



## LEGAL MATTERS

### The Impact of Megan's Law on Real Estate Values

By Randall Bell, MAI

A variety of tragedies and detrimental conditions can impact real estate values, ranging from environmental contamination, geotechnical problems and natural disasters, to construction defects and neighborhood nuisances. While many of these conditions can cause millions of dollars in damages, injuries, or loss of life, perhaps none is more disturbing than a crime against a child.

Individuals in the appraisal industry might know about properties that have become crime scenes and realize the difficulties in selling these properties. Yet, an issue that may more directly impact the typical property owner is the potential of having a former convicted felon as a neighbor. While the thought of living near anyone with a criminal record may be unsettling, the reality of living near a convicted child molester is particularly worrisome. Whether such individuals can ever be rehabilitated is, at the very least, controversial. Because of the seemingly unacceptable rate of repeat offenses, there is a real risk to children living nearby a convicted child molester. Houses and other properties located near these offenders' residences may be less desirable, thereby possibly extending marketing times and diminishing values.

Considerable attention has been focused on this subject, largely due to the relatively new legislation referred to as "Megan's Law." This law encourages states to enact legislation requiring residential notification when a convicted child molester lives nearby. Because these issues can impact property values, it prompts many important questions for appraisers: What exactly is Megan's Law? How can it impact real estate values? Should this issue be researched and reported as other neighborhood

factors are like airport noise or a flood zone designation? If properties near a convicted child molester's residence can be worth less, how should this be addressed in the appraisal report? A review of how Megan's Law came into existence is a good place to find answers to these questions.

#### The Background of Megan's Law

On June 30, 1994, seven-year-old Megan Kanka stopped to visit a man who lived diagonally from her family's home in Hamilton Township, a suburb of Trenton, NJ. Nobody in the neighborhood was aware that the man, Jesse Timmendequas, was a twice-convicted child molester. Nor were they informed he had served just six years of a ten-year sentence for his most recent crime, and was living with two other convicted child molesters whom he had met in prison.

Timmendequas talked to Megan in his driveway and then invited her into his house to see his new puppy dog. The young girl accepted his invitation and went into the house. Timmendequas subsequently strangled and sexually assaulted the girl, leaving her body in a wooded area three miles from the house. When he was eventually arrested, Timmendequas confessed to the crime. In court, he was found guilty and sentenced to death for his crime.

There was considerable public outrage after the crime, focused on the fact that three repeat offenders were allowed to live in a family neighborhood, while the local residents were not informed of their backgrounds. Megan's mother argued convincingly to the public that she would not have allowed her daughter to stroll through the neighborhood if she had known the criminal history of her three neighbors.

The fury grew. The house where the crime was committed was demolished, and the city developed a park in its place. However, the situation affected real estate beyond the crime scene. New state and federal laws were passed that fundamentally altered the issues surrounding disclosure.

Megan's Law started as a state of New Jersey law and became the model for the federal law, enacted in 1996. The law established that states were to inform the community when an offender was located in the area.

Furthermore, states would lose certain federal funding if they did not adopt a version of Megan's Law. New Jersey, New York and Connecticut were the first states to comply and adopt their own federally mandated versions of the law. Criminal-rights activists have challenged the federal and some state laws, however, these laws have ultimately been declared constitutional. There has been a clear trend favoring these types of laws throughout the United States and, most recently, in England in August 1997.

#### Key Issues for Real Estate Appraisers and Analysts

While Megan Kanka's tragic death clearly prompted major new disclosure laws that impacted real estate, these types of laws actually began with the 1953 case *Reed v. King*. This case involved the sale of a house that had been involved in a 1973 multiple murder. The buyer was told by both the selling and buying agent that the house was ideal for her, and yet they failed to make any mention of the murders. After moving in, the new owner learned the history of the property from neighbors. The buyer filed suit, alleging

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Summary of State Notification Laws			
Broad Community Notification	Notification To Individuals And Organizations At Risk	Access To Registration Information	No Notification
Alabama	Arkansas	Alaska	Kentucky
Arizona	Connecticut	Colorado	Nebraska
California	Georgia	Hawaii	New Mexico
Delaware	Illinois	Idaho	
Florida	Indiana	Kansas	
Louisiana	Iowa	Michigan	
Massachusetts	Maine	Mississippi	
Minnesota	Maryland	Missouri	
Montana	New Hampshire	North Carolina	
Nevada	New York	North Dakota	
New Jersey	Oklahoma	South Carolina	
Ohio	Pennsylvania	South Dakota	
Oregon	West Virginia	Utah	
Rhode Island	Wisconsin	Vermont	
Tennessee		Virginia	
Texas			
Washington			
Wyoming			

Source: Washington State Institute for Public Policy

The federal government has enacted legislation, referred to as "Megan's Law," that encourages states to disclose to the public the whereabouts of convicted child molesters within the community. These individuals may be transient and therefore the situation may change periodically. While the appraiser has no knowledge of any offenders residing nearby the subject property, the scope of this assignment did not include any investigation into this matter. The client is advised to consult with local law enforcement officials about this issue. The appraiser assumes no responsibility for any issues related to Megan's Law.



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that because of the undisclosed stigma, the property was worth less than the price paid. The trial court dismissed the case, but an appeals court ruled that a seller has an obligation to disclose facts materially affecting the value of the property when the facts are known only to the seller and not readily available to the buyer.

In the late 1980s, Helen Ackley wrote an article published in Reader's Digest describing how three ghosts had been haunting her home in Nyack, N.Y. However, when Ackley sold the house, she did not disclose the "hauntings" to either her agent or the buyer. A New York appeals court ruled in 1991 that the buyers had a right to seek repayment of their \$32,000 down payment. The agent was not found liable.

Like its precedent, the federal version of Megan's Law, coupled with existing disclosure laws, may require that home buyers be informed about the presence of a sex offender in the

neighborhood; however, the enforcement of these laws and who is required to make such disclosures varies from state to state. Because these issues are still fairly new, it is unclear exactly what all the ramifications will be for appraisers. It is clear that perceptions about certain homes and neighborhoods may be affected. At the very least, appraisers should be aware of these issues, and fully disclose in their reports specifically what they did and did not do during the course of their assignment.

As with other assumptions and limiting conditions, an appraiser should disclose that these laws might impact value and indicate whether or not a Megan's Law-like issue was studied during the course of the assignment. If the scope of the assignment did not include specific research into the issue of Megan's Law, a disclaimer may be added to the report, such as the following:

The following assumption could also be considered, which addresses the entire spectrum of detrimental conditions:

*There are a wide variety of detrimental conditions that can impact property values. These include, but are not limited to: non-market motivations, future temporary disruptions, stigmas, convicted criminals who reside in the neighborhood, neighborhood nuisances, future unannounced surrounding developments, structural and engineering conditions, construction conditions, soils and geotechnical issues, environmental conditions and natural conditions. The appraiser has inspected the subject property on a level that is consistent with the typical responsibilities of the appraisal profession; however, the appraiser does not have the expertise of market analysts, soils, structural or environmental engineers, scientists,*

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*specialists, urban planners and specialists in these various fields. Unless otherwise stated within the report, the appraiser assumes no responsibilities for the impact that the variety of detrimental conditions may cause.*

### Confronting the Megan's Law Issue

The practical influences of Megan's Law have spread throughout the nation. Alaska now publishes a list of 1,600 paroled sex offenders on the World Wide Web. In Connecticut, the police will release the name, address and photos of paroled offenders to anyone who asks. California provides information on about 64,000 offenders on CD-ROM at sheriff and police stations.

diminution in value. If the assignment does include quantifying any diminution in value, there are numerous factors that should be considered.

Quantifying the effects of stigma caused by offenders living in an area is difficult, particularly when no estimate can be made of the duration of their stay. It is conceivable that until a molester leaves a family neighborhood, it could be very difficult to sell the property. Of course, this does not mean that the property has no value, but rather that the extended sales time and uncertainties could cause losses in terms of discounts to entice a buyer, as well as carrying and holding costs. Yet, when the offender moves, the value could immediately rebound back to its normal market value.

price of similar homes not located near an offender. Care should be taken to consider both discounts and extended marketing periods. In addition, comparisons should only be made using market data from similar neighborhoods. If a diminution in value actually does exist, it will become apparent and quantifiable in the process. As a practical matter, because this information and market data may not always be available, it could be derived or supplemented through carefully scripted interviews with brokers and agents who are familiar with the neighborhood and situation.

Megan's Law encourages states to make public disclosures about the identities and whereabouts of convicted child molesters within communities where they live. This law has dramatically and universally amplified the significance of real estate disclosure issues. Because of society's growing awareness of the problem and the effects it can have on a property's desirability, it is clear that appraisers should address these issues within their reports.

*Megan's Law has dramatically amplified the Significance of real estate disclosure issues*

The federal version of Megan's Law declares that states can inform citizens of convicted offenders in one of three ways: (1) release their name to newspapers, (2) notify schools and child-care centers, or (3) allow access to lists by request.

If the appraiser is aware that an offender does live nearby the subject property, it can be handled in one of two ways. First, the appraiser can disclose the issue, plainly alert the reader of the report to the situation within the cover letter, and state that he or she did not measure the impact, if any, that the situation would have on property values. This may be considered a limited appraisal and may require the use of the USPAP Departure Provision.

Second, the appraiser can make an investigation of the situation, study the effect that this has had on properties in the neighborhood, and measure any

The ramifications to real estate have been documented throughout the country as Megan's Law has been implemented and some interesting dynamics have become evident. When traditional family communities have been notified of an offender living in area, the consequences have been predictable. Simply stated, local residents in family-oriented communities have inevitably wanted the offenders to leave. In many cases when the residents organize a protest, the offender does leave the neighborhood.

To measure any impact of an offender living nearby a specific property, a study must be conducted that is based on market data and the attitudes within the market, as of the date of value. Of course, the most useful market data would be derived from the actual sales of homes that were located in proximity

**Randall Bell, MAI, is a real estate analyst and oversees the real estate damages practice of Price Waterhouse LLP. He is the developer of an Appraisal Institute seminar on detrimental conditions and is also the author of a forthcoming book to be published by the Appraisal Institute on this subject. He holds an MBA degree from UCLA.**

1. A more detailed discussion of the effects of detrimental conditions will appear in an article by Randall Bell to be published in the October 1998 issue of The Appraisal Journal.