



HDLI MESSENGER

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WHAT'S HAPPENING AT HDLI?

SAVE THE DATE: HDLI's 2005 Fall Conference in Chicago, IL entitled "**MEETING YOUR OPERATIONAL AND DEVELOPMENT GOALS WITH LITTLE OR NO HUD FUNDING: Important Legal Issues and Solutions**" will take place on **MONDAY, October 10, 2005** as part of NAHRO's National Conference. (Note it's not the usual Tuesday this year).

SAVE THE DATE AGAIN: 1ST ANNUAL GENERAL COUNSEL'S FORUM! PHAs won't want their General Counsel and/or outside attorney(s) functioning as GC to miss HDLI's first annual *General Counsel's Forum in early 2006*. The Forum will address common issues facing GCs and provide for networking and problem solving. HDLI is forming its database for invitations. Please forward names and contact information to HDLI A.S.A.P.

ON-SITE CUSTOMIZED FAIR HOUSING TRAINING! No traveling necessary! Contact HDLI at (202) 289-3400 for more details on fair housing training on-site at your agency. **Attached is our detailed informational flyer.**

Eighth Circuit Prevents PHA From Prepaying Section 515 Loan

In the recent case of *Charleston Hous. Auth. v. USDA*, Nos. 04-1884, 04-2620, 2005 U.S. App. LEXIS 17513 (8th Cir. Aug. 18, 2005), the 8th Circuit Court of Appeals resolved the conflict between the loan prepayment protocol mandated by the Emergency Low Income Housing Preservation Act, 42 U.S.C. §1472(c)(1987)(Preservation Act) and the unconditional prepayment provisions of a preexisting Section 515 loan contract.

The Charleston (Arkansas) Housing Authority operated a 50-unit public housing development which was financed in 1981 by a Section 515 Rural Rental Housing loan and operated with Section 8 project-based assistance. The Section 515 loan contract provided for an unconditional right to prepay the loan. Nearly all residents of the development were minority.

The PHA later adopted a revitalization plan that included demolition of the 50 public housing units. It did not renew its Section 8 HAP contract and tendered the final payment on its Section 515 loan. The USDA rejected payment twice, claiming that it was a "prepayment" in violation of the Preservation Act.

The Preservation Act, enacted 6 years after the loan contract at issue was signed, requires an owner to provide information regarding whether prepayment would adversely affect minorities, and if so, requires that units must first be offered for sale to qualifying organizations or governmental bodies for continued use as public housing before prepayment. The USDA determined that prepayment in this case would adversely affect minorities.

The PHA argued that its payment was not a prepayment, but simply a regularly scheduled payment, and that the Preservation Act was not enforceable. It sought an order to quiet title and to force the USDA to accept payment and release the units. The trial court found against the PHA, and it appealed. Meanwhile, residents of the development and a nonprofit were successful in seeking an injunction against the PHA preventing it from implementing its revitalization plan on the basis that it would create a disparate impact based on race. The PHA appealed from both decisions. The 8th Circuit affirmed, holding that Congress has the right to alter its loan agreement through subsequent legislation, did not waive it, and that the payment was a prepayment.