

Student Housing, Civil Rights and Property Rights

[On behalf of Dornish Law Offices, PC](#) | Apr 1, 2008 | [All](#), [Landlord-Tenant](#), [Real Estate Practice](#)

By Bradley S. Dornish, Esq.

For many years, municipalities all over Pennsylvania have been attempting to deal with student housing issues. When colleges and universities do not have enough dormitories on their own campuses, many homes in the areas adjacent to the schools become student housing rentals. Sometimes, from 4-8 students will live in a 4 bedroom house. Often, the students bring their late hours, extra vehicles, weekend parties and other activities with them into the quiet residential neighborhoods. This conduct has created a backlash of anti-student housing ordinances.

Currently, we are fighting such an ordinance in Greensburg, Pennsylvania. That ordinance allows only 1 unit per building to be registered as a student housing unit, and imposes additional off street parking requirements on student housing that are not imposed on other types of residential uses. The Greensburg ordinance further provides that a new registration for student housing will not be accepted from a unit within 500 hundred feet of another already registered student housing unit. The ordinance also requires that each unit either be student housing or not student housing, and limits a landlord's ability to determine each year whether to rent to students or non-student tenants. Further, every student in the municipality has to register and identify their student housing unit for inspections by the municipal building inspector.

Certainly, some provisions of this ordinance can be justified as legitimate extensions of the "parens patriam" legal obligations of the municipality. In English, that means that the municipality has a duty to act in a parental capacity to protect those living within its borders, including students, from being taken advantage of by unscrupulous property owners providing crowded and unsafe, unsanitary housing.

However, many of the attributes of this ordinance are crafted to discriminate against students. I have advised several of my clients to include in their rental applications and to post at their properties the

language “students need not apply.” If this is vaguely reminiscent of the 1950’s civil rights movement, it should be. Back then, our courts did not consider that race, religion or national origin were the types of classifications which justified equal protection for the members of the discriminated against or minority groups.

Pennsylvania and Federal Courts have on many occasions upheld the ability of municipal ordinances to discriminate against students. The courts have ruled that students are not a protected class under existing civil rights laws, and therefore, the municipalities did not have to show a reasonable basis for each effort to identify and discriminate against students in providing housing. However, the difference we, as attorneys for landlords, see between the civil rights issues of the past and student housing, is that in student housing areas, those neighborhoods close to colleges and universities where many students reside, these ordinances create not just a discrimination against students, but a partial taking of the landlord’s property, and a deprivation to the landlord of the rental income that can come from the highest and best use of the property, i.e. renting it to students.

In Greensburg, I have a client with a 10 unit apartment building with 2 commercial units below. The municipality has strained to apply the student housing ordinance to a mixed use commercial/residential building. It makes little or no sense in an apartment building 2 blocks from a university to require that students can only live in 1 of 10 available units.

The prior cases in Pennsylvania have supported student housing ordinances based on the zoning interest in preserving the single family residential character of R-1 neighborhoods. I believe the Greensburg ordinance, and the city’s attempt to extend that ordinance beyond R-1 single family neighborhoods to every zoning classification in the city makes a good test case for landlords’ rights.

Other than students, the best potential for these 10 units in this area would be other groups of unrelated tenants, or small families on Section 8.

Unfortunately, the Section 8 allowed rent for these apartments would be substantially below the market rent paid by the students, for whom proximity to school adds value to the properties. My client has spent hundreds of thousands of dollars renovating the units to make them most suited to the ideal, student housing tenants. The prohibition against renting all but 1 of the units as student housing will cause my client not to realize market rents, and not to be able to cover the cost of the improvements

already made out of future rents to be received. The city can't reasonably argue that it is trying to preserve the single family character of a main street with businesses, including two retail spaces in the same building as these rental units.

Further, my client in this case like many other landlords in the municipality is under one year leases to individuals who were not necessarily identified as students in the rental applications received by my client. In the absence of a registration and restriction ordinance like Greensburg's, there would be no reason for a landlord to have to ask the question whether someone intended on being a student. If the prospective tenant met the requirements of the landlord's rental application for things like income and credit score, student status would be irrelevant to the landlord's decision on which tenants to rent to. Once the landlord has entered into a one year lease, as long as the tenant is abiding by all of the terms of the lease, there is no basis upon which the landlord can evict the tenant to come into compliance with the language of the ordinance. Yet, the failure to remove the excess students from the units in the building can expose the landlord to fines of \$8,000 per occurrence. Assuming that each of 9 of the 10 units in the building not permitted to be student housing is occupied by at least one student, that would expose my client to potential of \$72,000 in fines, or an alternative of improperly terminating leases and exposing my client to whatever claims for improper termination each of the terminated tenants might see fit to bring. This situation creates a proverbial rock and hard place.

In several cases involving single family homes or smaller units, the Greensburg Municipal Authorities have been willing to postpone the prosecution of those landlords until the end of their current lease cycles in exchange for their agreements not to rent to students for the next lease cycle. While this is a temporary fix for those units like single family homes, which can be more easily rented to a wider spectrum of potential tenants, that type of agreement simply won't work for a 10 unit building in an area where students appear to be the only true market for rental.

The Pennsylvania Residential Owner's Association, in conjunction with its member groups in other Pennsylvania cities, is planning additional action challenging these ordinances. Look for further updates on the pending cases in Greensburg and throughout the state, and make sure to check for local student housing and similar landlording ordinances already enacted and those being considered by municipalities wherever you own or are planning to buy rental property.

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