

## A Holiday Message from a Center Supporter

**I**t's holiday season, a time to be thankful for family, friends, and home. But for many families facing foreclosure, they will not be "home for the holidays."

That's why the work of the Arizona Center for Law in the Public Interest to stop the raid of a foreclosure trust fund is critical to preventing people from losing their homes to foreclosures.

On May 1, 2012, the Arizona Legislature swept \$50 million from a \$98 million Mortgage Settlement Trust Fund. The trust fund was a payment to Arizona as part of a multistate settlement with mortgage servicers over foreclosure abuses and fraud. The payment was intended to fund services effective in preventing future foreclosures and keeping distressed families in their homes.

One of the most effective foreclosure prevention efforts receiving funding from the Mortgage Settlement Trust Fund is housing counseling.

Housing counselors provide expertise and guidance in helping people deal with their mortgage servicer and navigate the system. With the

assistance of these trained professionals, homeowners gain access to the best information and make better decisions.

We know that housing counseling works. Homeowners facing foreclosure are 67% more likely to remain current on their mortgage if they receive counseling. In addition, over 80% of homeowners receiving housing counseling receive a mortgage payment reduction. Housing counselors also act as a safeguard against the multitude of foreclosure scams in our state.

Consider Ms. R., a mother of two young girls and a homeowner for 11 years. After having her work hours cut back because of the Great Recession, she fell behind on her mortgage payments. She tried working things out on her own with her lender to no avail. She was about to lose her home. Then she called the foreclosure hotline and got help from a housing counselor. In less than two months, the counselor helped Ms. R. renegotiate an affordable monthly payment as well as a principal reduction that was in line with the reduced market value of her home. "My counselor saved my family's home, and it didn't cost me a dime," said Ms. R.

Funding from the Mortgage Settlement Trust Fund will also pay for legal aid, outreach and education about foreclosure relief programs, and direct assistance to distressed borrowers who fall between the cracks of existing programs.

Many states have siphoned mortgage settlement funds for purposes unrelated to housing. But because of ACLPI, Arizona is seen as a leader in standing up to state lawmakers and protecting troubled homeowners' rights.

This holiday season, I'm adding ACLPI to my list of things to be thankful for. Because of ACLPI's work, more people like Ms. R will be "home for the holidays".

Valerie Iverson  
Executive Director  
Arizona Housing Alliance



**Arizona Center for Law  
in the Public Interest**  
202 East McDowell Road  
Suite 153  
Phoenix, Arizona 85004  
(602) 258-8850  
FAX (602) 258-8757

2205 East Speedway Blvd.  
Tucson, Arizona 85719  
(520) 529-1798  
FAX (520) 529-2927  
www.aclpi.org

**Phoenix Staff**  
Timothy M. Hogan  
Executive Director

Anne Ronan  
Staff Attorney

**Tucson Staff**  
Joy E. Herr-Cardillo  
Staff Attorney

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## Grazing Lease Update

For the last five years, the Center has been representing Wildearth Guardians in its efforts to secure a state grazing lease on an allotment near Springerville. Wildearth Guardians is an organization dedicated to protecting riparian areas from the damaging effects of livestock grazing. Both the Enabling Act enacted by Congress to admit Arizona and New Mexico into the Union and the Arizona Constitution require grazing and other leases to be issued to the highest and best bidder at a public auction. The auction and bidding requirements were imposed by Congress to insure that the beneficiaries to the state trust lands—mostly Arizona's public schools—would receive the maximum benefit of the trust.

The challenge for the Center has long been getting the State Land Department to comply with that requirement. Long time supporters will recall the case we brought in the late 90s (and decided in 2001) which established the right of conservation groups like Guardians to even apply for grazing leases.

In this case, Guardians followed the Land Department's procedure to apply for the lease in question. The current lessees also applied to renew the lease, so the Commissioner decided to request sealed bids. The current lessees didn't like that, so they filed an administra-

tive appeal challenging that decision. After that appeal, the Commissioner changed his mind about the sealed bids and instead simply awarded the lease to the rancher at the minimum rate without any bidding. He made this decision even though Wildearth Guardians had indicated in its application that it was willing to pay four to five times the minimum rate.

The Center appealed the Commissioner's about-face, but Maricopa County Superior Court Judge John Ditsworth upheld the decision. We have now appealed Judge Ditsworth's decision to the Arizona Court of Appeals. The Center filed its last brief on December 3rd and we expect that the Court will schedule argument on the appeal in early 2013. It is, to say the least, frustrating that we have to repeatedly sue the State Land Commissioner in order to get him or her (the names keep changing, but the policy stays the same!) to even consider leasing state trust land for more than the minimum amount.

### **THANK YOU**

The Center would like to thank  
**LEXIS-NEXIS**  
for its continuing grant  
of  
computerized  
legal research  
services.

## 10 Years Later, We Are Still Fighting to Get the State to Honor its Commitment to Provide Adequate Juvenile Mental Health Services

Ten years ago, Judge Roll approved a Settlement Agreement in *J.K. v. Humble* to protect the right of Arizona's Medicaid-eligible children to receive necessary mental health and substance abuse services. Unfortunately, the State has failed to live up to the commitments it made under the Agreement, and the Center is now before a Special Master in an effort to ensure that it does.

For those not familiar with the case, here is a bit of background. Federal law requires States to provide Medicaid-eligible children "necessary ... services, treatment and other measures ... to correct or ameliorate ... physical and mental illnesses and conditions." In the Agreement, Defendants - the directors of the Arizona Department of Health Services, the Department's Division of Behavioral Health Services, and the Arizona Health Care Cost Containment System - agreed to meet this obligation by developing and maintaining a service system that meets the nationally accepted standards spelled out in the "J.K. Principles." The Agreement includes specific actions the State must take to develop and maintain this system, including: developing an array of intensive community-based services for children with serious conditions; expanding substance abuse services; developing a training program that ensures staff have necessary knowledge and skills, and changing the state's quality

management system so that it measures whether class members are receiving the services required by the Agreement.

The Agreement contemplated compliance by July 1, 2007, with an additional six months to resolve any pending disputes. In January 2006, Plaintiffs invoked the dispute resolution procedures in the Agreement, which provides a three-step process: negotiation, mediation, and then resolution by the Court. Following a lengthy mediation, the parties stipulated to a three-year extension and the Court extended the term of the Agreement to July 1, 2010, and the period for resolving disputes to February 1, 2011.

On March 6, 2009, Plaintiffs again invoked the dispute resolution process due to the State's non-compliance in six specific areas. After unsuccessful mediation the plaintiffs asked the court for a second extension of the term of the Agreement. The Defendants filed a motion to dismiss.

On November 29, 2010, Judge Roll issued an Order denying both parties' motions and directing them to again try mediation, identifying six areas of alleged non-compliance that the parties were to discuss. Before that mediation began, Judge Roll was killed and the case was reassigned to Judge A. Wallace Tashima, Senior Judge, Ninth Circuit Court of Appeals.

Having been ordered back to mediation by Judge Roll, the parties selected former Superior Court Judge Rebecca Albrecht as a mediator and scheduled two days of mediation for February 14-15, 2011. At the end of the first day, however, the Defendants refused to engage in further mediation until the Court ruled on the scope of their obligations under the Settlement Agreement.

On March 4, 2011, the Defendants went back to court but instead of asking for the ruling they claimed to want, they filed a Motion to Terminate the Court's Jurisdiction. Judge Tashima denied the Motion and decided to appoint a Special Master to hear the compliance issues raised by the Plaintiffs.

On November 14, 2012 Former Chief Justice Ruth McGregor was appointed Special Master. Initially, she will resolve a dispute raised by the State as to the scope of the issues before the Court. The Defendants continue to assert that the Agreement does not require them to establish a behavioral health and substance abuse treatment service system that meets the nationally accepted standards. Although this dispute was resolved by Judge Roll before his death, the Defendants raised it anew with Judge Tashima. Upon the resolution of this issue the Plaintiffs will be preparing the evidence to support their long standing claim that the State has not meet its obligation to provide mental health services to the Class.

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