



Considering Megan's Law

Weigh pros and cons of disclosure when sex offenders live nearby

by Pamela V. Rothenberg

Recent focus on sex offender registries and notification, paired with increasing accessibility to information regarding sex offenders, has sparked debate about apartment managers' and other real estate professionals'—including home sellers and residential brokers—responsibility to inform existing and prospective residents about the presence of convicted sex offenders in communities.

Over the past decade, laws commonly known as Megan's Law, requiring convicted sex offenders to register with their states of residence after being released from confinement, have presented real estate professionals with conflicting potential liabilities.

On the one hand, professionals face significant risks associated with a failure to provide adequate notice about the presence of convicted sex offenders who subsequently engage in criminal conduct, victimizing residents living in the professionals' communities. On the other hand, professionals may be subjected to meaningful potential liabilities for violations of privacy laws protecting offenders and their families.

Only a few states have clearly articulated the disclosure duties under Megan's Law for persons involved in housing transactions, and few, if any, have specific requirements for apartment owners and managers.

In states where real estate professionals' disclosure obligations have not

been clearly addressed, commentators have opined as states move further from the common law standard of caveat emptor, or buyer beware, the likelihood of liability increases for real estate professionals failing to disclose the presence of known sex offenders.

The prevailing argument is the presence of sex offenders in neighborhoods is a foreseeable danger, and landlords exercising reasonable care must notify tenants.

Many believe courts may deem the presence of sex offenders in neighborhoods as a "health risk," materially impacting the value of the property and requiring disclosure by various state statutes.

While courts are typically skeptical of holding landlords liable for crimes committed by third parties victimizing their tenants, some courts have begun imposing liability when criminal activity was foreseeable.

The prevailing argument is the presence of sex offenders in neighborhoods is a foreseeable danger, and landlords exercising reasonable care must notify tenants. As in home sales contracts, courts may consider the presence of sex offenders material to the execution of leases and partially determinative of properties' rental values, therefore requiring disclosure.

Real estate professionals should become familiar with state privacy law requirements possibly protecting sex offenders and their families from disclosures under Megan's Law.

Before implementing new disclosure policies based on Megan's Law, consider all pros and cons. Evaluate the applicable Megan's Law and privacy laws in all jurisdictions where portfolios are located to identify specific disclosure obligations to existing and prospective residents, as well as the associated privacy law limitations.

More information about Megan's Law, including information about all 50 states and links to states maintaining electronic databases of sex offender information, is accessible at www.klaaskids.org. □

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