JUNE 2012

PARK WATCH

™ LEGAL DEVELOPMENTS NEWSLETTER

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New York High Court: Free Rent for 9 Years and Yes, Indefinitely!

And We Thought California Confiscated Property Rights

By: Terry R. Dowdall, Esq.

Upshot: In the race to be crowned the biggest "nanny"[1] state, New York's high court[2] ruled on June 7th that a tenant who occupies a loft unit, who has *not paid rent since 2003,* could not be evicted for lack of landlord's procurement of an occupancy permit–a process so replete with delay that about a third of loft landlords are in violation. But no worries, California remains undisputed as the most business-hostile state (*see below*).

Why We Care? The California Department of Housing and Community Development (HCD) may revoke a permit to operate (PTO) for code violations. Revocation of the PTO means that no rents may be collected for an entire park. Does revocation of a PTO pass constitutional muster? While PTO revocation is not taken lightly, still, it may be ordered based on code violations of a few tenants (the ultimate responsibility for which lies with the park owner). One may question whether such punishment fits the violation, or whether it is grossly disproportionate to the severity of health and safety risk.

Margaret Maugenest: Rent Free since 2003

This controversial case means that it is permissible with the court to impose an uncompensated physical occupation of property (not necessarily a "taking" in the legal sense) based on minor *building code violations*. The additional twist here is that the landlord sought an extension to comply, but the agency refused to grant an extension of time. Unless the legislature steps in, the tenant may live rent free into perpetuity, according to the N.Y. high court.

The Free Apartment

Facts: According to the lower appellate court, which affirmed eviction by the antepenultimate court on 2/15/2011, Margaret Maugenest (see inset), represented by lawyer, a Ms. Sandercock, commenced tenancy of a "loft" in 1984. A "loft" is an "interim multiple dwelling" as defined in the state "Loft Law." The tenant stayed on after the lease expired and pursuant to the law, because the landlord failed to make required improvements. When originally passed, the "Loft law" significantly burdened property owners. Often, several hundred thousand dollars must be

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In this Issue:

[1] "Nanny" refers to a state, a term of British origin for government which is overprotective or interferes with personal choice.

[2] N.Y.'s highest court is the Court of Appeal, the equivalent of our state Supreme Court.

invested for compliance with code. Many owners could not afford it outright, or when considered in light of a negligible return from rent controls. The law specified the need for renovations within a limited time frame or lose any ability to collect rent. Note: this practice parallels the rights of the HCD to revoke a permit to operate when corrections to common areas or homesites are not timely performed. The tenant stopped paying rent in 2003.

▌ *Lower Appellate Court*: *Can the tenant be evicted for non-payment?* In 2008, landlord sued for possession, but *not* unpaid rent. Note: in California, a demand for past rent may not include more than 12 months of unpaid rent. It is not clear what, if any, actions the landlord had taken in the 5 year interim.[3] According to the lower appellate court, landlord proved its right to possession by summary judgment. Not a single issue of triable fact existed in defense of the tenant. Despite code violations, landlord was entitled to possession because rent claims were waived, said the lower appellate court.

▌ *Court of Appeal*: The N.Y. High Court reversed. It concluded that until the landlord complied with the code, no action for possession could be brought, despite entreaties from the landlord that compliance due to delays from the administrative board made compliance a practical impossibility. The court said that the law " bars not only an action to recover rent, but also an 'action or special proceeding . . . for possession of said premises for nonpayment of such rent.' This is such an action, and it is barred. If that is an undesirable result, the problem is one to be addressed by the Legislature." Which is tantamount to proclaiming a right to live rent free for the indefinite future.

The tenant's lawyer said her client started withholding rent in 2003 because of failure to maintain the rental premises. Almost one-third of the total number of buildings under agency jurisdiction have still not managed to receive certificates of occupancy. In this case, the agency could grant an extension for circumstances beyond a landlord's control, but it rejected the landlord's claim that it deserved an extension in 2006. The landlord cannot collect rent, evict, or obtain a certificate of occupancy. Since the highest court of the state has ruled, the landlord's next avenue of relief includes the United States Supreme Court. A daunting proposition, especially in light of the fact that the U.S. high court just declined to hear the claims that N.Y.'s rent control law was unconstitutional.

▌ *It Gets Even Worse*: Furthermore, owners who do not obtain an occupancy permit can be hit with penalties of $1,000.00 per day for failure to take all necessary steps to obtain an occupancy permit, according to an information site for owners.[4]

What Can We Learn? The importance of timely addressing code compliance. Will the HCD ever let code violations stew for such a long period of time? YES. This last month our office reviewed a case where unaddressed code violations were cited four years ago. The cost to deal with unaddressed code violations can create needless expense for park operations, plus penalties as well. While HCD is one of the most reasonable and efficient of agencies with which park operators deal, it is imperative to promptly act on citations whether park or resident related. Brandishing the putative unconstitutionality of revocation of a PTO may be an interesting defense. The cost of fixing the violations will be invariably and immeasurably cheaper.

Mendocino County Rejects MHP Rent Controls!

WMA's Message Heard: Expensive, Housing Decline, Better Alternatives Save Taxpayer Burden

By: Terry R. Dowdall, Esq.

▌ *Upshot*: The consideration of rent controls in any city or county is controversial when the cost to the taxpayer is considered. Rent controls do not achieve stated objectives, but signal decline of housing stock and dramatic impact on a city budget. Impartial analysis free of emotionally-heated rhetoric *should* carry the day. When special interests prevail, parks close. Evidence: Catalina Mobile Estates in Oceanside, which closed because the owner could no longer afford to stay in business due to rent controls. But fiscal and economic responsibility won out in Mendocino County. Despite the usual hyberbolic claims of poverty, abuse and hardship, WMA's indefatigable educational efforts prove that false claims of the greedy must fail. The County owners should now capitalize on this victory while they can. The introduction of fair long term leases to sustain park operations in a reasonable manner

[3] "The company's lawyer, David Berger, told the Times the company has been slow in meeting the law's requirements because all improvements required tenant approval, and they have nitpicked over aesthetics" (according to the American Bar Association Journal) http://www.abajournal.com/news/article/tenant_who_didnt_pay_rent_since_2003_cant_be_evicted_because_of_code_violat/.

[4] http://loftlawnews.blogspot.com/

should be pursued. Consideration of rent controls never goes away. One may expect attacks on incumbents. And the next Board of Supervisors may not be as intellectually honest as the current members.

▌*Facts*: The ordinance was drafted by County Counsel Jeanine Nadel at the board's request. Last September, county supervisors voted 4-1 in favor of rent control. The ordinance would have imposed rent controls on all parks, whatever their rents, whatever the rent increase histories.

Advocates of the law claimed the usual tired stratagem of exhorting the need for assistance for seniors on fixed incomes. It was argued that protection from unreasonable rent hikes by park owners was necessary. The problem with that strategy was that there was no history of any such excessive rent increases. Rent controls are intended to alleviate pressure on rents caused by exploitation of a housing shortage. Where the supply is so limited that owners can take advantage by imposing price hikes upon a captive market, price controls may stop such upward spiraling. Here, as is true everywhere, there was no evidence that anyone was exploiting a captive or short housing supply. Some called these parks "cash cows" and said that residents needed some kind of security in order to "keep their human dignity." But rent controls, like food stamps, do nothing for dignity. Leases provide the dignity which residents should seek and desire. Seniors claimed limitations in Social Security payments may not cover new rent increases.

The opponents of the ordinance provided the Board with considerable actual facts to show that the ordinance was a myopic and needless burden on nearly all but the immediate beneficiaries of the law, the incumbent residents. Mendocino County would be identified as a socialistic enclave engendering the genuine uncertainties in the private business sector emblematic of a locale with heavy government regulation. A government bent on wealth transfers disrespects property rights. Rent controls take the ability to properly maintain property, and transfer it to the tenants; property declines, maintenance declines, attractiveness diminishes. The chilling effect on business, commerce, housing and business attitude in dealing with such a municipality are well documented. Property owners are discouraged from offering affordable forms of housing. And because rent hikes in the event of emergency situations would be prevented, park owners who had kept rents stable for as long as three years would be forced to begin regularly raising rent charges if the ordinance were passed. Rent controls always hurt the resident: Owners do not take rent increases unless there is a good reason; if they cannot cover necessary expenses and improvements, they must take all the ordinance gives, because else it is lost and not recoverable. Ironically, the result is increased frequency of rent increases.

The smartest of the residents understand this, of course. There was opposition from the residents themselves. The Board discussed possible legal ways to apply pressure to just one park. However, 60 parks would be penalized. And many other park tenants expressed opposition to the ordinance in petitions considered by the Board.

The motion to reject rent controls passed unanimously. Spearheading the educational effort was WMA. According to Doug Johnson, WMA's Northern California Regional Representative, "This was a stunning victory. . . [L]ast September, county supervisors voted 4-1 in favor of rent control -- nine months later, all five voted against it." Doug modestly gives credit to the park owners, and in good part, this rightly so. Prudent, reasonable practices in management speak for themselves, no matter the cloudy din thrown up by the residents with false claims of hardship and demands for the naked wealth transfer of rent controls. But without WMA to work hard to organize and get the truth out, that Board might have continue to be mislead.

What Can We Learn? The process of fighting rent controls is an arduous and thankless task. It is the question of asserting the truth above the din of mass tenant appeal and political realities. Most local politicians cannot see beyond the next election. The voting bloc of residents is a powerful narcotic to induce bad legislation in order to placate a landless majority. Many cities and counties have capitulated to the pressure of the well-organized collective of residents demanding a yes-vote and the heads of the owners. And then there are the few municipalities that learned from their mistakes and rescinded rent controls. Or never enacted them in the first instance. These areas have better housing, superior choice, and pride in ownership, yet the rent control crusade which signals a downhill slide in to a housing abyss continues. So what can the park owner do?

▌*Leasing is Important for Owners and Pride and Security of Residents*. Prepare for the next round of conflict. Realize that the battle is won but the war. Rent controls once introduced, never go away. Tenant collectivists will continue seeking confiscation of property, bit-by-bit, and they are likely to eventually succeed. For example, the next Board may be different. The County owners should embrace leases like never before. The rent control exempt lease agreement is the best protection against the actions of government to copnfiscate private property. To stay in the mobilehome park business at profit is to lease, and lease completely. In Mendocino County, rent control will be back. Count on it.

CFPB Internal Publications Available (Standards for Investigation and Enforcement)

By: Terry R. Dowdall, Esq.

▌*Upshot*: The SAFE Act calls for regulation of mortgage loan originators. Aside from the infrequent (as opposed to he habitual

or repetitive) making of loans for the sale of mobilehomes in your community, a mortgage loan originator is required for securitized lending, and a California Finance Lender license is required for the source of the loans. See generally, *"S.A.F.E. Act: A 12 Step Program for Compliance."* [5] The CFPB has issued final rules and one interim final rule governing its enforcement of statutes under its authority. All are available at: http://www.dowdalllaw.com/Codes-and-Regulations.shtml, scroll down to "Federal law," under sub-heading: "Consumer Financial Protection Bureau Internal Documents (2012)."

The final rules relate to investigation and adjudication of claims of violations of the Act. These codes establish a framework for the bringing of claims of violations of the SAFE Act against offenders. Between the promulgation of these regulations, the additional staffing of the agency, and announcements of initiation of activity in earnest, it is of utmost importance that every park owner considering the making of mobilehome loans have a plan to comply with the SAFE Act. Your attention is invited once again to the enforcement effort against Vanderbilt Mortgage, in which a total sanction of $750,000 was levied[6] for violations of the SAFE Act. The latest regulations all but reflect an immediate readiness for prosecution of SAFE Act violations. Each of the publications available at: http://www.dowdalllaw.com/Codes-and-Regulations.shtml, are briefly discussed here.

■ Procedures for Investigations. The CFPB adopted a final rule describing its procedures for investigations. Under Section 1052 of the Dodd-Frank Act, the CFPB has authority to conduct investigations to determine whether any person is or has been engaged in conduct that, if proved, would constitute a violation of any federal consumer financial law. The CFPB's authority to investigate, the rights of the regulated, and the procedures related to investigation demands and hearings are covered. Interestingly, no staff-level employee may unilaterally commence an investigation. Only the Assistant Director or any Deputy Assistant Director of the Office of Enforcement may initiate an investigation (§§1080.4, .6). The "Rules Relating to Investigations" (commencing at p. 28) are available at http://www.dowdalllaw.com/Investigations.pdf.

■ Adjudication Proceedings. The Dodd-Frank Act requires the CFPB to establish rules for its adjudications. Such rules deal with rights to appeal a hearing officer's recommended decisions; deadlines for decisions by hearing officers and final decisions by the Director, a limited right to inspect and copy documents obtained by non-Bureau employees (there is no requirements to divulge material which may be helpful to the regulated. The procedures do not include the rights of discovery, though in self-serving fashion, the public is assured that the "parties who appear before the Bureau receive a fair hearing." The CFPB states that in "many instances . . . [the] Bureau will simultaneously seek civil money penalties, a cease-and-desist order, and potentially other available remedies." Against this background, be advised that the hearing process will be expedited. The Director (Richard Cordray, unconfirmed by the Senate) will make the final decisions. "The Bureau notes that expeditious proceedings are contemplated under . . . the Dodd-Frank Act, . . . which requires that the hearing be held no earlier than 30 days nor later than 60 days after the date of service of the notice of charges, unless an earlier or later date is set by the Bureau at the request of any party so served." For litigators in California, this is moving at light speed. The "Rules of Practice for Adjudication Proceedings"are available here: http://www.dowdalllaw.com/adjudicationProceedings.pdf (commencing at p.109).

■ State Official Notification. The Dodd-Frank Act permits a state attorney general or regulator to bring an action to enforce the Act. But the state official is required to provide notice to the CFPB. The final rule sets forth the procedure for notification. The CFPB can intervene as a party. "State Official Notification Rule" is available at http://www.dowdalllaw.com/notificationRule.pdf (commencing at p.20).

■ Equal Access to Justice Act (EAJA). The EAJA, requires agencies that conduct adversary adjudications to award attorney fees and other litigation expenses to certain parties other than the United States in certain circumstances. The CFPB is required to establish procedures for the submission of applications for the award of fees and other expenses. An eligible party will receive an award when it prevails, unless CFPB was "substantially justified" or "special circumstances" make an award unjust, CFPB's demand is substantially in excess of the decision and is "unreasonable," unless there is a "willful violation of law," "bad faith," or "special circumstances" which make an award unjust. *Are you "eligible" for an award of attorney's fees?* To be eligible for an award of attorney fees, the party must be:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees, or a "501(c)(3)" with not more than 500 employees;

(3) A cooperative association (§15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; or other partnership, corporation, association, or organization with a net worth of not more than $7 million and not more than 500 employees, and certain "small entities" (5 U.S.C. 601(6)) (this refers to the Small Business Act, as amended, Section 3, Public Law 85-536, as amended. The "Equal Access to Justice Act Implementation Rule" is available at http://www.dowdalllaw.com/Eaja.pdf (commecing at p.8).

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[5] at: http://www.dowdalllaw.com/PARK_WATCH_MMXI-08-09-SAFE_ACT-DODD_REQTS-FAA_ARBx.pdf

[6] IN RE: CONSENT ORDER VANDERBILT MORTGAGE AND FINANCE, INC. (February 25, 2010) ("VMF shall pay a civil money penalty of seven hundred fifty thousand dollars ($750,000.00); . . .within ten (10) days of the entry of the Consent Order in this matter").

California Named "Worst State for Business"

Hostile Government Blamed for Business Exodus - Governor Brown's faux pas on Network Television.

By: Terry R. Dowdall, Esq.

Upshot: Chief Executive magazine ranked California as the "worst place" to do business for the eighth year in a row. [7]

Jerry Brown with Charlie Rose. Contrary to Governor Jerry Brown's recent assertion that California is still the "Wild West" when it comes to business, it isn't. Brown, in a network television interview with Charlie Rose, proclaimed this state as the home of "Facebook," only to be tersely corrected by Charlie Rose ("Facebook was started in New Haven . . . " which caught Brown flat-footed). An awkward moment for Brown and his handlers, and funny if not so revealing.

The polled executives described the magazine's "Development Trend Indicator" as "Negative, " described as a: "[S]ucking sound continues as frustrated businesses leave state for friendlier climes."

The representative remark was that: "California continues to head in the wrong direction as its tax policies will drive more businesses and people to relocate in other states. State politicians feel business and commerce are 'necessary evils' that provide the funds to enable pursuit of their misguided agendas. California government is difficult to work with and very bureaucratic. Taxes and regulation are high and unruly."

Taxation and Regulation Killing Business. Texas has been top-ranked every year, a state with which California cannot compare. However, comparisons to Florida[8] are also striking: " CEOs give Florida's workforce quality a good but not superlative rating of 6.73. California is rated at 5.82, not as bad as Hawaii or New Mexico, but not as good as 48th-ranked Illinois either. When it comes to taxation and regulation, however, California's score plummets to 1.74—the lowest by far of any state, and well below Florida's rating of 7.27. . . It even gives Massachusetts a good name."

And yet, the California legislature continues arranging the deck chairs. Texas and second-ranked Florida have the highest migration rates in the nation for 2001 through 2009. California has lost 1.5 million people over the same period. On the bright side, by some "measures, it remains by far the strongest magnet for venture capital investment."

"A third of U.S. welfare recipients live in California, the report noted. High state taxes and bundles of red tape make operating a business in the state unaffordable to many companies, critics say. ¶Last year, 254 California companies moved some or all of their work and jobs elsewhere -- 26% more than 2010."

What can Owners do until there is a loosening of the noose around business and manufactured housing? It does not appear that the flagrant hostility for business and abuse of property rights in the legislature and courts will end any time soon. Not until there is a "teachable moment" born of some catastrophic event, anyway. Is it time for community owners to reconsider the strategy of allowing for co-signing and guaranties to secure sufficient credit-worthiness to qualify prospective homeowners? How else can you deal with 48th place in workforce quality?

Why Mobilehome Sellers May Wish to Reconsider Guarantees for Borrowers Performance.

By Terry R. Dowdall, Esq.

Upshot: The need for innovation to fill spaces, sell homes and qualify purchasers is urgent. Lending requires gold-plated purchasers, shipments of homes to California is virtually non existent, the unemployment rate in many areas is staggering. One answer is to control spaces and rent out the mobilehome. This alternative is even more attractive because in most areas, the rent control laws apply only to the space, not also the mobilehome which is owned by a different party. For some owners, the rental of the mobilehomes, despite significant revenue gains, is a different business. And with attendant risks not worth the effort. For these owners, attracting qualified buyers is a challenge when even condominiums are competitively priced.

Another method for borderline prospective homeowners. A guarantee is the agreement to assume the financial obligation of another party. A guarantor can shore up a borderline credit application and put a purchaser in the home. It depends on the guarantor

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[7] http://chiefexecutive.net/california-is-the-worst-state-for-business-2012 The survey considered responses from 650 business leaders, who graded states on factors such as taxes, regulations, living environment and more.

[8] http://chiefexecutive.net/watching-florida

and the long term objectives of the owner. Staying readily in range to be sued if necessary and the applicant's ability to pay rent are keys. On the flip side, once allowed, the practice must be allowed for all applicants. Clear guidelines and procedures can alleviate any misunderstandings or confusion. A recent case highlights the powers of a guaranty and enforcement. As demonstrated here, there is not much formality required in order to establish an enforceable guaranty and the guaranty adds protections in case of debtor's misfortunes and protections, such as bankruptcy and anti-deficiency laws.

A borrower obtained a mortgage from a lender. Another person guaranteed payment by signing the loan documents as "Guarantor," including a declaration that his obligation as guarantor was to pay off the loan should the borrower default.

As might be expected, the borrower defaulted. The lender demanded that the guarantor pay. The guarantor sought to be released from any obligation to pay the borrower's debt, claiming the agreement was not worded to constitute a guarantee, but that of a demand note (the language was consistent with a demand note).

The court held that the guarantor was responsible for the debt since the contract was agreed upon by both parties to be a guarantee, not a demand note, at the time of its formation.

The anti-deficiency laws (which protect a borrower against a deficiency judgment) do not provide the same protection to the guarantor on a mortgage debt. A guarantor is held to more stringent requirements to make good on debts, reasoned the court, else there is no inducement to a lender to make an otherwise higher risk loan.

A guarantor is responsible despite the misfortunes of the debtor. This is superior to a co-sign situation, in which the other party takes on the duties, co-extensively, with the primary debtor. Also, the guarantor can be subject to enforcement effort simultaneously with the debtor with properly drafted agreeements.

No Liability for Disclosing Sex Offender

By Terry R. Dowdall, Esq.

▌ *Upshot:* A tenant may make truthful disclosures to potential purchasers without liability, even concerning nearby sex offenders.

▌ *Facts:* An owner of residential rental property leased it to two tenants. Cooper was also a real estate agent. Landlord and owner sought to sell the house and entered in to a purchase agreement with a buyer for the sale of the property. Cooper informed the buyer of the existence of a registered sex offender living nearby. The buyer canceled the purchase as a result of the disclosure. The owner incurred damages by reason of the cancelled sale.

Cooper (the tenant) wins. In June 2007, after seeing police officers "raid" the offender's house, Cooper expressed concern about it to the landlord/owner, who said she was selling the house but did not intend to disclose that the offender lived nearby because she thought it would make the house unsellable. Cooper spoke to the prospective buyer's agent, who informed him that the buyer might have children. Because of the risk to children posed by a registered offender living nearby, Cooper "discussed" Megan's Law and the duty of a real property seller to disclose information about real property, then advised of registered offender across the street.

▌ *Holding:* Cooper claimed that revealing the sex offender was protected conduct since the location of a registered sex offender is public information of concern to property owners. The court held the tenant was protected. While park owners are not permitted to use the fact of registration on the Megan's Law website as a factor in approval or disapproval of an applicant, a later disclosure for proper purposes is permissible. The court stated that the tenant's conversation with the buyer's agent was closely and directly related to specific issues of great interest to the general public.

Based on "[t]he laws concerning the collection and dissemination of information about registered offenders; and the Legislature's expressions of intent in enacting those laws, we have no difficulty concluding that . . . Cooper (the tenant) satisfied his burden to show that his disclosure and expression of intent to disclose were taken in furtherance of his right of free speech in connection with an issue of "widespread, public interest."

▌ Person to be Protected. Disclosure to protect a persons at risk is also permissible. But how direct does the identification of the person to be protected need to be?

The court stated that the landlord/owner's definition was too much: ("We also reject [landlord/owner's] claim that in the absence of a specific, identifiable person who is in fact at risk, the disclosure of information, even if ostensibly for the purpose of protection, is nevertheless unauthorized. We doubt the Legislature intended such a narrow and cramped interpretation because the purpose of the registration law and the blanket dissemination of registration information through the ML Web site is to facilitate and enhance the protection and safety of those living in proximity to registered offenders."

Hence, a requirement that there must exist a "specific, identifiable person at risk" would limit, rather than promote, the purpose of the law. Moreover, such a requirement would not necessarily prevent the harassment of registered offenders from misuse of information for the unauthorized purposes enumerated in the statute.

"In our view, the statute authorizes disclosure not only when one provides the information to a mother who is standing in front of her house with a small child in her arms but also where one provides information with a reasonable and good faith belief that doing

so will help protect another person and intending that the information do so."

What Can We Learn? We may not use Megan's Law website registration as a reason to deny employment or tenancy. In a mobilehome park, it is clear that such persons are a de facto protected class who may not suffer discrimination by an owner in the application for tenancy. On the other hand, this case reflects that disclosure in some circumstances is not impermissible. While the best strategy is to seek out local law enforcement to make disclosures of sex offenders in a community, the issue of non-disclosure by the park owner may raise liability concerns due to the possibility that the sex offender may be deemed a foreseeable risk of harm to others. This tight-rope is a difficult one for the management to walk. It is strongly advised that in such situations, the individual facts of the matter be brought to the attention of local law enforcement. The registered sex offender has also been deemed fit to be in general society by applicable government agencies. Certain acts or omissions in respect to the offender may also go too far and rise to the possibility of claims against management. Consultation with your counsel is also strongly suggested to do the best you can to get it right.

HUD Awards $4.3 Million to Combat Housing Discrimination in California

By: Terry R. Dowdall, Esq.

▮ *Upshot:* HUD has awarded grants to enforce housing laws and seek out discrimination. Expect more testers, claims, investigations.

▮ *Facts:* HUD has awarded $4.3 million to 11 fair housing organizations to pursue fair housing violators. The money will be used to enforce the Fair Housing Act through investigation and testing of alleged discriminatory practices. This will lead to prosecutions, and settlement ("conciliation agreements") including the ususal educational classes and commitments also paid to the housing agencies.

It is important to know the FHA and to follow it. Period.

● Watch advertising (if in English in a Spanish-Speaking area, be sure to run the ad in the Spanish Speaking papers too).

● Watch for applications for tenancy from marginal applicants in protected classes, then a subsequent application with sterling credit from a Caucasian, followed by another marginal application by protected class members. Take the first acceptable application always. Do not wait to take the most qualified for tenancy. Do not make notes on the application referring to protected class status of the applicant. Do not predict whether the application is acceptable or not.

● Watch for telephone calls inquiring about rentals or tenancy. Do not get into any specific discussion regarding the tenancy application requirements. It is best to have a set statement for use in respnding to telephone inquiries so that the same information is provided every single time a call is received.

● DO provide applications for tenancy even when you do not believe the applicant is qualified. You never know until you have a written submission.

● DO have application qualification criteria in writing. DO have a fair housing policy posted.

● Obtain CASp inspections for your properties. Watch for the WMA Reporter this month, in which our office provides an article in depth about the ADA and FHAA as to modifications and reasonable accommodations.

HUD is awarding FHIP grants to the following agencies in California.

California Greater Bakersfield Legal Assistance, Inc. (GBLA) Bakersfield	$312,846.00
Fair Housing Council of Central California Fresno	$259,034.00
Southern California Housing Rights Center Los Angeles	$324,980.00
Greater Napa Fair Housing Center Napa	$309,000.00
Bay Area Legal Aid Oakland	$325,000.00
Housing and Economic Rights Advocates (HERA) Oakland	$168,261.00
Inland Mediation Board Rancho Cucamonga	$650,000.00
Inland Mediation Board Rancho Cucamonga	$125,000.00
Fair Housing Council of Riverside County, Inc. Riverside	$284,894.00
Fair Housing Council of Riverside County, Inc. Riverside	$125,000.00
California Rural Legal Assistance, Inc. San Francisco	$325,000.00

California Rural Legal Assistance, Inc. San Francisco		$325,000.00
Fair Housing of Marin San Rafael		$277,452.00
Fair Housing of Marin San Rafael		$324,997.00
Orange County Fair Housing Council, Inc. Santa Ana		$198,833.00
	TOTAL	$4,335,297.00

The Continuing Legacy of *United States v. Plaza Estates:* Summer Play in Streets Cause Death

By: Terry R. Dowdall, Esq.

Upshot: It is summer and kids are at play. Under the *Plaza*[9] decision, it is illegal to require the supervision of children, or limit their access at all hours to common facilities of the park. Such restrictions violate familial status rights of the residents in an all age community (note this rule does not apply to older persons parks).

Federal Law: Kids (under 18) are allowed to play in the streets, and do so unaccompanied by parents or guardians. It is for the parents to decide the level of proficiency of their children. The parents decide when and under what circumstances children are permitted to be outside, in the streets and in common areas. Management may not second guess the parents, and may not stop use of streets for play or recreation.

The Net Result Every Summer of Every Year: The tragic deaths and injury of small children as a result of the inability of management to regulate use of narrow streets used by speeding cars, where small children cannot be seen by even careful drivers, is the legacy of the *Plaza* decision. Reason was cast to the wind in this decision, by disallowing even a modicum of control and regulation for the safety of children. Hence just this past month, we have two sad stories to report.

Fremont Tribune: "A 2-year-old Fremont boy died from his injuries after being run over by a pickup truck. . . Fremont Police Interim Chief Jeff Elliott said 2-year-old Jorge Avalos Jr. was killed in the accident, which occurred shortly after 3:30 p.m. at a trailer court at 1015 N. Pierce St. The driver of the pickup was the boy's father, 36-year-old Jorge Avalos Sr. of Fremont. ¶Elliott said Jorge Avalos Sr. was pulling his 2004 Dodge Ram 1500 forward to leave the residence and was not able to see his son, who was in the street. The young boy was run over and sustained injuries to his head. ¶Elliott said the boy was transported to Fremont Area Medical Center, where he was pronounced dead shortly after 4 p.m."[10]

KTVB.COM, June 18, 2012 at 10:44 AM: "Driver hits 4-year-old boy in trailer park. Police say a four-year-old boy is in stable condition after being hit by a pickup on Saturday at a mobile home park in Mountain Home. Police and rescuers say the young boy was injured after he reportedly ran in front of a 35-year-old woman's pickup truck around 12 p.m.. Sgt. Rick Viola told KTVB that after the woman hit the child, she then immediately exited her vehicle to see what had happened. . .It's not clear if the woman saw the child or not."

HOA Not Liable for Injuries Resulting from Minor Defects in Common Areas

By: Terry R. Dowdall, Esq.

Upshot: A doctrine well known in tort law and applicable to governmental entities is now extended to the private sector in this case. The trivial defect doctrine, holds that small, minor defects may not be used to pursue legal claims. Especially in "older persons" parks, the minor irregularities in common area walk ways can be a hotbed of liability for "trip and fall" accidents. Management now has a defense against the obviously trumped up claims of the disingenuous. Though the case concerned an HOA in a 'stick-built' development, the legal principles should apply equally to a mobilehome park.

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[9] http://www.dowdalllaw.com/plaza-published-opinion-re-all-age-discrimination-1-19.pdf

[10] http://fremonttribune.com/news/local/child-injured-in-trailer-park-accident/article_d2934352-b59d-11e1-ba31-001a4bcf887a.html#ixzz1xpPhrOSS

Facts: Somerset Gardens is a townhouse development. The townhomes had a cement walkway extending from the driveway to the front door. Homeowner usually entered the townhome, however, through the garage. She explained: *"I had no reason to walk the walkway. It wasn't something that I normally did. I also didn't go out and look at the plants or anything. That was maintained by the homeowners' association."*

One day, she parked in the garage and noticed gardeners working. She decided to discuss a lawn sprinkler problem. She and a gardener subsequently walked across her lawn to discuss the irrigation. After, she walked on the walkway toward the garage. When the gardener made an additional comment, however, she turned to look at him. At that point, her foot caught in a walkway separation. She fell forward on her hands, shoulder, elbow, and right knee. She claims injury, consisting of six surgeries over two and one-half years. She was 63 years old.

The HOA refused to compensate her, claiming no liability for a trivial defect in the common area walkway. Held, the HOA is not responsible for the medical expenses associated with the injury from tripping on a slight defect in a common area walkway.

The Court said: "It is well settled that a property owner is not liable for damages caused by a minor, trivial, or insignificant defect in his property (e.g., a sidewalk crack less than one-half inch in depth). Persons who maintain walkways—whether public or private—are not required to maintain them in absolutely perfect condition." The duty of care imposed on a property owner, even one with actual notice, does not require the repair of minor defects.

Other cases have determined that a raised edge of three-fourths inch trivial as a matter of law; and ranging from three-fourths inch to one and one-half inches.

The court concluded, "Moreover, the duty of care imposed on a property owner, even one with actual notice of a defect, does not require the repair of minor or trivial defects. Minor defects such as the crack in the plaintiff's walkway inevitably occur, and the continued existence of such cracks without warning or repair is not unreasonable. Thus, the defendant is not liable for this accident irrespective of the question whether he had notice of the condition."

What can we learn? It is very important to maintain property to avoid claims of failure to maintain. But property management is an imperfect proposition at best. As the court notes, cracks and imperfections are inevitable. And every person has a duty to use some modicum of care to look and watch where one is going. The standards to keep such claims out of court have been limited to trivial defects. More than an inch difference in a walking path opens management to a risk of liability. Fair Warning.

Please feel free to contact Terry R. Dowdall, Esq. for further information and questions.