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California Megan's Law updates: Landlords must know obligations and limitations

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by Tamara Cross A recent change in California's Megan's Law now allows public access to specific information about registered sex offenders in California via the Internet through the website <http://meganslaw.ca.gov>. This website provides photographs, addresses, and offenses of registered sex offenders in California. New accessibility requirements emphasize the dilemma already faced by landlords regarding the responsibilities landlords have when they receive notice that a potential applicant or a current tenant is a registered sex offender. This article will address what actions landlords can and cannot take to protect themselves and other tenants without violating Megan's Law and fair housing laws. **WHAT IS MEGAN'S LAW?** Megan's Law is founded on the principal that convicted sex offenders are likely to re-offend. Based on this likelihood, individuals should have access to information about sex offenders in their community to help prevent further sex crimes. For over 50 years California has required dangerous sex offenders to register with their local law enforcement agencies. In 1996 California adopted California's Megan's Law (California Penal Code Section 290.4). This law requires the Department of Justice to produce and distribute a CD-ROM monthly containing information about "high risk" and "serious" sex offenders. 1 This CD-ROM is currently available for viewing by the public at all sheriff departments, several police departments, county district attorneys' offices and college campuses. In September 2004, the Governor of California signed into law the requirement that the sex offender information be accessible to the public via the Internet. This website, <http://meganslaw.ca.gov> provides not only photographs, addresses, and offenses of registered sex offenders in California, but useful information regarding:

- * Frequently asked Questions: <http://meganslaw.ca.gov/faq.htm>
- * How to protect Yourself and Your Family: <http://meganslaw.ca.gov/protect.htm>
- * Facts about Sex Offenders: <http://meganslaw.ca.gov/facts.htm>
- * Penalties for Misuse of Information: <http://meganslaw.ca.gov/registration/penalty.htm>

NOTIFICATION IN THE LEASE
California Megan's Law also requires landlords to place a notification of the statewide database in every residential lease. Specifically, California Civil Code Section 2079.10(a) states that the notice in the lease should read as follows: The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more and many other local law enforcement authorities maintain for public access a database of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The database is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service. This

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notice adequately informs the tenants about the statewide database of the locations of registered sex offenders. Landlords may also notify tenants of the website, Meganslaw.ca.gov. **LIMITATIONS ON USE AND DISTRIBUTION OF LAW INFORMATION** Megan's Law allows information regarding registered sex offenders obtained from the website or CD-ROM to be used solely to protect a person "at risk." What constitutes an "at risk" individual may be subject to interpretation, but the Law specifically prohibits the use of the information obtained from this site to deny housing or employment to a registered sex offender. Furthermore, strict penalties are imposed against those who unlawfully use or distribute information obtained through these databases. Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, will be guilty of a misdemeanor, punishable by imprisonment and fines. Actual damages, attorney fees and exemplary damages are also available for the unauthorized use or distribution of this information. **DILEMMA OF LANDLORDS** California landlord-tenant law has increasingly placed more and more responsibility on landlords to protect tenants from the criminal conduct of others.² A landlord may have liability if he or she is aware of a known or potential risk and fails to take reasonable steps to protect the tenants against the risk.³ This responsibility can include protecting the tenants against the dangerous propensities of another tenant.⁴ Furthermore, manufactured home communities and apartment complexes may be more vulnerable to repeat offenses by registered sex offenders because the communities require families with children and/or seniors to live in close proximity with each other and share community pools and recreational rooms. Megan's Law, however, clearly prohibits landlords from using information obtained from the website or CD-ROM to discriminate against any registered sex offender, including denying tenancy to an applicant or evicting a current resident. How do landlords reconcile these two seemingly conflicting areas of law? California Megan's Law places the responsibility for monitoring and distribution of information about convicted sex offenders on law enforcement agencies. Megan's Law specifies that only law enforcement agencies may authorize individuals, residents, schools, churches or other community members to distribute information about convicted sex offenders to others. Therefore, if the landlord obtains information regarding a registered sex offender applying for or living in the community, or if the landlord believes that he or she has seen a registered sex offender in the vicinity and has a reasonable belief that the offender represents a threat to the tenants or others in the community, the landlord should immediately contact the local law enforcement agency and notify them of the situation. The law enforcement agency shall make the decision whether or not the registered sex offender would be violating his or her parole by living in the community or whether the registered sex offender poses an unreasonable risk to the community and what actions should be taken to protect the community or any individual "at risk." The landlord may use the information obtained by the site to exercise appropriate caution to protect those in the landlord's direct care or supervision. It is recommended that the landlord document in writing all communications with the law enforcement agency regarding concerns and requests to distribute information obtained on the site. The landlord should be diligent in following up with the law enforcement agency also to determine what action the agency is taking in regards to the information and concerns. If the landlord feels that the law enforcement agency is not responding appropriately, the community attorney should be contacted to discuss other courses of action. Landlords who notify the law enforcement agency and take reasonable measures to follow up with the agency in regards to known sex offenders in the area or potential risks the sex offender may present are arguably taking reasonable (and lawful) steps toward protecting the tenants against the known or potential risks the sex offender may present. Other reasonable steps that may be taken by the landlord to assist in protecting tenants against registered sex offenders are: 1. Inform tenants about the website, meganslaw.ca.gov. Encourage tenants to view the information regarding sex offenders in the area themselves. Limit discussion

about the website to the website address only, do not specifically discuss the contents of the site with tenants. When tenants view the site for themselves there is no unlawful distribution. If the tenants do not have Internet access, encourage members of the community to go view the CD-ROM database and website with photos of convicted sex offenders at the law enforcement agency. 2. Encourage your law enforcement agency to distribute flyers or other information warning or notifying individuals in the community of the presence and identity of the offender and of the website. 3. Request your law enforcement agency to hold a meeting at your community to notify your residents of ways they can protect themselves and their children against sexual predators. 4. It may also be advantageous for owners or managers to engage the community's attorney for the purpose of notifying the law enforcement agency, requesting disclosure of sex offender information in the community and insuring the law enforcement agency is taking all appropriate measures to protect the community.

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