Compliance with NJNCMDL Notice Requirements: Lessons from Willow Ridge Apartments Ruling

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Under the New Jersey Newly Constructed Multiple Dwellings Law (NJNCMDL), residential properties built after June 25, 1987, may be exempt from local rent control and rent leveling ordinances for up to 30 years or the duration of the initial mortgage's amortization period, whichever is shorter. See N.J.S.A. § 2A:42-84.2. The NJNCML encourages the construction of multiple dwellings in the state by exempting newly-built properties from rent control, rent leveling, and rent stabilization laws. The intent is to maintain a stable environment for financing, constructing, and marketing these properties, ensuring that the exemptions remain intact during the trial period. See N.J.S.A. § 2A:42-84.6. Prior to entering into a lease, property owners must provide prospective tenants with written notice stating that the property is exempt from rent control for the remaining duration of the exemption. See N.J.S.A. § 2A:42-84.3. Additionally, owners claiming this exemption must file a written statement with the municipal construction official at least 30 days before the certificate of occupancy (CO) is issued, detailing the exemption, its start date, and the number of rental units in the building. See N.J.S.A. § 2A:42-84.4.

The NJNCMDL, however, does not specify what happens if an owner fails to file the required exemption notice on time. A recent ruling from the Appellate Division clarified this issue. In *Willow Ridge Apartments, LLC v. Union City Rent Stabilization Board*, the court held that property owners who fail to submit proper notice of exemption at least 30 days before a CO is issued forfeit their right to rent control protection under the NJNCMDL.

In this case, Willow Ridge, LLC (Willow Ridge), the owner of an apartment building, was unable to prove that the prior owner had properly filed the required exemption notice. As a result, the property was not exempt from rent control. Willow Ridge presented multiple arguments at trial, including 1) the NJNCMDL did not explicitly state that failure to file the notice would result in losing the exemption, 2) it could not have filed the notice since it was not the owner at the time, and 3) that such a loss was unduly punitive. Willow Ridge also provided evidence of communications confirming that the property was exempt. Despite this, the lower court held that the burden of proving the exemption was properly filed rests with the owner, and failure to comply with the NJNCMDL's notice provisions within the statutorily proscribed time results in the loss of the exemption.

Rather than consider the plaintiff's arguments and evidence on an equitable basis, the Appellate Court affirmed the lower court ruling, confirming that the burden of proving that a claim for exemption was properly filed lies with an owner. This ruling emphasizes the importance of strict compliance with filing deadlines. Current property owners must be able to prove that the exemption notice was filed adequately at least 30 days before the issuance of a CO. As noted, the decision makes it clear that courts will not consider whether the current owner was the builder of the property or whether it received assurances from either previous owners or municipal officials, and historical treatment will not bear on a court's decision.

Thus, for owners who fail to file the exemption notice at least 30 days before the issuance of a CO, there appears to be no waiver or other relief for non-compliance under the NJNCMDL.

Recommendations

Following the Willow Ridge decision, current and future property owners of newly constructed residential multi-family properties should take steps to ensure compliance with NJNCMDL's notice requirements. Merely proving that the project is newly constructed is not sufficient to safeguard against claims brought by tenants or rent control authorities for violations of the NJNJMDL. Prior to engaging in multi-family housing development activities, to maximize their return on investment, developers should consult with legal counsel to ensure that all necessary action is taken in a timely fashion. In addition, for investors purchasing multi-family housing constructed after 1987, a thorough analysis of the record pertaining to the project is essential to confirm that the proper steps were taken and required filings were done to secure any available exemptions from the applicable rent control laws. Due diligence activities in this regard may include reviewing official correspondence from the municipal authorities with jurisdiction over the project. In addition, when negotiating the purchase agreement for such a multi-family project, buyers should incorporate clauses in their purchase agreement requiring sellers to represent compliance with the NJNCMDL and provide proof thereof as a condition to the buyer's obligation to consummate the purchase. Further, indemnification language in favor of the buyer, including reasonable attorneys' fees, should the buyer suffer damage as a result of a breach of the seller's representations, should also be included as part of the terms of the purchase agreement. Taking these precautions can help avoid future disputes over the rent control status of the property.

Retaining knowledgeable legal counsel in advance of engaging in development activities or purchasing property subject to the NJNCMDL can help confirm that all necessary action with respect to a project is taken in a timely fashion to maximize the anticipated return on investment.

Porzio's multidisciplinary Real Estate, Environmental, and Land Use team is ready to help you stay compliant with NJNCMDL notice requirements.