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

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.

Continue reading.

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