

SACRAMENTO REPORT
Good News on Megan's Law!
by **Greg McConnell, Legislative Advocate**

I am pleased to report that on the last day of session, the California Legislature gave final approval to AB 2712 (Leno) "Megan's Law." This is a very significant step forward for rental housing providers. The bill brings clarity to the duties and obligations of landlords under Megan's Law, limits landlord liability and ensures fundamental fairness to people who comply with the law.

AB 2712 makes two changes to California Law:

1. It amends the Penal Code to clarify that while landlords may use information on the Megan's List Website when making housing decisions in order to protect a person at risk, landlords are not required to use the information.
2. It creates a new Civil Code Section, 2079.10b, which limits liability when landlords rent to a person on the list.

When the legislature first drafted Megan's Law, it unintentionally created a huge ambiguity regarding the duty of California landlords to protect their tenants from sex offenders. On one hand, Megan's Law can be read to prohibit landlords from using the information on Megan's List to screen a potential tenant or evict a tenant who is a registered sex offender. On the other hand, the law also says that the information from Megan's Law can be used to protect an undefined "person at risk."

This ambiguity puts landlords who try to comply with the law in an untenable position because they can be sued either by the registered sex offender if they use the information or by a tenant if they do not. For example, landlords can be subject to a fine of up to \$25,000 for incorrectly using the information to evict a sex offender or for using the information to deny tenancy. Alternatively, if the landlord does not use the information, the landlord may be sued by tenants who claim they were injured because the landlord failed to meet the duty to protect a person at risk. AB 2712 removes these ambiguities and provides liability protection for landlords.

AB 2712 was sponsored by a diverse group of real estate interest groups that included large and small owners, mobile home owners, builders, and developers. The bill also had the backing of the Western Center on Law and Poverty which is the state's largest tenant advocacy group.

Strangely, the only opposition came from another Apartment Association. They attempted, unsuccessfully, to lead a chorus of republicans to defeat the bill. They argued against AB 2712 as though it would promote the rights of sex offenders over the rights of potential victims. They even went so far as to say that if the bill passed it would result in sex offenders living next to children. Neither of these claims had merit.

Many of the republicans were thrilled to have a fight. They saw this as an election year opportunity to show they were tougher on sex offenders than democrats. They orchestrated a message that they opposed AB 2712 because it protected landlords but not

children. They said they would pass nothing short of a bill that would require landlords to use the Megan's list to screen out and evict all registered sex offenders

This was clearly posturing because everyone who advanced that theory knew very well that attempts to pass such a law over the last two years have failed miserably. They also know that the Attorney General has indicated that passage of such a law would render the Megan's Law website unconstitutional and then we would have no idea where California's 75,000 sex offenders live.

Moreover, we proved that the assertion that landlords are unable to deny tenancy to sex offenders is off the mark. The only thing Megan's law prevents is the use of the information from the website. It does not prevent use of other criminal data bases.

This point was made clear when the Chairman of the Assembly Judiciary Committee agreed that existing law allows landlords to screen potential tenants for past crimes and deny tenancy to those who have criminal backgrounds. For example, under the law, an owner can ask an applicant if he has ever been convicted of a felony. If he answers in the affirmative, he can be rejected. If he lies and the landlord does a criminal background check and later discovers the truth, the tenant can be evicted. This kind of screening is allowed for all kinds of felonies, including sex crimes.

As the hearing on AB 2712 heated up, it was almost humorous to witness a legislative debate where the democrats were arguing for limiting liability and protecting landlords from frivolous lawsuits, while the republicans were arguing about tenants rights. Fortunately, the right argument prevailed.

AB 2712 now goes to the Governor for signature. We will be working to get him to sign the legislation into law.

Bad News on 60 Day Notices

The Legislature approved AB 1169. If signed into law by the Governor, on January 1, 2007, landlords will have to go back to giving a 60 day notice to terminate a tenancy. AOA will be contacting you directly about how you can contact the Governor and make your views known on this important legislation.

Editor's Note: This is an abbreviated report. I have been working non stop on a variety of bills in the closing week of the legislative session. We will have a thorough report on all of the bills we have been following this year in next month's report.

View the entire text of the bills in this report at <http://www.leginfo.ca.gov/bilinfo.html>
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