NATIONAL HOUSING LAW PROJECT

advancing housing justice

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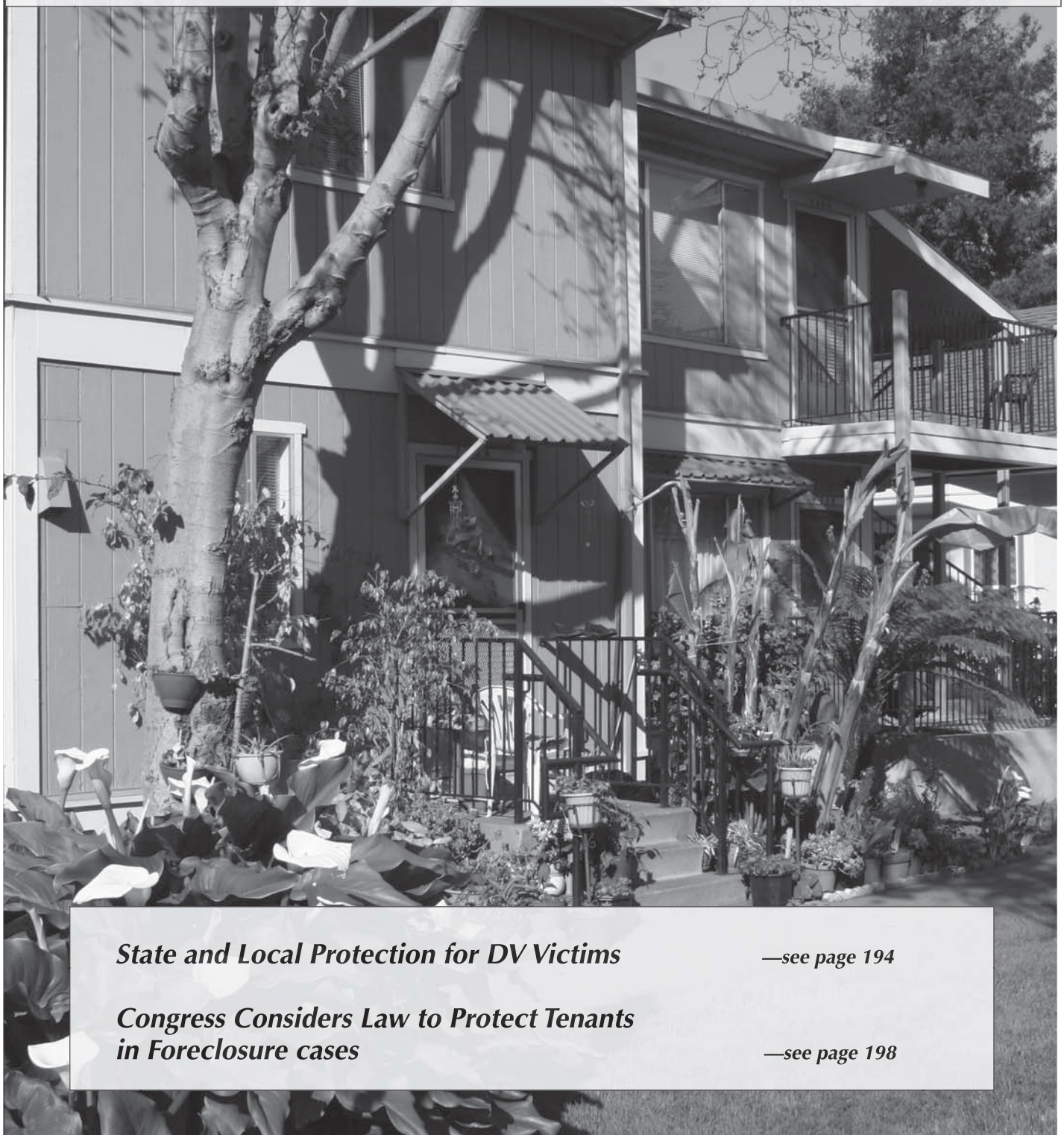

ADVANCING HOUSING JUSTICE

A Decent, Safe, & Affordable Home for All

Housing Justice Network National Meeting

SUNDAY & MONDAY, DECEMBER 7 & 8 8:30 am – 5:00 pm

The National Meeting of the Housing Justice Network is a dynamic two-day event that brings together low-income housing allies—public interest attorneys, affordable housing advocates, policy analysts, organizers, and residents—from across the nation. Attendees participate in sessions on current developments in the federal housing programs, discuss strategies for representing the interests of low-income residents, and exchange ideas on litigating, advocating, and organizing. HJN members will also begin the process of planning policy advocacy and set priorities for work with the new incoming Administration. The keynoter speaker for the meeting is Cruz Reynoso, a former Associate Justice of the California Supreme Court and former Vice-Chair of the U.S. Commission on Civil Rights.

The HJN Meeting is a tremendous opportunity to meet with colleagues and build our collective capacity to advance housing justice for low-income households across America.

Federal Housing Programs: One-Day Training for New Practitioners

SATURDAY, DECEMBER 6 9:00 am – 5:00 pm

This substantive training provides a comprehensive overview of the federal housing programs, recent changes, current trends, and issues facing practitioners. The full-day training is designed for advocates with limited housing experience—and will help prepare you for more in-depth discussion at the HJN Meeting sessions. Practitioners are welcome to attend just the meeting or just the training. Note: There is a discounted rate for attending both.

See pages 208-209 for more information and a registration form.

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614 Grand Avenue, Suite 320, Oakland CA 94610
Telephone (510) 251-9400 • Fax (510) 451-2300

727 Fifteenth Street, N.W., 6th Fl. • Washington, D.C. 20005

www.nhlp.org • nhlp@nhlp.org

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Cover: Rosefield Village is a 46-unit family public housing complex operated by the City of Alameda Housing Authority.

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Inquiries or comments should be directed to Eva Guralnick, Editor, *Housing Law Bulletin*, at the National Housing Law Project, 614 Grand Avenue, Suite 320, Oakland, CA 94610, Tel: (510) 251-9400 or via e-mail to nhlp@nhlp.org

Post-*Rucker* Decisions: Six Years Later*

In 1996, Congress enacted what is known at the "one strike and you're out" law for public housing, mandating that every public housing agency include in its lease terms a provision that "any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy."[1] In 2002, the Supreme Court upheld the strict liability component of this law in *Department of Housing and Urban Development v. Rucker*, finding that Congress acted constitutionally in mandating "lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity."[2]

There have been several reported court and hearing officer decisions regarding evictions from federally assisted housing and termination of vouchers which applied to or have been impacted by the *Rucker* decision. Several of these decisions have already been summarized in previous issues of the *Housing Law Bulletin*;[3] this article provides advocates with an overview and update of decisions issued since December 2005, the date of the *Bulletin*'s last such update.

In the last three years, few reported cases have upheld public housing tenancies against one-strike eviction actions. Courts in Massachusetts, the District of Columbia, Tennessee, and Delaware found that public housing resident protections embedded in state or local law were preempted by *Rucker*. A municipal court in Cleveland disagreed, however, holding that *Rucker* did not strip the court of its equitable authority. In New York, the courts considered the interaction of one-strike eviction actions and a separate administrative eviction process provided by state law. Although the case law in New Jersey is not fully consistent, two recent decisions agreed that the one-strike rule does not apply where the public housing agency (PHA) chooses to use administrative actions to evict. Courts in New Jersey and Massachusetts also

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*Antonia M. Konkoly, a J.D. Candidate at the University of California, Berkeley School of Law (Boalt Hall) and a summer intern at the National Housing Law Project, is the author of this article.

[1]42 U.S.C. § 1437d(l)(6) (West, Westlaw, Current through P.L. 110-284 (excluding P.L. 110-234, 110-246, and 110-275) approved 7-23-08). HUD implementing regulations contain a similar provision at 24 C.F.R. § 966.4(f)(12) (2007).

[2]535 U.S. 125, 130 (2002).

[3]NHLP, *One Strike Evictions: Post* Rucker *Decisions*, 32 HOUS. L. BULL. 201 (Sep. 2002); NHLP, *Post*-Rucker *Decisions: Three Years Later*, 35 HOUS. L. BULL. 257 (Nov./Dec. 2005).

weighed the scope of "criminal activity" susceptible to a one-strike eviction, finding, respectively, that disorderly conduct and violent criminal activity that occurred one mile offsite met the standard.

State Courts Consider Preemption Issues

Massachusetts Supreme Court Rejects State's Innocent Tenant Defense

In *Boston Housing Authority v. Garcia*,[4] the Supreme Judicial Court of Massachusetts held that the federal one-strike provision preempted a state law protection for innocent tenants. The case arose out of the Boston Housing Authority's efforts to evict Doris Garcia, whose two household-member sons had been arrested for possession of marijuana in separate incidents four days apart. Unrepresented by counsel, Garcia told the trial judge that she did not know of or have control over her sons' actions, a defense previously recognized under state law.[5] The trial judge told Garcia that her lack of knowledge or control were irrelevant after *Rucker*, and entered judgment for the BHA.

On appeal, and represented by counsel, Garcia argued that *Rucker* had not decided any questions of conflict preemption, as the decision was not concerned with any state statute or rule but only with whether federal law itself provided an "innocent tenant" defense. Further, in the absence of express preemption, she argued that courts should seek to reconcile any supposed conflicts and that state limitations on the exercise of federal discretion are well recognized. While the housing authority must use the "one strike" lease clause, it is not required to evict, and must also use discretion and consider all applicable circumstances in determining when an eviction is warranted.[6] Therefore, Garcia argued, these federal mandates do not conflict with the Massachusetts innocent tenant defense, and, therefore, the rule does not constitute an additional hurdle or impediment that impermissibly thwarts the will of Congress.

The court disagreed, holding that Congress had given housing authorities the responsibility and discretion to consider special circumstances,[7] and that to allow state judges to second-guess the decisions of a PHA was a direct conflict: "[P]ermitting a judge to override the use of that discretion, based on the judge's evaluation of evidence presented on the issue of a tenant's knowledge or control, would run afoul of and substantially interfere with the congressional objective. It is therefore preempted."[8]

Thus, while *Rucker* did not preempt Massachusetts' general "cause" standard[9] for evictions, in the context of federally assisted housing, "cause" was now strictly defined by the federally required lease clause.[10] If a household member engaged in drug-related activity, cause has been shown and the court must enforce the lease and evict.[11] In making these determinations, courts may also consider whether a PHA has abused its discretion by making decisions "without cause"—*i.e.*, unsupported by sufficient facts or in violation of due process requirements.[12]

District of Columbia Court of Appeals Finds Local Cure Provision Preempted; One-Strike Rule Not Self-Executing

Three cases in the District of Columbia Court of Appeals also addressed the issue of federal preemption,[13] each specifically in relation to a provision of local D.C. law requiring landlords to provide tenants thirty days' opportunity to correct lease violations prior to filing for eviction.[14] The first case, *Scarborough v. Winn Residential L.L.P.*,[15] involved the eviction of a Section 8 Moderate Rehabilitation

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[4]871 N.E.2d 1073 (Mass. 2007); *see* NHLP, *Massachusetts Court Finds State Innocent Tenants Protections Preempted*, 37 Hous. L. Bull. 205 (Nov./Dec. 2007).

[5]Massachusetts state law requires a finding of "cause" for an eviction. Mass. Gen. Laws ch. 121B, § 32 (West, Westlaw, Current through Chapter 200, except for Chapters 173, 176, 182, 188, and 196 of the 2008 2nd Annual Sess.). Interpretative case law had established that tenants have a right to attempt to rebut the inference that they were (1) aware of the offending action by other household members and (2) able to exercise some influence to prevent it; if tenants could demonstrate "special circumstances indicating that [they] could not foresee or prevent the [lease violation by another household member]," they could avoid eviction. *Spence v. Gormley*, 439 N.E.2d 741, 745 (Mass. 1982). Massachusetts' Supreme Judicial Court had reaffirmed this "special circumstances" rule in 1998 in *BHA v. Bell*, 697 N.E.2d 130 (Mass. 1998), a case in which BHA did not assert federal preemption.

[6]24 C.F.R. §§ 5.852, 966.4(l)(5)(vii)(B) (2007). HUD has issued two HUD letters in the wake of the *Rucker* decision. In an April 16, 2002, letter, Secretary Mel Martinez urged public housing administrators "to be guided by compassion and common sense" and to "consider the seriousness of the offense and how it might impact other family members." Martinez also stated that the one-strike clause is a tool that "should be applied responsibly" because "[a]pplying it rigidly could generate more harm than good." In a June 6, 2002, letter, Assistant Secretary Michael M. Liu stated, "[a]fter *Rucker*, PHAs remain free, as they deem appropriate, to consider a wide range of factors in deciding whether, and whom, to evict as a consequence of such a lease violation. Those factors include, among other things, the seriousness of the violation, the effect that the eviction of the entire household would have on non-household members not involved in the criminal activity, and the willingness of the head of the household to remove the wrongdoing household member from the lease as a condition for continued occupancy." *But see* Scarborough v. Winn Residential L.L.P., 890 A.2d 249, 259 (D.C. 2006) (holding that "*Rucker* itself does not require a landlord to weigh additional considerations opposing and favoring eviction before pursuing lease termination").

[7]449 Mass. at 735 (a lengthy footnote 14 describes in detail HUD's policy of individualized consideration by the authority).

[8]*Id.* at 734.

[9]*Id.* at 736; *see* Mass. Gen. Laws ch. 121B, § 32, *supra* note 5.

[10]449 Mass. at 736.

[11]*Id.* at 737.

[12]*Id.* at 736.

[13]As the court noted in *Scarborough, infra* note 15, technically speaking in the District of Columbia the issue is not one of federal preemption of state action, but rather of whether in a given matter, "a congressional statute of national application prevails over a statute applying only to the District of Columbia." However, the two issues do not present any substantive differences and can be treated as the same. 890 A.2d at 255.

[14]D.C. Code § 42-3505.01(b) (West, Westlaw, Current through July 7, 2008).

[15]890 A.2d 249 (D.C. 2006).

tenant for possession of unlicensed firearms by a guest.[16] Leaving open the question of whether the D.C. cure provision applied only to ongoing "nuisance-like" violations (such as keeping a pet or smoking) or also covered violations arising out of discrete criminal activities, the court held that *even if* the cure provision did apply to the case, it would frustrate the objectives of the federal one-strike law,[17] and was therefore preempted.

Reasoning that because the only way a tenant could "correct" one-time criminal activity would be to refrain from engaging in such conduct again within the next thirty days, the *Scarborough* court held that allowing the tenant the benefit of such a cure opportunity would "render[] the [one-strike] eviction provision a virtual nullity, because the grounds for eviction—the criminal act—would be washed away by a simple promise not to commit another crime."[18] Because the cure provision therefore stood as an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress,"[19] conflict preemption prevented its availability to Section 8 Moderate Rehabilitation tenants facing eviction for criminal activity. The court also concluded that Department of Housing and Urban Development (HUD) regulations[20] authorize, but do not require, housing providers to weigh additional considerations opposing and favoring eviction before pursuing lease termination, and that when a housing provider finds a tenant's criminal activity to provide a sufficient basis for eviction, courts may not review its exercise of discretion.[21]

Less than a year later, the D.C. Court of Appeals affirmed and extended *Scarborough* in *Calloway v. District*

[16]One of the guns had been used in the apartment by a non-tenant, in what was ultimately ruled a self-defense killing.
[17]Because the case involved a Section 8 Mod Rehab apartment, the governing one-strike provision was 42 U.S.C. § 1437f(d)(1)(B) (West, Westlaw, Current through P.L. 110-284 (excluding P.L. 110-234, 110-246, and 110-275) approved 7-23-08).
[18]890 A.2d at 257.
[19]*Id.* at 255.
[20]24 C.F.R. §§ 5.852, 966.4(l)(5)(vii)(B) (2007).
[21]890 A.2d at 258-59.

Marcia Rosen Joins Staff as New NHLP Executive Director

The National Housing Law Project (NHLP) is extremely pleased to announce the appointment of Marcia Rosen as its new Executive Director.

Marcia comes to NHLP with an extraordinary and extensive background in housing and community development work and leadership for which she has received significant and well-deserved recognition. For six years she served as the Executive Director of the San Francisco Redevelopment Agency, a government agency dedicated to promoting community, economic and physical development of San Francisco's distressed neighborhoods and the development and preservation of affordable housing. Prior to that she served for five years as Director of the San Francisco Mayor's Office of Housing, representing the mayor before various local, state and federal agencies and legislative bodies. During this time, she also served on the U.S. Conference of Mayors Housing and Community Development Committee, representing that committee and the City of San Francisco during both the Clinton and Bush Administrations. Before serving the City of San Francisco, Marcia was the Deputy Director of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, where she represented low-income people and community organizations in a broad array of civil rights cases and issues, specifically focusing on housing, land use, economic and community development, and child and youth issues.

Marcia has received numerous and prestigious awards for her work and leadership. Earlier this year, she was recognized by both the California Redevelopment Association and the Treasure Island Development Authority. In 2007, she was named a Housing Hero by the San Francisco Housing Action Coalition and received a proclamation of honor from San Francisco Mayor Gavin Newsom. In 2006, she was named one of the most Influential Women in Business by the San Francisco Business Times and was honored by the Treasure Island Homeless Development Initiative.

Marcia received her undergraduate degree from the University of Massachusetts and her Juris Doctorate from the University of California, Hastings College of Law. She was also a Loeb Fellow at the Graduate School of Design at Harvard University.

Marcia will begin her tenure on November 3 and assume leadership of the organization from Gideon Anders, who is retiring after holding the position of Executive Director for the past eleven years.

We are delighted to welcome Marcia to our organization and look forward to working with her as she leads NHLP into a new era in the fight for housing justice. We hope you will join the NHLP board and staff in extending a warm welcome and best wishes to Marcia Rosen, our new Executive Director.

of Columbia Housing Authority.[22] There, the court held that where the federally required one-strike provision was contained not in the tenant's lease, but in a lease addendum, the tenant was similarly barred by the principles of conflict preemption from invoking the protections of the local cure provision.

In the final case, *Pratt v. District of Columbia Housing Authority*,[23] the issue before the court was whether the one-strike rule is "self-executing"—*i.e.* whether it preempts the local cure statute even when an eviction is based solely on a lease provision that does not incorporate the prohibition against criminal activity. DCHA had initiated the eviction action against tenant Angela Pratt following the arrest of her household member son, Davon Pratt, for unauthorized use of a motor vehicle. Although Pratt's lease contained language authorizing DCHA to evict for "serious or repeated" violations of certain lease provisions, among them one forbidding her to disturb her neighbors' peaceful enjoyment of the premises, or to allow other persons on the premises with her consent to do the same,[24] due to an apparent oversight the lease lacked the required federal one-strike provision.

Reversing a lower court's jury decision, the Court of Appeals held that because "the federal policy is effectuated through a specific lease provision and resultant contractual liability of the tenant,"[25] and because the lease provision under which DCHA brought the eviction action lacked any specific reference to criminal activity, the federal one-strike provision did not apply to Pratt and therefore could not preempt the local cure provision in her instance. The court then turned to the question, left undecided by both *Scarborough* and *Calloway*, of whether the D.C. cure statute, by its own terms and without regard to supercession by federal law, applied to lease violations arising out of discrete criminal activities. Finding that it did, the court concluded that Pratt had a right to cure the lease violation and that the housing authority's effort to evict without first granting her this opportunity was in violation of Pratt's statutory rights.[26]

Tennessee Court of Appeals Finds State Waiver Provision Preempted

In *Ross v. Broadway Towers*,[27] the Tennessee Court of Appeals affirmed a lower court decision to evict Jack Ross, a Section 202 resident, on the grounds that his live-in caretaker (now spouse), Barbara Wheeler, had been convicted of felony forgery in an attempt to take money from her elderly mother's bank account. The forgery had occurred more than five years earlier, although the conviction had not been entered until nine months prior to the couple's move-in date; Ms. Wheeler had escaped detection of the conviction at the time of the rental application by not disclosing that she also used the name Barbara Norwood (the name under which she had been convicted). After receiving the eviction notice, Ross tendered, and the landlord accepted, an additional rental payment.

The Court of Appeals held that the federal one-strike provision could not preempt the local cure provision.

On appeal, Ross raised several issues, arguing, *inter alia*, that the trial court erred in granting the detainer warrant when the termination notice contained no allegation of any breach that occurred during the term of the lease, and that under Tennessee state law,[28] the landlord was estopped from proceeding with the eviction by his acceptance of the rental payment. In affirming the eviction, the appellate court held that because federal regulations allowed the landlord to deny applications based on prior criminal records, the fact that neither Ross nor Wheeler engaged in any criminal conduct during the term of the lease was immaterial: had Ms. Wheeler provided her other name, she would not have been allowed to move in, and she could not "escape the consequences of her misconduct" simply because she had been mistakenly admitted into the housing project.[29] Further, the court held that, without question, the nature of Ms. Wheeler's forgery conviction was such that it posed a threat to the health and safety of the other senior residents.[30]

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[22]916 A.2d 888 (D.C. 2006).

[23]942 A.2d 656 (D.C. 2008).

[24]As quoted in the opinion, the sole lease provision (paragraph 5(l)) under which DCHA sought to evict Pratt required her "[t]o conduct… herself and cause other persons who are on the premises with…her consent to conduct themselves in a manner that will not disturb…her neighbor[s'] peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition." Although the court noted that this language "is broad enough to encompass the criminal activity at issue," it nonetheless found the lack of the specific one-strike language to be fatal to DCHA's one-strike eviction action. *Id.* at 658.

[25]*Id.*

[26]The lease provision in question, *supra* note 24, allowed for eviction in the case of lease violations committed by other members of the tenant's household or by guests. In its discussion on whether Pratt was afforded the protections of the D.C. cure provision, the court stated that she was entitled to "the opportunity to avoid eviction by timely measures—such as the exclusion of Davon Pratt from her household—to prevent recurrence of the criminal activity her son engaged in." *Id.* at 662. Thus, while Pratt was entitled under D.C. law to an opportunity to cure, under the terms of her lease her tenancy remained contingent upon the criminal activity of other household members or guests.

[27]228 S.W.3d 113 (Tenn. Ct. App. 2006).

[28]Tenn. Code Ann. § 66-28-508 (West, Westlaw, Current with laws from the 2008 Second Reg. Sess., eff. through May 15, 2008).

[29]228 S.W.3d at 121.

[30]*Id.* at 120. The court stated, "If Ms. Wheeler will forge legal documents in an attempt to steal a substantial amount of money from her own elderly mother, then the other elderly and/or disabled residents of the premises cannot be excluded as [her] potential future victims."

With respect to the waiver issue, the court held that the federal one-strike law impliedly preempted this state law provision, as the waiver rule would "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[31] For this conclusion, the court relied heavily on *Scarborough*,[32] importing the logic there about the conflict between the one-strike law and a local *cure* provision to the unanalogous instance of Tennessee's *waiver* rule.[33]

Delaware Superior Court Finds One-Strike Rule Does Not Apply to Non-Drug Related Criminal Activity; More Protective State Law Provisions Preempted

In an unreported decision, the Superior Court of Delaware held that the federal one-strike law imposed strict liability only on drug-related activity, not other kinds of criminal activity. Applying the principles of statutory analysis to the one-strike clause, the court in *Howell v. J. of Peace Ct. No. 16*[34] stated that insofar as they applied to "merely criminal" (as opposed to drug-related) activity, "[t]he code and the regulation each require *an additional showing* that the documented illegal act threatened the health and safety of other residents or disturbed the peaceful enjoyment of other residents."[35] Thus, in instances such as the one before the court, where a public housing tenant engaged in non-drug-related criminal activity, *Rucker* had "no application,"[36] and the PHA had the "specific burden" of showing "some causal connection between the crime and the threat to others."[37]

Finding that the trial court's decision did not adequately address whether the PHA had satisfied this additional burden, the appellate court remanded the case with instructions to examine the issue. The court further found, without much discussion, that a state law providing additional tenant protections (in the form of a requirement that a landlord show actual or threatened irreparable harm in order to sustain an eviction action) was preempted by federal law and did not apply to public housing tenants.[38] Thus, while in order to evict for non-drug related criminal activity, the PHA needed to establish a causal connection between the crime and the endangerment of other residents, it did not have to pass the additional state-law hurdle of showing irreparable harm.[39]

Municipal Court in Cleveland Says No Preemption of Equity Authority

In *Cuyahoga Metropolitan Housing Authority v. Harris*,[40] the Cleveland court held that while a PHA need not prove awareness of a guest's drug-related activity on the part of a tenant in order to prevail in a one-strike eviction action, *Rucker* did not preempt or limit the court's equity powers to decide for an innocent tenant. The PHA had initiated the eviction suit after a guest of the tenant had been arrested in the tenant's apartment on a federal warrant. During the arrest, police found crack cocaine in the guest's pocket; a sweep of the apartment turned up no further drugs or paraphernalia, and the tenant testified that she had been unaware of the drugs in her guest's possession. The magistrate judge presiding over the summary proceedings decided for the tenant, and the PHA appealed. Affirming the magistrate's decision, the court stated that to permit eviction under the circumstances at hand "would be to hold that public housing tenants can have no guests or, equally implausible… that public housing tenants must conduct a thorough search of each guest every time guests enter PHA property,"[41] and affirmed that *Rucker* did not strip the court of its equity power.

Courts Consider *Rucker* in the Context of State Laws

New York Courts Grapple with Requirements of Parallel Eviction Processes Under State Law and a Separate Administrative Procedure

In *New York City Housing Authority. v. Grillasca*,[42] the Civil Court of the City of New York held that *Rucker*'s strict liability standard was not relevant to evictions brought by a housing authority under New York state law,[43] as opposed to those brought under the administrative

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[31] *Id.* at 123, quoting *Boggs v. Boggs*, 520 U.S. 833, 844 (1997).
[32] 890 A.2d 249, *supra* note 15.
[33] *Scarborough* had reasoned that one-strike rules are, by definition, irreconcilable with cure provisions: "The only way to make sense of the idea of 'correcting' criminal activity would be to require the tenant not to engage in such activity again…[in] this interpretation… the criminal act would be washed away by a simple promise not to commit another crime." 890 A.2d at 257. The Tennessee waiver provision at issue in *Ross*, on the other hand, operated wholly independently of any such promise and indeed is premised on the behavior of the landlord, not the tenant. The *Ross* court failed to explain its logical leap, instead merely quoting at great length from the *Scarborough* opinion and concluding, "We agree with the rationale in *Scarborough*." 228 S.W.3d at 122-24.
[34] 2007 WL 2319147 (Del. Super. Ct. July 10, 2007).
[35] *Id.* at *7, quoting *D.C. Housing Authority v. Whitfield*, 2004 WL 1789912 (D.C. Super. July 30, 2004), emphasis in original.
[36] *Id.* at *6.
[37] *Id.* at *8.
[38] *Id.* at *8-9.
[39] In other words, the court interpreted the standard for a public housing eviction to be either, in cases of drug-related criminal activity, strict liability, or in cases involving "mere" criminal activity, the special burden of showing that the criminal activity posed a threat to the health, safety or right to enjoyment of other residents or employees. The court's holding was that the state law "irreparable harm" provision did not apply to either instance.
[40] *Cuyahoga Metropolitan Housing Authority v. Harris*, 861 N.E.2d 179, 181 (Cleveland Mun. Ct. Nov. 7, 2006) (The court quoted from the letters from HUD Secretary, Mel Martinez, April 16, 2002 and HUD Assistant Secretary Michael M. Liu, June 6, 2002, to Public Housing Directors regarding the implementation of *Rucker.* These letters are available at http://www.nhlp.org/html/pubhsg/rdcases.htm).
[41] *Id.*
[42] 852 N.Y.S.2d 610 (N.Y. Civ. Ct. Aug. 13, 2007).
[43] N.Y. Real Prop. Acts. Law §§ 711(5) and 715 (West, Westlaw, Current through L.2008, chapters 1 to 172, 174 to 237).

procedure. The New York City Housing Authority (NYCHA), had initiated eviction proceedings after the police found a small amount of marijuana, a larger amount of cocaine, and three small digital scales in tenant Yolanda Grillasca's public housing apartment. Grillasca, who was disabled and had very limited intellectual functioning, shared the apartment with her adult disabled son. NYCHA initiated the proceedings pursuant to New York state law, which bases eviction decisions not upon lease violations but upon statutory provisions.[44] The court held that because the statutory proceeding was not related to the lease, the "strict liability" lease clause did not alter NYCHA's burden of proof in the case.

New York state law requires a dual showing that the unit is "customarily or habitually" used for an illegal trade, and that the tenant "knew or should have known" of the activity..

New York state law requires a dual showing that the unit is "customarily or habitually" used for an illegal trade, and that the tenant "knew or should have known" of the activity. Applying these standards to NYCHA's case, the court held that the agency had failed to make either showing: the single incident in which drugs were found in the apartment did not establish a "habitual" use, and without evidence that the drugs were in plain sight, there was no evidence that Grillasca knew or should have known of their presence. The court also stated that Grillasca's limited intellectual abilities were relevant to the issue of whether or not she knew or should have known about the drugs, making it even less likely that she was aware of the activity.

The court dismissed the eviction proceedings, but noted that "nothing bars petitioner from using its administrative termination of tenancy procedure, based upon violation of its lease provisions and applying the strict liability standard of *Rucker* there."[45] The court also noted that while its refusal to apply the *Rucker* standard to statutory proceedings was in keeping with the practice of the Appellate Term, First Department,[46] it was in conflict with another recent decision, *New York City Housing Authority v. Taylor*, [47] from the Appellate Term in the Second Department.

Another recent unpublished decision out of the same court, *New York City Housing Authority v. Lipscomb-Arroyo*,[48] followed *Grillasca* even while trying to reconcile its holding with *Taylor*.[49] The case involved an attempted eviction following the arrest of the tenant's guest on drug possession charges. The court cited *Grillasca* for its conclusion that because NYCHA brought the eviction pursuant to state statute,[50] any alleged lease violations were unrelated to the case. Turning to *Taylor*, the court stated that the current case could be distinguished. According to the court, in *Taylor*, the tenant's son had been arrested three times on NYCHA property and once more in front of the apartment, and also kept a large amount of cash in plain view, whereas the instant case involved only a single arrest of an acquaintance of the tenant.[51] The court concluded that the applicable law, announced in an unreported 2002 case,[52] required NYCHA to show by a preponderance of the evidence first "that the alleged use itself constituted an illegal trade or business," and second "that the tenant knew of or acquiesced in the illegal use in his or her apartment."[53] Finding that NYCHA did not meet its prima facie burden on either account, it dismissed the case.

[44] *Id.*; 852 N.Y.S.2d at 614. Thus, under the New York statutory scheme, a landlord can bring an eviction proceeding based upon illegal drug activity even if its lease with the tenant has no clause prohibiting illegal activity. The statutory eviction proceeding can even be brought by someone who is not the landlord at all, such as a nearby resident or a law enforcement agency.

[45] 852 N.Y.S.2d at 614.

[46] *Id.*; *see* NYCHA v. Eaddy, 801 N.Y.S.2d 237 (Table) (N.Y. App. Div. Apr. 25, 2005) ("The evidence, fairly interpreted, thus supports the dual findings that the apartment was being used for illegal purposes…and that the tenant knew or should have known of the activities and acquiesced therein."); *see also* NYCHA v. Otero, 799 N.Y.S.2d 162 (Table) (N.Y. App. Div. Nov. 24, 2004) ("The amount of contraband recovered negates tenant's denial of knowledge…and gives rise to an inference that the tenant knew or should have known that the apartment was being used as a base for illegal drug activity.").

[47] *See* NYCHA v. Taylor, 800 N.Y.S.2d 351 (Table) (N.Y. App. Div. Feb. 18, 2005), holding that *Rucker* operates to apply the strict liability standard even in a statutory cause of action. Note, however, that *Taylor* still analyzed the tenant's culpability under the standard that the PHA "must show that the tenant knew or had reason to know of the activity and acquiesced therein"; the court here applied the strict liability standard by way of *imputing* knowledge to the tenant via the one-strike clause in her lease. *Id. See also* NHLP, *supra* note 3.

[48] 2008 WL 2265293 (N.Y. Civ. Ct. June 2, 2008).

[49] 800 N.Y.S.2d 351.

[50] N.Y. Real Prop. Acts. Law §§ 711(5), 715, and 231(a) (West, Westlaw, Current through L.2008, chapters 1 to 172, 174 to 237).

[51] However, the holding in *Taylor* had been that the one-strike strict liability lease provision operated to "charge" public housing tenants with knowledge, not that NYCHA had successfully shown actual or constructive knowledge on the part of the tenant. *See supra* note 47. The court did not explain why, if *Taylor* was good law, the tenant was not similarly "charged" with knowledge in the instant case.

[52] Howard Ave. Assoc. v. Rojas, N.Y.L.J. (Apr. 5, 2002), as cited in *Lipscomb-Arroyo*, *supra* note 48.

[53] 2008 WL 2265293 at *7.

New Jersey Court Says Public Housing Evictions Subject to Special State Law Provision

In *Long Branch Hous. Auth. v. Villano*,[54] the Superior Court of New Jersey, Appellate Division, reversed a lower court decision in favor of public housing resident Toni Villano, whom the Long Branch Housing Authority (LBHA) had attempted to evict after a drug-related arrest of a visitor occurred in her apartment. There was some dispute as to whether the arrestee, identified in court documents only as L.A., was living in the apartment or merely visiting Villano's adult daughter. Villano testified that because she had two teenagers, she always had "kids in and out" of the apartment, and that she was unaware that L.A. had brought crack cocaine into the apartment. The trial court had ruled in favor of Villano, applying a provision of state law[55] that requires tenant knowledge of drug activity[56] for eviction and holding that the LBHA had not shown by a preponderance of the evidence that she had "knowingly harbored" someone engaging in drug activity.

The appellate court reversed, holding that the trial court had failed to consider whether Villano's eviction was justified under a different provision of state law—N.J.S.A.2A:18-61.1e(2)—that applies more specifically to public housing residents, and that gives the PHA discretion to evict where it can establish that a tenant had substantially breached any lease covenant pertaining to illegal drug use on the premises, as long as the covenant comports with federal requirements.[57] The court cited to its prior decision in *Housing Authority v. Spratley*[58] for the conclusion that New Jersey Law[59] governed in the case at hand: there, the court had ruled that this provision creates a "mandate" for New Jersey courts to "enforce accountability provisions contained in public housing leases to the extent they comport with federal guidelines."[60] Alternately, *Spratley* had held that the principles of federal preemption required such enforcement.[61] In light of *Rucker*, then, the *Villano* court remanded the case with instructions to the trial court to determine first, whether Villano had "substantially breached or violated" any lease covenant pertaining to the illegal use of controlled substances, and if so, second, whether the relevant covenant conformed to applicable federal guidelines—including the strict liability "one-strike" provision upheld in *Rucker*.

Courts Consider Scope of "Criminal Activity"

Massachusetts Holds Violent Crime Committed Offsite Sufficient for One-Strike Eviction

In *Lowell Housing Authority v. Melendez*,[62] the Supreme Judicial Court of Massachusetts affirmed the eviction, by summary proceedings, of a public housing resident who had used a kitchen knife to assault and attempt to rob a patron in a convenience store located approximately one mile away from the development in which he lived. On appeal, George Melendez argued that because his criminal activity took place a mile off-site, it was a physical impossibility for it to pose a threat to other tenants. The court disagreed, holding that the "continued tenancy…by someone capable of such aggressive and violent behavior constituted a real and continuing danger to other tenants."[63]

In reaching its decision, the court emphasized that although not all criminal activity justified an eviction action by a PHA, nothing in either the one-strike statute or in the lease limited qualifying criminal activity to activity that occurred on-site. Rather, the court interpreted the limiting factor to be that the criminal activity in question "threaten the health, safety, or right to peaceful enjoyment" of the other tenants. The court declined to delineate a standard for which kinds of criminal activity met that threshold, stating that such determinations were largely fact-dependent, but held that "assault by means of a dangerous weapon and armed robbery is so physically violent, that one who engages in it normally would pose a threat to, or reasonably inspire a significant level of fear on the part of, tenants forced to live in close proximity to the offending tenant."[64]

The court also found significant that the one-strike statute does not require conviction of a crime as a condition for its application—an indication, it said, that the policy is not a tool for punishment, but rather one to help PHAs ensure the safety of their tenants. The court concluded, "Tenants of public housing…represent some of the most needy and vulnerable segments of our population, including low-income families, children, the elderly, and the handicapped. It should not be their fate, to the extent manifestly possible, to live in fear of their neighbors."[65]

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[54]933 A.2d 607 (N.J. Super. Ct. App. Div. 2007).

[55]N.J. Stat. Ann. § 2A:18-61.1p (West, Westlaw, Current with laws eff. through L.2008, c. 45 andJ.R. No. 3), a provision of the state's Anti-Eviction Act, allows for the eviction of a tenant who "knowingly harbors or harbored [in the leased premises] a person who committed such an offense, or otherwise permits or permitted such person to occupy the premises, whether continuously or intermittently."

[56]Defined as any offense under the Comprehensive Drug Reform Act of 1987, N.J.S.A. 2C:35-1 to -28.

[57]N.J. Stat. Ann. § 2A:18-61.1e(2) (West, Westlaw, Current with laws eff. through L.2008, c. 45 andJ.R. No. 3) allows for the eviction of a public housing tenant who "has substantially violated or breached any of the covenants or agreements contained in the lease for the premises pertaining to illegal uses of controlled dangerous substances, or other illegal activities, whether or not a right of reentry is reserved to the landlord in the lease for a violation of such covenant or agreement, provided that such covenant or agreement conforms to federal guidelines regarding such lease provisions and was contained in the lease at the beginning of the lease term."

[58]743 A.2d 309 (N.J. Super. Ct. App. Div. 1999).

[59]N.J.S.A.2A:18-61.1e(2).

[60]743 A.2d 313 (N.J. Super. Ct. App. Div. 1999).

[61]*Id*. at 314.

[62]865 N.E.2d 741 (Mass. 2007).

[63]*Id*. at 744.

[64]*Id*. at 744-45.

[65]*Id*. at 745.

New Jersey Court Says Disorderly Conduct Is "Criminal Activity" Adequate to Justify Eviction

The issue before the New Jersey Superior Court, Appellate Division in *Housing & Redevelopment Authority of Franklin v. Miller*[66] was whether a disorderly conduct offense met the definition of "criminal activity" in the one-strike law and therefore could serve as the basis of a public housing eviction under the law, or alternately, whether such an eviction required proof of a "crime" as defined in the state criminal code. Noting that the "criminal activity" is "not the customary method of describing or defining a non-civil offense,"[67] the court held that Congress intended the phrase to have a broad meaning, and to "include conduct that we, and other states, define as disorderly or petty disorderly offenses."[68]

The court found support for its holding in the domestic violence exception contained in the one-strike law, which provides that the law will not apply to domestic violence-related activity if the perpetrator is a victim of such violence.[69] Because Congress was surely aware that several states define domestic violence-related offenses as disorderly and petty disorderly offenses, the court reasoned, "the statutory exception clearly indicates that offenses of this nature were intended to come within the category of 'criminal activity' justifying eviction."[70] The court acknowledged that Congress did place a limitation on the meaning of "criminal activity," insofar as it must involve conduct that threatens the health or safety of other tenants, or their right to peaceful enjoyment, but concluded that the tenant's simple assault, even though classified as a petty offense, met this standard and therefore could serve as the basis for her one-strike eviction.[71]

Conclusion

While recent cases interpreting *Rucker* in the context of state laws do not fit into any neat patterns, it is clear that in almost all instances where this precedent arises, the tenant faces an uphill battle in defending an eviction action. While the state courts appear to have mixed reactions regarding the basic fairness of strict liability evictions—several decisions appear to hint that were the court in the PHA's position, it would not necessarily choose to pursue eviction under the circumstances—there appears to be a near-consensus that *Rucker* has limited the authority of the courts to override the discretion exercised by the PHA in pursuing these evictions. But when the exceptions do occur, they are in cases such as *Cuyahoga Metropolitan Housing Authority v. Harris*, where the facts are particularly compelling and the court is exercising its equitable powers. ■

[66] 935 A.2d 1197 (N.J. Super. Ct. App. Div. 2007).
[67] *Id.* at 1200.
[68] *Id.* at 1201.
[69] 42 U.S.C. § 1437d(l)(6) (West, Westlaw, Current through P.L. 110-284 (excluding P.L. 110-234, 110-246, and 110-275) approved 7-23-08).
[70] 935 A.2d at 1202.
[71] *See also* Mayes v. Hernandez, 856 N.Y.S.2d 25 (N.Y. Sup. Ct. Dec. 6, 2007) (upholding termination of public housing tenancy where the tenant violated her lease by allowing her sons to sell drugs from the unit and by allowing husband, who was a sex offender, to reside without PHA permission).

State and Local Housing Protections for Domestic Violence Victims Gaining Momentum

By now, many advocates are familiar with the protections that the Violence Against Women Act (VAWA) affords survivors of domestic violence, dating violence, and stalking who are applying to or participating in the public housing, tenant-based Section 8, and project-based Section 8 programs. VAWA provides that applicants for these programs cannot be rejected on the basis of their status as victims of abuse, and that participants in these programs cannot be evicted or have their assistance terminated based on acts of abuse committed against them.[1]

Unfortunately, VAWA does not cover several categories of survivors—namely, participants in the other housing subsidy programs of the Department of Housing and Urban Development (HUD), the Low-Income Housing Tax Credit program administered through the Internal Revenue Service, or programs administered by the Department of Agriculture's Rural Development office, not to mention tenants in unsubsidized private housing. Further, VAWA fails to address several issues that survivors regularly encounter, such as the need to change their apartment's locks or to break a lease to flee an abuser. As a result, advocates throughout the country are lobbying for or implementing a variety of state and local housing protections for domestic violence survivors. These efforts build upon the recent movement within the domestic violence and housing advocacy communities to address obstacles survivors often face in maintaining housing, such as being evicted for calling the police or because the batterer caused a noisy disturbance at the dwelling.

[1] 42 U.S.C. §§ 1437d(c)(3), 1437d(l)(5), 1437f(c)(9)(A)-(B), 1437f(o)(6)(B), 1437(o)(7)(C).

Specific Types of Legislation

Examples of state and local domestic violence housing protections include laws that: (1) prohibit housing discrimination based on an applicant's or tenant's status as a survivor of domestic violence; (2) provide an eviction defense where the landlord tries to evict the victim because the abuser committed a crime or lease violation at the rental unit; (3) bar landlords from limiting a tenant's right to call for police or emergency assistance; (4) require landlords to change locks where tenants have provided documentation of domestic violence; and (5) permit early lease termination without further obligation to pay the rent where tenants provide landlords with documentation of domestic violence.[2] Each category of these laws is discussed in detail below.

Nondiscrimination Laws

Nondiscrimination laws prohibit a landlord from terminating a tenancy, failing to renew a tenancy, or refusing to enter into a rental agreement based on the tenant's or applicant's status as a victim of domestic violence. Rhode Island, the District of Columbia, and Westchester County (New York) have achieved this result by amending their existing fair housing laws to include victims of domestic violence as a protected class.[3] Arkansas, Indiana, North Carolina, and Washington have added provisions to their landlord-tenant codes barring denials of housing or evictions based on a person's status as a victim of domestic violence.[4]

A nondiscrimination provision is currently pending in San Francisco,[5] and Vermont recently passed a law creating a commission to study housing discrimination against victims of domestic violence.[6] Nondiscrimination laws have failed in recent years in California,[7] Florida,[8] Hawaii,[9] Massachusetts,[10] and New York[11] due in part to opposition from realtors' groups and apartment owners' associations. Even in jurisdictions that do not have specific protections for domestic violence victims unprotected by VAWA, denials of housing and evictions that are based on an applicant's or tenant's status as a domestic violence victim may be challenged under federal and state fair housing laws.[12]

Eviction Defenses

Domestic violence victims are often threatened with eviction due to criminal acts committed at their rental units by their abusers. In response, several jurisdictions have enacted laws providing an eviction defense where the landlord tries to evict the victim because the abuser committed a crime, lease violation, or dangerous act at the rental unit.[13] To invoke these laws, the victim must provide written documentation of the domestic violence, usually a police report or restraining order. For example, Colorado's law provides that

> [i]t shall not constitute an unlawful detention of real property . . . if the tenant or lessee is the victim of domestic violence . . . which domestic violence or domestic abuse was the cause of or resulted in the alleged unlawful detention and which domestic violence or domestic abuse has been documented by the following: (I) A police report; or (II) A valid civil or emergency protection order.[14]

Again, even without explicit defenses for those domestic violence victims unprotected by VAWA, federal housing program regulations, or state or local law, advocates may still be able to raise a fair housing defense for those facing evictions that are related to acts of violence committed against them.

Right to Call Police

Six jurisdictions have laws prohibiting landlords from limiting a tenant's right to call a peace officer or emergency assistance.[15] Such laws ensure that domestic violence victims may summon police to their rental units in response to incidents of abuse without being penalized by their landlords. Several of these laws provide that a tenant's right to call for emergency assistance is nonwaivable.[16]

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[2]Legal Momentum and the National Law Center on Homelessness and Poverty have created helpful charts summarizing state laws that affect domestic violence survivors' housing rights. *See* Legal Momentum, *Housing Protections for Victims of Domestic and Sexual Violence* (Aug. 2007), http://www.legalmomentum.org/site/DocServer/housing.pdf?docID=381; National Law Center on Homelessness and Poverty, *State Laws and Legislation to Ensure Housing Rights for Survivors of Domestic and Sexual Violence* (Mar. 2008), http://www.nlchp.org/content/pubs/DV_Housing_State_Laws_Mar%20_20082.pdf.

[3]D.C. Code § 2-1401.01 (2007); R.I. Gen. Laws § 34-37-1 (2007); Westchester County Code § 700.05 (2005).

[4]Ark. Code Ann. § 18-16-112 (2007); Ind. Code Ann. § 32-31-9-8 (West 2007); N.C. Gen. Stat. Ann. § 42-42.2 (West 2007); Wash. Rev. Code Ann. § 59.18.580 (West 2007).

[5]Residential Rent Ordinance: Tenant Rights for Victims of Domestic Violence or Stalking (proposed June 8, 2008).

[6]S. 357, 2007 Gen. Ass., Reg. Sess. (Vt. 2008).

[7]S.B. 1745, 2005 Leg., Reg. Sess. (Cal. 2005).

[8]S.B. 1408, H.B. 931, 2008 Leg., Reg. Sess. (Fla. 2008).

[9]S.B. 2208, H.B. 2762, 2008 Leg., Reg. Sess. (Haw. 2008).

[10]S. 2574, 185th Gen. Ct., Reg. Sess. (Mass. 2008).

[11]A. 5916, S. 3072, 2007 Leg., Reg. Sess. (N.Y. 2007).

[12]*See, e.g.*, *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005); *Winsor v. Regency Property Mgmt.*, No. 94 CV 2349 (Wis. Cir. Ct. Oct. 2, 1995); *HUD v. CBM Group, Inc., et al.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001).

[13]Colo. Rev. Stat. Ann. §§ 13-40-104, 13-40-107.5 (West 2007); D.C. Code § 42-3505.01 (2007); Iowa Code Ann. §§ 562A.27A, 562B.25A (West 2007); La. Rev. Stat. Ann. § 40:506 (2007) (applies to housing authorities only); N.M. Stat. Ann. § 47-8-33 (West 2007); Va. Code Ann. § 55-248.31 (West 2007); Wash. Rev. Code Ann. 59.18.580 (West 2007).

[14]Colo. Rev. Stat. Ann. § 13-40-104 (West 2007).

[15]Ariz. Rev. Stat. Ann. § 33-1315 (2007); Colo. Rev. Stat. Ann. § 38-12-402 (West 2007); D.C. Code § 2-1402.21 (2007); Minn. Stat. § 504B.205 (West 2007); Tex. Prop. Code Ann. § 92.015 (Vernon 2007); Wis. Stat. Ann. 704.44 (West 2008).

[16]*See, e.g.*, Colo. Rev. Stat. Ann. § 38-12-402 (West 2007); D.C. Code § 2-1402.21 (2007); Minn. Stat. § 504B.205 (West 2007); Tex. Prop. Code Ann. § 92.015 (Vernon 2007).

Lock Changes

As part of basic safety planning, many domestic violence survivors need to change their locks to prevent abusers from regaining access to the home. Ten jurisdictions have laws requiring the landlord to change the locks or permitting the domestic violence survivor to do so.[17] Most states require the survivor to provide documentation of domestic violence. In cases where the survivor and perpetrator are cotenants, the survivor is typically required to provide the landlord with a copy of a restraining order barring the perpetrator from the dwelling. Several states require landlords to act on the tenant's request within a short period of time, such as within one to five days. The survivor usually must pay for changing the locks, although in many states these costs may be covered by victims' compensation funds, and restraining orders may contain provisions ordering perpetrators to pay these costs.

Early Lease Termination

To escape an abusive relationship, a domestic violence survivor may need to terminate her lease early and flee to a confidential location. However, some survivors may delay leaving for fear that they will face substantial penalties for breaking their leases. To assist survivors to move to safer homes, fourteen jurisdictions have statutes permitting a tenant who is a survivor of domestic violence to terminate a lease early.[18] New Jersey[19] is currently considering a similar provision. The majority of these statutes were enacted within the past five years, and several became effective in 2007.

The laws require the tenant to provide proof of domestic violence, usually in the form of a restraining order or a police report. Some jurisdictions also permit the tenant to verify the domestic violence by providing a signed statement from a qualified party, such as an attorney, licensed health professional, or social services provider.[20] Several jurisdictions specify the time period in which the tenant can request lease termination, usually within thirty to ninety days after the restraining order, police report, or other documentation was issued.[21] Most statutes also specify the notice period that the tenant must give to the landlord before the lease termination becomes effective, which ranges from three to thirty days.[22] The tenant can vacate the unit before the notice period expires, but is responsible for rent until the expiration date. Several jurisdictions provide that existing law governing return of the security deposit still applies, regardless of the survivor's early termination of the lease.[23]

A common issue that arises when these laws are developed is cotenants' continued obligations under the lease once the domestic violence survivor leaves the rental unit. Several states provide that cotenants are not released from their obligations under the rental agreement.[24] In contrast, Arizona law provides that when a survivor obtains an early lease termination, the tenancy terminates for all cotenants, although remaining tenants may be permitted to enter into a new lease with the landlord.[25] New York has dealt with the issue by requiring the survivor to obtain a court order to terminate the lease, and permitting the court to sever a cotenancy if there are tenants on the lease other than the survivor.[26]

Common Obstacles to These Laws

In many jurisdictions, realtors' organizations and apartment associations have strongly opposed housing protections for domestic violence survivors. It is therefore crucial for advocates to become familiar with the arguments that are typically raised against these laws, and to work with the opposition throughout the legislative process. A common area of dispute is the type of documentation that will be required to prove domestic violence. In California, landlord groups opposed the state's proposed early lease termination legislation because it would have permitted tenants to document domestic violence by

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[17] Ariz. Rev. Stat. Ann. § 33-1318 (2007); Ark. Code Ann. § 18-16-112 (2007); D.C. Code § 42-3505.08 (2007); 765 Ill. Comp. Stat. Ann. 750/20 (West 2007); Ind. Code Ann. §§ 32-31-9-9, 32-31-9-10, 32-31-9-11 (West 2007); N.C. Gen. Stat. § 42-42.3 (West 2007); Or. Rev. Stat. Ann. § 90.459 (2007); Utah Code Ann. § 57-22-5.1 (West 2007); Va. Code Ann. §§ 55-225.5, 55-248.18:1 (2007); Wash. Rev. Code Ann. § 59.18.585 (West 2007).

[18] Ariz. Rev. Stat. Ann. § 33-1318 (2007); Colo. Rev. Stat. Ann. 38-12-402 (West 2007); Del. Code Ann. Tit. 25, § 5314 (2007); A.B. 2052, 2007 Leg., Reg. Sess. (Cal. 2008); D.C. Code § 42-3505.07 (2007); 765 Ill. Comp. Stat. Ann. 750/15 (West 2007); Ind. Code Ann. §§ 32-31-9-12, 32-31-9-13 (West 2007); Minn. Stat. Ann. § 504B.206 (West 2007); N.Y. Real Prop. Law § 227-c (McKinney 2007); N.C. Gen. Stat. § 42-45.1 (West 2007); Or. Rev. Stat. Ann. § 90.453 (West 2007); Tex. Prop. Code Ann. § 92.016 (Vernon 2007); Wash. Rev. Code Ann. § 59.18.575 (West 2006); Wis. Stat. Ann. § 704.16 (West 2008).

[19] A-2871, 213th Leg., Reg. Sess. (N.J. 2008).

[20] *See, e.g.*, D.C. Code § 42-3505.07 (2007); Or. Rev. Stat. Ann. § 90.453 (West 2007); Wash. Rev. Code Ann. § 59.18.575 (West 2006).

[21] *See, e.g.*, Ariz. Rev. Stat. Ann. § 33-1318 (2007); Colo. Rev. Stat. ANN. § 38-12-402 (West 2007); D.C. Code § 42-3505.07 (2007); Ind. Code Ann. § 32-31-9-12 (West 2007); Or. Rev. Stat. Ann. § 90.453 (West 2007); Wash. Rev. Code Ann. § 59.18.575 (West 2006).

[22] *See, e.g.*, Del. Code Ann. Tit. 25, § 5314; D.C. Code § 42-3505.07; 765 Ill. Comp. Stat. Ann. 750/15 (West 2007); Ind. Code Ann. § 32-31-9-12 (West 2007); N.Y. Real Prop. Law § 227-c (McKinney 2007); N.C. Gen. Stat. § 42-45.1 (West 2007); Or. Rev. Stat. Ann. § 90.453 (West 2007). The Sargent Shriver National Center on Poverty Law has prepared sample lease termination notices and tenants' rights brochures to be used with Illinois' law, but could be adapted for use in other states. The documents are available at http://www.povertylaw.org/advocacy/women-and-family/safe-homes-act.

[23] *See, e.g.*, Ariz. Rev. Stat. Ann. § 33-1318 (2007); Colo. Rev. Stat. Ann. § 38-12-402 (West 2007); Ind. Code Ann. § 32-31-9-12 (West 2007); Wash. Rev. Code Ann. § 59.18.575 (West 2006).

[24] *See, e.g.*, Ind. Code Ann. § 32-31-9-13 (West 2007); N.C. Gen. Stat. § 42-45.1 (West 2007); Or. Rev. Stat. Ann. § 90.453 (West 2007); Wash. Rev. Code Ann. § 59.18.575 (West 2006).

[25] Ariz. Rev. Stat. Ann. § 33-1318 (2007).

[26] N.Y. Real Prop. Law § 227-c (McKinney 2007). A sample petition requesting a court to sever a domestic violence victim's cotenancy and terminate the survivor's obligation to pay rent is available at http://www.nycourts.gov/forms/familycourt/pdfs/gf-38.pdf.

obtaining a written statement from an attorney, medical professional, or domestic violence service provider.[27] The groups claimed that this documentation could be fabricated, and the bill's author amended the bill by requiring a tenant to provide either a police report or restraining order. Although this amendment has reduced some opposition to the bill, it may have the effect of denying protection to victims who are unable to access the police or courts due to language barriers, disability, or fear of retaliation.

Landlord groups and advocates may need to negotiate whether the domestic violence victim will be required to pay a fee to break a lease.

Another common area of dispute is the landlord's right to evict the batterer. Landlord groups may argue that if they going to be are barred from evicting domestic violence victims or required to release victims from their leases, they should be entitled to summary procedures permitting them to terminate the tenancy of perpetrators who are cotenants of the victims. Wisconsin's early lease termination law includes such a provision, which permits a landlord to issue a five-day notice to vacate if a tenant poses an imminent threat of harm to other tenants and has been named in a restraining order or criminal complaint.[28] Although the need to evict a perpetrator who has threatened or disturbed the enjoyment of other tenants is understandable, advocates should be wary of proposals that would reduce the protections provided by the jurisdiction's existing unlawful detainer procedures. Such proposals can usually be opposed on the basis that tenants who threaten or disturb the enjoyment of other tenants can already be evicted for lease violations or for constituting a nuisance under existing landlord-tenant laws.

Money is also a common area of dispute, particularly with regard to early lease termination legislation. Landlord groups and advocates may need to negotiate whether the domestic violence victim will be required to pay a fee to break a lease. In Minnesota, for example, a domestic violence victim breaking a lease "is responsible for the rent payment for the full month in which the tenancy terminates and an additional amount equal to one month's rent."[29] Such provisions restrict the ability of low-income victims to use early lease termination laws. Other areas of negotiation will likely include whether tenants using early lease termination laws will be entitled to return of their security deposits, and whether tenants owing back rent will be permitted to use such laws.

[27] *See* Assembly Judiciary Committee, AB 2052 Analysis at 4-5 (Mar. 25, 2008), http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2051-2100/ab_2052_cfa_20080324_114005_asm_comm.html.
[28] Wis. Stat. Ann. § 704.16 (West 2008).
[29] Minn. Stat. Ann. § 504B.206 (West 2007).

Advocacy Approaches

Advocates have employed several approaches to secure passage of housing protections for domestic violence survivors. As already noted, it is essential to work with realtors' groups and apartment associations in

California Enacts Early Lease Termination Law

On September 27, California Governor Arnold Schwarzenegger signed Assembly Bill 2052, which authorizes tenants who are victims of domestic violence, stalking, and sexual assault to terminate their private or subsidized housing leases and be discharged from their rent obligations thirty days after providing written notice to the landlord.[1] To prove that he or she is a victim of domestic violence, stalking, or sexual assault, the tenant must attach a police report or restraining order to the notice. The notice to terminate the tenancy must be given within sixty days of the date the restraining order was issued or the police report was made. Existing law governing security deposits still applies. Additionally, any remaining tenants in the unit are not released from their obligations under the lease, except for the victim's family members. The bill became effective immediately.

Realtor and apartment owner lobbies threatened to oppose the bill if it did not contain a provision stating that a tenant who is a perpetrator of domestic violence, sexual assault, or stalking may be deemed to have committed a nuisance. As a concession to these groups, the bill provides that if a person commits an act of domestic violence, stalking, or sexual assault against another tenant on the premises, there is a rebuttable presumption that the perpetrator of the abuse has committed a nuisance.[2] Due to concerns that victims living with their abusers may face retaliation if the abuser is served with eviction papers based on acts of domestic violence, the presumption applies only if the victim has vacated the premises. The provision is subject to a three-year sunset clause.

[1] A.B. 2052, 2007 Leg., Reg. Sess. (Cal. 2008) (to be codified at Cal. Civ. Code § 1946.7).
[2] A.B. 2052, 2007 Leg., Reg. Sess. (Cal. 2008) (to be codified at Cal. Proc. Code § 1161).

developing this legislation. Other important collaborators include law enforcement, district attorney's associations, civil rights organizations, and fair housing groups. As with any type of legislation, policymakers will want proof that there is a need for these protections, so it is critical to gather client stories and, if possible, data on evictions and denials of housing resulting from domestic violence. It is also necessary to educate policymakers regarding the link between domestic violence and homelessness and to explain that a safe and stable home is crucial to ending the cycle of violence.[30] Agencies that cannot participate in legislative advocacy due to Legal Services Corporations restrictions can still play a valuable role by reviewing proposed legislation to ensure that it is consistent with existing landlord-tenant and family law statutes and by providing anecdotal information. Finally, the experiences of advocates in the growing number of states that have these protections can be invaluable in drafting language, developing strategy, creating outreach materials, and responding to opposition arguments. ■

[30]The National Housing Law Project has developed sample advocacy letters, fact sheets, and testimony in support of housing protections for domestic violence survivors. To obtain these documents, or for any other information about housing protections for domestic violence victims, contact NHLP Equal Justice Works Fellow Meliah Schultzman at mschultzman@nhlp.org.

Congress Considers Protection for Tenants Victimized by Foreclosures

In a 2007 letter to Barney Frank, Chairman of the House of Representatives' Committee on Financial Services, Federal Reserve Chairman Ben Bernanke responded to Mr. Frank's inquiries regarding the impact of foreclosures on tenants by stating that: "[these] interactions are governed by state laws, and are not an area in which the Federal Reserve has regulatory authority".[1] Mr. Bernanke then "encourage[d] the Congress . . . to give this problem appropriate consideration and explore whether legislative or regulatory changes are called for to better protect responsible consumers."[2]

Congress is now considering just such changes. Identical federal bills, titled the "Protecting Tenants at Foreclosure Act of 2008," were introduced in the United States House on May 5, 2008 and in the Senate on May 19, 2008.[3]

These bills are intended to mitigate the disruptive impacts of foreclosure-induced evictions on families that, in most cases, did nothing to precipitate the mortgage default. Testimony at a July 23, 2008, briefing on Capitol Hill[4] laid out the dramatic and tragic impact of foreclosure on families who often learn their fate when the sheriff or an agent of a foreclosure sale purchaser appears at their door demanding immediate possession. Hinting at the sheer numbers of families involved, a recent survey by the National Low Income Housing Coalition (NLIHC) found that, in 2007, 25% of foreclosed single family homes in California were renter occupied, 35% of the nearly 14,000 foreclosure filings in Chicago involved two- to six-unit buildings, and that 60% of the 15,000 filings in New York City were on multi-unit buildings.[5] A related survey disclosed that only eight states provide over thirty days notice to tenants and require the new owner to use a judicial eviction process.[6] Eight

[1]Letter from Ben Bernanke to Rep. Barney Frank (Oct. 25, 2007), at 1.
[2]*Id*. at 2.
[3]Protecting Tenants at Foreclosure Act of 2008, H.R. 5963, 110th Cong. (2008) and S. 3034, 110th Cong. (2008) (hereinafter "the Bills"), respectively sponsored by Reps. Ellison of Minnesota, McCarthy of New York and Capuano of Massachusetts (referred to the House Committee on Financial Services) and by Senators Kerry and Kennedy of Massachusetts (referred to the Committee on Banking, Housing and Urban Affairs).
[4]Organized by the National Low Income Housing Coalition, with participation by SERVE, Inc. (Securing Emergency Resources through Volunteer Efforts), United Way, National Alliance to End Homelessness, the United Conference of Catholic Bishops and the National Housing Law Project, the briefing was attended by approximately eighty Congressional staff, and representatives of media and interested organizations.
[5]NLIHC, Foreclosure's Invisible Victims: Recent Research on the Foreclosure Crisis (July 23, 2008).
[6]NLIHC, Foreclosure and Eviction Practices by State (Draft July 25, 2008).

more states require that tenancies survive foreclosure unless the tenant[7] is named in the foreclosure filing.[8] Over two-thirds of states, therefore, provide neither of these protections to tenants who were otherwise in good standing upon the foreclosure sale.

Preexisting Tenancies

The bills would provide that "bona fide" tenants under "bona fide" leases[9] receive at least ninety days notice to vacate in the event of foreclosure on their residence, with tenants under leases longer than ninety days entitled to occupy the premises through the remaining term of the lease.[10] The sole exception would be that, even if an existing lease extends beyond ninety days, a successor may terminate the lease "on the date of sale of the unit to a purchaser who will occupy the premises as a primary residence," with ninety days' notice to vacate.[11]

Section 8 Tenancies

As a subclass of all tenants, Section 8 Housing Choice Voucher program participants receive additional protections. The foreclosure purchaser would not be able to assert "vacating the property prior to sale [as] other good cause" for terminating the lease during the initial term of the lease.[12] In subsequent lease terms, vacating prior to sale would constitute "good cause" only "if the property is unmarketable while occupied, or if such owner will occupy the unit as a primary residence."[13]

The bills further provide that the foreclosure purchaser of a unit occupied by a voucher participant would take title subject both to the Housing Assistance Payments (HAP) contract with the local housing agency and to the lease with the tenant.

Implementation

The bills provide that the preexisting tenant protections govern "any foreclosure on any dwelling or residential real property after the date of enactment of this Act." Although the bills do not define "foreclosure," it presumably means the trustee's sale or court judgment terminating the mortgagor's rights.[14]

The voucher participant protections would be implemented by adding language to Section 8 (o)(7) of the United States Housing Act of 1937,[15] which governs the content and operation of the HAP and the lease. Therefore, it is unclear whether these protections would take effect only upon inclusion of the newly mandated provisions in a new HAP contract, a renewal contract, or a lease renewal.

Scope

It is important to note that both the preexisting tenancies and the Section 8 tenancies provisions reach only to the "immediate successor in interest" at the foreclosure sale.[16] Subsequent purchasers would take possession free of the bills' constraints, so their effect on straw subsequent successors would likely become the subject of litigation under federal law and state legal and equitable title principles.

The preexisting tenancy sections of the bills specify that longer time periods or additional tenant protections found in federal or state subsidized housing requirements, or in state or local law, would remain unaffected.[17] The Section 8 tenancies section, requiring the survival of the HAP and lease, provides that longer time periods or additional tenant protections found in state or local law would also be unaffected.[18]

Prospects for These Bills

Because cash flow is critical to the operation and therefore the marketability of multi-unit rental property, there is little incentive for sellers or purchasers of such properties to want the units empty at sale, unless the plan is for major renovation. In contrast, many foreclosing lenders continue to insist that single-family homes be vacant, although this may change as the number of foreclosures continues to rise and significant numbers of vacant homes, both by their very existence and because they attract vandals, pull down the value of both the empty houses and those in the surrounding neighborhood. How the various interests will position themselves if these bills reach the floor of Congress has yet to be seen, but these bills represent an important attempt to protect responsible consumers. ■

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[7] *Id.* (sometimes named as "J. Doe").
[8] *Id.*
[9] A "bona fide" tenant and a "bona fide" lease exist if: "(1) the mortgagor under the contract is not the tenant; (2) the lease or tenancy was the result of an arms-length transaction; or (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property." The Bills at Section 2(b).
[10] The Bills at Section 2(a)(2)(A) and (B).
[11] *Id.* Section 2(a)(2)(A).
[12] *Id.* Section 3.
[13] *Id.*
[14] Section 2(a) applies the bills to the immediate successor in interest "pursuant to the foreclosure."
[15] 42 U.S.C. § 1437f(o)(7) (2007).
[16] The Bills at Section 2.(a) and Section 3 (1) and (2).
[17] The Bills at Section 2(a)(2).
[18] *Id.* Section 3 (2).

HUD & DOJ Issue Statement on Reasonable Modifications

In March 2008, the Department of Housing and Urban Development (HUD) and the Department of Justice released a Joint Statement on Reasonable Modifications under the Fair Housing Act.[1] A reasonable modification is a "structural change made to existing premises, occupied or to be occupied by a person with a disability[2], in order to afford such person full enjoyment of the premises."[3] Thus, whereas a reasonable accommodation changes a rule, policy, or practice, a modification actually changes the structure of a unit.[4] Failure to provide a reasonable modification may constitute discrimination. The Joint Statement provides technical guidance to people with disabilities and housing providers on the right to reasonable modification under the Fair Housing Act (FHA). Key points are summarized here.

Scope

The bulk of the Joint Statement's guidance applies to reasonable modification under the FHA, distinct from reasonable modification rules under Section 504 of the Rehabilitation Act of 1973.[5] Section 504 applies to housing providers receiving federal financial assistance, such as public housing authorities, HOPE VI recipients, project-based Section 8 owners, or HUD multifamily properties. Section 504 does not cover private owners accepting Section 8 vouchers or Low Income Housing Tax Credit housing providers. Recipients of federal financial assistance should treat reasonable modification requests like reasonable accommodation requests—they must grant the requests and pay for them unless they constitute an undue financial or administrative burden or a fundamental alteration of the program.

For those housing providers covered solely by the FHA, the range of people responsible for providing reasonable modifications includes individuals, corporations, associations, property owners, housing managers, homeowners, condominium associations, lenders, real estate agents, brokerage services, and state and local governments.[6] Anyone else with authority to grant a reasonable modification request must also abide by the FHA.

Process

The process for requesting a reasonable modification is simple. The tenant with disabilities, or a person acting on her behalf, must make clear that she would like a structural change made that relates to her disability. If she does so, a housing provider must permit the modification so long as it is reasonable and relates to the disability.[7] Approval of a reasonable modification may be conditioned on an agreement by the tenant to restore the property to its original condition at the end of the tenancy, excepting normal wear and tear.[8]

The tenant may request the modification for the interior or exterior of a dwelling, as well as common areas. For example, a tenant may request a modification to adjust cabinet height inside the home or to widen the entrance to common laundry facilities.

In some situations, a housing provider will want verification of the need for the reasonable modification. If a disability is not obvious, the housing provider may request that the tenant provide verification that she has a disability as defined by the FHA and needs the modification in order to address a need related to the disability.[9] The verification may come from the individual, "a doctor or other medical professional, peer support group, non-medical service agency, or a reliable third party who is in a position to know about the individual's disability."[10] Such information must be kept confidential. If the disability and the need for the modification are obvious, the housing provider should not request such verification.

In order to ensure quality and safety, the housing provider may also request a description of the modifications as well as proper documentation and appropriate licenses if necessary.[11] These documents are especially useful for larger and more complex requests.

Costs

One of the biggest concerns with regard to reasonable modification is who will pay the costs. As a general rule, if the request for reasonable modification is granted, the tenant must pay the costs for both installation and removal of interior modifications, a major distinction from the reasonable accommodation process.[12] The housing provider may even negotiate with the tenant to have her pay into

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[1]Department of Housing and Urban Development and the Department of Justice, Joint Statement On Reasonable Modifications Under The Fair Housing Act (2008) (hereinafter Joint Statement), *available at* http://www.usdoj.gov/crt/housing/fairhousing/ (last visited on Sept. 23, 2008).

[2]42 U.S.C. § 3602(h): "'Handicap' means, with respect to a person - (1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of title 21)."

[3]*Joint Statement* at 3.

[4]*See* 42 U.S.C. § 3604(f)(3)(B); *see also* Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodation Under the Fair Housing Act (2004).

[5]29 U.S.C.A. § 794 (West, Westlaw (Current through P.L. 110-320 (excluding P.L. 110-315)) approved 9-18-08).

[6]*Joint Statement* at 6.

[7]42 U.S.C. § 3604(f)(3)(A); *see also Joint Statement* at 3.

[8]*Id.*

[9]*Joint Statement* at 4.

[10]*Id.* at 5.

[11]*Id.* at 12.

[12]42 U.S.C. § 3604(f)(3)(A); *see also Joint Statement* at 3.

an interest-bearing escrow account in order to ensure that the unit will be restored to its original condition if it would interfere with future use of the premises. When determining if an escrow account is permissible, the housing provider and tenant should consider the "1) extent and nature of the proposed modifications; 2) the expected duration of the lease; 3) the credit and tenancy history of the individual tenant; and 4) other information that may bear on the risk to the housing provider that the premises will not be restored."[13] The amount put into escrow cannot exceed the cost of restoring the unit and all interest accrues to the benefit of the tenant. Any unused amount must be returned to the tenant.

While the general rule applies to the majority of cases, the details of who pays for the modifications are nuanced. If the building has not yet been constructed, the tenant is responsible for any costs of a reasonable modification request above what the builder would have otherwise paid, unless the request is something already required by the design and construction rules in the FHA.[14] If the modification is something required under the design and construction rules on accessibility under the FHA, she is not responsible for the costs, regardless of whether the building has already been built or not.[15]

There are other costs for which the tenant is not responsible, even in an existing building. First, for modifications to the exterior of a unit or to common areas, the tenant is not responsible for the costs of restoring the premises to their original condition.[16] Second, the housing provider may not require that the tenant obtain special liability insurance or an additional security deposit for the modification.[17] Third, the housing provider may be required to pay the difference if she wants the modification to involve more expensive materials simply for aesthetic reasons or to satisfy a preference for workmanship standards above local code requirements.[18] Finally, while the tenant is generally responsible for the costs of the maintenance of the modification, the housing provider is responsible for maintenance costs if the modification is to a common area.[19] Thus, it's important to consider carefully which costs are assignable to the tenant and which are assignable to the housing provider.

Conclusion

Reasonable modifications help make a greater number of units accessible for people with disabilities. While some low-income families with disabilities live in federally assisted housing that must follow Section 504's rules, a large number of such families live in units solely covered by the FHA. It is vital that both tenants and housing providers understand the extent of the duties and obligations under the reasonable modification provisions of the FHA. ■

[13] *Joint Statement* at 14.
[14] *Id.* at 15.
[15] *Id.* at 7.
[16] *Id.* at 13.
[17] *Id.* at 12.
[18] *Id.* at 11.
[19] *Id.* at 8.

Santa Monica's Inclusionary Zoning Ordinance Withstands Constitutional Challenge

A California appellate court has rejected an apartment association's facial takings challenge to the city of Santa Monica's inclusionary zoning ordinance. In *Action Apartment Association v. City of Santa Monica*,[1] the plaintiff association argued that the ordinance was unconstitutional because there was no nexus or rough proportionality between the construction of market-rate housing and the city's affordable housing shortage. After reviewing the United States Supreme Court's 2005 decision in *Lingle v. Chevron U.S.A., Inc.*,[2] the appellate court concluded that the nexus and rough proportionality test does not apply to facial challenges to land-use regulations and affirmed the trial court's dismissal of the case.

Background

Santa Monica's inclusionary zoning ordinance provides that builders of condominium projects with four or more units must construct between 20 to 25% of the total units as ownership or rental units for moderate- or low-income households, depending on the total number of units in the project.[3] As an alternative, developers are permitted to construct the affordable housing units off-site, but they must build 25% more affordable units than would be required if they built the units on-site.[4] The ordinance permits a developer to request an adjustment or waiver if the ordinance's requirements effectuate an unconstitutional taking or would otherwise have "an unconstitutional application" to the property.[5]

On September 11, 2006, Action Apartment Association (AAA), "an association of rental property owners who united after radical rent control was enacted in 1979,"[6]

[1] Action Apartment Ass'n v. City of Santa Monica, No. B201176, slip. op. (Cal. Ct. App., 1st Dist., Aug. 28, 2008).
[2] 544 U.S. 528 (2005).
[3] Santa Monica Mun. Code § 9.56.050 (2006).
[4] *Id.* § 9.56.060.
[5] *Id.* § 9.56.170.
[6] Action Apartment Association, *Who We Are*, http://www.action-wam.com/about.htm (last visited Sept. 16, 2008).

filed a complaint against the City of Santa Monica in Los Angeles County Superior Court seeking to invalidate the ordinance. AAA alleged that, on its face, the ordinance violated the takings clauses of the United States Constitution and the California Constitution. Specifically, AAA argued that the ordinance was unconstitutional because there was no essential nexus between the construction of market-rate residences and a shortage of affordable units in Santa Monica.[7] Further, AAA alleged that the ordinance's inclusionary requirements were not roughly proportional to any impact caused by the construction of new condominium units.[8]

The Supreme Court has held that to prevail on a facial takings claim, a party challenging a piece of legislation must demonstrate that its "mere enactment" deprived the owner of all viable use of his or her property.

AAA also alleged that because the ordinance created a constraint on the production of new housing, it should have been submitted to the state Department of Housing and Community Development for review.[9] The trial court sustained the city's demurrer to the complaint and dismissed the action. AAA appealed.

Applicable Takings Jurisprudence

The Supreme Court has held that to prevail on a facial takings claim, a party challenging a piece of legislation must demonstrate that its "mere enactment" deprived the owner of all viable use of his or her property.[10] Instead of this deferential standard, AAA argued that the state court should apply the legal standard used in exaction cases, i.e. cases challenging regulations in which a public entity conditions approval of a proposed development on the dedication of property to public use. In *Dolan v. City of Tigard* and *Nollan v. California Coastal Commission*, the Supreme Court held that a two-part test applies in exaction cases. First, there must be an "essential nexus" between the legitimate state interest the government asserts and the development restriction imposed on the landowner.[11] Second, there must be a "rough proportionality" so that the required dedication of property "is related both in nature and extent to the impact of the proposed development."[12] Both the United States Supreme Court and California Supreme Court have stated that the *Nollan/Dolan* standard applies to a decision made regarding an individual developer's request for approval of a project, rather than to facial attacks on land-use regulations.[13]

One California appellate court has addressed a facial challenge to an inclusionary zoning ordinance. In 2001, a homebuilders' association sought to invalidate the city of Napa's ordinance, which imposed on residential developers a requirement that 10% of all newly constructed units be affordable.[14] Much like Santa Monica's ordinance, Napa's ordinance permitted developers to satisfy the inclusionary requirement through an "alternative equivalent proposal" such as the construction of affordable units off-site.[15] The ordinance also permitted developers to apply for an adjustment or complete waiver of the ordinance's requirements if there was no nexus between the development's impact and the inclusionary requirement.[16] Because developers could seek waivers of the inclusionary requirements, the court found that the ordinance did not, on its face, result in a taking.[17] The court also noted that the ordinance provided significant benefits, such as expedited processing, fee deferrals, loans, grants, and density bonuses.[18] Like the developers in *Action Apartment Association*, the homebuilders' association argued that Napa's ordinance was subject to the *Nollan/Dolan* standard, and that there was no "essential nexus" or "rough proportionality" between the inclusionary requirement and the impacts caused by development.[19] However, the court found that the *Nollan/Dolan* standard applies only to individual land-use decisions and does not apply to facial challenges to legislation that governs all development in a city.[20]

In 2006, developers also brought a facial takings challenge to San Diego's inclusionary zoning ordinance. Like the statutory schemes employed by many other California jurisdictions, San Diego's ordinance permitted developers to apply for a waiver from the inclusionary requirements.[21] However, unlike Napa's ordinance, a waiver was only available if a developer demonstrated the existence

[7] *Action Apartment Ass'n*, slip. op. at *1 (Aug. 28, 2008).
[8] *Id.*
[9] *Id.* at *2.
[10] Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 318 (2002).
[11] Dolan v. City of Tigard, 512 U.S. 374, 391 (1994); Nollan v. Calif. Coastal Comm'n, 483 U.S. 825, 837 (1987).
[12] Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 547 (2005).
[13] City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 702 (1999); Santa Monica Beach, Ltd. v. Super. Ct., 968 P.2d 993, 1002 (Cal. 1999).
[14] Home Builders Ass'n of N. Calif. v. City of Napa, 108 Cal. Rptr. 2d 60, 62 (Cal. Ct. App. 2001).
[15] *Id.*
[16] *Id.* at 63.
[17] *Id.*
[18] *Id.*
[19] *Id.* at 65.
[20] *Id.* at 66.
[21] NHLP, *San Diego's Affordable Housing Ordinance Declared Unconstitutional*, 36 Hous. L. Bull. 123, 124 (Jun./Jul. 2006).

of four factors.[22] A superior court judge held that the ordinance was facially unconstitutional because it did not provide a waiver in cases where there was no reasonable relationship or nexus between a development's impact and the inclusionary requirement.[23] The city later agreed to amend the ordinance to include a provision allowing developers to seek a waiver if their housing projects would not contribute to the city's affordable housing problem.[24]

Facial Challenge Rejected

In *Action Apartment Association*, attempting to distinguish the *Napa* decision, AAA argued that the United States Supreme Court's decision in *Lingle v. Chevron U.S.A. Inc.* expanded takings jurisprudence to permit the *Nollan*/*Dolan* standard to apply in facial takings challenges.[25] *Lingle*, decided in 2005, had held that a property owner cannot establish a regulatory taking simply by alleging that a regulation does not "substantially advance" a legitimate state interest.[26] The state appellate court swiftly rejected AAA's argument, noting that the *Lingle* Court had no opportunity to consider whether the *Nollan*/*Dolan* test should apply to facial challenges.[27] Further, the *Lingle* Court explicitly stated that other than its abrogation of the "substantially advances" standard, it was not disturbing any of its prior takings holdings.[28] Accordingly, the appellate court rejected AAA's facial takings challenge, holding that *Lingle* did not expand the *Nollan*/*Dolan* test to facial challenges of land-use regulations, and affirmed the dismissal of AAA's takings claim.

No State Approval Was Required

AAA also argued that Santa Monica's ordinance constituted a de facto amendment to the city's housing element and therefore required approval by the state Department of Housing and Community Development (HCD). California's Government Code requires that an amendment to a city's housing element must be submitted to HCD prior to its adoption.[29] The court noted that nothing in the Government Code requires HCD to review inclusionary zoning ordinances.[30] The court also noted that Santa Monica's housing element had been approved by HCD, and that the inclusionary zoning ordinance did not amend the housing element.[31] Accordingly, the court also rejected AAA's argument that the ordinance required state approval.

Conclusion

The court's firm rejection of AAA's claims confirms that a deferential standard, rather than the more demanding *Nollan*/*Dolan* test, should apply to facial takings challenges to affordable housing ordinances. By reemphasizing that *Nollan*'s and *Dolan*'s heightened scrutiny is triggered only in as-applied cases, the court's analysis may provide clarity for other courts examining the constitutionality of inclusionary zoning ordinances. This in turn may encourage other municipalities to use such ordinances to create additional affordable housing. ■

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[22] *Id.* Those four factors were: (1) Special circumstances unique to that development justify the grant of the waiver; (2) The development would not be feasible without the waiver; (3) A specific and financial hardship would occur if the waiver were not granted; and (4) No alternative means of compliance are available.

[23] Bldg Indus. Assoc. of San Diego County, Inc. v. City of San Diego, No. GIC817064 (Cal. Super. May 19, 2006).

[24] Lori Weisberg, *City Amends Affordable Housing Law*, San Diego Union-Tribune, July 20, 2006, http://www.signonsandiego.com/news/metro/20060720-9999-7m20afford.html.

[25] *Action Apartment Ass'n*, slip. op. at *9 (Aug. 28, 2008).

[26] Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 545 (2005).

[27] *Action Apartment Ass'n* slip op. at *9.

[28] *Id.* (citing *Lingle*, 544 U.S. at 545).

[29] Cal. Gov't Code § 65585 (West, WESTLAW through Ch. 267 of 2008 Reg. Sess).

[30] *Action Apartment Ass'n*, slip op. at *10.

[31] *Id.*

Recent Cases

The following are brief summaries of recently reported federal and state cases that should be of interest to housing advocates. Copies of the opinions can be obtained from a number of sources including the cited reporter, Westlaw,[1] Lexis,[2] or, in some instances, the court's website.[3] Copies of the cases are *not* available from NHLP.

Fair Housing Act: Lender's Practices May Violate Fair Housing Act

National Community Reinvestment Coalition v. Accredited Home Lenders Holding Co., 2008 WL 3974310 (D.D.C. Aug. 28, 2008). The district court refused to dismiss the plaintiffs' complaint which asserted that defendant's lending practices in several metropolitan jurisdictions discriminated against African-American and Latino mortgage applicants. The court found that it had personal jurisdiction over the defendant by virtue of the District of Columbia's long-arm statute and the fact that the defendant made loans in the District of Columbia. The court also held that the plaintiff organization had standing to bring the suit based on the fact that it had to expend resources to counteract the defendant's discriminatory practices. Further, it held that Section 804 of the Fair Housing Act extends to lending practices and that the plaintiffs had alleged a claim that the defendant's lending practices violated the act. Accordingly, it denied the defendant's argument that the plaintiffs failed to state a claim upon which relief could be granted. Lastly, it rejected the defendant's claim that the FHA does not authorize a disparate impact cause of action. It therefore rejected the defendant's motion to dismiss.

Fair Housing Act: Continuum of Care Facility Did Not Fail to Make Reasonable Accommodation

Herriot v. Channing House, 2008 WL 3929214 (N.D.Cal., Aug. 28, 2008)(Unpublished).The plaintiff, a resident in a Continuum of Care facility, brought a Fair Housing Act claim against the facility based on its failure to make a reasonable accommodation to plaintiff by allowing her to remain in her own unit instead of moving her to an assisted living facility in the same complex. It was undisputed that the plaintiff suffered from dementia and required around-the-clock assistance due to her physical disabilities. The district court granted summary adjudication to the defendant, finding that under California law the facility could not provide the type of services that the plaintiff required in her unit and that it could only provide those services in the residential care facility. Accordingly, the court found that the facility's insistence that the plaintiff move did not violate the Fair Housing Act.

RESPA and Truth In Lending Act: Mortgage Lender Failing to Distance itself from Appraisers

Cedeno v. IndyMac Bancorp, 2008 WL 3992304 (S.D.N.Y., Aug. 26, 2008). Mortgage loan borrowers who secured loans from the defendant brought federal Real Estate Settlement Procedure Act, Truth in Lending Act and several state law claims against the defendant lender for failing to insulate itself from appraisers who conducted appraisals, appraisal companies and/or appraisal management firms who performed faulty and defective appraisal services which inflated the value of residential properties in order to allow the defendant to complete more real estate transactions and obtain greater profits. The inflated appraisals allegedly misled the plaintiffs as to the true equity in their homes. The court rejected all of the plaintiffs' claims and dismissed their complaint on the ground that none of the laws relied on by the plaintiffs covered the acts on which they based their damage claims.

Administrative Procedure Act: HUD Rule Regarding Renewal of Project-Based Section 8 Contracts Invalidated

Steinhorst Associates v. Preston, 2008 WL 3884337 (D.D.C., Aug. 22, 2008). Ruling on a summary judgment motion filed by an owner of a development receiving Section 8 project-based assistance, the court struck down a HUD regulation governing the renewal of Section 8 Housing Assistance Payment (HAP) contracts and whether or not owners whose contracts are about to expire must restructure their mortgages. The court held that the rule, found at 24 C.F.R. § 401.100(b), was not an interpretive rule and that HUD could not adopt and apply it without publishing the rule for prior public notice and comment. Accordingly, the court struck the rule and remanded the issue of renewing the owner's HAP contract to HUD.

Preemption of Local Ordinances: Rights of Convicted Sex Offenders to Live Within Designated Distances of Various Public Service Facilities

G.H. v. Township of Galloway, 951 A.2d 221, 2008 WL 2971776 (N.J.Super.A.D., July 15, 2008). The court of appeals upheld

[1]http://www.westlaw.com.
[2]http://www.lexis.com.
[3]For a list of courts that are accessible online, see http://www.uscourts.gov/links.html (federal courts) and http://www.ncsc.dni.us/COURT/SITES/courts.htm#state (for state courts). See also http://www.courts.net.

the lower court decision, in which the plaintiff challenged municipal ordinances prohibiting convicted sex offenders from living within a designated distance of schools, parks, playgrounds and daycare centers. The court held that the ordinances conflicted with the state's Megan law and were therefore preempted. ■

Recent Housing-Related Regulations and Notices

The following are significant affordable housing-related regulations and notices that the Department of Housing and Urban Development (HUD), the Department of Agriculture (USDA's Rural Housing Service/Rural Development (RD)), Federal Housing Finance Board, Federal Emergency Management Agency (FEMA) and the Veterans Administration issued in August of 2008. For the most part, the summaries are taken directly from the summary of the regulation in the Federal Register or each notice's introductory paragraphs.

Copies of the cited documents may be secured from various sources, including (1) the Government Printing Office's website,[1] (2) bound volumes of the Federal Register, (3) HUD Clips,[2] (4) HUD,[3] and (5) USDA's Rural Development website.[4] Citations are included with each document to help you secure copies.

HUD Final Rules

73 Fed. Reg. 49,332 (Aug. 21, 2008)
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Conforming Amendment To Include Students With Disabilities Receiving Assistance as of November 30, 2005

***Summary*:** This rule makes a conforming amendment to HUD's regulation that restricts individuals enrolled in an institution of higher education and who meet certain other requirements from receiving assistance under Section 8 of the U.S. Housing Act of 1937. That regulation was required by statute to be promulgated in 2005, and the statute was subsequently amended to exempt from this restriction students with disabilities who were receiving Section 8 assistance as of November 30, 2005.

***Effective Date*:** September 22, 2008.

[1]http://www.access.gpo.gov/su_docs.
[2]http://www.hudclips.org/cgi/index.cgi.
[3]To order notices and handbooks from HUD, call (800) 767-7468 or fax (202) 708-2313.
[4]http://www.rdinit.usda.gov/regs.

HUD Proposed Rules

73 Fed. Reg. 45,368 (Aug. 5, 2008)
Streamlining Public Housing Programs

***Summary*:** This proposed rule would support HUD's overall objective to streamline the regulations governing public housing programs and to facilitate the transition of public housing agencies (PHAs) to asset management. In general, this proposed rule would streamline portions of the public housing regulations, and more closely align the regulatory framework of public housing with other federally subsidized housing programs, providing PHAs greater flexibility within the parameters of current law. This proposed rule offers general principles and basic guidelines for PHAs to follow, rather than overly prescriptive measures, thus allowing PHAs to operate projects more efficiently as they move toward asset management.

***Comments Due Date*:** October 6, 2008.

73 Fed. Reg. 49,543 (Aug. 21, 2008)
Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Substantial Default

***Summary*:** This proposed rule would make two sets of amendments to improve evaluation and oversight of public housing agencies (PHAs). First, this proposed rule would amend HUD's Public Housing Assessment System (PHAS) regulations for the purposes of: Consolidating the regulations governing assessment of a PHA's program in one part of the Code of Federal Regulations (C.F.R.); revising certain PHAS regulations based on the department's experience with PHAS since it was established as the new system for evaluating a PHA in 1998; and updating certain PHAS procedures to reflect recent changes in public housing operations from conversion by PHAs to asset management, including updating and revising the PHAS scoring. The changes proposed by this rule are intended to enhance the efficiency and utility of PHAS. Second, the proposed rule would establish, in a separate part of the C.F.R., the regulations that would specify the actions or inactions by which a PHA would be determined to be in substantial default, the procedures for a PHA to respond to such a determination or finding, and the sanctions available to HUD to address and remedy substantial default by a PHA. To date, such regulations have been included in the PHAS regulations, but the actions or inactions that constitute substantial default are not limited to failure to comply with PHAS regulations. Accordingly, the proposed regulations applicable to substantial default are more appropriately codified in a separate C.F.R. part. This proposed rule is also publishing the scoring processes for each of the PHAS scoring categories as appendices to part 902. Although these scoring processes are proposed as appendices, it is also possible that, at the final rule stage, they will be published as separate notices.

***Comment Due Date*:** October 20, 2008.

73 Fed. Reg. 46,826 (Aug. 12, 2008)
Public Access to HUD Records Under the Freedom of Information Act and Production of Material or Provision of Testimony by HUD Employees: Revisions to Policies and Practices Regarding Subpoenas and Other Demands for Testimony

***Summary*:** This proposed rule would modify HUD's policies and practices regarding responses to subpoenas and other demands for testimony of HUD employees, or for production of documents by HUD. This proposed rule would delegate authority to additional officials within HUD's Office of General Counsel and would revise the criteria used to evaluate such demands. Finally, this rule would eliminate unnecessary provisions covering HUD's response to demands in cases in which the United States is a party to the case in which testimony or documents are requested.

***Comment Due Date*:** October 14, 2008.

HUD Federal Register Notices

73 Fed. Reg. 45,233 (Aug. 4, 2008)
Notice of Proposed Information Collection: Comment Request; Customer Satisfaction Surveys

***Summary*:** HUD has submitted to the Office of Management and Budget an information collection requirement for review and is soliciting public comments on the subject proposal. The information collected relates to the requirement that federal agencies provide the highest quality service to our customers by identifying them and determining what they think about our services. The surveys covered in the request for a generic clearance will provide HUD a means to gather this data directly from our customers.

***Comments Due Date*:** October 3, 2008.

73 Fed. Reg. 46,312 (Aug. 8, 2008)
Reconsideration of Waivers Granted to and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees

***Summary*:** This notice reconsiders and generally affirms the waivers made under the three "common" notices governing grant funds for Community Development Block Grant disaster recovery grants for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, and Wilma in the Gulf of Mexico in 2005. These prior notices were published in the Federal Register on February 13, 2006, October 30, 2006, and August 24, 2007. The notice published today addresses the purpose and use of these funds, while highlighting unique components of the three notices and noting any changes made by HUD as the result of the required reconsideration of the waivers. For the most part, HUD is repeating or restating the original explanatory text so that grantees and program administrators may continue to have the explanation of a changed requirement and the requirement itself in a single document.

***Effective Date*:** August 8, 2008.

73 Fed. Reg. 49,588 (Aug. 21, 2008)
Public Housing Assessment System (PHAS): Asset Management Transition Year Information and Uniform Financial Reporting Standards (UFRS) Information

***Summary*:** This notice provides certain information related to scoring and submission requirements for public housing agencies (PHAs) under the Public Housing Assessment System (PHAS) for PHA fiscal years ending June 30, 2008, September 30, 2008, December 31, 2008, and March 31, 2009. These fiscal years coincide with the first year of project-based budgeting and accounting under asset management, also known as the "transition year." Much of the information contained in this Federal Register notice was presented in PIH Notice 2008-18, Information on Upcoming Rulemaking Associated with the Public Housing Assessment System as a Result of the Conversion to Asset Management, dated March 27, 2008. That information is reiterated in this notice in order to inform the broader public of these actions. This notice also provides information related to the current Uniform Financial Reporting Standards for PHAs with fiscal years ending June 30, 2008, September 30, 2008, December 31, 2008, and March 31, 2009. This notice provides that HUD, on a one-time basis, will not enforce the regulatory sixty-day deadline for reporting unaudited financial condition information for most PHAs.

***Dated*:** August 7, 2008.

HUD Notices

PIH 2008-35 (Aug. 20, 2008)
Cost-Test and Market Analyses Guidelines for the Voluntary Conversion of Public Housing Units Pursuant to 24 CFR Part 972

Summary: This notice applies to public housing agencies (PHAs) that are applying to HUD under the voluntary conversion program of Section 22 of the 1937 Housing Act and 24 C.F.R. 972. It provides guidance to PHAs in implementing elements of Section 533 of the Quality Housing Work Responsibility Act of 1998. That section authorizes a PHA to request approval from HUD to voluntarily convert a public housing property, or portion thereof, to tenant-based assistance, subject to several conditions, including Conversion Assessment Components. One required component of the conversion assessment is the cost analysis described in 24 C.F.R. § 972.218(a), comparing the cost of public housing with the cost of tenant-based assistance. HUD will approve the proposed voluntary conversion of a property (including removal of a property, or portion thereof, from a PHA's inventory) only when the cost analysis component of the conversion assessment demonstrates the total costs of ongoing maintenance and operations for

a property exceed the total costs of providing tenant-based assistance. In addition to this cost analysis component, the conversion assessment must also include an analysis of the market value of the property as described. This market-value analysis will evaluate various proposed development scenarios and sets of assumptions including use of the property as public, assisted, or market-rate housing based on the as-is and post rehab condition as required as part of the conversion assessment set forth in the voluntary conversion rule.

Rural Housing Service/Rural Development Final Rule

73 Fed. Reg. 49,591 (Aug. 22, 2008)
Direct Single Family Housing Loans and Grants

***Summary*:** Through this action, Rural Housing Service (RHS) is addressing the following: The agency is revising the minimum insurance deductible amount and removing specific dollar limits with regards to insurance deductible clauses. The agency also is clarifying the amount of dwelling coverage required to address current standards in the mortgage insurance industry and the coverage that the agency may obtain when force-placed insurance is required. The intended effect is to make it easier for new homeowners to secure affordable insurance coverage and give the agency sufficient flexibility to quickly react to changes in insurance costs and requirements. This action also is revising the applicant net asset limitation to increase it from $7,500 to $15,000 for non-elderly families and from $10,000 to $20,000 for elderly families. The intended effect is to require applicants to contribute a down payment when their net assets exceed the stated limits. These limits have not been updated in over ten years. Finally, this action updates the rural area definition to reference the effective date of census data collected through 2010.This rule combines three actions under one notice. In the event that RHS receives adverse comments on any one section of this rule, the agency will proceed with the final implementation of the other portions not affected. No adverse comments are anticipated.

***Due Date*:** This rule is effective without further action November 5, 2008, unless RHS receives written adverse comments or written notices of intent to submit adverse comments on or before October 21, 2008. If adverse comment is received, RHS will publish a timely withdrawal of the rule in the Federal Register.

Rural Housing Service/Rural Development Unnumbered Letters

Personally Identifiable Information for Multi-Family Housing Borrowers, Managers and Tenants (Aug. 5, 2008)

Summary: The purpose of this memorandum is to inform the field of the implementation of Personally Identifiable Information as it relates to Multi-Family Housing (MFH) customers. Currently, the account numbers assigned to MFH loans consist of the customer's Social Security Number or Tax Identification Number (SSN/TIN), combined with a state and county code. New account numbers will be provided to all customers, replacing the SSN/TIN as part of their account number. However, documents in the case file may still contain the SSN/TIN as part of the originally assigned account number. Tenant SSN/TIN numbers will no longer be reflected on-line or on reports. However, if a state identifies a need to have access to these numbers (i.e.: Wage Matching) customers may identify two employees per state who can be approved for special access.

Funding for Single Family Housing Direct Loans (Aug. 22, 2008)

Summary: The purpose of this unnumbered letter is to provide additional guidance for Single Family Housing direct loan applications and to provide special processing authority for extending expiring Certificates of Eligibility for the balance of FY 2008. Chapter 4, Section 5, Paragraph 4.25 of HB-1-3550 provides that when funds are available and the Loan Originator has determined that an applicant is eligible, a Certificate of Eligibility is issued. This certificate is valid for a period of forty-five or sixty days, as applicable. Upon expiration of these timeframes, up to two thirty-day extensions may be granted. Once an applicant has received the maximum number of extensions, the handbook states that the application is no longer considered active and should be withdrawn. Due to the current funding uncertainties, some applicants may not be able to locate a suitable property through no fault of their own. In these situations, upon the expiration of a second extension, a new Certificate of Eligibility may be issued when the income verifications and the credit report on hand will be viable for at least sixty additional days, keeping in mind that income verifications are valid for 120 days and credit reports for six months. ■

HOUSING JUSTICE NETWORK NATIONAL MEETING

Advancing Housing Justice: Event Basics

Fees

Fees include materials, lunch each day, and refreshments.

	BY 10/31	AFTER 10/31	SPONSORED CLIENT*
Training only: Dec 6	$ 195	$ 250	$ 195
Meeting only: Dec 7-8	$ 430	$ 535	$ 330
Meeting + Training	$ 575	$ 695	$ 500

*This rate applies to clients whose registrations are paid for by a legal services organization.

CANCELLATION/REFUND POLICY

To qualify for a refund less a $50 handling fee, a written cancellation must be received by NHLP no later than November 21, 2008. No refunds will be given after that date.

Registration

Space is limited, so register early! **The deadline for early registration is October 31, 2008**. Mailed forms must be postmarked by that date; faxed forms must be received by that date. Forward registration with payment to:

FAX (CREDIT CARD ONLY)
510.451.2300

MAIL
NHLP
Attn: Registration
614 Grand Avenue, Suite 320
Oakland, CA 94610

Site Information

Washington Court Hotel
525 New Jersey Avenue, NW, Washington, D.C. 20001
800.321.3010 or 202.268.2100

Washington Court Hotel, located in the Capitol Hill neighborhood, is a five-minute walk to the U.S. Capitol Building and the National Mall and is just two blocks away from an array of shopping, dining and entertainment options. Washington Court Hotel is a union hotel.

Washington Court Hotel is the site for the training, meeting and guest accommodations. Please call the hotel directly to make reservations (last session will end at 5 p.m. on Monday, December 8, so please plan accordingly). Mention that you are attending the Housing Justice Network conference to receive a conference room rate of $175. Rate is single/double occupancy plus tax. **Please make your reservations early! Rooms at the conference rate are limited and are available on a first-come, first-served basis through October 31, 2008.**

Questions

Contact Amy Siemens at 510.251.9400 x3111 or asiemens@nhlp.org.

HOUSING JUSTICE NETWORK NATIONAL MEETING

Advancing Housing Justice: Registration

PLEASE PRINT CLEARLY

1 PERSONAL INFORMATION

NAME _____ NAME ON BADGE (IF DIFFERENT) _____

ORGANIZATION _____

MAILING ADDRESS _____

CITY _____ STATE _____ ZIP _____

PHONE _____ FAX _____

EMAIL _____ ORGANIZATION'S WEB SITE _____

Housing Experience: ☐ years. What issues have you worked on? _____

_____

○ I am an HJN member. ○ I would like to become an HJN member.
Please send me an application form via ○ email ○ fax

Do you require special arrangements? (Please attach a description)
○ access ○ visual ○ audio ○ vegetarian ○ other dietary

2 FEES

	BEFORE 10/31	AFTER 10/31	CLIENT
○ Federal Housing Program: One Day Training	$ 195	$ 250	$ 195
○ Housing Justice Network Meeting only	$ 430	$ 535	$ 330
○ One Day Training + Meeting	$ 575	$ 695	$ 500

3 PAYMENT

Payment must be included at the time of registration. Registrations will not be processed or confirmed until full payment has been received.

○ This payment covers more than one registration. **I have attached a registration form for each paid attendee.**

○ I've enclosed a check for $ _____ made payable to National Housing Law Project

○ Please bill my ○ Mastercard ○ Visa for $ _____

CARD NUMBER _____ EXP. DATE (MONTH/YEAR) _____

NAME OF CARDHOLDER _____ AUTHORIZED SIGNATURE _____

BILLING ADDRESS (REQUIRED FOR CREDIT CARD ORDERS) _____

CITY _____ STATE _____ ZIP _____

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Housing Law Bulletin (10-issue subscription)	$ 175		
Welfare and Housing—How Can the Housing Assistance Programs Help Welfare Recipients? (2000)	$ 5		
Housing for All: Keeping the Promise (1995)	$ 5		
The Family Self-Sufficiency Program: An Advocate's Guide (1994)	$ 10		
A Passage from Poverty: Self-Sufficiency Policies and the Housing Programs (1991)	$ 10		

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TOTAL

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