



## Legislative Update

### *Mobile Home Landlord Tenant Act (MHLTA)*

By Ishbel Dicken, Staff Attorney, Columbia Legal Services

Approximately 6 – 8 % of the state’s population own their own homes but rent the land under them and reside in a manufactured housing community (mobile home park) of which there are between 1800 – 2000 in Washington.

The Manufactured/mobile Home Landlord Tenant Act (MHLTA) has been in existence since 1977 as a result of the Legislature acknowledging the uniqueness of living in a manufactured housing community.

While the MHLTA (RCW 59.20 *et seq*) has been amended over time, there has never been any attempt on the part of the Legislature to guarantee enforcement of the act. Homeowners unable to hire attorneys to challenge violations of the statute have had to “shut up and put up” with egregious behaviors because it is expensive and virtually impossible to move a manufactured home once it has been installed in a community. Unfortunately, some landlords have been able to take advantage of the inequity in the situation and have violated the MHLTA with impunity.

This is about to change. 2ESHB 1461 was signed by the Governor on Friday May 11, 2007. This bill requires the Attorney General’s office to accept complaints about violations of the MHLTA, attempt mediation between the parties, establish a timeframe for compliance and issue fines of up to \$250/day for continued non-compliance. Complaints can be made by

calling 866-924-6458 or online at [www.atg.wa.gov/fileacomplaint.aspx](http://www.atg.wa.gov/fileacomplaint.aspx). Either party can appeal the AG’s decision to an Administrative Law Judge, and appeal that decision to Superior Court.

2ESHB 1461 requires all community owners to register annually with the Dept. of Licensing and to pay a \$10/space fee of which no more than \$5 can be paid by the homeowner. The income generated from this annual fee (approximately \$400,000) will help pay for additional staff within the AG’s office needed to manage this new program.

The other big issue facing homeowners living in manufactured housing communities is closure of the communities. Forty communities have been given closure notices in the past 18 months resulting in the displacement of more than 1400 households. The vast majority of these homeowners are unable to relocate their homes to other sites, either because no spaces are available or the homes are too old to be moved. As a result most homeowners are demolishing their homes and swelling the ranks of wait lists for subsidized housing.

The State does have a relocation assistance fund (RCW 59.21) paid for by a \$100 transfer of title fee when homeowners, living in manufactured housing communities, sell their homes.

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# Substantive Law and Practice Tips

## Reconsiderations and Revisions

By Merf Ehman, HJP Managing Attorney

Many tenants who lose at an eviction show cause hearing want to appeal their case. The tenants have several options, including filing a reconsideration, or revision. Some tenants want to appeal so they have more time to move. Filing an appeal does not automatically prevent physical eviction by the Sherriff. An appeal can take a significant amount of time, especially if the tenant proceeds pro se. In addition, there are few pro bono resources for a tenant seeking an appeal. Tenants must seriously consider the strength of their case before proceeding. If they go forward with the appeal and the case has no merit, the court can sanction the tenant and award attorney fees to the opposing party. As an HJP attorney, your role is to help the tenant determine if his or her case has legal merit, which type of appeal to undertake, and explain how appeals process works.

A motion for reconsideration is made to the same commissioner who heard the original case. Generally, no there is no oral argument. A reconsideration is most appropriate where there is new information about the case that was unavailable at the time of the show cause hearing. A motion for revision is made to a Superior Court Judge. The motion is made on only the facts that were before the commissioner. The deadline for both proceedings is ten days. The chart below sets out the differences between a reconsideration and a revision. Please use this chart to assist you in advising clients or if you decide to volunteer to do revision or reconsideration for a client, but do not distribute to clients as it is not intended as a pro se assistance packet. If you have questions please feel free to call me at 206-267-7019 or e-mail me at merfe@kcba.org.

	RECONSIDERATION	REVISION
Legal Authority	<i>CR 59; KCLR 7(b)(5).</i>	<i>RCW 2.24.050; KCLR 7(b)(7)</i>
Appeal deadline	<i>10 calendar days KCLR 7(b)(5)</i>	<i>10 calendar days KCLR 7(b)(7)</i>
Service deadline	<i>Service should be attempted within 10 calendar days (e.g., could be mailed on the 10<sup>th</sup> day). A Return of Service or Certificate of Mailing/Personal Delivery should be filed with the court.</i>	<i>10 Calendar Days (7 days if mailed) A Return of Service or Certificate of Mailing/Personal Delivery should be filed with the court.</i>
Automatic stay?	<i>NO</i>	<i>NO</i>
Stay available?	<i>There is no mechanism in the statutes or rules for a stay of the writ of restitution.</i>	<i>YES, but you must file a separate motion after filing the revision. The stay motion goes to either the assigned judge or to Chief Civil Judge for unassigned cases. KCLR 7(b)(B)(iv). If the judge denies the stay motion then the tenant will probably be evicted before the revision hearing. If you win at the revision hearing you can ask that the tenant be reinstated.</i>
Made to Commissioner who made original decision?	<i>Yes</i>	<i>No</i>
Made to a Superior Court Judge?	<i>No, unless a judge made the original ruling.</i>	<i>Yes.</i>
New evidence permitted?	<i>Yes.</i>	<i>No.</i>

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## *Reconsiderations and Revisions*

	RECONSIDERATION	REVISION
Permissible grounds?	<p>(1) <i>Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial.</i></p> <p>(2) <i>Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;</i></p> <p>(3) <i>Accident or surprise which ordinary prudence could not have guarded against;</i></p> <p>(4) <i>Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;</i></p> <p>(5) <i>Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;</i></p> <p>(6) <i>Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;</i></p> <p>(7) <i>That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;</i></p> <p>(8) <i>Error in law occurring at the trial and objected to at the time by the party making the application; or</i></p> <p>(9) <i>That substantial justice has not been done.</i></p>	<p><i>Unlike reconsideration, no specific grounds are required. A revision hearing is essentially a hearing de novo. A “<b>hearing de novo</b>” is defined as “trying matter anew the same as if it had not been heard before and as if no decision had been previously rendered.”</i></p> <p><i>Black’s Law Dictionary, Sixth Ed., West Publishing Co., 1990.</i></p>

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## Reconsiderations and Revisions

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	RECONSIDERATION	REVISION
What must be included in the motion and submitted to the court?	Set forth the specific grounds for the reconsideration Relief requested Statement of facts Statement of issues Evidence relied on Authority LR7(b)(4)	1) Relief requested 2) Statement of facts 3) Statement of issues 4) Evidence relied on 5) Authority — LR7(b)(4) 6) Identify the error claimed
Response from opposing party?	No, unless asked for by the court. Opposing party then has 2 days to reply.	Yes. Noon 2 court days before hearing KCLR 7(b)(3)(C)
Reply deadline?	Reply permitted only if response made. Due 2 court days after service of response	Noon 1 court day before hearing. KCLR 7(b)(3)(D)
Oral argument?	NO.	YES.
Working papers required?	Yes. Include stamped envelopes addressed to each party. KCLR 7(b)(5)	Yes. Moving party must send entire record from prior hearing to judge. You must submit all materials originally submitted to the commissioner including documents and pleadings in the court file and a copy of the electronic recording of the hearing. KCLR 7(b)(7)(B)(iii). You can request the recording (audio or video) at the clerks office. Deliver to judge at least 5 days before hearing. KCLR 7(b)(3) (7)
Scheduling	At least 6 court days. KCLR 7(A). Should be scheduled within 30 days. <u>Commissioners' orders:</u> No hearing time needed. On Note for Motion, write "without oral argument." Do not check a box for a hearing time. <u>Judge's orders:</u> Use Note for Motion, note motion without oral argument, at least 6 court days after service.	A hearing should be set not less than 6 court days and not more than 21 calendar days from service of motion (unless court orders otherwise). Call judge to schedule before filing. If cannot reach judge in time, set a date and judge will reschedule. If it is in front of the Chief Civil Judge, the time for a revision motion is listed on the note for motion form – currently 1:30 p.m. Tues./Wed. in King County.

# Substantive Law and Practice Tips

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## *Advising Section 8 Voucher Tenants at HJP*

By Emily Whitmore, HJP Law Clerk

Section 8 tenants facing eviction are in a particularly delicate situation. In addition to losing their homes, Section 8 tenants face termination of their Section 8 subsidy. For many tenants, the Section 8 subsidy provides their only access to decent, affordable housing. To effectively advise Section 8 voucher tenants, HJP attorneys should familiarize themselves with the special rights and obligations of tenants under the Section 8 voucher program. This article provides an overview of the voucher program, along with some considerations to bear in mind when advising Section 8 clients facing eviction.

### **Overview of the Section 8 Program**

In 1974, Congress enacted Section 8 as the primary vehicle for the federal government's efforts to provide an adequate supply of low-income housing. There are currently four types of housing assistance provided by the Section 8 program: tenant-based rental assistance, project-based rental assistance, homeownership assistance, and down payment assistance. The voucher program, which provides tenant-based rental assistance, has been HUD's primary low-income housing program since 1981.

The administrative structure of the tenant-based Section 8 voucher program is as follows: HUD establishes the federal requirements for the program (found in Part 24 of the U.S. Code of Federal Regulations) and allocates funds into different housing markets by inviting local public housing agencies (PHAs) to apply for them as they are appropriated by Congress. Every PHA is responsible for administering its own Section 8 program locally and has substantial discretion under HUD regulations to establish local policies affecting tenants' eligibility requirements, rights, and obligations under its program.

In every Section 8 voucher program, the PHA secures funds from HUD and then distributes those funds in the form of rental housing subsidies to private landlords on behalf of low-income households. Generally, HUD pays the difference between the rent charged by a landlord (called contract rent) and the household's rental contribution (usually about 30 percent of the household's income adjusted for family size). The eligible household receives a Section 8 rental voucher to use in a housing unit of their choice. If the household moves to another unit, the voucher can be used in the new unit.

### **Relationships in the Section 8 Program**

There are three parties involved in every Section 8 subsidized tenancy: the assisted household, the landlord, and the PHA. After meeting the PHA's eligibility requirements and securing a voucher, tenants receiving assistance under the Section 8 voucher program

must locate a unit in the private market that meets federal housing quality standards for decent, safe, and sanitary housing. When the applicant finds both a suitable unit and a willing landlord, the landlord and the tenant ask the PHA to approve the leasing of the unit under the program. If everything is approved, the landlord and the PHA enter into a Housing Assistance Payments (HAP) contract. The HAP contract obligates the PHA to pay the landlord the difference between the household's contribution (determined by the PHA) and the approved contract rent for the unit. It also obligates the landlord to maintain the unit so that it meets PHA standards. Once in the program, the assisted household must meet all family obligations mandated by the PHA, including the duty to report changes in family composition or income and the duty to notify the PHA if the household receives an eviction notice. The landlord and the tenant enter into their own separate rental agreement.

HJP clients will be in programs with the King County Housing Authority, the Seattle Housing Authority, or the Renton Housing Authority. Because each PHA has the discretion to set its own policies in administering its Section 8 program, volunteer attorneys assisting Section 8 voucher tenants should consult the relevant PHA's administrative plan (available at HJP) in order to determine their client's rights and obligations under that PHA's section 8 program.

### **Evictions and Terminations**

Under the Section 8 voucher program, leases usually run for an initial term of one year unless shorter terms are specifically approved by the PHA. A landlord under contract with any PHA may not evict a tenant during the first year of the lease term without good cause. Good cause must be related to a tenant's behavior and may include serious or repeated violations of the lease, involvement in criminal activity, or violation of federal, state, or local laws that impose obligations on tenants. After the initial lease term, a landlord may be able to terminate a Section 8 lease without cause unless a local law, such as Seattle's Just Cause Eviction Ordinance, provides differently. A landlord may not evict a tenant due to a PHA's refusal to make payment under their HAP contract with the landlord if the landlord fails to make repairs or fails to pass a PHA housing inspection.

The termination issue may arise if a tenant fails to meet the family obligations mandated by the PHA. Once in the Section 8 program, the assisted household must meet all family obligations under the program in order to retain eligibility. Family obligations vary under different Section 8 programs, but some common ones are a duty to report changes in family composition or income, the duty to notify the PHA if the household receives an eviction notice, the duty to provide the PHA or HUD with any information requested as part of the annual recertification process, and the duty to provide the landlord and the PHA with proper legal notice before moving or terminating a lease agree-

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## *Advising Section 8 Voucher Tenants at HJP*

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ment. A list of the family obligations mandated by a PHA can be found in that PHA's administrative plan.

The termination issue may also arise when a landlord attempts to evict a tenant for non-payment of rent or other lease violations. While a landlord's commencement of the eviction process alone is not grounds to terminate the tenant's eligibility, HUD regulations allow a PHA to terminate Section 8 voucher assistance if the tenant is evicted or commits a serious lease violation. Therefore, HJP attorneys assisting Section 8 tenants should evaluate each case to determine whether it is in the best interest of the client to attempt to reach an agreement with the landlord for a mutual termination of the lease such that the tenant might not prevent the loss of her Section 8 subsidy. In cases where it is evident the tenant is very likely to be evicted and will then face a voucher termination by the PHA, volunteer attorneys should explore the possibility of a mutual lease rescission and payment arrangement with the landlord. If the tenant is unable to come to an agreement with the landlord and must contest the eviction at the Show Cause hearing, the Housing Authority must continue to make the Housing Assistance Payments to the landlord until the eviction becomes final by court order and the tenant has exhausted her appeal rights or voluntarily moves.

A PHA may also terminate assistance at any time if a tenant owes that PHA or another PHA any money. The PHA, at its discretion, may offer the tenant an agreement to pay the amounts owed; therefore, if there is a vacancy or damage claim against the tenant under an outstanding contract with a PHA, that tenant should make every effort to negotiate a reasonable repayment agreement. Because breaking a repayment agreement with a PHA is also grounds to terminate assistance, if a tenant anticipates missing a payment under a repayment agreement, she should contact social service agencies or family for financial assistance or attempt to

make alternative arrangements with the PHA.

### **The Right to an Informal Hearing**

HUD regulations mandate that in the event a tenant's Section 8 subsidy is terminated, a PHA may not stop making housing assistance payments to the landlord under an outstanding contract before the tenant has had the opportunity to contest the decision at an informal hearing. The PHA must promptly notify the tenant in writing of its decision to terminate the subsidy; that notification must include an explanation of the basis for the PHA's decision and must alert the tenant of her right to request an informal hearing (and the deadline for requesting such a hearing). A tenant who receives a termination notice from a PHA should respond to the notification by requesting a hearing in writing, and should keep a copy of the written request for her records. If a tenant fails to request a hearing before the deadline given by the PHA, she will waive her right to contest the decision.

A tenant facing termination has the right to examine any PHA documents relevant to the hearing and may obtain counsel to represent her at the hearing at her own expense. Local policies regarding the informal hearing can be found in each PHA's administrative plan. If a client comes to HJP with a termination notice, HJP attorneys can review the notice and advise the tenant about her hearing rights and how to prepare for the hearing. There is a publication on [Washingtonlawhelp.org](http://Washingtonlawhelp.org) that sets out this information for Section 8 tenants: it is called "Section 8 Certificate and Vouchers: Denial or Termination of Benefits." Tenants interested in obtaining legal assistance for the informal hearing can be referred to the Legal Action Center, the Northwest Justice Project, or to the King County Bar Association's Community Legal Services Intake Line at 206-267-7055.

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## *DPD Code Enforcement and Relocation Assistance*

*By Christine A. Kelly, HJP Rule 9 Law Clerk*

The Seattle Housing and Building Code, SMC 22.200 – .208, promotes the health, safety, and welfare of the general public. To accomplish this goal, the Code places the obligation of compliance on property owners, occupants, and anyone else who is responsible for the condition of a building or premises. When a property owner does not fulfill his or her obligations, tenants have recourse through the Seattle Department of Planning and Development (DPD).

While the Housing and Building Code has many requirements, according to Housing Ordinance Specialist Elizabeth Fisher, some

of the most common violations that DPD addresses are poor conditions in rental housing, violations of the Seattle Just Cause Ordinance, and violations of the Tenant Relocation Assistance Ordinance. The first step in addressing any of these problems is to report the violation to DPD by calling them at 206-615-0808. Tenants who have multiple issues should start with Housing Code complaints to avoid being transferred multiple times.

### **Poor Conditions**

First, a tenant may report the violation(s) to DPD. DPD will then inspect the tenant's premises plus any common areas to which the tenant gives the inspector access. The DPD inspector can give

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## *DPD Code Enforcement and Relocation Assistance*

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the tenant a general idea of any violations. DPD places high priority on emergency situations and will usually inspect the same day as long as the call comes in before 2 p.m. Examples of what DPD considers emergency situations are those in which the tenant has no water or electricity (in the absence of a natural disaster) or a situation where a tenant has received a 24-hour shut off notice for a utility that the landlord has the responsibility to pay.

Medium priority situations are those situations that are significant but do not make the premises uninhabitable. Poor conditions such as leaks and rotting floors are medium priority housing code violations; DPD normally inspects these types of violations within 7 to 10 days. Land use code violations are also medium priority. Commonly reported land use code violations include removal of required off-street parking and unauthorized uses, such as a business in a residential zone. DPD usually inspects land use code violations within 15 days.

The final type of violations DPD inspects are weed complaints. Weed complaints are low priority and are inspected seasonally and as schedules permit.

DPD inspectors will work with tenants to schedule inspections at times when both the inspector and the tenant can be present. While DPD prefers not to inspect without a tenant present, in a situation where it is absolutely impossible for the tenant to be present for the inspection, that tenant can leave a key and a note that explicitly gives DPD permission to inspect in the tenant's absence. The amount of time before an official notice of violation is released depends on the number and type of violations, but they are usually out within two weeks. If a tenant needs a report sooner, that tenant should inform the inspector so that the inspector can make an effort to accommodate that tenant. Some violations of the Housing and Building Code can also trigger the availability of relocation assistance.

If necessary, tenants may also ask inspectors to be present at show cause hearings to testify about the landlord's code violations. An inspector's testimony can help a tenant to show that the conditions exist as the tenant says they do, that the owner had knowledge of the conditions, and who was responsible for the damage (based on the age of the damage, for example). A tenant who wishes to have an inspector testify must subpoena that inspector. Subpoena forms are available in the HJP courthouse offices. If the tenant and not an attorney issues the subpoena it must be signed by the court. For more information on the subpoena process, see CR 45.

### **Just Cause Ordinance (JCO) (SMC 22.206.160 C)**

A tenant who believes that his or her landlord violated the Seattle Just Cause Ordinance can contact DPD. If DPD determines that there is no just cause for eviction, DPD first issues a letter to the landlord requesting that the landlord rescind the eviction notice. In most situations, the landlord complies with this request and the tenant has no further issues. However, when the landlord does not comply, DPD then issues a notice of violation. It is very rare for any landlord not to comply at this point. But, if the landlord still refused to comply, DPD would hand the issue over to the Seattle City Attorney for legal action.

### **Relocation Assistance**

The final common complaint heard by the DPD is violation of the Tenant Relocation Assistance Ordinance. Developers must go through a certain process before they engage in development activity that will displace tenants. The Tenant Relocation Assistance Ordinance addresses tenant displacement in this situation. The Code authorizes four other types of relocation assistance: Emergency Order to Vacate and Close, Land Use Code violations, and Condominium Conversions; these are described in detail below. Since relocation assistance, for Cooperative Conversions, is rarely used, it is not covered in this article. An attorney who needs information about Cooperative Conversions can find the applicable ordinances in SMC 22.902.

### **1. Tenant Relocation Assistance Ordinance (TRAO) (SMC 22.210)**

The Tenant Relocation Assistance Ordinance provides benefits for residential tenants who will be displaced because of development activity. Development activity includes demolition, change of use, substantial rehabilitation, and removal of use restrictions. Benefits are available only to low-income tenants, who are defined by the ordinance as those households with an income no greater than 50 percent of King County median income. Eligible tenants may receive payments up to \$2,829 per household; half of this is paid by the developer, and the other half is paid by the City.

Because TRAO is quite detailed, the DPD has little discretion to waiver from its requirements. Developers who will displace tenants must apply for a Tenant Relocation License before receiving any permit for development activity. When a developer applies for its Tenant Relocation License, DPD will provide the developer with tenant relocation packets that explain the relocation assistance process. The developer must distribute these packets to all tenants. Tenants then have 30 days to respond by applying for relocation assistance. It is very important for ten-

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## *DPD Code Enforcement and Relocation Assistance*

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ants to apply within this 30 day window; a tenant who fails to do so most often loses any chance at relocation assistance. While extensions and appeals are technically available, they are granted only in dire circumstances.

Tenants who can show that they are low income (as defined by the ordinance) will generally be eligible for assistance. There are two main exceptions: First, if a tenant has signed a terminating lease, that tenant will not be eligible for relocation assistance. A terminating lease is one that explicitly states that the tenant shall quit and expire from the rental premises at the end of the lease term. These tenants are ineligible because it is their lease that displaces them, not the development activity. The second exception applies to tenants who moved in with written notification that development activity was going to occur. Because these tenants entered their agreements knowing they would end because of development activity, they, too, are ineligible for relocation assistance.

### **2. Emergency Order to Vacate and Close (SMC 22.206.260, .265)**

When DPD finds that a building, housing unit, or premises is an imminent threat to the health or safety of the occupants or the public, it may issue an emergency order that requires the owner to either restore the premises to a safe condition within a specified time or immediately to vacate and close the premises. When the emergency order requires tenants to vacate and the tenants actually vacate, those tenants may be eligible for relocation assistance if they also meet certain other requirements.

In addition to an order actually requiring the housing unit to be vacated and closed, four other requirements must be met to receive emergency relocation assistance. First, the conditions that create the emergency must have arisen from circumstances within the control of the property owner. Some examples of these conditions are when the property owner fails to perform maintenance that results in the emergency situation, makes affirmative acts that cause the emergency situation, or terminates water or utility services provided by the owner. Second, the conditions that create the emergency cannot have arisen from an act of God or from the affirmative actions of a person or persons beyond the property owner. Third, the conditions that created the emergency cannot have been caused solely by the actions of the tenant. For example, if a fire is caused by a tenant's cooking, emergency assistance is not available. Finally, because emergency assistance is provided for by the Seattle Just Cause Ordinance, DPD maintains that a tenant is eligible for this type of assistance only if that tenant has a month-to-month tenancy; however, one could argue that the ordi-

nance should also apply to other tenancies.

Assuming a tenant meets the above requirements, that tenant will generally be eligible for emergency assistance. Eligibility for this type of relocation assistance is not limited to low-income tenants; however, a tenant's income level is determinative of both the amount of relocation assistance that tenant will receive and when that tenant may receive those funds. A low-income tenant (defined by SMC 22.206.260 as one who earned no more than 50 percent of the median family income) is eligible for emergency relocation assistance up to \$3,321. Any other tenant is eligible for two months' rent. Tenants must apply for emergency assistance within 7 days of the order's compliance date. Generally, tenants cannot receive emergency assistance until the landlord deposits the funds with DPD. Sometimes, if DPD has funds available, low-income tenants can receive their money before the landlord has made the deposit; tenants who are not low-income cannot receive funds early.

### **3. Land Use Code Violations (SMC 22.206.160(C)(1)( I))**

The Seattle Land Use Code sets the maximum number of unrelated people (or mixture of related and unrelated people) who may live together in one dwelling unit at eight. SMC 23.84.016. If there are more than eight people, all of whom are not related to each other, living together, and the owner attempts to reduce the number of residents to the legal limit, tenants are sometimes eligible for relocation assistance. A tenant must meet three requirements to receive this type of assistance. First, the excess number of tenants must have occurred with the knowledge or consent of the owner. Second, the owner must have received a Notice of Violation (NOV) from the DPD. Finally, because relocation assistance for a land use code violation is provided by the Seattle Just Cause Ordinance, DPD maintains that a tenant must be a month-to-month tenant. Landlords will usually negotiate with tenants in this situation rather than pay fines of \$75 per day for the continued code violation. In addition to the above requirements, tenants facing this situation must wait to receive notice from their landlords of the Land Use Code violation. Tenants who move voluntarily will receive no assistance.

Once a tenant has met the eligibility requirements, the amount of assistance that tenant may be eligible to receive is \$2,000 for low-income tenants (up to 50% of King County Median Income) or two months' rent for other tenants. The landlord must give the tenant a 30-day notice and pay the relocation assistance to tenants at least two weeks before the termination of tenancy.

### **4. Condominium Conversions (RCW 64.34, SMC 22.903)**

Relocation assistance for tenants living in apartments that will

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## DPD Code Enforcement and Relocation Assistance

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be converted into condominiums is governed by state law; DPD's role rests solely in income eligibility determinations. State law caps relocation assistance at \$500 and provides it only for those households within 80% of the monthly median income in the Seattle-Everett Standard Metropolitan Statistical Area. Tenants are eligible for conversion assistance if they vacate **after** receiving a 90-day notice notifying them of the conversion. The property owner must pay the tenant relocation assistance on or before the day the tenant vacates the unit. Tenants who opt to purchase the unit are not eligible for condominium-conversion relocation assistance.

### For more information

Attorneys who would like more information about code compliance issues can contact DPD's Housing Ordinance Specialists: Kim at 684-7401 or Jim at 684-7979. DPD also publishes Client Assistance Memos (CAMs) that provide overviews of major issues. These can be found on DPD's website ([www.seattle.gov/dpd](http://www.seattle.gov/dpd)) under the Publications menu. Complaints may also be filed at that website, or by calling 615-0808.

The Housing and Building Maintenance Code can be found in a binder at the Seattle HJP Courthouse office. It is also available on the web at <http://clerk.ci.seattle.wa.us/~public/code1.htm>

### A Comparison of the Major Types of Relocation Assistance

	Type of Assistance			
	Tenant Relocation Assistance Ordinance (TRAO)	Emergency Order to Vacate and Close	Land Use Code Violation	Condominium Conversion
<b>Maximum Amount</b>	\$2,829	\$3,321 (low-income tenants <sup>1</sup> ) or 2 months' rent	\$2,000 (low-income tenants <sup>1</sup> ) or 2 months' rent	\$500
	<sup>1</sup> Low-income is defined by this ordinance as 50% of King County Median Income			
<b>Tenant Income Limit</b>	50% of King County Median Income	None. Income is only used to determine the amount of the assistance.	None. Income is only used to determine the amount of the assistance.	80% of monthly median income for Seattle-Everett Metropolitan Statistical Area.
<b>How to Qualify</b>	Low-income tenants qualify when they are displaced because of development activity. Tenants must wait for DPD packets which landlord distributes after receiving permits. Tenants <i>must</i> turn packets in within 30 days.  <b>Exceptions:</b> Tenants who have terminating leases and tenants who entered into their leases with written notification of future development activity are ineligible for TRAO.	There are 5 requirements for qualifying: (1) DPD has issued an emergency order that requires the housing unit to be closed and vacated. (2) The conditions that created the emergency were in the sole control of the property owner. (3) The conditions that created the emergency were not the result of an act of God or a person or persons beyond the control of the property owner. (4) The conditions that created the emergency were not caused solely by the actions of the tenant. (5) The tenant has a month-to-month tenancy.	There are 4 requirements: (1) The owner has knowledge of or has consented to excess tenants. (2) The owner has received a DPD Notice of Violation (NOV). (3) The tenant has a month-to-month tenancy.	Low-income tenants (80% of the monthly median income for the Seattle-Everett Metropolitan Statistical Area) qualify if they vacate after receiving a 90-day notice of the conversion.
<b>Applicable Law</b>	SMC 22.210	SMC 22.206.260, .265	SMC 22.206.160(C)(1)(I)	RCW 64.34.440(6)(e), SMC 22.903.020, .030

# Substantive Law and Practice Tips

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## *Keeping the Evidence Out and the Tenant In: Potential Use of the Exclusionary Rule in Eviction Cases*

By M. Varn Chandola, HJP Staff Attorney

You represent a tenant in an eviction action based on her alleged illegal drug activities in her apartment. The police department which conducted a search of the tenant's apartment and discovered a small quantity of marijuana in her bedroom provided the landlord, pursuant to RCW 59.18.075, with written notice of the seizure of drugs in the tenant's apartment. The landlord, after receiving the notice, initiated an eviction action against the tenant by serving her with a three day notice to quit the premises under RCW 59.12.030(5).

Upon further investigation, you discover that the police officers had discovered the marijuana after conducting an unlawful warrantless search of the apartment. Although you are aware that the illegally seized evidence is inadmissible to prove the tenant's guilt in a trial related to her criminal charges, you wonder whether the same evidence may be ruled inadmissible in her eviction case. While the exclusionary rule is routinely applied in criminal cases to exclude evidence obtained through unlawful government conduct, you are uncertain of its application in civil cases. Realizing that you are navigating through a highly unsettled area of the law, you decide that you will attempt to invoke the exclusionary rule to exclude the evidence in your client's eviction case. What will you need to convince the court of in your motion to exclude the evidence based on the exclusionary rule? The information which follows will provide some guidance on what hurdles need to be overcome to allow the exclusionary rule to be applied in eviction actions.

### **I. The Exclusionary Rule Under the Fourth Amendment**

The Fourth Amendment to the Constitution of the United States protects the individual against unreasonable searches and seizures by the state. Evidence which is obtained in violation of the Fourth Amendment is generally subject to the exclusionary rule which holds that illegally uncovered evidence may not be used at trial to prove the defendant's guilt. See *Mapp v. Ohio*, 367 U.S. 643 (1961). The Washington Constitution under Article I, Section 7 allows for a more expansive application of the exclusionary rule than the Fourth Amendment. See *State v. Ferrer*, 136 Wn.2d 103 (1998); *State v. White*, 97 Wash.2d 92 (1982). With the intent of protecting the privacy of individuals with no express limitation, Article I, Section 7 provides even greater protection than the Fourth Amendment from warrantless searches and seizures. See *Id.* Considering that the exclusionary rule is a remedy under criminal law, your initial hurdle is to successfully argue that the exclusionary rule may also be applied in civil cases such as eviction proceedings.

### **II. Use of the Exclusionary Rule in Quasi-Criminal Cases**

The exclusionary rule has been held to be applicable to civil proceedings which are characterized as quasi-criminal in nature. See *Deeter v. Smith*, 106 Wn.2d 376 (1986); *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965). Those forfeiture proceedings which penalize the defendant for violation of a criminal law are considered quasi-criminal in nature. See *Id.* You will, therefore, have to argue that an eviction hearing against the client is a forfeiture proceeding which penalizes the tenant for a violation of a criminal offense. The fact that the landlord is seeking the mandatory forfeiture of the tenant's lease under RCW 59.12.030(5) is, in itself, proof that the eviction hearing is a forfeiture proceeding [*In Stevenson v. Parker*, 25 Wn. App. 639 (1980), the court establishes the use of the term "forfeiture" of a lease in discussing an eviction action. See *Id.* at 647]. The eviction action which stems from the small quantity of marijuana found in the tenant's apartment penalizes her for criminal conduct. Other than the illegal drugs found in her apartment, there is no other basis for the eviction action. You are therefore confident that you can successfully argue that the eviction proceeding is quasi-criminal in nature. The exclusionary rule should therefore be extended to the eviction case to bar the use of illegally uncovered evidence. Without such evidence, the eviction action is subject to dismissal. It is important for you to point out to the court that application of the exclusionary rule only applies to those limited eviction cases where the tenant is being penalized for criminal activity.

### **III. Placing the Exclusionary Rule in a Balance**

Although you are fully prepared to defend the use of the exclusionary rule in your case based on your ability to prove that the eviction proceedings against your client are quasi-criminal in nature, the court may require you to make a further showing prior to ruling in your favor. Instead of relying on the quasi-criminal standard, some courts have applied a balancing test to determine whether the exclusionary rule will be followed. See *U.S. v. Janis*, 428 U.S. 433 (1974). The balancing test weighs the deterrent effect on law enforcement of excluding the illegally uncovered evidence against the cost to society of applying the exclusionary rule. See *Id.* Use of the balancing test will depend on the facts of a given case. For instance, you may attempt to show that not only do the landlord and police department work so closely together in enforcing the criminal laws within the rental complex, but that the police officers have a strong incen-

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# Substantive Law and Practice Tips

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## *Keeping the Evidence Out and the Tenant In: Potential Use of the Exclusionary Rule in Eviction Cases*

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tive to conduct searches even if they are illegal since the landlord regularly uses evidence of contraband from such searches to evict tenants. While the application of the balancing test will depend on a case by case basis, you may always rely on the considerable protection provided to an individual's privacy rights under Article I, Section 7. You should argue that Article I, Section 7 alone provides substantial weight on the side of excluding the unlawfully obtained evidence and tips the balance in favor of your client. See *White*, supra.

### **IV. Exclusionary Rule with the Inclusion of State Action**

In discussing how to convince the court to apply the exclusionary rule in the eviction case, the most difficult hurdle may encounter is establishing that the landlord is a state actor. The landlord's attorney may assert that constitutionally based remedies such as the exclusionary rule do not apply in an eviction case unless the tenant can demonstrate that the landlord is a state actor. See *Soldal v. Cook County*, 506 U.S. 56 (1992). Without any doubt, the landlord's attorney argues, the constitutional provisions concerning civil rights protect individuals from state action rather than from actions of private parties such as the landlord. The court may therefore refuse to apply the exclusionary rule to exclude the evidence presented by the landlord who is a private party. Although you should be prepared to argue that the issue concerning state action is irrelevant as long as eviction proceedings are considered quasi-criminal in nature, the court may require the tenant to show the presence of state action prior to any further consideration of the exclusionary rule. Based on the facts of your case, you may argue that state action is present in a couple of ways.

Where a private party is encouraged to engage in certain conduct through legislation, the private party's actions may constitute state action. See *Robinson v. Florida*, 378 U.S. 153 (1964). As you review your case, you realize that your client may never have faced an eviction action had it not been for the requirement under RCW 59.18.075 that law enforcement provide written notice to the landlord of the seizure of the drugs. The statute does not create any exception to the notification requirement for those situations where the seizure of drugs came about through an unlawful search by the state. Considering that the statute aids landlords in evicting tenants for criminal activity even if the evidence is unlawfully obtained by the government, one may argue that when the landlord is encouraged by legislation to use illegally uncovered evidence against the tenant then the landlord becomes a state actor.

A less complicated path for showing state action is if the tenant can establish facts which prove that the landlord and law enforcement established a symbiotic relationship or joint contacts which make the landlord inseparable from the state in terms of responsibility for the state's unlawful conduct. See *Soldal*, supra; *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961). Once again, demonstrating the close relationship between the state and landlord in enforcing the criminal laws will be the key to convincing the court that the landlord was imbued with state action. See *Id.* If you can, for instance, provide a conspiratorial appearance to the actions of the police officers and landlord which ultimately resulted in the initiation of the eviction case against your client then the court may find that the landlord is a state actor.

Finally, the landlord may be characterized as a state actor if the landlord is licensed or regulated by a state agency [See *Public Utilities Commission v. Pollak*, 343 U.S. 451 (1952)] or receives subsidies or aid from the government [See *Norwood v. Harrison*, 413 U.S. 455 (1973)]. Whenever the landlord is a housing authority, the tenant's attorney should carefully look into how the government may aid or regulate the landlord. The mere fact that the landlord is regulated or receives aid from the some entity of the state will be insufficient to prove the presence of state action. *Id.* However, if you can demonstrate that the state regulation or aid is somehow tied to the landlord's challenged conduct then the landlord may be characterized as a state actor.

You are now prepared to argue that the exclusionary rule should apply in your client's case. Although you realize that you are dealing with a gray area of law, you have some solid legal arguments to present to court and the ability to create a strong record in the event that the case is appealed.



# Tenant Rights and Homelessness Prevention

## *Solid Ground Tenant Services*

*By Jon Grant, Tenant Counselor, Solid Ground*

Solid Ground, formerly the Fremont Public Association, operates a Tenant Services hotline that provides free housing counseling for tenants' across Washington State. We assist tenants in navigating Title 59.18 of the Residential Landlord/Tenant Act to help tenants' understand their rights as well as the statutory obligations of the landlord. Three common areas that our program covers are how to get a deposit back, how to request a repair, and eviction prevention through rental assistance.

Tenant Services provides rental assistance to achieve complete housing stability and prevent homelessness. Eligibility for rental assistance requires that the tenant is income eligible (income is 50% below the median average), lives within the City of Seattle, has an income of 1½ times over what the tenant pays in rent, and cannot live in transitional housing. Our funds can be used both for eviction prevention and for a client who needs assistance with move-in deposit costs. A tenant who does not meet these requirements can still call to receive information on the Residential Landlord/Tenant Act, but otherwise should contact the Community Information Line at 206-461-3200 for other available resources. In order for a tenant to access Tenant Services rental assistance funds they *must* go through the hotline by calling **206-694-6767**, Monday, Wednesday, and Thursday 10:30 a.m. to 4:30 p.m.

Tenants who are facing eviction outside of Seattle can still call the hotline to talk to a Tenant Counselor to brainstorm other alternatives to losing their housing. Tenant Counselors are not attorneys and cannot give legal advice; but can connect low-income tenants to other financial, governmental or legal resources, and discuss loss mitigation strategies. Tenant Counselors can also assist with credit screening issues, proper notices for rent increases and rule changes in the lease, improper entry of the landlord, proper notice to move out, eviction, or termination of tenancy, and what to do if the tenant is a victim of discrimina-

tion, harassment, or retaliation.

In the early stages of a housing crisis a tenant facing an eviction for non-payment of rent could have other remedies outside of litigation. Sometimes a tenant believes they are legally allowed to withhold rent if a landlord does not make a repair, and then finds themselves in front of a court commissioner for non-payment. Legal advocates that provide limited representation during the hearing might be frustrated by not being able to assist the client in the separate repair issue outside of the courthouse. This is an area where the tenant could be referred to Tenant Services where we have sample letters and forms available for use by the tenant to request a repair from the landlord. Tenant Counselors can give step by step explanations on the proper process to have a repair requested, and discuss what remedies are provided to them if the repairs go unfinished.

Another area the program could assist with is when a tenant goes to the courtroom seeking legal advice after receiving a 3 Day Notice to Pay or Vacate, and before the Summons and Complaint has been filed. If the tenant lives in Seattle and is income eligible, referring them to our hotline for rental assistance can be an effective tool to avoid an eviction hearing all together.

If a legal advocate has a question they can contact a Tenant Counselor directly, but clients must be referred to the Tenant Services hotline. If a tenant is in need of advocacy or housing counseling outside of the courtroom, then Tenant Services can be a helpful tool to add to the tenant's resources. A tenant who is informed of their rights is in a stronger position to save their housing and prevent homelessness.

**Solid Ground**  
**(formerly the Fremont Public Association)**

Tenant Services Hotline

**206-694-6767**

Days/Hours of Operation:

Monday, Wednesday, Thursday



# Volunteer of the Quarter

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## *Michael Hudak, HJP Seattle Legal Assistant*

*By Amanda Kale*

The Housing Justice Project is proud to recognize Michael Hudak as the HJP Volunteer of the Quarter for Spring 2007. Mike spent nearly two years as an exemplary volunteer with HJP Seattle. He routinely went above and beyond the call of duty to make sure that clients reached the services they needed. Mike left HJP in late April to finish his law school career and prepare for the Bar Exam.

Mike's dedication to the Housing Justice Project was clear from the beginning. His first day at HJP was one of the busiest in the project's history. Managing attorney Merf Ehman remembers that "Mike seemed overwhelmed at first due to the volume of cases and the fast pace. He observed it all. I wasn't sure if he would come back because some volunteers whose first days are extremely busy decide that HJP is 'not a good fit for them,' but not Mike."

Mike joined HJP Seattle in July 2005 to get some legal experience and familiarize himself with the community after transferring to Seattle University from Gonzaga University. Merf recalls, "He took on extra shifts all through August and September when we were without a coordinator. He volunteered back at the office to help with a backlog of administrative tasks. He did whatever was asked." Throughout Mike's time with HJP, he consistently covered his weekly volunteer shift and often picked up extra mornings with HJP when needed during seasonal breaks and finals. Mike also used his attention to detail to undertake the tedious task of entering hundreds of cases into the client management database as a data entry volunteer for HJP when he wasn't at the courthouse or fulfilling his obligations as a busy law student.



Mike used his calm and comforting demeanor to make clients' experience at HJP as pleasant as possible. On last summer's client survey, one client wrote: "Mike is wonderful!" He routinely interviewed very challenging clients who were not only satisfied with him but raved about the way he treated them. "One of the most challenging clients I've seen at HJP called me after she had been to the HJP office. She repeatedly praised the way Mike accommodated her needs during her visit to HJP," recalls HJP Seattle coordinator, Amanda Kale.

As Mike moves on with his legal career, the Housing Justice Project staff congratulates him on his outstanding pro bono contribution.

***Thank you, Mike! You'll be missed!***

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## ***MHLTA*** (Continued from page 1)

RCW 59.21 allows assistance up to \$7,500 for the relocation of a single wide home and up to \$12,000 for the relocation of a double-wide. Usually the cost of relocation and/or demolition is more than the maximum that the state allows.

Additionally, since there is such a crisis in Washington of communities closing there is currently no money in the State's

relocation assistance fund. The Legislature responded to this problem by allocating \$2 million of the General Fund for relocation assistance. This will cover the existing shortfall but will not help any other homeowners who have not yet submitted receipts for the cost of their relocation. They are still able to submit receipts for costs incurred in relocating but it may take the state a couple of years to reimburse them for these costs.

# Housing Justice Project – Kent (HJP Kent)

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*Not only are the clients diverse, so are our volunteers.*

*By Melanie Armstrong, HJP Kent Summer 2007 Extern*

This month HJP Kent would like to introduce and recognize the commitment of its volunteer attorney Blakely Lord. A native North Carolinian, Blakely has been a dedicated Washington resident for the past two years. In addition to her work with HJP Kent, Blakely is a member of the board for the Community Day School Association, and she is currently working toward her Mediator Certification in Thurston County.

A law school graduate from the University of North Carolina-Chapel Hill, Blakely was admitted to the North Carolina bar and practiced transactional law with NASA for three years before moving to Washington State. Although she enjoyed the work she did with NASA in California, the work, says Blakely, did not afford her the same opportunity to provide pro bono services as she had hoped. For this reason, Blakely resigned from NASA, and accepted an offer to work for Alaska Airlines' Claims Division in Washington.

As an employee with Alaska Airlines, Blakely has made a concerted effort to remain "enriched through participation" with the encouragement of her employer. An HJP Kent volunteer for more than one year, Blakely credits her commitment to volunteering with HJP Kent to the program director Kim Nguyen's eager response and willingness to supply her with the educational material and training necessary to learn the area of the law applicable to HJP clients. Training, says Blakely, can make a world of difference in recruiting volunteer attorneys, especially where the law at issue is unfamiliar. Nevertheless says Blakely, the privilege of receiving an education should compel each of us to endeavor to "...be a part of the world in a meaningful way" For Blakely, her meaningful contribution is through pro bono service.



*Happy 10th Birthday  
HJP!*

The Housing Justice Project Seattle is celebrating its 10<sup>th</sup> Anniversary in 2008. After a one month pilot project in 1997, HJP began normal operations at the King County Courthouse in Seattle on July 14<sup>th</sup>, 1998. Please join us in celebrating the Housing Justice Project's 10<sup>th</sup> birthday on February 7, 2008 at 6:00 p.m. at Perkins Coie, 1201 Third Avenue, Suite 4800 – Room 48-07 in downtown Seattle. Please contact Program Manager Orijit Ghoshal at [OrijitG@kcba.org](mailto:OrijitG@kcba.org) or 206.267.7028 with any questions.

# Farewell and Good Luck!

## *Farewell Elizabeth! Farewell Varn!*

By Kim Nguyen

### **Elizabeth Fisher**

During her tenure as staff attorney at HJP Kent, Elizabeth Fisher also worked part-time at the City of Seattle in the Department of Planning & Development as a Housing Ordinance Specialist. In this position, she enforces Seattle's rental housing ordinances, such as the Just Cause Eviction Ordinance. She works with landlords and tenants who have questions or issues relating to such ordinances. In early 2007, Elizabeth's position at the City of Seattle transitioned into a full-time position.

Elizabeth has been an invaluable part of HJP. She had the remarkable ability to skillfully balance the stressful nature of the job while remaining positive and deeply committed to our mission and clients. Elizabeth is a very talented attorney and though we are deeply saddened by her departure, she will continue doing important work by helping people understand their rights.



*"Elizabeth has been a tremendous asset to KCBA and to HJP in particular. She has the perfect combination of compassion, patience and legal judgment. We will sorely miss her!"*  
– Judy Lin, Staff Attorney, Kinship Care Solutions.



### **Varn Chandola**

For the past 6 months, Varn Chandola was the HJP Kent Staff Attorney. Varn hails from Arizona where he graduated from the University of Arizona School of Law and worked as a criminal defense attorney for 10 years. Since moving to Seattle in 2002, Varn opened his own legal consulting firm called Chandola Consulting, specializing in legal research. Varn was drawn to HJP out of a desire to experience law beyond the world of criminal work. He feels that the best part of the job is advocating for underprivileged clients, similar to clients he represented in the past. He appreciates that there are volunteers that advocate for our clients although they are not always successful. Although Varn will be leaving to start a private practice in Kent, he will continue volunteering at the HJP Kent clinic. We appreciate Varn's efforts and wish him the best of luck in his future endeavors.



# Farewell and Good Luck!

## Amanda Kale Leaves HJP for Law School



By Merf Ehman

Amanda Kale left the Housing Justice Project (HJP) in July after serving as the Program Manager/Paralegal to attend Seattle University School of Law.

Amanda brought great enthusiasm and excellent organizational skills to HJP. Amanda helped improve and expand HJP. Amanda simplified the volunteer training process

to make it as seamless as possible. She revamped the HJP new volunteer training program by adding in more hands on components to the sessions. She created improved email communications with volunteers including expanding HJP's quarterly newsletter, The Writ and improving the HJP website. To meet the increasing number of client's at HJP, Amanda recruited additional law student and attorney volunteers to meet the increased client need. She also implemented the HJP P.M. pro-

gram at the King County Law Library starting with one night a week and after a year, adding an additional night. This program reaches more tenants facing eviction, especially those that work during the morning.

Amanda enjoyed her work with the HJP and especially the volunteers. The volunteers dedication and commitment to pro bono inspire her to volunteer while in law school and continue volunteering when she becomes an attorney. She also enjoyed her interaction with clients. Her strongest memory is of working with client who had a bright 5 year old. The client came back later to thank her. He was grateful that his child was at home with a babysitter and not homeless.

Amanda's hope for HJP is that someday it does not have to exist. She would love to see the numbers decline because there was no longer a need for our services.

HJP staff and volunteers wish her well in her law school career. But she is greatly missed!



### HOUSING JUSTICE PROJECT MEMBER NEWSLETTER

King County Bar Association  
1200 Fifth Avenue, Suite 600  
Seattle, WA 98101

Phone: 206.267.7100  
Fax: 206.267.7099

**Project Sponsors:**  
*KCBA, Northwest Justice Project,  
Legal Action Center, Tenant's Union,  
Columbia Legal Services,  
Fremont Public Association, and  
private volunteer attorneys*

King County Bar  
Foundation



### Housing Justice Project Mission Statement:

The Housing Justice Project is a homelessness prevention program providing accessible volunteer-based legal services to low-income tenants facing eviction in King County.

For more information about the Housing Justice Project or if you are interested in volunteering, please contact:

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