

# Condo Insights

## #49 Background Checks - Part 2

Association board members and unit owners want to know who and why an individual is on association property. While it is generally safe to assume most individuals have legitimate reasons for their presence, how well are condominium and community association boards and members really able to control who is present at the property and know why an individual is on site?

Part 1 discussed background checks for employees and contractors. Part 2 will address issues related to gathering information about potential condo owners, tenants, visitors and guests.

Can a condo board insist on running a background check on prospective buyers before allowing them to purchase? Can the board deny a prospective buyer the right to purchase based on the information found in a background screening report? Probably not.

The New Jersey Condominium Act prohibits a condo board from reserving or retaining the right of first refusal to purchase a condo unit on resale. A right of first refusal gives certain parties the right to make the first offer on a property when it enters the market. An association board cannot use the right of refusal to ward off potentially troublesome buyers.

Can an association “kick out” an owner if they declare bankruptcy or are convicted of a criminal offense? No, a condo board cannot remove an owner from their property; only a court can do that. A condominium board does not have the power of eviction because condo units are privately owned parcels of real estate.

At many Southern NJ condominiums, unit owners have the right to lease their units subject to the provisions of their association’s governing documents. Associations have the right to regulate leasing so long as the regulations are reasonable and non-discriminatory. The New Jersey Law Against Discrimination (“LAD”) is one of the most comprehensive anti-discrimination laws on the country. It includes protections against discrimination to include sexual orientation, gender, race and marital status. The prohibition applies to real estate agents and housing providers, including property owners, agents, employees and brokers, landlords, superintendents, and condominium associations.

The association does not have legal standing as it applies to whether a unit owner decides to accept or reject a potential rental tenant. In New Jersey an association cannot screen prospective tenants, but the association is permitted to require the submission of the lease for approval so as to ensure the lease is in compliance with the association governing documents and that the tenant is made aware of their obligation to comply with the association’s rules, regulations, policies and procedures and local or municipal laws on occupancy.

Most association governing documents hold the condo unit owner responsible for the behavior and actions of the occupants of their condo, regardless of whether the occupant is a tenant, tenant’s guests or guests of the unit owner. Renting the condo unit does not relieve the unit owner from the responsibility for the occupants of their condo to fully comply with the association’s rules, regulations, policies and procedures.

Suppose the condo board is made aware that an individual with a criminal history is renting a unit in the association? Suppose condo owners find out about an owner or tenant with a criminal history staying at the condo building? What is the condo board’s obligation? Does the condo board have an obligation to alert other residents of a resident with a criminal record? The association has no legal standing to involve itself in the rental transaction and Courts have upheld the idea that denying rental based on criminal record could be tantamount to racial discrimination under the Fair Housing Act. This becomes a complex issue balancing the nature of the criminal act, the legal responsibilities of the condo board, the safety and protection of the residents in the association and the rights of the owner or tenant to not be harassed or targeted by other residents of the association.

The New Jersey Condominium Act limits the information a condo board is required to disclose to bookkeeping matters such as receipts and expenditures and an accounting of condo fees and payments for each condo unit. Unless the Association Master Deed spells out other disclosure obligations, the condo board has no requirement or obligation to disclose information about any residents, even those with a criminal history. Legal counsel advice and guidance is essential if a board finds itself in such a situation.

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