

Megan's Law: To Disclose or Not to Disclose?

By Barry S. Goodman, Esq.

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A buyer with a five-year-old daughter is about to make an offer on a house. You have been told that a sex offender who was convicted of molesting a young girl lives next door. If you are the listing agent, what right do you have to disclose this information to the buyer? If you are the buyer's agent, do you have a duty to reveal this information? What if you are a dual agent or a transaction broker?

New Jersey, as well as all other states, the federal government and the District of Columbia, has enacted what is known as "Megan's Law," which governs your obligations concerning the disclosure of sex offenders living in a neighborhood. It therefore is critical for you to understand New Jersey's Megan's Law in order to avoid breaching your fiduciary duty to your client and violating the express mandates of Megan's Law.

New Jersey's Megan's Law

Megan's Law arose from a brutal rape and murder in July 1994 of seven-year-old Megan Kanka by a convicted sex offender who had been released from prison and moved into her neighborhood. Megan's family, the community, the state and, indeed, the nation were outraged that there was no way to know that a sex offender was living in the neighborhood so that Megan's family could have tried to prevent this tragic event.

As a result, the New Jersey Legislature led the way by enacting Megan's Law, which became effective in October 1994.¹ The purpose of Megan's Law is to identify sex offenders who are likely to be recidivists and to alert the public when necessary for the public's safety.²

Megan's Law is divided into two distinct components. The first requires certain sex offenders to register with local law enforcement agencies.³ The second requires notification to the community concerning registered sex offenders who are considered to be a moderate or high risk to commit such offenses again.⁴ In addition, the Legislature directed the New Jersey attorney general to promulgate guidelines and procedures for the notification required by the Law.⁵

Under Megan's Law, the prosecutor's office is required to determine whether a sex offender poses a low, moderate or high risk of re-offense. The notice provided to the public depends upon the likelihood that the person will commit the offense again. The three tiers of offenders created by the Law are as follows:

- ☛ Tier 1 – Every registrant will at least qualify as a Tier 1 offender under which notification extends only to law enforcement agencies likely to encounter the registrant.
- ☛ Tier 2 – Sex offenders who are at a moderate risk of re-offense are classified under this tier, with notice going to law enforcement, school and community organizations, including registered schools, day care centers, summer camps and other community organizations that care for children or provide support to women and/or individuals who are likely to encounter the sex offender.
- ☛ Tier 3 – High risk registrants are included in this tier under which members of the public likely to encounter the registrant, such as neighbors, are notified, in addition to all the notices required for Tier 1 and 2 offenders.⁶

¹ N.J.S.A. 2C:7-1 to 19.

² *E.B. v. Ventiero* 119 F.3d 1077, 1097 (3d Cir. 1997).

³ N.J.S.A. 2C:7-2 to 4.

⁴ N.J.S.A. 2C:7-5 to 11.

⁵ N.J.S.A. 2C:7-8a.

⁶ N.J.S.A. 2C:7-8c.

Disclosing Information About Sex Offenders

Megan's Law specifically includes certain prohibitions against the use of information about the registration of sex offenders. This includes the use of such information for the purpose of applying for, obtaining or denying any housing or accommodations.⁷

Under the attorney general's guidelines, neighbors are sent notice of a Tier 3 sex offender living in or moving into a neighborhood. However, the notice specifies that the neighbor is prohibited from sharing this information "with anyone who is outside of your immediate household." Thus, sellers are prohibited from sharing this information about a sex offender living in the community with any potential buyer.

The guidelines further provide that "[n]ew residents should be provided with information about such offenders as they would have received had they been a resident at the time the community notification initially took place, unless the offender's Tier classification or the scope of community notification has been changed in the interim to preclude such community notification." Thus, the notice only will be provided after a person becomes a "resident."

Megan's Law also authorizes the State Police to make information available to the public over the Internet about certain sex offenders who are required to register under the Law. This Internet registry includes information pertaining to Tier 3 and, with certain exceptions, Tier 2 sex offenders. It does not include any information about Tier 1 sex offenders.⁸ This Internet site contains an unambiguous warning against misusing the information on this site as follows:

WARNING: Any person who uses the information contained herein to threaten, intimidate or harass another, or who otherwise misuses that information, may be subject to criminal prosecution or civil liability.

Real Estate Commission Regulations Concerning Megan's Law

The Real Estate Commission (REC) similarly promulgated regulations dealing with a licensee's duties and obligations under Megan's Law. The REC specifically prohibits real estate licensees from making any inquiry or providing any information about registered sex offenders as follows: "licensees shall make no inquiry about and provide no information on notifications from a county prosecutor issued pursuant to that law [Megan's Law]. In response to requests

for such information, licensees shall inform the person making the inquiry that information about registered sex offenders is maintained by the county prosecutor."⁹

The REC also requires that real estate licensees include in all contracts for and leases of residential real estate they prepare the following statement in print as large as the predominant size print in the document:

MEGAN'S LAW STATEMENT – Under New Jersey law, the county prosecutor determines whether and how to provide notice of the presence of convicted sex offenders in an area. In their professional capacity, real estate licensees are not entitled to notification by the county prosecutor under Megan's Law and are unable to obtain such information for you. Upon closing the county prosecutor may be contacted for such further information as may be disclosable to you.¹⁰

Thus, real estate licensees are absolutely prohibited from providing any information about a possible sex offender living in a neighborhood and must refer any inquiries about sex offenders to the county prosecutor, who only will provide the information after the buyer actually has closed title on the property.¹¹

Conclusion

As a result, although there may be an emotional desire to advise a buyer who has a five-year-old daughter that a sex offender lives in the neighborhood, real estate licensees are absolutely prohibited from providing such information. Similarly, sellers are not permitted to provide such information to buyers. However, buyers have the absolute right to contact the county prosecutor to find out if there are any sex offenders living in the neighborhood after title has closed. In this way, buyers will be able to take any actions they deem necessary to protect their children and themselves from any sex offender who lives in the area.

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⁷ N.J.S.A. 27C:7-16c.

⁸ Unfortunately, the Internet registry, which is located at www.state.nj.us/lps/dcj/megan, only is as accurate as the information the sex offenders provide to local law enforcement authorities. Thus, if the sex offender moves and does not notify the local authorities, the information on the Internet will not be accurate.

⁹ N.J.A.C. 11:5-6.4(d).

¹⁰ N.J.A.C. 11:5-6.4(e).

¹¹ In prohibiting the dissemination of any information about a sex offender in the neighborhood until after a buyer has purchased the home, the Legislature had to balance the need of any new homeowner to know about such sex offenders to protect children living in the home and the right of the seller not to have the value of the property plummet through no fault of the seller if a sex offender happens to move into the neighborhood.