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Do You Know Your Neighbor? Sex Offenders in Community Associations

Scott B. Carpenter, Esq.

Clients often ask us, "What can we do about a registered sex offender living in our community?." Put another way, "Is it feasible or prudent to prohibit the residency of registered sex offenders in the community?" If so, is it possible to do so?

By way of background, Arizona has since 1996 required that people convicted of certain crimes register with the sheriff in the county they intend to reside in after incarceration. They must do this within ten (10) days of their release from prison or jail. Once the person registers, the information is fed into a state run database. Registration is required by A.R.S. § 13-3821 for the following offenses: (1) Unlawful imprisonment; (2) Kidnapping; (3) Sexual abuse; (4) Sexual conduct with a minor; (5) Sexual assault; (6) Sexual assault of a spouse; (7) Molestation of a child; (8) Continuous sexual abuse of a child; (9) Taking a child for the purpose of prostitution; (10) Child prostitution; (11) Commercial sexual exploitation of a minor; (12) Sexual exploitation of a minor; (13) Luring a minor for sexual exploitation; (14) Sex trafficking of a minor; (15) A second or subsequent violation of indecent exposure to a person under fifteen years of age; (16) A second or subsequent violation of public sexual indecency to a minor under the age of fifteen years; (17) A third or subsequent violation of indecent exposure; (18) A third or subsequent violation of public sexual indecency; (19) Unlawful age misrepresentation; and (20) Aggravated luring a minor for sexual exploitation. Once released from incarceration, offenders convicted of one of the offenses listed above are given a recidivism risk, "Level 1" – low risk, "Level 2" – intermediate risk, and "Level 3" – high risk. Arizona law mandates this risk assessment so that appropriate community notification can take place. The levels are currently based on nineteen (19) criteria that criminal justice experts believe are generally accurate predictors of future behavior.

Can a condominium or planned community association prohibit the residency of individuals who are obligated to register because they have been convicted of the 20 crimes set forth above? The simple answer is "yes". A Board of Directors can have a lawyer draft an amendment, the Board can decide to submit it to the membership for approval, the membership can vote for it, and the Board can have the amendment recorded with the County Recorder. But does such a prohibition offend the law in any other way? No, but mistakes, risks and problems can always arise in the implementation and in the enforcement (or non-enforcement) of such a provision.

This topic will be discussed in more depth at a "Focused Issue Summit" at our offices on September 22, 2009 at 9 am and Noon (same program). It is free to community managers and board members of clients of the firm. At the Summit, we will discuss the political feasibility of adopting such a restriction, fair housing concerns and discrimination allegations, implementation options, risks, and potential disadvantages. If you want to attend, please send an e-mail to our Director of Client Education, Shannon, at shannon@carpenterhazlewood.com.

Carpenter, Hazlewood, Delgado & Wood, PLC.
1400 E Southern Ave. Suite 400 | Tempe, Az 85282