

**Advocating Against
Displacement:
Using state and federal laws
to protect private and public
housing residents**

Pathways to Justice 2012

Practising Law Institute

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Revitalization + Displacement = Relocation Benefits

- Revitalization & Gentrification
- Effects on the low-income community
- First Goal: Preventing displacement
- Second Goal: Enforcing relocation laws

Applicable anti-displacement and relocation laws

■ Federal

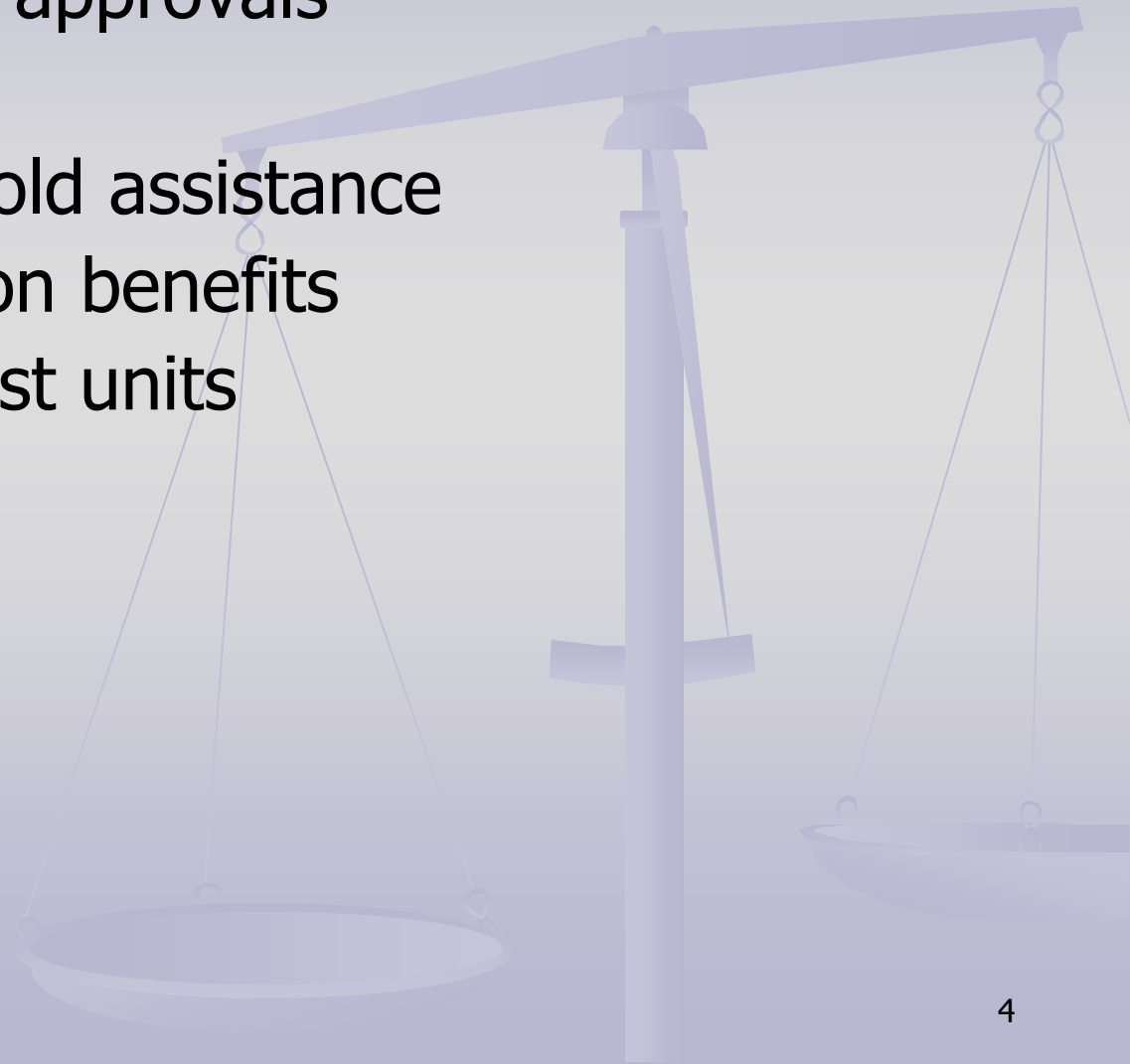
- Uniform Relocation Assistance Act (\$)
- Housing & Community Development Act (\$ and production)
- Demolition/disposition of Public Housing
- Rental Assistance Demonstration

■ State

- California Relocation Assistance Act (\$)
- California Redevelopment Law (\$ and production)
- Cal. Health & Safety Code (discretionary \$)
- Other laws

Displacement Is Costly

- Local government approvals
- Notice procedures
- Individual household assistance
- Monetary relocation benefits
- Replacement of lost units
- Sanctions
 - Appeals
 - Litigation
 - HUD audits



With regard to private housing, which of the following is true?

1. If the laws are applicable, the displaced person can choose which law (federal, state or local) to invoke.
2. The Uniform Relocation Act was enacted by Congress in 1970 and specifically preempts all state and local laws.
3. The Uniform Relocation Act is intended to provide the maximum benefits and therefore, preempts any state or local law

Choice of Benefits



- Cumulative benefits – in addition to any other federal, state or local law
- Choice between state & federal of highest level of benefits
- Choice between URA and §104(d)

Which law applies?



- ✓ Who is entitled to benefits?
- ✓ Who is doing the displacement?
- ✓ What is the activity?
- ✓ Where is the money coming from?
- ✓ Where is the activity located?

Who is entitled to benefits?

- Homeowners & Tenants
- Residents before, “at” or after Initiation of Negotiations (ION)
- Residents who receive:
 - Improper notices
 - Improper relocation “assistance” or “payoffs”
 - Threatened with eviction or legal action
 - *Temporary* relocation beyond 1 year

Who is doing the displacement?

- Public entity *or*
- Any entity acting on behalf of the public entity
 - Consultant?
 - Private Developer?
 - Police Department?
 - Real Estate Agent?
 - *Non-profit* Developer

What is the activity?

Where is the \$\$ coming from?


■ Test #1: Uniform Relocation Act

Is the unit subject to acquisition, disposition or demolition?	Yes
Is it a single activity or a series of activities?	Yes
Is the "project" federally assisted?	Yes
Provide URA assistance?	YES

Test #2: §104(d) of HCDA

Will the unit be demolished or converted?	Yes
Are CDBG/HOME/§108/UDAG funds used in <i>project</i> ?	Yes
Is household low or moderate income? (Income below 80% of AMI)	Yes
Provide § 104(d) assistance?	YES

Where is the activity located?

- ✓ State-designated redevelopment area
 - ✓ Neighborhood Revitalization Strategy Areas
 - ✓ Enterprise Communities
 - ✓ Empowerment Zones
 - ✓ Renewal Communities
 - ✓ Rural Housing and Economic Development
 - ✓ Brownfields ED Initiative
 - ✓ Public housing
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Relocation Assistance: Four Elements

1. Relocation Plan
2. Notices & Advisory Services
3. Moving and Related Expenses
4. Comparable Replacement Housing

PRE-DISPLACEMENT ASSISTANCE

Advisory agencies must pre-plan,
provide assistance, including
comparable housing *before*
residents can be forced to move

Relocation Plan

- Projected dates of displacement
- Analysis of housing needs and resources
- Relocation Assistance to be provided
- Available funds for relocation
- Temporary relocation plans
- Last resort housing plan
- Other criteria

Notices and Advisory Services

- Relocation Plan
- *Many* different kinds of notice
 - Must be adequate
 - Must comply with legal requirements
- *Meaningful* Advisory Services
 - More than just a referral system

Moving Costs and Related Expenses

- ❑ Fixed Moving Expenses
- ❑ Actual Moving Expenses
 - ❑ Transportation
 - ❑ Storage
 - ❑ Insurance
 - ❑ Packing and unpacking
 - ❑ Replacement value Disconnection and reconnection costs
- ❑ Security deposits & other related expenses

“Comparable Replacement Unit”

- Decent, safe and sanitary
- Similar in size, function and type and quality of construction
- Affordable @ 30% of income for 42 to 60 months
- Available *Now*

Last Resort Housing

- Statutory Limits
\$22,500 and \$5,250
- Must *Exceed* Statutory Limits When Decent, Safe and Sanitary Comparable Replacement Housing is not available on a timely basis
- Last Resort Housing Options



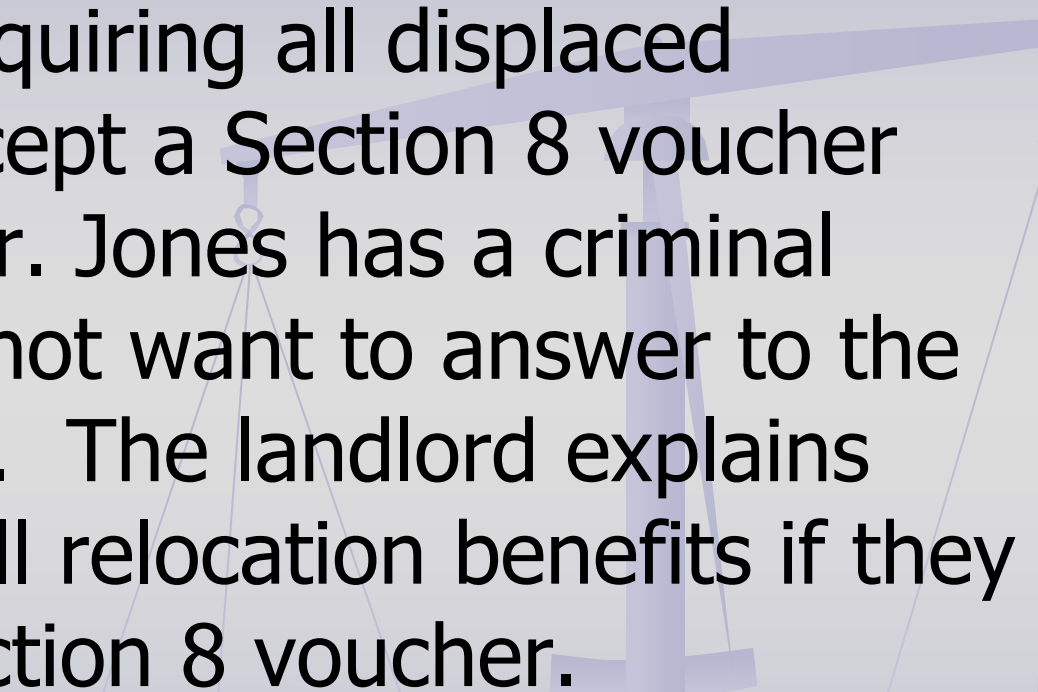
Replacement Housing *Payment (RHP)*

- *Goal:* Achieve comparable housing with long-term affordability
 - *Homeowner:* Difference between cost of old and replacement home
 - *Tenant:* RHP paid for 42 (or 60) months
 - Can be used for a down payment
 - Subject to last resort housing
 - Calculate *each* regulatory formula!!

Displaced Tenant Household

Mr. and Mrs. Jones have three children. Mr. Jones was recently injured and it is unlikely he will be able to return to work. Mrs. Jones makes \$900 per month in a bakery. The Jones family lives in a one bedroom apartment. Their building is slated for demolition with the use of HUD CDBG funds. Their landlord has found them a comparable two bedroom unit that rents for \$1,800.

Using the worksheet, calculate the amount of benefits that are owed under (1) the URA and (2) § 104(d).



The landlord is requiring all displaced households to accept a Section 8 voucher under §104(d). Mr. Jones has a criminal history and does not want to answer to the housing authority. The landlord explains that they forfeit all relocation benefits if they don't take the Section 8 voucher.

Question 1: The Jones cannot refuse to take the Section 8: True or False

Question 2: You find out Mr. and Mrs. Jones are undocumented. As a result, they are not eligible for any benefits:
True or False

Section 104(d) Replacement Requirements

- 1:1 Replacement
- Vacant or Substandard
- Affordability restrictions
- Enforceability
- HUD Waiver



The Role of HUD



- Guidance for Region IX HUD grantees
 1. URA and Section 104(d)
 2. HUD Handbook 1378
- Review of Appeals
- Monitoring
- Corrective Action(s)
- Hand-out (Definitions/Programs/ION)
- How we can work together.
- www.hud.gov/relocation

Community Redevelopment Law (H&S Code §33413)

- Replacement housing
 - Removal of lower income housing as part of redevelopment project
 - Replacement Housing Plan (pre-destruction)
 - 1:1 replacement replaced w/in 4 years
- Affordability level and deed restrictions
- Preference for displaced persons

Common Issues



- SRO's and Motels
- Mobile Home Owners
- Conditions of Eligibility
- Hard to House Occupants
- All Inclusive Settlement Agreements & Waivers
- Code Enforcement
- Public housing demolition & disposition

Relocation & Public Housing

- Units of Public Housing US 1.1 M, CA 36,000
- 10,000-11,000 units lost every year
- Units are threatened due to age of stock and inadequate funding
- PHA options: continue to operate with available funds, propose demolition/disposition or convert to Rental Assistance Demonstration (RAD) or other conversions

Demolition/Disposition (D/D) and Relocation

- PHA D/D in most cases not subject to URA exceptions if eminent domain, mixed finance, HOPE VI, required or voluntary conversions.
- Also exception if subject to Section 104(d) triggered by CDBG or HOME funding
- BUT: Relocation obligations of D/D statute are similar to URA

D/D Application and Relocation Plan: form HUD 52860

- Must include relocation plan information
- Date **after** HUD approval of D/D that relocation begins
- If units are vacant, explain why, when and where tenants relocated
 - Units may not be vacated in anticipation of D/D approval, H & S exception
 - Full service for residents until HUD approval, but may consolidate

D/D Application and Relocation Plan: form HUD 52860

- Offered comparable housing = in areas “generally not less desirable,” meet HQS
 - Comparable = May be PH or Vouchers
- Description of how PHA will provide counseling and advising services
- Estimated costs of moving and counseling/advising services
 - Actual and reasonable may include cost of security and utility deposits
- Source of funds for moving expense

D/D Application and Relocation Plan: form HUD 52860

- Relocation timetable as prescribed in § 970.21; and
- A certification that the PHA created a Relocation Plan on file at central office & will comply with the relocation requirements of 24 CFR Part 970
 - Including 90 day notice prior to displacement
- Note: HUD does not approve the Relocation Plan and the D/D application approval is only review it gets.

D/D Application and Relocation Plan

- HUD will reject any D/D application if
- Inconsistent with PHA annual Plan
- If does not contain the relocation plan items listed above

(RAD) Rental Assistance Demonstration & Relocation

- A demonstration to permit PHA to compete to convert voluntarily Public Housing developments to Project-Based Voucher (PBV) or Project-Based Rental Assistance (PBRA)
 - Up to 60,000 units; applications accepted beginning 30 days after rules are final until 9/30/2015 or 60,000 whichever first.

RAD Tenant Protections re: Displacement and Relocation

- Preservation strategy
- No rescreening due to conversion
- Right of return if temporarily relocated for rehab or construction
- URA applies post conversion
- BUT: de minimis loss of units (what if occupied?); PBV limited to 50% for family units converted without supportive services; unclear about URA preconversion

Keeping track of what is happening (PHA Plan)

- PHA Annual Plan-public notice and comment
 - Before submitting a D/D application, must describe in PHA Plan and any plans for D/D
 - RAD plan to convert substantial amendment to PHA plan
- Problem: PHAs list in PHA Plan developments for proposed D/D without any plan of action as a holding pattern (may be a future problem for RAD)

Keeping track (Notice to Residents)

- D/D Notice to residents
 - Residents of the development, the RAB and any resident council and public officials must be consulted on D/D application
 - Including LEP and accessible communications
- RAD: must notify and have two meetings with residents prior to submitting RAD application

Keeping track of what is happening (SAC)

- Special Applications Center (SAC) lists PHAs that have submitted D/D applications
- Problem: SAC list created after submission of application which requires tenant consultation, amendment to PHA Plan and relocation planning. Thus may be very late in the process.



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