**THE INFORMATIONAL CORRLINKS NEWSLETTER (ICON) #102**

**APRIL 2024 – HOMEOWNER’S ASSOCIATIONS**

ICoN provides legal, treatment, activism news & practical info for incarcerated SOs. Send inquiries in a CorrLinks email (iamthefallen1@yahoo.com) or to Derek Logue, 2211 CR 400, Tobias NE 68453. I don’t advise/assist on appeals, sentencing/prison issues, non-SO news & services like people-finding, Penpals & mail forwarding.

**LAW WATCH**

CO: The CO Bureau of Investigation (CBI) released the findings of the investigation into Yvonne “Missy” Woods, which concluded Woods’ handling of DNA testing data affected 652 cases between 2008 & 2023, including posting incomplete results in some cases. A review of her work from 1994 to 2008 is also underway, according to the CBI. “This discovery puts all of her work in question, & CBI is in the process of reviewing all her previous work for data manipulation to ensure the integrity of all CBI laboratory results. TheCBI brought in third-party investigative resources to protect the integrity of the inquiry.”

*In the Matter of Rashid Laliveres*, No. COA 23-742 (NC Ct of Apps, 2/20/24): Upheld registration requirement of an RP from NY; RP argued that registration shouldn’t be required because attempted offenses are not included in the definition of a reportable conviction in NC statutes, but N.C. Gen. Stat. §14-208.6(4)(b) specifically states registration in NC is required if required to register in another state.

*State of Iowa v. Kadin Jeffrey Miller*, Op. No. No. 22–0903 (IA Sup Ct, 3/8/24): Overturned registry requirement for conviction for 1st deg harassment after posting his ex’s nude pics online after a breakup (aka “Revenge Porn”). IA Code §229A.2(10) defines “sexually motivated” for inclusion on SOR as the commission of a crime for “the purpose of sexual gratification of the perpetrator of the crime.” The State couldn’t prove beyond a reasonable doubt the offense was sexually motivated.

*US v Hay*, No. 22-3276 (10th Cir 2024): While this case doesn’t involve an RP, it is important because it concerns our privacy rights. The 10th Circuit upheld a KS conviction of 10 counts of stealing gov’t property & 6 counts of wire fraud as part of a scheme to defraud the VA by exaggerating his disability. As part of its investigation, VA agents installed a pole camera across the street from his house to film his activities for 68 days straight. “Mr. Hay had no reasonable expectation of privacy in a view of the front of his house…As video cameras proliferate throughout society, regrettably, the reasonable expectation of privacy from filming is diminished.” LEAs have been reportedly acquiring footage from Ring cameras (a private doorbell camera made by Amazon connected to the internet) w/o search warrants to obtain footage of suspects for years. (Amazon claims they no longer do this.) This could become problematic for PRs concerned about being targeted for gov’t surveillance. There are other surveillance companies that provide cameras using mobile phone data instead of WiFi, such as Arlo or Reolink, but there is no guarantee these are not subject to warrantless searches as well.

Bill Summaries:

* CO: SB 118 would impose mandatory minimums for individuals convicted of SO, mandating that they serve 75% of their sentence before becoming eligible for parole. The bill would allow offenders deemed “low-risk” to complete sex offender treatment within the community instead of prison.
* LA: St. Tammany Parish Council introduced an ordinance requiring RP housing providers require landlords to limit occupancy to one RP per 1000 sq ft of property report criminal activity on their properties, pay a $5k annual fee to the parish, buy insurance that covers up to $1 million in liability, provide 24/7 supervision on site, erect a 6ft “privacy fence” around the properties, & other restrictions.
* OK: HB3992 will require those convicted of offenses against minors to serve 100% of their sentences & make those sentences LWOP.

**HOMEOWNER’S ASSOCIATIONS (HOAs)**

I was recently asked about rights as an RP regarding Homeowners associations (HOAs). It seems counterintuitive for an RP to desire to live in an HOA. HOAs tend to have a poor reputation these days. As one RP put it, “HOAs suck. What started out as a group to assist each other in protecting property values has morphed into a bunch of nosy neighbors with a God complex. HOA covenants are not laws & have no legal force beyond the association being able to sue a non-compliant member for breach of contract.”

First, allow me to explain the difference between an HOA & rental properties. With rental properties, you are renting, not buying. You do NOT own the property. Thus, they CAN discriminate against you because you are not a protected class, & private persons don't have to rent to you if they don't want to, & you can be evicted from rental properties.

An HOA is an organization made up of people who own homes in the same community, like a condo, townhouse or planned development of single-family homes. The HOA helps manage the community, & it collects monthly fees to pay for shared amenities. You agree to pay for these amenities when you sign up to move into an HOA. But the key difference is that you OWN that property. A condominium (or condo) is like an apartment where you own the interior of your home, but the HOA owns & manages the exterior & common areas & will have the most rules. A townhouse is a single-family home that is at least 2 stories tall & shares at least one wall with another townhouse. Townhouses typically offer the same types of features & services as condo, but own both the interior & exterior of your townhouse, so you’ll face fewer HOA regulations. Single-Family Home HOAs tend to be the least restrictive but there are still some rules you must follow. You must follow their rules; if you refuse to pay the HOA fees or break the rules, you could be fined, sued, or even have a lien filed on your property. Conversely, the HOA must follow all federal, state & local laws like the Fair Housing Act or the Americans with Disabilities Act. HOA board members have a legal responsibility to act in the best interests of the homeowners in the community.

While there has been a lot of discussion about banning RPs from HOAs, there aren't many court cases on this subject.

In 2020, the Wildwood Estates Homeowner’s Association in Beatrice, NE filed a suit against an RP but it was dismissed. A Gage Co. judge stated that concern over the RP’s residence was nothing more than speculation & that the association must demonstrate a real threat of great or irreparable injury & found that the association had not demonstrated a probability of success on their challenge. The HOA later filed a motion to dismiss the lawsuit.

In *Lake Naomi Club, Inc. v. Rosado*, 285 A. 3d 1 (Pa: Commonwealth Court 2022), the PA Commonwealth Court of Pennsylvania (the state's intermediate court), ruled against an HOA restriction banning those classified as Tier 3 (those considered "high risk") from an HOA property. The Court pointed to *Fross v. County of Allegheny*, 610 Pa. 421, 20 A.3d 1193 (2011), a PA Supreme Court ruling which held that an Allegheny Co. ordinance that broadly excluded RPs from residing in county population centers was preempted by the Sentencing Code, 42 Pa.C.S.§§9701-81, & the Prisons & Parole Code (Parole Code), 61 Pa.C.S.§§101-7301.

“Although Fross involved a county ordinance & not a restrictive covenant by a private community, the Sup Ct's ruling clearly established a public policy that local counties & municipalities cannot impose SO residency restrictions due to PA’s statewide legislative scheme governing the release of SOs, manifested in SORNA & the Sentencing & Parole Codes. If local counties & municipalities must adhere to these statewide mandates, so must private residential communities.” This could mean that states that allow municipalities to create their own ordinances might rule that HOAs could make similar rules if it went to court. If PA allows municipalities to create local ordinances in the future, this case might eventually be overturned. There are some news reports that some HOAs have passed SO bans in FL & OH.

But in *Mulligan v. Panther Valley Property Owners Ass’n*, 337 N.J. Super. 293 (App. Div. 2001), the NJ Appellate Division upheld an HOA’s amendment precluding Tier 3 RPs from residing (but not owning the property) within the common interest community.

In *Lake Holiday Property Owners Association, Inc. v. John Koempel*, No. 23-MR-17 (Cir. Ct. LaSalle Co.) (January 30, 2024), a circuit court ruled restrictive covenants banning any type of RP from residing in the community were enforceable. The Court noted that Koempel knew of the rule before he moved in, unlike the PA case, where the rule was created after Rosado had moved into his home. HOA ‘restrictive covenants” are a private contract, so constitutional safeguards aren’t applicable. The court further held that owners have a choice as to whether they want to live in a community that has restrictions on sex offenders & that they have “…ample alternatives & may just decline their membership in the community”; Koemel is not being compelled to sell his property; his family can still reside there, but he can’t; Koempel can rent the property; & Koempel couldn’t point to a law identifying RPs as a protected class of persons. While this was a trial court ruling & non-binding, IL has uphold a number of draconian laws like park bans, so I have little hope this will be overturned on appeal.

An attorney in AZ claims, “In 2014 the Arizona Legislature specifically authorized HOAs to have CC&Rs prohibiting RSOs in their community. A.R.S. §33-1260.01(H) & §33-1806.01(H).” The actual statute reads, “This section does not prohibit & an association may lawfully enforce a provision in the community documents that restricts the residency of persons who are required to be registered pursuant to §13-3821 & who are classified as level 2 or level 3 offenders.”

Meanwhile, an attorney in NV states his state may not uphold an HOA rule from banning RPs in a 2016 article, citing registry data cannot be used for “any purpose related to … housing or accommodations” (still accurate as of this writing), harassment concerns, lack of state statutes or legal precedent allowing such bans, infringement on private property rights, & even potential Fair Housing violations

Unfortunately, some folks are willing to pass HOA rules knowing they’ll likely never be challenged. Tony DeGirolamo, the Avondale HOA president (in Starke Co, OH) boasted of creating new rules to discriminate against RPs. He told Cleveland News 19 in 2013, “They’re not breaking the law, they’re violating our deed restrictions for which the homeowners association is responsible to enforce,” DeGirolamo explained how the HOA will enforce it, even if an RP is not breaking a law. “Enforcement starts with a letter. It starts with a letter from our management company telling them they are violating the deed restrictions asking them to stop. Which would mean selling their property or moving out. If they don’t follow those instructions, then we have to go to court.”

The general consensus on the topic suggests that HOAs should not publish an RP’s info & direct them to the state’s public registry. One article suggested, “Look into amending the HOA governing documents to ban SOs from renting or owning property in the community after seeking a lawyer’s advice. Such amendments are potentially illegal & likely to be declared as such by the courts.” States can vary wildly on rules. The LA Times published in 2013 that, “Penal Code §290.03 allows the board to pass (registry info) along to owners as long as it merely restates factual details… However, the law is tricky. If a seller were to refuse to sell to a RSO solely on the basis of that person’s inclusion on the state database — & such a motivation could be proven — that would be a violation of CA Penal Code §290.039(j). Violations of this provision may entitle the registered individual to damages & payment of their attorney’s fees.”

The short answer is that your rights as a property owner vary by state statutes regulating residency restrictions &/or may be determined by whether a condition for moving in existed before an agreement was made allowing the RP to reside within the HOA. Few court rulings likely exist because litigation is costly. It is your decision, but my opinion is HOAs are not worth the hassle.