

Megan's Law: Affects Multi-Housing Industry

Last May President Clinton approved an Amendment to the Violent Crime Control and Law Enforcement Act of 1994, commonly referred to as "Megan's Law."

This measure makes it mandatory that state and local law enforcement agencies release "relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released."

Consequently, law enforcement agencies are required to advise the public of sexually violent offenders in the community.

A recent National Apartment Association publication suggested the possibility of lawsuits against management companies that do not check the names of certain offenders covered under Megan's Law before they rent to these individuals.

It also is quite conceivable that lawsuits may arise in the event such offenders become renters and then perpetrate a crime against a fellow resident at the apartment community.

With the availability of information concerning sexually violent offenders, it could be argued quite persuasively that a management company should insure that such data is reviewed as part of its resident screening process.

It has become quite common for the courts to hold management companies liable for the foreseeable criminal acts perpetrated against their residents. This duty to protect renters is especially true where there was either actual or constructive notice of facts indicating the likelihood of a crime to be committed against a tenant.

In most instances this was shown through deficient security practices and/or the existence of prior crimes at the apartment community.

Some of these cases were couched in terms of a "negligent failure to disclose" by the management company. In *O'Hara v Western Seven Trees Corp.*, a California court found that management's knowledge of previous assaults by the same individual and of certain other conditions, which made future assaults likely, but its failure to disclose this information to a prospective resident constituted a valid suit against the apartment manager.

In a Maryland decision, *New Summit Associates Limited Partnership v. Nistle*, management's failure to disclose a defect in the resident's bathroom mirror, which allowed the invasion of her privacy by construction workers in other apartments, violated its duty of reasonable care to the resident.

A management company should make sure the resident-screening form it uses is obtaining available information concerning sexually violent offenders. With this data the apartment

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manager would have the appropriate facts to deny such applicants residency at his or her rental property.

In this author's opinion, making rental decisions without knowing an applicant's criminal background is not in the best interests of either the management company or its residents.

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