

# Ruling Exposes Perils of Overzealous Buyer Screenings by Community Associations

By **Michael L. Hyman** | August 12, 2020



Michael Hyman, Siegfried Rivera.

Most Florida community associations are authorized under their governing documents to conduct screenings for prospective new buyers and tenants. Naturally, associations wish to prevent individuals from becoming a new resident who could present a danger to the community or are too much of a financial risk based on their credit history. However, as a recent court ruling from Southwest Florida demonstrates, associations that go too far in their screening efforts could face significant legal consequences.

The recent ruling ordered a Marco Island condominium association to stop its unreasonable screening practices, and the case made local headlines in the pages of the Naples Daily News.

David Mech, a prospective buyer at the Crescent Beach Condominium, sued the condominium association in December and represented himself in the case without the benefit of legal counsel. He alleged that he walked away from his \$425,000 all-cash offer to purchase his dream condominium unit because he refused to comply with the associations' request to provide his last two annual tax returns for himself and Katarina Palijusevic, who planned to invest in the unit with him.

"There's no reason for them to know the total income for people," he states in the newspaper article. He believed the financial screening requirement was unjustified and just "plain nosy," so he walked away from his opportunity to the Marco Island condo. "Do I really want to live in a building that has that type of board? That's really an issue to me," he stated.

The Collier County court judge ruled that the board's blanket policy requiring new buyers to produce personal tax returns was "patently unreasonable." The judge awarded Mech his legal costs and is yet to determine the final award. Mech claims that he lost approximately \$4,000 just from his early withdrawal from his apartment lease in Irvine, California, prior to being informed of the tax return requirement.

Mech was able to demonstrate to the court that the association had no valid reason to see his tax returns after he successfully passed its full background and credit checks with a clean criminal record and outstanding credit score. He even attempted to negotiate with the board to provide it with more limited financial background information, but it declined.

The board's treasurer testified that it began requiring tax returns from prospective buyers after the housing market crashed more than a decade ago, but court documents demonstrated that the board added the requirement

to its documents only after Mech filed his lawsuit. The association argued that tax returns provide more information than a credit report, showing not only income but also assets and interest income, as well any partnerships or corporate interests.

The judge concluded tax returns should only be requested under extreme circumstances when there's good cause based on negative results from background screenings or credit checks. She expressed concerns that the board's demands for tax returns could be a "fishing expedition" rather than a reasonable effort to determine whether a buyer is acceptable for the community.

"Unlike a lending institution, which is neutral and provides loans to strangers, a board at a condominium association is mostly made up of the people who live there," the judge concluded. "What person wants the people who share the condominium complex with him or her to know their financial business? Answer: Nobody."

As a local county court ruling, this decision will not have significant precedential value, but it does serve to illustrate the potential dangers for associations that also request tax returns or other personal financial records as part of their screening procedures. The state's courts have generally only upheld screening restrictions against property transactions that are considered reasonable. These could be argued to include criminal records, negative experiences with past landlords, low credit scores and responses in applications demonstrating an inability to abide by community rules, such as pet restrictions barring pet owners.

Boards of directors should consult with highly qualified and experienced association legal counsel to develop and implement effective screening

protocols for their community. This should include a standard application, interview and background/credit check process with full documentation for every step. By adhering to the highest standards of reasonability and fairness, associations will be able to benefit from effective screening procedures that do not expose them to potential legal repercussions.

**Michael L. Hyman** *is a shareholder with Siegfried Rivera in Coral Gables. He has focused on community association law since 1970.*

<https://www.law.com/dailybusinessreview/2020/08/12/ruling-exposes-perils-of-overzealous-buyer-screenings-by-community-associations/>

Reprinted with permission from August 12, 2020 edition of the "Daily Business Review" © ALM Media Properties,LLC. All rights reserved. Further duplication without permission is prohibited. For information, contact 877-257-3382, reprints@alm.com or visit [www.almreprints.com](http://www.almreprints.com).