

Hawaii Access to Justice Commission

2016 Access to Justice Conference

Friday, June 24, 2016

Workshop: “Landlord-Tenant Mediation: Working Together to Prevent Homelessness”

Presenters: David Chee, Nalani Fujimori Kaina, Jan Harada, Tracey Wiltgen, Judge Michael Tanigawa (moderator)

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The presentation was not intended to be a discussion about mediation for individual issues relating to eviction. The purpose of the presentation was to provide the different perspectives of those involved in evictions and discuss the process of creating a diverse group to address the issue and prevent homelessness.

- David Chee provided the landlord perspective as an attorney who represents landlords in the eviction process. Landlords are in the business of renting and do not want to evict tenants. An eviction represents a failure of the business model and landlords would rather get the relationship back to where it should be and not a financial strain.
- Nalani Fujimori Kaina provided the tenant perspective and the role of Legal Aid Society of Hawaii (“LASH”), the agency she leads. She expressed that often the reason for an eviction is non-payment of rent and the tenant will need to leave the unit. However, even in that situation, the tenant feels wronged and wants to be heard. The role of LASH is to find a way to make sure the system is fair and “find voice for the tenant.” Laws governing housing programs can be complex (i.e. Low Income Tax Credit projects, Section 8) and tenants may not understand what has happened and are not able to navigate the legal system.
- Jan Harada spoke about the role of social service agencies like Helping Hands Hawaii (“HHH”), which is the agency she leads. Programs like HHH enter when a tenant is about to be evicted or have basic utilities (electricity, gas or water) shut off. Often this is due to an employment or medical issue or it is an ongoing household budgeting issue, stemming from being overburdened by rent. Providing the assistance includes gathering information, verifying the household’s income, and providing financial counseling takes

time to turn around. Clients should be encouraged to seek help as soon as possible.

- Tracey Wiltgen described the services of The Mediation Center of the Pacific, Inc., where she serves as Executive Director. Over the past year, the Mediation Center mediated 548 Landlord/Tenant cases. Of those, 249 were for summary possession and 56% reached agreement through mediation. In many cases, mediation provided more time for the tenant to move out, 14% of the cases resulted in the tenant being able to remain in the unit. It takes approximately 30 minutes of court time for the mediation. The goal of the mediation is not to advocate on behalf of the tenant, it is to give them a voice.

The Steps to Avoid Eviction (“STAE”) initiative is an attempt to get tenants and landlords to address the issue of a possible eviction before it is too late. It is too late when both parties are in the adversarial process of eviction proceedings. STAE brought together a partnership including landlord attorneys, non-profit legal service providers, social service providers, mediation services, the Department of Human Services, the City and County of Honolulu, and the court to get a comprehensive understanding of the issue and find ways to mitigate the unwanted outcome of eviction. What makes a difference is an opportunity for the landlord and tenant to communicate, an opportunity for both parties to “be heard”, addressing the issue early, and the intervention of community based supports like financial assistance, financial counseling, and mediation.

Outcomes from the initiative include a flyer with information and contacts for resources was distributed to landlords and to sites where clients in need may find them. The same information and links to resources can be found on the LASH website. An innovative solution that was identified is a “legal check-up.” This is an early intervention program similar to a medical check-up. Clients will be assessed for legal needs and help can be provided to avoid costly legal services.

Challenges include a lack of resources, a lack of trust between the parties, and an ongoing need to educate the tenant on the process which can sometimes fall to the landlord’s attorney.

Suggestions or thoughts on other tools to avoid the eviction process include:

- A list of frequently asked questions (“FAQ”) given to the tenant by the landlord which will communicate an opportunity and willingness to talk.
- Public education about mediation and improved access to mediation services as a way to engage both parties. Access to legal help for landlords who may not be able to afford representation.

- Pre-court mediation information session scheduled at the time of the court session.
- Insurance for landlords.