New Jersey Appellate Division Invalidates Ordinance Requiring 55+ Home Ownership



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In the first decision on this issue, in *New Jersey Realtors v. Township of Berkeley*, the New Jersey Appellate Division recently ruled that a municipal ordinance restricting ownership in age-restricted communities to individuals over the age of 55 is invalid on the grounds that it violates, and is preempted by, the federal Fair Housing Act (FHA) and the New Jersey Law Against Discrimination (NJLAD). The Plaintiff in this case, New Jersey Realtors (NJR), argued that the ordinance violates the FHA and the NJLAD because both statutes prohibit familial status discrimination. The Superior Court Judge granted summary judgment to NJR agreeing that the ordinance violates the FHA and the NJLAD in that the ordinance restricts ownership, not occupancy, as the previous ordinance had provided. In addition, the Judge noted that there could be unintended consequences, which include preventing an older owner from transferring title to a younger person for estate planning purposes.

The Township of Berkeley appealed the lower court's finding that the ordinance is unconstitutional to the Appellate Division. The Appellate Division explained that the FHA includes certain exemptions for older persons to allow communities to discriminate on the basis of familial status. Notably, wrote the Court, the exemption only addresses occupancy, not ownership, by people fifty-five years and older. This issue is the first of its kind in New Jersey. Ultimately, the Appellate Division held that because the FHA exemption related to persons fifty-five years old and older does not apply, the ordinance violates the FHA and is unlawful.

The Appellate Division also found that the ordinance violates the NJLAD. Specifically, the plain reading of the NJLAD provides an exemption for older persons related to occupancy, not ownership. Thus, any ordinance with an age restriction on ownership is a discriminatory housing practice that violates the NJLAD on the basis of familial status. The Appellate Division found that the Township of Berkeley's ordinance is preempted by State Law.

The Appellate Division went a step further than the trial judge and found that the ordinance is invalid, not only because it violates federal law and is preempted by state law but because it is arbitrary and unreasonable. The Appellate Division referenced the inability of property to be addressed in estate planning and the smaller pool of potential buyers for properties identified as needing to be owned by older people. The Appellate Division made it clear that any future ordinance related to familial discrimination cannot restrict ownership of property, only occupancy.

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