



To: All PPCA Property Owners  
From: Pocono Pines Community Association Board of Directors  
Re: Prohibiting Tier Three Sex Offender Occupancy in Lake Naomi –Timber Trails, Deed Restriction Amendment  
Date: January 21, 2015

At the 2013 LNC Annual Members Meeting, concerns were expressed because a convicted sex offender had been living in the Community as a renter. Members asked whether there was a way to prevent such people from residing in our child-centric communities. At the time of the meeting, information necessary to answer those questions was not available. However, Management and the two Community Associations have now done research and can provide a response.

The first conclusion we reached was that any effective remedy must be done through the Community Associations, because only they have jurisdiction over all of the properties in the Lake Naomi and Timber Trails Communities. The jurisdiction of the Lake Naomi Club is limited to those people who choose to become members, currently about 2/3 of the total properties.

The second conclusion was that the Associations can, with the approval of their member property owners, enact restrictions prohibiting occupancy of premises within their respective communities by convicted sex offenders, but subject to three limitations:

- The restriction must be based on a legitimate risk of future harmful conduct, not just punishment for past bad behavior.
- It can only restrict occupancy, not ownership or transfer, of properties in the communities.
- The restriction cannot be retroactive – it can only apply to people who begin occupancy after the effective date of the restriction.

The third conclusion was that the restriction could be implemented through amending either the Association Bylaws or the Deed Restrictions. Amending the Bylaws is easier, because it requires only a majority vote of the property owners who actually cast votes, while amending the Deed Restrictions requires an affirmative vote of *two-thirds* of properties *that are eligible to vote*. However, the Association Boards decided that the preferable route would be an amendment of the Deed Restrictions because, while that alternative has more stringent requirements, an affirmative vote would demonstrate strong support among the Members, and would ensure that the restriction is clearly communicated to all new purchasers.

The two Association Boards have debated over the past year the desirability, need and scope of a proposed Deed Restriction amendment and have now reached consensus to present to you, for your consideration and comment, the one that is contained in the enclosed attachment. In short summary, it would prohibit any person who is a convicted “Tier 3” sex offender from occupying or residing in any property in the two communities.

We anticipate that both Boards will hold public sessions, open to all of their Members, for a detailed discussion of the proposed amendment, its pros and cons, and to answer all questions concerning it. The objective in sending you this preliminary mailing is to inform you about the factors the Boards have considered and invite you to provide your comments and questions about the desirability of having such a deed restriction. You may send them either by mail, addressed to PPCA Board of Directors, PO Box T, Pocono Pines, PA, 18350 or by email, addressed to Community Manager Wendi Freeman, [wfreeman@lakenaomiclub.com](mailto:wfreeman@lakenaomiclub.com) and she will forward to the Boards.

The enclosed attachment shows the wording we are presently considering. After we have discussions with and input from our members, we will decide if revisions are necessary and whether we should go forward to presenting it for a formal vote.

As a starting point, here are the most important questions that the Boards considered in deciding to present this proposed amendment to you.

### IS THERE A REAL NEED FOR A PROHIBITION?

We are aware of only one instance in which a convicted sex offender actually was living in one of our Communities (the one who was the subject of the discussion at the annual meeting), and one instance where one expressed an interest in living here, and probably would have but for the fact that he was convicted in a different state and the Pennsylvania parole board refused to accept him. For the one who did live here, his conviction was prior to the enactment of Megan's Law, so he was not required to register and our proposed deed restriction would not apply to him. There was never a problem with that person, and both our Chief Ranger and the local police let him know that he was being closely observed. So, with only those two instances, neither of which led to any problem, why do we believe it is in the best interest of the Communities to consider a prohibitive deed restriction?

The simple answer is that, without the deed restriction, there will be nothing to prevent a violent sex offender from moving into the Communities in the future. If there is never a need to enforce the restriction, then having it is academic, but if there is a need, having the deed restriction would be the only viable way to exclude the person. One analogy is the fire insurance we all maintain on our houses – the risk of fire is small, and we don't expect it will happen, but if it does, the insurance is our protection against loss.

### WHY IS IT DIRECTED TO "TIER 3" SEX OFFENDERS?

Pennsylvania, along with most states, adopted what is called "Megan's Law", inspired by a young girl who was raped and murdered by a convicted pedophile neighbor. It defines three categories of convicted sex offenders based on the nature of the offense. Tier 3 is the highest category; it applies to offenders who committed a violent offense or repeated offenses. The law sets periods of time during which each category of offenders must register with the State Police and provide their addresses and employment information, which are then available to the public. The period for Tier 1 is 15 years, Tier 2 is 25 years, and Tier 3 is for lifetime. The rationale of the registration requirement is that sex offenders tend to be repeat offenders, and the public is entitled to know where they are residing. For additional information, please visit the following Pennsylvania website:

<http://www.pameganslaw.state.pa.us/Main.aspx>

After reviewing the offenses in each category, the Boards decided that Tier 3 represented the clearest future risk, and therefore the most defensible basis for the proposed prohibition.

### HOW DO WE PLAN TO ENFORCE THE RESTRICTION?

To the best of our knowledge, based on our search of the publicly accessible registration files, there are no current owners in either Community who are in the prohibited category. Any time there is a transfer of ownership, one of the Associations must issue a resale certificate. That gives us the ability to check prospective new owners against the public record and, if any of them is a registered offender, to inform them that they are not permitted to occupy the property.

While we do not have the same ability to pre-check all potential renters, anyone who seeks to obtain a temporary membership in the Lake Naomi Club must submit an application with the names of the individuals, and we can similarly use that information to run a check against the public records.

In any event if the Association involved becomes aware from any source of a violation of the restriction, the amendment provides that the Board has the authority to enforce removal of the person by all legally available means.

### WILL HAVING THE DEED RESTRICTION EXPOSE THE ASSOCIATIONS TO LEGAL RISKS AND EXPENSES?

Yes, it may, but our consensus is that the risk will likely occur only if a Tier 3 offender seeks to reside here and, if that happens, having the deed restriction would give us the basis to remove that person, even though it involves legal action and expense. Without the deed restriction, we would not have that ability and would have to accept having that person continue to live in our child-centric community. In addition, just having the restriction in place may be an effective deterrent that will influence sex offenders to choose a different community where they don't face the prospect of an eviction action.

### WHY LIMIT THE RESTRICTION TO SEX OFFENDERS? WHY NOT INCLUDE CONVICTED VIOLENT CRIMINALS AND DRUG DEALERS?

As noted above, one of the essential requirements to have an enforceable restriction is clear evidence that the persons excluded pose a real future risk to the safety of our residents. Megan's Law and its registration requirements provide that evidence. It shows that the Legislature has already determined that those people present a future risk. But the Legislature has not passed similar laws regulating other types of violent criminals or drug dealers. Without that supporting evidence, trying to enforce a broader prohibition makes it more likely there would be a challenge and less likely that we would be successful.

### WILL THE RESTRICTION STAND UP IN COURT IF WE HAVE TO ENFORCE IT?

The Boards believe that it can be enforced but, frankly, we cannot give you absolute assurance that it will be. We are not alone if we pass the Deed Restriction. Many other communities have already adopted similar prohibitions. We are aware of only one court challenge to a similar prohibition, and that one was made, not by a precluded sex offender, but rather by a homeowner in the Panther Valley gated community, who contended that it unlawfully restricted her ability to sell or rent her property. The New Jersey Superior Court noted that there were competing policy considerations between the community's desire to protect its members and the risk that widespread adoption of such prohibitions could unduly limit where the precluded persons could live. The Court concluded that the record in the case before it was inadequate to resolve those policy issues and elected not to decide whether the restriction was enforceable. We have found no case where a court actually decided if the community could evict a sex offender or prohibit one from moving in.

The likelihood is that we will face a legal challenge only if we adopt and then enforce the restriction against a sex offender who seeks to live here. The fact that we would be the first community in the Commonwealth of Pennsylvania to adopt such a restriction might invite a challenge from some public interest group provided they can establish standing, which would mean finding an individual who was a convicted sex offender and who was willing to make the challenge. In either instance, we believe there is a reasonable possibility we would succeed in blocking the individual but, without having the Deed Restriction in place, there would be no possibility at all.

Please study the above explanation thoroughly and carefully. We recognize that our Members will likely have questions and comments, both supportive of and against pursuing such a deed restriction. Please communicate them to us! This is a serious question and it is essential that all viewpoints and all relevant information be considered as we decide what is in the best interest of our Communities.