



## “Megan’s Law” Update: Website Information on Registered Sex Offenders

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### TABLE OF CONTENTS

#### Introduction

- I. **Changes to Existing Law**
- II. **Duties and Obligations in Real Estate Sales Transactions**
- III. **Duties and Obligations in Real Estate Lease Transactions**

#### Introduction

On September 24, 2004, California enacted AB 488 (Parra), which requires the California Department of Justice to make specified information about certain sex offenders available to the public via an Internet website and to update that website on an ongoing basis. The website is now currently active at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Previously this information was available through a “900” telephone number and through local law enforcement agencies. “Megan’s Law” requires that a notice of the availability of this information on the database be disclosed to the buyer of residential property, and to the tenant of residential property. The reporting requirements have not changed under the new law. This legal memorandum is designed to provide guidance to REALTORS® with questions concerning the new and existing disclosure obligations regarding sex offender information as they relate to their real estate practice.

#### I. **Changes to Existing Law**

##### **Q 1. *What is the new change to Megan’s Law?***

**A.** The California Legislature recently passed and the governor signed AB 488 (Parra) which adds California Penal Code §290.46 requiring the California Department of Justice to create a website, accessible to the public, which will include specified information about certain sex offenders. The statute also delineates the penalties associated with the misuse of the new information.

##### **Q 2. *What information will be on the website?***

**A.** The information contained about a specific sex offender will depend on the status of the sex offender. For the most serious offenders, the sex offender’s exact address, name, any aliases, photograph, physical description, gender, race, date of birth and criminal history will be included. This category includes: (1) virtually all offenders who have been convicted of committing a lewd act with a child under the age of 14 or whose crime involved force or fear as an element; (2) virtually all offenders who have been convicted of two or more

sex offenses in separate trials; and (3) “sexually violent predators”. Certain other offenders will have the county of residence and the ZIP code of the offender but not the exact address. Less serious offenders may apply to the Department of Justice for exclusion of their information from the website. Information about the less serious offenders will continue to be maintained through the “900” number, the Department of Justice, and local law enforcement agencies.

**Q 3. *Where can I access the information on the website?***

**A.** The California Department of Justice will maintain the website at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov) which will be updated on an ongoing basis. The Department will also have discretion about the translation of the information on the website into other languages besides English. Any person who is required to register as a sex offender is not entitled to access the website, and if he or she accesses the website, is punishable by a fine of \$1000, six months imprisonment in county jail, or both.

**Q 4. *How may the information be used?***

**A.** The information contained in the website, as well as the information available from other Megan’s Law sources, may be used only to protect a person at risk. Except to protect a person at risk or as authorized under any other law, use of the information for any purpose relating to the following is prohibited: (1) health insurance, (2) insurance, (3) loans, (4) credit, (5) employment, (6) education, scholarships or fellowships, (7) housing or accommodations, and (8) benefits, privileges or services provided by any business establishment. Information obtained from the database cannot be used to harass or intimidate a sex offender, or a relative of the sex offender. “Person at risk” is not defined under the statute and would depend on various factors, including the nature of the crime that the sex offender committed.

**Q 5. *What are penalties for the misuse of the information contained on the website?***

**A.** Any person who uses the information contained in the website to commit a misdemeanor is subject to an additional fine of not less than \$10,000 and not more than \$50,000, in addition to any other applicable punishment for that misdemeanor. Any person who uses the information to commit a felony shall be punished by a five year term of imprisonment in state prison, in addition to any other punishment for that felony.

**II. *Duties and Obligations in Real Estate Sales Transactions***

**Q 6. *What are the disclosure obligations of real estate brokers and sellers of real property under this law?***

**A.** California Civil Code §2079.10a states that any contract for the sale of residential real property containing one to four units shall contain a notice informing the buyer of the existence of a public database maintained by the California Department of Justice, and how to access this database through local law enforcement or a “900” phone number. The exact language of the notice is stated in subsection (a) of this statute, and that language is contained in all current versions of C.A.R. purchase agreements and residential leases. The statute does not specifically require real estate brokers or sellers to provide this notice, but the statute provides a safe harbor for brokers and sellers if the notice is contained in the contract.

**Q 7. *Has the new law changed the statutory obligation of disclosure?***

**A.** No. Once the specified notice is given, the notice is deemed to be sufficient to notify the buyer of the statewide database, and sellers, landlords and brokers are not required to provide any other information regarding the proximity of registered sex offenders, absent actual knowledge. Nothing in AB 488 (California Penal Code §290.46) has changed the statutory obligations of disclosure.

**Q 8. *Do real estate brokers have a duty to disclose the existence of the Internet website?***

**A.** Nothing in AB 488 specifically imposes any duties on real estate brokers or agents to disclose the existence of the website containing information about registered sex offenders. However, to best protect the interests of

participants in a residential sale, real estate brokers may adopt a policy to inform prospective buyers of the existence of this new website.

**Q 9. *What disclosures are required if either the seller or the broker is actually aware of a registered sex offender living in the area?***

**A.** Both the seller and the broker have a duty to disclose material facts under California law. Under California Civil Code §2079.10a, providing the notice of the existence of the Megan's Law database does not insulate either the seller or the broker from otherwise disclosing material facts of which either is aware. Based on these standards, the answer depends on the exact facts and circumstances regarding the information known.

**Q 10. *What disclosures are required if the broker learns that the buyer is a registered sex offender?***

**A.** The buyer's broker probably would not be required to disclose that the buyer is a registered sex offender. It would likely not be a material fact to the seller, nor impact the sale of the property from the seller's perspective. Since the buyer's broker has a fiduciary duty to the buyer, then the broker probably should not disclose this information as this might be a breach of his/her duty to the client.

**Q 11. *What disclosures must be given to the seller or listing agent by brokers representing the buyer who have knowledge of a sex offender living in the area?***

**A.** The selling agent has no duty either under common law or California statutes, to disclose the exact location of a sex offender to the seller or to the listing agent. However, if the proximity of a registered sex offender is the reason that buyer is not purchasing the property, the buyer is not prohibited from disclosing the reason for cancellation of the purchase contract.

**Q 12. *Should a real estate agent print out a copy of the information from the Internet site and provide the information to his/her client?***

**A.** The answer to this question depends on what the client will do with the information. If the client will use the information for an invalid reason (see Question 4), then the agent might be seen to be in violation of California Penal Code §290.46. Consequently, a prudent agent will disclose the existence of the website or other sources where his or her client can access the information, but probably should not print out a copy of the information for the client.

### **III. Duties and Obligations in Real Estate Lease Transactions**

**Q 13. *What are the disclosure obligations of real estate brokers or property owners in the leasing of real property?***

**A.** California Civil Code §2079.10a states that any contract for the lease of residential real property shall contain a notice informing the tenant of the existence of a public database maintained by the California Department of Justice, and how to access this database through local law enforcement or a "900" phone number. The exact language of the notice is stated in subsection (a) of this statute, and that language is contained in all current versions of the C.A.R. lease contracts. The statute does not specifically require real estate brokers or property owners to provide this notice, but the statute provides a safe harbor for brokers and property owners if the notice is contained in the lease contract.

**Q 14. *Has the new law changed the statutory obligation of disclosure to a tenant?***

**A.** No. Once the specified notice is given, the notice is deemed to be sufficient to notify the tenant of the statewide database and provides a safe harbor to real estate brokers and property owners for further notification, absent actual knowledge of a sex offender. Nothing in AB 488 (California Penal Code §290.46) has changed the statutory framework of disclosure. However, to best protect the interests of participants in a residential lease transaction, real estate brokers and property owners can adopt a policy to inform prospective tenants of the existence of the new website that contains sex offender information.

**Q 15. Should a landlord or property manager check the Megan's law website to see if any of their current tenants are on the database?**

**A.** No. There is no statutory or case law requiring a landlord or property manager to check to see if current tenants are on the Megan's law database.

**Q 16. Would it be prudent for a landlord or property manager to check the Megan's law website to see if a prospective tenant is on the database?**

**A.** Perhaps, so long as the information obtained from the database is not used to deny accommodations to the prospective tenant solely based on the fact that the person is on the list, unless it is necessary to protect a "person at risk." There is no statutory or case law requiring a landlord or property manager to check to see if a prospective tenant is on the Megan's law database.

**Q 17. What is the disclosure obligation of the landlord or broker if the landlord or broker has actual knowledge of a sex offender?**

**A.** Any landlord or broker who has actual knowledge of the location of a current registered sex offender does have a duty to disclose this information to a tenant, assuming that it is a material fact. If a sex offender moves into the area while tenants are occupying the landlord's property and the landlord or the broker (property manager) becomes aware of this fact, then the landlord or the broker would be obligated to notify current tenants of the location of the sex offender if necessary to protect a person at risk.

**Q 18. If a current tenant has been charged with (but not convicted of) committing a sexual offense, should the other tenants be notified?**

**A.** No. At this point the charge of a sexual offense is an allegation and the facts have not been proven.

**Q 19. What is the disclosure obligation of the landlord or broker if a sex offender is currently living in the unit that will be rented out?**

**A.** The answer to this question depends on whether this would be a material fact to the prospective tenant. Since the sex offender will not be living at that address any longer, the information that the previous tenant was a registered sex offender would not appear to be a material fact. However, as prospective tenants may enter into the property and be at risk if the sex offender is there, then for the purpose of the safety of the prospective tenant, this information should probably be disclosed, or other precautions should be taken when the prospective tenant is viewing the property if such prospective tenant might be at risk.

**Q 20. Would a landlord or property manager need to disclose that a previous tenant of the unit (not presently a tenant) was a registered sex offender?**

**A.** The fact that a previous tenant was a registered sex offender would likely not be a material fact about the property that would need to be disclosed. However, if the sex offender committed a crime in the unit in question, then that information might be a material fact that would likely need to be disclosed.

**Q 21. Can a landlord deny a rental/lease application from a prospective tenant who is a registered sex offender?**

**A.** A rental application can ask whether any proposed occupant has been convicted of or plead no contest to a felony, and can reject a prospective tenant on the basis of the conviction of a felony. Information from the database cannot be used to discriminate against a prospective tenant if the tenant is not guilty of a felony. If a registered sex offender is not guilty of a felony, then the landlord would only be allowed to use this information to protect a person at risk.

**Q 22. Would a landlord have the right to terminate a tenant who the landlord discovers is a registered sex offender?**

**A.** If the information on the tenant's application was false and the landlord rented the unit to the tenant based on that false information, then the landlord would have the right to terminate the tenancy. If the tenant has violated the law and become a sex offender during the tenancy, the right of the landlord to terminate the tenancy would depend on the terms of the lease agreement. (For example, the C.A.R. Residential Lease or Month-To-Month Rental Agreement has a provision that states that the tenant shall not "violate any law or ordinance" (Section 14A) which would give the landlord the right to terminate the tenancy.)

**Q 23. Are the disclosures on rental agreements contained in current versions of C.A.R. contracts sufficient for disclosure?**

**A.** Yes. The laws relating to disclosure of the Megan's Law database have not changed under the new law, so the Megan's Law database disclosure notices contained in the current versions of C.A.R. contracts are still sufficient for meeting disclosure obligations, assuming that neither the agent nor the owner has actual knowledge of a registered sex offender living nearby. The Standard Forms Committee is currently reviewing whether to make a change to the current C.A.R. forms. If any new legislation changes the required disclosure, then C.A.R. will modify the disclosure statement contained in the C.A.R. forms to comply with any statutory requirements.

**Q 24. Where can I obtain additional information about this and related subjects?**

**A.** More information is available through the Office of the Attorney General and the California Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). This legal memorandum is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit C.A.R. Online at [www.car.org](http://www.car.org).

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The information contained herein is believed accurate as of February 18, 2005. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.

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