-tenant, fair housing, code enforcement, and other areas. The following are some of the highlights of this year's successful legislative session.

Sponsored Bills Signed into Law

AB 551 (Nazarian): Establishes an initial framework for regulating the treatment of bedbugs in rental housing. Among its provisions, the bill requires notice to tenants describing bedbugs and what to do if they are found, protects tenants from retaliation for reporting bedbugs, and prohibits landlords from showing, renting, or leasing a unit known to be infested.

AB 587 (Chau): Assists the tens of thousands of mobilehome owners who do not have current title to their homes. The bill creates a three-year tax abatement program for mobilehome owners who never received title to their home and may owe back taxes as a result. The bill gives homeowners a path to bringing title current without significant financial burden.

AB 2501 (Bloom): Closes numerous loopholes in Density Bonus Law that local governments use to discourage or block use of the law, preventing the construction of affordable units. The bill requires local governments to respond to an application in a timely manner, clarifies the standard for use of the law's incentives, and prevents local governments from imposing additional studies or other requirements that block or kill density bonus projects.

AB 2556 (Nazarian): Clarifies a number of provisions from AB 2222 (Nazarian, 2014), which established a No Net Loss requirement in Density Bonus Law. The No Net Loss requirement is a critical protection for existing low-income households, ensuring that Density Bonus projects do not result in a net loss of affordable housing. Among other provisions, the bill provides a simple way to determine replacement obligations when the incomes of current or former tenants is unknown and provides some flexibility around the size of replacement units.

AB 2819 (Chiu): Amends the state's UD masking provision to protect the rental history of innocent tenants. Current law allows unmasking (and subsequent reporting) of any eviction action unless at least one defendant prevailed in the case within 60 days. This has left vulnerable thousands of tenants whose cases are never pursued by the landlord or who ultimately win or settle after 60 days. AB 2819 flips current law, keeping all UDs masked unless the landlord prevails within 60 days or secures a judgment after trial.

Other Critical Advocacy

Fighting for Tenant Protections: CRLAF and WCLP played a key role in fighting for tenant protections in SB 7 (Wolk), the culmination of a multi-year effort by Senator Wolk to require water sub-meters in multifamily housing. The Governor signed SB 7 into law this year, with many of the tenant protections sought by WCLP and CRLAF in place. We will actively monitor its implementation and pursue legislation to strengthen the law if necessary to prevent abuses.

Blocking Bad Bills: WCLP and CRLAF advocates helped stop a number of bills that would have eroded housing protections. These included AB 2003, which would have eroded habitability defenses in unlawful detainers; AB 2760, which would have undermined fair housing law protections for support animals; AB 2391, which would have expanded a controversial pilot allowing landlords to gain possession by declaration against so-called trespassers; and AB 2312, which would have required pre-trial deposit of rent in non-payment UD cases.



Research and Resources

The National Low Income Housing Coalition report [Housing Spotlight: A Long Wait for a Home](#) analyzes subsidized housing waiting lists and finds that 53% of voucher waiting lists are closed to new applicants and 65% of waiting lists had been closed for at least one year.

This Equal Rights Center [report](#) examines the discrimination African-American women with criminal records face in accessing housing.

Yale researchers found that [Implicit Racial Bias in Behavior Appears in](#)

[Preschool.](#)

Training

California Eviction Defense: Protecting Low-Income Tenants 2017, March 8, 2017, 9:00am-5:00pm, Practising Law Institute San Francisco and Webcast.