



GETTING RID OF A NEIGHBORHOOD NUISANCE

Lawsuit may not be best way to go

A few weeks ago I received an e-mail from a reader asking if, when she sells her home, she must disclose to prospective buyers that her neighbor is an E-Bay dealer who has frequent visitors coming to his residence to pick up merchandise they purchased on E-Bay.

That's a tough question.

The first issue is whether the visitors have a material effect on the market value of her home. Probably not (unless the volume of daily traffic is extremely high).

The second issue is if the operation is illegal. Most towns now allow home business operations as long as the resident pays a business license fee and there is not an unreasonable amount of traffic created.

Is that E-Bay home business a "nuisance?" Probably not. But if it rises to the level of creating a serious neighborhood disturbance that would irritate a person of normal sensibility, then it might be a nuisance that can be legally abated.

WHAT IS A REAL ESTATE NUISANCE?

A real estate public or private nuisance creates a disturbing or irritating situation for occupiers of real property. But not every minor inconvenience is a nuisance.

For example, when my neighbor enters her driveway, she sometimes

honks her auto horn. I think it is to reassure her dog that she's home. Is that a nuisance? Probably not.

However, if she regularly honks her car horn in the middle of the night and awakens me and the other nearby homeowners, that's probably a private nuisance that could, if necessary, be abated by a court action.

Or, suppose your neighbors regularly have loud late-night parties. The noise is so loud you can't sleep. You phone the police who temporarily quiet the noise. But this disturbance occurs frequently on many occasions. That might be a private nuisance subject to an abatement lawsuit.

TWO TYPES OF NUISANCES

Legally, there are two types of nuisances that can be abated by court action. Of course, before a lawsuit arises, the parties should attempt to reach a reasonable solution to the problem.

Often, the offending party isn't even aware their action is disturbing neighbors and they will adjust their behavior accordingly. However, sometimes the offender refuses to cooperate.

For example, in the adjoining town to where I live there was a properly licensed bar with dancing and loud late-night music. But the adjoining residential neighbors were unable to sleep until the band quit playing. They sued the bar owner who was forced to restrict the noise so it no longer disturbed the neighbors.

1—PUBLIC NUISANCE AFFECTS MANY PROPERTY OCCUPIERS

A public nuisance is a continuing disturbance that adversely affects a large number of people. Examples include a noisy outdoor amphitheater, a house of prostitution, a "drug house," a smelly factory, a rat-infested dump, and a noisy airport.

The customary legal remedy to remove or mitigate a public nuisance is for a public official, such as the city or county attorney, to bring an abatement lawsuit against the offender.

Legal remedies to remove or minimize public nuisances include (a) a court injunction to completely stop the offensive activity, (b) a partial abatement court order, (c) a negotiated settlement or mitigation, and (d) payment of monetary damages to be allowed to continue the public nuisance.

For example, airports are classic examples of public nuisances that disturb thousands of nearby residents. But rather than completely abate and shut

down these public nuisances, because they offer employment and public travel benefits, the courts usually try to facilitate reasonable settlements. That's why many major airports have paid millions of dollars to nearby homeowners and business owners to insulate their properties from the noise.

However, some public officials refuse to act to abate public nuisances. Political pressure and even incompetence play a role.

In recent years, property owners affected by public nuisances have successfully brought legal actions to abate public nuisances when public officials refused to act.

The leading example occurred a few years ago in Berkeley, Calif. Neighbors were unable to get the police and local officials to abate an alleged neighborhood drug house. Actually, it was a 36-unit apartment building, which was reportedly primarily occupied by drug dealers.

So the 75 angry neighbors, becoming very upset by the shootings and other crimes originating from the apartment building, each sued the owners of the property for the maximum Small Claims Court damages of \$5,000 each. Faced with 75 lawsuits for \$5,000 each, the judge ruled in favor of the 75 plaintiffs.

But the apartment building owner appealed. The 75 neighbors eventually won a total of \$218,000 in damages in the appellate court against the apartment owners who refused to abate their public nuisance, which adversely affected an entire neighborhood (*Lew v. Superior Court*, 25 Cal.Rptr.2d 42).

2—PRIVATE NUISANCE AFFECTS JUST ONE OR A FEW INDIVIDUALS

Although a public nuisance adversely affects a large number of individuals, a private nuisance just involves one or a few individuals.

Examples include a frequently barking dog, a neighbor who plays loud music, a vacant lot that has become a dump that attracts rats, and a neighbor with late-night noisy parties.

Often, a very polite request to the offender is sufficient to resolve the problem.

Or, a strong letter from an attorney will frequently get results. To illustrate, a condo owner friend of mine had to resort to this method. She told me she was one step away from filing a lawsuit.

Her new condo neighbor enjoyed playing loud rap music. Her polite requests asking him to turn down the volume didn't produce results. She asked the condo homeowner's association for help but they weren't effective. However, a forceful letter from her attorney to the offender, which cost her about \$100, resulted in peace and quiet.

When none of these methods work to abate a private nuisance, a lawsuit against the offender might be the only effective remedy. Even when the activity is legal with a proper license, such as operating a home business that creates excessive traffic or other neighborhood disturbances, a court can order a private nuisance abated.

DEFENSES TO A NUISANCE ABATEMENT LAWSUIT

If a lawsuit becomes the only feasible method to abate a public or private nuisance, the defendant might raise several defenses.

These defenses often include (1) the nuisance was tolerated for a long time, and/or (2) the plaintiff moved to the neighborhood and knew about the nuisance.

But most courts now rule the statute of limitations is not a defense to a nuisance because every new occurrence is a separate offense that can be abated.

Other ineffective defenses to lawsuits for nuisance abatement include (1) the local zoning or ordinances allow the offensive activity, (2) there was no law violation, and (3) the neighborhood has other private and public nuisances.

RESULTS OF NUISANCE ABATEMENT LAWSUITS ARE UNPREDICTABLE

The result of a public or private nuisance abatement lawsuit is very difficult to predict. For this reason, before filing a lawsuit, it is best to try to resolve the problem with the offending party.

A sympathetic judge or jury or a crafty defense attorney can often result in adverse decisions for the plaintiff seeking nuisance abatement.

Factual evidence, such as photos, witness testimony and scientific test results, can prove a nuisance actually exists. But obtaining a court abatement order and monetary damages for the plaintiff can be difficult so litigation should be used only as a last resort.