August 5, 2024

New Jersey Appellate Division Invalidates Municipal Ordinance Regulating Ownership of Age-Restricted Residences

In the recent appellate case *New Jersey Realtors v. Township of Berkeley*, the Superior Court of New Jersey, Appellate Division, invalidated a municipal ordinance that restricted property ownership in certain senior housing communities to individuals aged fifty-five or older. This decision, rendered on July 31, 2024, highlights the legal limits of municipal authority in enacting land use regulations that impact property rights and underscores the protection against discrimination based on familial status under the federal Fair Housing Act (FHA) and the New Jersey Law Against Discrimination (NJLAD).

The dispute arose when Berkeley Township enacted Ordinance No. 22-13-OA (the Ordinance), amending its land use provisions to mandate that ***ownership*** in specific senior housing communities be limited to those aged fifty-five or older. New Jersey Realtors (NJR) challenged the Ordinance, claiming it violated the FHA and the NJLAD by discriminating based on familial status and failing to comport with the exemption for age-restricted housing. NJR argued that the FHA and the NJLAD only require that age-restricted housing be ***occupied*** by an individual fifty-five or older.

The core issue here was whether Berkeley Township's Ordinance, which required that age-restricted units be purchased or owned by individuals aged fifty-five or older, contravened the anti-discrimination provisions of the FHA and the NJLAD, which prohibit discrimination on the sale or lease of property based on familial status. Answering affirmatively, the Appellate Division provided three key reasons to support its holdings.

First, it held that, under the FHA, the Berkeley Township Ordinance's ownership restriction did not comport with the FHA exemptions for housing for older persons because such exemptions pertain to occupancy restrictions, not ownership. The Appellate Division explained, "Critically, the FHA's housing for older persons exemption permits restrictions on occupancy, not ownership, to persons fifty-five years and older. … Because the exemption does not apply and the Ordinance's restriction on ownership in age-restricted communities discriminates on the basis of familial status, we conclude that the Ordinance violates [the FHA] and is therefore unlawful."

Similarly, the NJLAD prohibits housing discrimination on the basis of familial status, with an exception for qualified housing for older persons. However, in a 2019 amendment to the NJLAD, the exemption section was updated to say that "nothing in the requirements of [the housing for older persons regulations] shall be construed to restrict the age of any purchaser or grantee of housing who does not reside in, or intend to reside in, such housing." This led the Appellate Division to conclude that "a plain reading of the regulation clarifies that the housing for older persons exemption applies only to occupancy, not ownership. Thus, considering the text and the underlying purpose of the NJLAD, we conclude that any age restriction imposed on ownership in [the Ordinance] is a discriminatory housing practice that violates the NJLAD on the basis of familial status."

The Appellate Division also concluded that the Ordinance is preempted by the FHA and the NJLAD. It explained that local ordinances cannot conflict with federal and state laws, and the ownership restrictions imposed by the Ordinance directly conflicted with the antidiscrimination provisions in the FHA and the NJLAD. Citing *United Bldg. & Constr. Trades Council v. Mayor & Council of Camden*, a New Jersey precedent on preemption, the Appellate Division held that "when a state statute has preempted a field by supplying a complete system of law on a subject, an ordinance dealing with the same subject is void."

In conclusion, this ruling has significant implications because this is the first time New Jersey courts have expressly addressed whether age-related ownership restrictions are permitted under federal and state laws. In holding that the

Ordinance is invalid, the decision underscores the importance of understanding the distinction between permissible occupancy restrictions and impermissible ownership restrictions in age-restricted communities. It reinforces the principle that while municipalities have the power to regulate land use, they must do so within the confines of federal and state legal protections against discrimination and unwarranted restrictions on property rights.

Should you have any questions concerning this legislation or land use matters in general, please contact the authors of this alert or any member of the Day Pitney real estate team.

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