Sex Offender Notification: The Status of Megan’s Law in Georgia

By Anne F. Meroney, Attorney at Law

Dilemma #1: You have a listing on a residential property. Your client tells you that there is a person who was once convicted of child molestation living next door. Do you have a duty to disclose this fact to prospective buyers and their agents?

Dilemma #2: You are a buyer’s agent. When showing property, do you have a duty to ask whether there are any convicted sex offenders living in the neighborhood?

Real estate licensees facing these issues are in a frightening predicament. The legal issues (the possibility of a lawsuit for failure to disclose) pale in the face of moral and practical issues (the possibility of preventing harm to a child or harming the reputation of another person).

If the seller’s agent, in Dilemma #1, above, can verify that the information is true, then, in this writer’s opinion, the information should be disclosed if it appears that this fact would be material to the buyer. For example, the buyer might be a young couple with small children. If the information cannot be verified, it might be based on rumor, and should not be affirmatively disclosed. Even if there is no liability of a licensee to a buyer for passing along false information given by the seller, there is still the specter of a suit by the neighbor for slander or libel.

There is no legal “duty to ask,” per se, as described in Dilemma #2. The buyer’s agent must, however, obey the instructions of his client, and that includes asking questions that the client wants answered. If the buyer instructed its agent to ask the question, and its agent failed to ask the question of the seller or its agent, then, arguably, the licensee might have some liability on the theory that the buyer justifiably relied on the agent.

In this era of heightened concern on the part of real estate licensees about legal liability and professionalism, such questions have generated ongoing debate. The issue of community notification of the presence of sex offenders catapulted into the news with the 1994 passage of Megan’s Law by the New Jersey legislature. The act was named in memory of Megan Kanka, age 7, who was raped and murdered by a convicted sex offender who, unknown to Megan’s parents, lived in their neighborhood. The New Jersey law permits courts having jurisdiction over sex offenses to classify sex offenders into three categories based on the degree of risk that they will repeat their conduct. It requires varying degrees of public notification, depending on level of risk. Megan’s law has been upheld against court challenges. Other states have adopted their versions of Megan’s Law.

During 1996, President Clinton signed H.R. 2137, an amendment to the 1994 Omnibus Crime Bill. This is a federal version of Megan’s Law. The federal law requires states to notify the public when sexually violent offenders are released from prison or paroled, and their expected addresses. Federal law leaves the procedure and mechanics of implementation up to the states, including the definition of degree of danger imposed and type of notification required.

Georgia passed a sex offender registration law in 1996 (O.C.G.A. § 42-1-12, which deals with penal institutions). This law does not catch all convicted sex offenders in its net. It applies only to those offenders who are released from prison, supervised parole, or probation after the law’s effective date of July 1, 1996. Definitions of “sexually violent offenses against minors” include both specific criminal acts and “any conduct that by its nature is a sexual offense against a minor.” First-time offenders who come under Georgia’s First Offender Act (unless federal law requires otherwise) are excluded from the registration requirements. If a perpetrator is under age 18, and the conduct is criminal only because of the victim’s age (e.g., statutory rape), the conduct is not considered an offense within this law. The registration law defines the length of time a registration must be maintained and the procedures for registration.

The information contained in the Georgia sex offender registry is private data, intended primarily for law enforcement agencies, except that the Georgia Bureau of Investigation or any sheriff maintaining records under the law is authorized to release relevant information that is necessary to protect the public concerning a specific person required to register (a victim’s name cannot be disclosed). The law grants law enforcement officials immunity from liability for good faith conduct.

In its 1997 session, the Georgia Legislature has passed an amendment to the sex offender registration law that expands the definitions of offenses to include federal offenses and offenses committed in other jurisdictions (S.B. 105). In addition, the legislature has considered a number of other bills designed to deal with the danger that may be posed by released or paroled convicted sex offenders. Several have remained in committee, including a bill that would require “chemical castration” of convicted rapists and child molesters, and one, a bill that would have required convicted rapists to post identifying signs at their residences, has failed.

In this writer’s opinion, the Georgia sex offender registration law does not impose any duty on law enforcement officials or others to disclose information on request. In fact, the law does not contain any mechanism for the public, including real estate licensees and their clients, to request and get information about where convicted sex offenders live.

In conclusion, there is no ironclad, knee-jerk answer to the dilemmas posed at the beginning of this article either from the perspective of the seller’s agent in deciding whether to disclose or of the buyer’s agent in assisting the buyer to perform its own due diligence. Each fact situation must be analyzed carefully in context, and, as mentioned, there are many factors to be considered. Further, it may be difficult to get the necessary verifying information. Licensees must exercise their best professional judgment in such circumstances, informed by guidance from their brokers and advice of legal counsel.

Ms. Meroney is well known among Georgia legal and real estate professionals. She is a real estate educator and a former Senior Vice President and General Counsel to the Georgia Association of Realtors. She is currently in private practice in Atlanta and maintains LawPoint a legal information service for real estate professionals.