

[Alerts and Updates]

New Jersey Adopts Law Permitting Conversion of Age-Restricted Housing Units to Non-Age-Restricted Housing Units and Modifies Laws Concerning Affordable Housing

July 8, 2009

On July 2, 2009, N.J. Gov. Jon Corzine enacted S-2577 (sponsored by Sen. Paul Sarlo, Sen. Joseph Vitale, assemblymen Louis Greenwald and Joseph Malone, and assemblywoman Nilsa Cruz-Perez), which allows for the conversion of certain age-restricted housing developments to non-age-restricted housing developments, under certain circumstances, and makes several modifications to current laws governing the provision of affordable housing. The bill was conditionally vetoed by the governor in May 2009, but was shortly thereafter amended pursuant to his comments, and approved. The law took effect immediately.

In order for a project to be eligible for a conversion, a developer must meet certain requirements:

- The developer must have received preliminary or final approval for construction of the age-restricted development prior to July 2, 2009, the effective date of the bill.
- The developer must not be holding a deposit for and must not have conveyed any units within the age-restricted development.
- The developer must agree to set aside 20 percent of the units as affordable housing, in accordance with the regulations promulgated by the Council on Affordable Housing.

In addition, an applicant seeking approval for a converted development under the new law must provide documentation that:

- The site meets the Residential Site Improvement Standards parking requirement.
- The recreation improvements and other amenities to be constructed on the site have been revised, as needed, to meet the needs of a converted development.
- Water supply and sanitary systems are adequate to meet the needs of the converted development, pursuant to N.J.A.C.5:21-5 and N.J.A.C.7:14A-23.3, respectively.
- If additional water supply or sewer capacity is needed and the developer is unable to obtain it, the number of dwelling units are reduced accordingly.
- If additional parking is needed, and the developer is unable to provide it, the number of dwelling units are reduced accordingly.
- If additional parking is needed and it increases the amount of impervious cover by more than one percent, the storm water system calculations and improvements are revised accordingly.

While the converted units must comply with the State Uniform Construction Code Act (N.J. Stat. Ann. § 52:27D-119 et seq.) and any requirements for, and limitations on, size and square footage imposed pursuant to a preliminary approval, the developer may revise the floor plans of the dwelling units without requiring any further board review or approval. Furthermore, the layout of a subdivision or site plan may be reasonably revised to: accommodate additional parking, recreational improvements, infrastructure enhancements, a needed reduction in units, height requirements and dwelling footprints that do not modify the square footage of the development or individual units. Plans may also be revised to *reduce* the size, height, floor area ratio, number of bedrooms and

total square footage. The number of bedrooms for the affordable units may only be increased within the footprint to comply with bedroom distribution requirements, as established in the Uniform Housing Affordability Controls.

The approving board has 30 days to advise whether the application is complete, and 60 days following a determination of application completeness to render a decision on the application for conversion. Applicants seeking conversion do not have to pay any application fees, though the local board may charge reasonable escrow fees pursuant to section 40:55D-53.2 of the New Jersey Municipal Land Use Law.

As signed into law, if the approving board determines the requirements of the law have been met, the conversion will be approved, unless the board finds that the conversion will cause substantial detriment to the public good and will substantially impair the intent and purpose of the zone plan and zoning ordinance. An applicant may appeal the decision of the board on a conversion application to the court in a summary matter by filing the appeal within 30 days of receipt of the board's resolution. On appeal, the court is to consider the reasonableness of the board's decision on the conversion application.

This law was enacted to deal in part with "currently eroding economic conditions," the lack of land approved for housing that meets the needs of households requiring smaller housing units and the shortage of affordably priced workforce-housing units. Moreover, it is in furtherance of Governor Corzine's goal to produce and preserve 100,000 units of affordable housing over the next 10 years.

The law expires on July 31, 2011. However, it provides a municipal planning or zoning board the ability to extend the period for conversions by an additional 24 months if it finds that, at the end of the initial period, "poor economic conditions continue to adversely affect the real estate market in New Jersey."

For Further Information

If you have any questions about this Alert or would like more information, please contact any of the [attorneys](#) in the [Real Estate Practice Group](#) or the attorney in the firm with whom you are regularly in contact.