

Sex Offenders in Massachusetts Community Associations

By: *Scott J. Eriksen, Esq.*



Over the past few months, we have fielded a number of questions from association clients as to what information they share regarding sex offenders living at their communities. Many of our boards and managers understandably feel compelled to notify residents if a registered offender moves into the property. They are often concerned not only about the safety of residents and guests, but also about the impact that an offender may have on the property values or other issues related to having an offender in the community (intra-owner disputes or violence, etc.). We are certainly sensitive to these concerns – particularly as they relate to safety – and believe that boards are well advised to be vigilant of any reason to suspect criminal behavior at their communities and act to address it within their power; however, boards must also be mindful of the statutory scheme governing the dissemination of offender information so as not to expose the association to unnecessary liability.

M.G.L. Chapter 6, §178E states that sex offender “[r]egistration data...shall not be disseminated to the public except in accordance with sections 178D, 178I, 178J and 178K.” M.G.L. c. 6, §178D provides for the creation of the comprehensive sex offender registry database and its public access via the internet. However, this provision provides that *only level 3 sex offender information shall be provided via internet.*

M.G.L. c. 6, §178I sets forth qualifications necessary for an individual to receive Sex Offender Registry information. It states that “[a]ny person who is 18 years of age or older and who states that he is requesting sex offender registry information for his own protection or for the protection of a child under the age of 18 or another person for whom the requesting person has responsibility, care or custody shall receive at no cost from the board a report....” This provision allows one submitting an inquiry to receive information on both level 2 and level 3 offenders. While a condominium board may argue some “responsibility” toward its residents, the statute implies the necessity of a guardianship relationship in situations in which one person would receive the information on behalf of another.

M.G.L. c. 6, §178J states that anyone obtaining sex offender information must receive a warning that such information cannot be used “to commit a crime or to engage in illegal discrimination or harassment of an offender....” M.G.L. c. 6, §178K states that “[t]he public shall have access to the information regarding a level 2 offender in accordance with sections 178I and 178J.” This section also provides that “[t]he public shall have access to the information regarding a level 3 offender in accordance with sections 178D, 178I and 178J.” This section further states that “[a] level 3 community notification plan shall require the *police department* to notify organizations in the community which are likely to

encounter such sex offender and individual members of the public who are likely to encounter such sex offender.”

In light of the above, we have advised clients that, generally speaking, the applicable statutory provisions do not appear to provide for the public to have knowledge of level 1 offenders. Further, as to level 2 and level 3 sex offenders, the public can generally only obtain knowledge by making a request and assenting to the required terms. The right/authority to disseminate information to the public rests strictly with law enforcement.

Notwithstanding the above, many boards are justifiably unwilling to adopt the “do nothing” approach on moral and potential liability grounds, and we agree that some level of communication regarding knowledge of an offender’s presence is appropriate in almost all cases. While there is a general legal principle that one party is not liable for the criminal actions of another (absent collusion, agency or the like), case law indicates that there may be circumstances where a board’s failure to identify a potential threat such as this could give rise to liability. Accordingly, where a board becomes aware that a sex offender is living at or has moved into the community, we typically suggest that they consider sending a simple, carefully-worded statement to the ownership along the following lines: *“The Board recently received a request for information regarding whether any sex offenders reside at {Blank} Condominium. Under Massachusetts law, the Board is not empowered to release information regarding registered sex offenders. However, local law enforcement is permitted to do so, and we advise all residents and/or potential buyers, renters or occupants to exercise their rights to make inquiry with local law enforcement should they wish to do so.”*

Of course, each set of facts requires careful consideration as different circumstances may require more or less action on the part of the board. We strongly recommend that if the board is faced with a question regarding a resident offender, or whether to disseminate information about an offender, that the board consult with its legal counsel.

This article is intended for informational purposes only and is not to be utilized or interpreted as legal advice.