



NEW JERSEY REALTORS® PREVAILS IN CASE LIMITING MUNICIPAL LICENSING FEES

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In December 2011, Hamilton Township passed an ordinance imposing a licensing fee on all apartments that are rented for more than 30 days, including single-family homes. The annual fee for each apartment was initially \$100, but the fee was reduced to \$85 and later reduced even further to \$65. This ordinance affected approximately 1,100 units in Hamilton Township, including 498 apartment units at the development owned by Timber Glen. Timber Glen objected to the licensing fee — which would have cost the company \$32,370 per year based upon the \$65 fee per unit — and filed a suit challenging the ordinance.

New Jersey Realtors® won a significant victory for tenants and the rental industry when the court held that municipalities are limited in the licensing fees they can charge for apartments. In the case, *Timber Glen Phase III, LLC v. Township of Hamilton*, the Appellate Division held that municipalities can only impose a licensing fee with regard to residential rental units if they are rented for a term of less than 175 consecutive days by a person having a permanent residence somewhere else. As a result, a licensing fee that was imposed by Hamilton Township on Timber Glen and other apartment owners was rendered invalid. This ruling applies to all municipalities in New Jersey.

Since a municipality only has the authority that is vested in it by statute or the New Jersey Constitution, Hamilton Township argued that it had the authority to impose the licensing fee under what is known as the Licensing Act, which contains broad language that allows municipalities to license “hotels, boarding housings, lodging and rooming houses, trailer camps and camp sites, motels, furnished and unfurnished rented housing or living units and all other places and buildings used for sleeping and lodging purposes.” Timber Glen, on the other hand, argued that an Amendment to the Licensing Act in 1998, which contains narrow language concerning the scope of a municipality’s

authority to license and impose fees for rental units, should be applied rather than the broader section upon which Hamilton Township relied. The narrower section of the Licensing Act allows municipalities to impose license fees with regard to “the rental of real property for a term less than 175 consecutive days for residential purposes by a person having a permanent place of residence elsewhere.”

After the trial court ruled in favor of Hamilton Township, Timber Glen appealed. New Jersey Realtors® filed an amicus application supporting the position of Timber Glen and also arguing that the additional licensing fees would be passed on to tenants, who already were struggling to afford the high rents for apartments in New Jersey, especially in these difficult economic times. The New Jersey Apartment Association and the New Jersey Builders Association also appeared on behalf of Timber Glen. The New Jersey League of Municipalities appeared as an amicus on behalf of Hamilton Township’s position.

The Appellate Division reversed the trial court’s decision and held that the narrower language limits the broader language in the Licensing Act. Thus, municipalities can only impose a licensing fee with regard to a residential rental that is for a term of less than 175 consecutive days by a person with a permanent residence elsewhere. The court held that if it were to adopt Hamilton Township’s argument, there would have not been any need to add the narrower language to the Licensing Act since it already would have been part of the broader language that Hamilton Township relied upon. The court refused to render the narrower language meaningless.

As a result, if you live or work in a municipality that imposes improper licensing fees for residential apartments, it is strongly suggested that you contact your local board or Bruce Shapiro, New Jersey Realtors®’ local government and Regulatory Affairs Coordinator. ■