



El Centro, California

POLICE DEPARTMENT

Neighborhood Watch

Civil Actions

Crack houses, gambling dens and houses of prostitution can have a devastating impact on residential neighborhoods. When these and other types of illegal businesses are operating in an apartment or home, other tenants and neighbors in the area live in constant fear. Moreover, children growing up in the neighborhood are exposed to these illegal activities and the dangers that they bring on a daily basis. The traditional methods of combating drug activity and prostitution have been moderately successful. However, there are other tactics that concerned citizens and community residents can use. "Common law," or legal principles that have evolved over time through court decisions, can be a powerful tool to curb drug dealing and prostitution. Depending on the facts of a particular problem, the types of common law actions that may be utilized include nuisance and negligence. The initiation of a law suit will require time, effort and dedication. It is possible that a nuisance action can be avoided by seeking and securing the attention of the property owner.

Briefly, a nuisance is an activity that disturbs or interferes with another person's possession of property, affecting the use or enjoyment of such property. It causes discomfort, annoyance or damage to other residents. The unlawful use of a house, apartment or storefront to deal drugs would be an example of a nuisance. This type of private nuisance involves an interference, intentional in origin, substantial in nature, and unreasonable in character. It is caused by the owner's failure to act. Each resident has a right to request that a property owner take action to protect the building from the presence or effects of drug dealing. An owner or other person found guilty of committing or participating in the creation and maintenance of a nuisance (e.g. landlord) may be required to pay money to a resident or residents



affected by the illegal activity. While the drug operation is the source or cause of the nuisance, an owner's tolerance of drug activity may constitute maintenance of a nuisance. Where a property owner knows, for example, that a drug den is operating on his/her property and it is seriously or substantially interfering with the enjoyment or value of another's property, the failure of the owner to end the interference may be considered intentional.

Before bringing a nuisance action in civil court, residents who are disturbed by the criminal activity should inform the property owner, in writing, of the existence of the nuisance and request that the owner take appropriate measures to abate the nuisance. Notifying the owner in writing establishes that the owner has knowledge of the problem and an opportunity to address it. Further, residents should document carefully the types of activity taking place, including how often, and what occurs when, how much noise and traffic are created, and whether any violence has occurred. Information from the police department on the frequency of complaints and arrests may also help substantiate your claim.

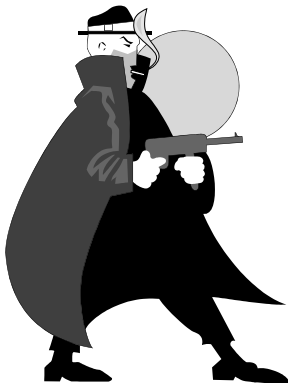
Another requirement is that the interference with another person's property must be unreasonable. For a nuisance claim to be successful, the activity must be of such significance as to cause physical discomfort and annoyance. Drug dealing or prostitution activity that causes violence or noise, loitering and traffic, for example, would likely constitute physical discomfort and annoyance. At trial, once it is established that a property owner substantially and unreasonably interfered with the enjoyment or value of a person's

property, the property owner has to demonstrate that the failure to act was reasonable or that the interference was not significant.

Liability for nuisance may also be based on negligence or recklessness on the part of the property owner. Failure to inspect or to rent the property without inquiring or confirming the purpose or use of the property constitutes negligence or recklessness. The owner is indeed under a duty to inspect and maintain his/her property in a habitable condition. An owner's failure to prevent violence, excessive noise or traffic, or code violations on the property is a breach of his/her responsibility. When this abdication of duty causes harm or injury by reducing the rental value of neighboring property, causes emotional distress or physical injury, the owner is liable. Should the illegal conduct be ongoing or continuous despite arrests, the court may order the owner to stop the nuisance immediately.



A negligence action may also be employed to fight drug operations and other criminal activities. Where a building serves as a market for drugs, any resident or business tenant injured as a result of that activity may sue the owner for negligence. The resident may claim that the owner owed a duty or obligation to such resident or tenant to maintain the safety of the building, that the owner breached that duty by permitting drug dealing in the building or on the property and that such breach was the cause of the harm suffered by the resident or tenant. The law also imposes an obligation on a property owner to take precautions necessary to protect residents against reasonably foreseeable criminal acts of other persons who are on the owner's property. Further, an owner has a responsibility to protect the guests of residents while they are on the owner's property. A property owner must take reasonable measures to prevent injury or harm to all persons whose presence on the property may be reasonably anticipated.



To establish a breach of duty, an injured resident or guest must show that the property owner knew or had reason to know of the danger that caused the harm. The owner may be found to have notice of a drug operation even without personal knowledge, where the drug den has operated from the property for a period of time, where the police have made several arrests for drug offenses in the building, or where violence has occurred on the property.

A property owner has actual notice where the owner learns firsthand of the dangers. One way the owner has actual notice is to write a letter informing the property owner of the location of the drug den and describing the effects on the residents. Such letter should also describe in detail any other problems in the building including broken locks, doors, and/or windows that either were caused by the drug dealing or may cause or contribute to the drug operations. This letter should be sent by certified mail, return receipt requested, to ensure that the property owner receives the letter and is on notice of the dangerous conditions. Subsequent contacts with the landlord or owner will serve to confirm that the owner had actual notice and to determine what actions the owner will pursue to correct the problem. Residents should retain copies of any correspondence and make notes of any conversations. Once an injured tenant demonstrates a breach of duty, the resident must show that the breach of duty caused the injury or harm. This is proving causation. Only damages for the actual injury will be awarded.