

Court Addresses Public Housing Policy

The U.S. Supreme Court recently heard arguments concerning the propriety of the "One Strike and You're Out" policy now utilized in public housing. This initiative came about in 1996 when President Clinton announced it as a way to combat crime in public housing projects. It allows public housing authorities to deny occupancy to applicants, as well as evict residents, on the basis of alcohol abuse and illegal drug-related activities.

The case addresses an action by the Oakland Public Housing Authority who initiated an eviction proceeding against a 63-year-old woman who had lived in public housing since 1985. Her mentally disabled daughter was found in possession of cocaine three blocks from the woman's apartment. The woman contended that she regularly searched her daughter's room for proof of alcohol and drug use and never found any evidence or observed any indication of it.

The housing authority stated that the lease provision authorized the eviction. It stated, "the tenant, any member of the household, or another person under tenant's control, shall not engage in . . . any drug-related criminal activity on or near the premises . . ."

The renter argued that the law did not authorize the eviction of innocent residents. She went on to say that even if the law would allow such an eviction, it would be unconstitutional and violate the Americans with Disabilities Act.

The Ninth Circuit Court of Appeals in San Francisco agreed with her argument. It looked at the legal basis for the eviction and concluded that it was not intended to apply to "innocent tenants." The Court stated, "if a tenant has taken reasonable steps to prevent criminal drug activity from occurring, but, for a lack of knowledge or other reason, could not realistically exercise control over the conduct of a household member or guest, (the statute) does not authorize the eviction of such a tenant."

A decision in this case is expected this summer. It could have a tremendous impact on the way management handles immediate evictions, especially in public housing.

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