



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Age Limits On Owning Senior Units Unlawful, NJ Panel Says

By **Carla Baranauckas**

Law360 (July 31, 2024, 5:49 PM EDT) -- A New Jersey appellate panel on Wednesday backed a lower court's finding that a Garden State municipality's ordinance limiting property ownership in senior housing communities to those 55 years old or older violated the federal Fair Housing Act and state Law Against Discrimination, holding that both statutes prohibit discrimination based on familial status.

The three-judge panel noted in a published opinion that both the Fair Housing Act and the Law Against Discrimination specifically include exemptions related to occupancy of homes based on age for senior housing. But neither statute states a specific exemption related to ownership of homes in senior communities.

"The Ordinance unreasonably infringes upon the well-established and constitutionally protected right to own and sell property and the restriction unreasonably and irrationally exceeds the public need," Judge Greta Gooden Brown wrote for the panel in a published opinion.

In March 2022, the Berkeley Township Council updated the Land Development section of its municipal code, changing provisions that required occupancy of age-restricted units in certain retirement communities by people aged 55 years or older to also restrict ownership of such units to people in that age group.

The New Jersey Realtors filed suit in May 2022, claiming that the revised ordinance was "invalid and unenforceable" on the ground that limiting property ownership, rather than occupancy, violated federal and state law prohibiting discrimination based on familial status.

Three months later, the New Jersey Realtors sought summary judgment, citing a letter from the state commissioner of the Department of Community Affairs that said: "Our research yielded the results you expected. Both the federal and state laws limit the age of the occupants of the home in age-restricted communities, not the age of the owner of the home."

In December 2022, the trial court granted the Realtors' motion for summary judgment.

The township appealed, arguing in part that without ownership restrictions, investors could buy units in retirement communities, upgrade them and flip them for higher prices. That could undermine the purpose of providing affordable housing for older people on fixed income.

"The court's decision protects the rights of adult children to purchase a home in their own name in an age-restricted community for their parents who cannot afford to purchase the home and allow the parents who are fifty-five or older to live there," said Barry S. Goodman of Greenbaum Rowe Smith & Davis LLP, who represented the Realtors. "It similarly permits parents to transfer title to their home to their adult children for estate planning reasons. It also allows a wife who is under fifty-five whose husband who was over fifty-five passes away to continue to own their marital home instead of her being forced to sell their marital home solely because she is under fifty-five. The discriminatory age restriction on who could purchase a home in an age-restricted community also limited the potential buyers for those homes and therefore artificially suppressed the value of the homes in these communities, thereby damaging every owner of a home in the community.

"The issue of whether age-restricted communities or municipalities can restrict ownership based upon the age of the purchaser was a matter of first impression. As a result this decision, age-restricted communities and municipalities that have such discriminatory age requirements for owners immediately should change their rules or ordinances to eliminate such an illegal requirement."

Representatives for the township did not immediately respond to requests for comment Wednesday.

The New Jersey Realtors are represented by Barry S. Goodman and Conor J. Hennessey of Greenbaum Rowe Smith & Davis LLP.

The township is represented by Christopher J. Dasti and Jeffrey D. Cheney of Dasti & Staiger Attorneys at Law.

The case is *New Jersey Realtors v. the Township of Berkeley*, case number A-1384-22, in the Superior Court of New Jersey, Appellate Division.

--Editing by Andrew Cohen.

All Content © 2003-2024, Portfolio Media, Inc.