



# HDLI MESSENGER

A monthly electronic publication of the  
Housing and Development Law Institute  
NOVEMBER 2006 EDITION

**HDLI GOLD SPONSORS: Reno & Cavanaugh, PLLC; Douglas & Boykin, PLLC;  
Ballard, Spahr, Andrews & Ingersoll, LLP; Nixon Peabody, LLP**

## WHAT'S HAPPENING AT HDLI?

**JOIN US!** HDLI is convening its second annual **GENERAL COUNSEL'S FORUM** on **Friday, January 19, 2007**. This conference is an intimate forum that focuses on the unique issues currently facing in-house and outside general counsel. **Register now!**

**SPRING CONFERENCE:** HDLI's **2007 Spring Legal CLE Conference** will take place **April 26-27, 2007** at the Washington D.C. Marriott hotel! **An early registration form is attached.**

Written conference materials are available for purchase from HDLI's **2006 Fall Legal CLE Conference** entitled **"PHA AND SECTION 8: Strategies to Avoid Legal Pitfalls in a Changing Regulatory Environment"** which took place October 16, 2006. See the attached order form.

If you have not already purchased a copy of HDLI's **INDEX TO HUD REGULATIONS**, why not make your life easier and order your copy now with the **attached order form!**

### *The following resulted from a recent member inquiry:*

**Q:** What right does a Section 8 landlord have to participate in the Section 8 program?

**A:** None. 24 CFR § 982.306 generally discusses where a PHA may disapprove a landlord's participation in its Section 8 program. 24 CFR § 982.306(e) specifically states that "[n]othing in this rule is intended to give any owner any right to participate in the program." Three cases have discussed this issue:

In *Roth v. City of Syracuse*, 4 Fed. Appx. 86, 2001 U.S. App. LEXIS 2541 (2nd Cir. Feb. 20, 2001), a landlord alleged that by refusing to include his apartments on lists of available subsidized housing units available for rental by prospective tenants and then by suspending him from participation in the Section 8 program, the local housing authority had prevented minorities from exercising their rights to rent apartments in areas of low poverty and minority concentration. The Second Circuit

found that the landlord had no right to participate in the Section 8 program. In *Booty v. HUD*, 2004 U.S. Dist. LEXIS 23522 (N.D. Tex. Nov. 19, 2004), landlords claimed that a housing authority and HUD unlawfully refused to allow them to participate in the Section 8 program after they voiced their concerns about the unfair administration of the program. A district court in Texas held that the landlords failed to state a claim for violation of due process because they did not have a cognizable property interest in continued participation in the Section 8 program.

Finally, in *Selma Hous. Dev. Corp. v. Selma Hous. Auth.*, 2005 U.S. Dist. LEXIS 20500 (D. Ala., August 16, 2005), the landlord complained that the housing authority's cancellation of his HAP contract and other alleged wrongful actions violated his rights, and he sued under Section 1983. Like the preceding courts, a district court in Alabama held that the housing authority was entitled to summary judgment because the owner lacked a constitutionally protected property right to the renewal of the HAP contract.