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Condominiums: Lease Restrictions May Violate Fair Housing

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With the downturn in the housing market slowing sales of all types of housing, many condominium and homeowners' associations are seeing an increasing number of owners choosing to lease units to tenants. In response, some owner associations are adopting rules restricting or prohibiting leasing of units. However, at least one appellate court has ruled that a prohibition against leasing violates the federal Fair Housing Act (FHA). In *Villas West II of Willowridge v. McGlothin*, 841 N.E.2d 584 (Ind. Ct. App. 2006).

In the *Villas West* case, the homeowners' association had adopted a rule prohibiting any leasing of residential units. The plaintiffs did not argue that the association intended to discriminate in adopting the prohibition against renting. Rather, the plaintiffs relied on past decisions under the FHA prohibiting action that disproportionately impacts minorities, even if the action was not intended to discriminate. The plaintiffs produced evidence at trial showing that in the City of Kokomo, Indiana, where Villas West was located, 54 percent of African-American households rented housing, while only 34 percent of white households did so. Based on that information, the court concluded that the association's prohibition against leasing impacted African-American households to a greater extent than white households.

The court then considered whether the association had a legitimate interest in prohibiting rental of housing units. The court concluded that plaintiffs had produced evidence showing that leasing may have an adverse effect on property values, so that the association did have a legitimate interest in restricting leasing. Lastly, the court considered whether the association could have addressed those legitimate concerns in a less discriminatory manner. The court found that the association could address concerns regarding nuisance behavior and maintenance of units by renters through enforcement of rules directly addressing those issues, rather than by prohibiting rentals, so that a less discriminatory alternative was available to the association. While the court found the case a close one, it upheld the trial court's ruling that the prohibition against renting had violated the FHA.

Minority home ownership rates lag behind majority home ownership rates in many parts of the country. Consequently, the reasoning of the *Villas West* court would apply in many areas. While the court was careful to limit its opinion to the facts of that case, a homeowners' association considering adoption of rental restrictions or prohibitions should consider the applicability of the decision to its own situation and be prepared to distinguish its own situation from that one.

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