



Love Thy Neighbor?

by Zachary Lawrence JD

The King James Bible states..."Thy shalt love thy neighbor as thyself". The Ten Commandments states: "Thou shall not bear false witness against thy neighbor".

Perhaps the more practical maxim is ..."Love thy neighbor, unless they interfere with your use and enjoyment of the property". California Civil Code section 3479 states:

"Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable

enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, is a nuisance".

The classic example of an attractive nuisance is if you have a swimming pool on your property that does not have any barriers or fences. This pool may reasonably attract curious children and it may cause injury or death.

Now that we've dispensed with the Bible study portion of this article, let's move on

to how all this applies to you, the landlord. I discussed this matter with real estate attorney Andy Baker on the Landlord Radio Network (www.parkside123.com).

Zac: What is a nuisance?

Baker: A phrase you hear all the time with any discussion of rental units is "Quiet enjoyment". This means that tenants have a legal duty to respect one another's space and not interfere with the use of the premises. So nuisance simply means that you can't annoy your neighbors or the owner (if the owner lives on the premises).

Zac: Please explain the difference between a private nuisance and a public nuisance.

Baker: The main difference is how many people it affects. If the nuisance affects only the owner and a tenant, or a few tenants, then it's a private nuisance. A public nuisance is when it affects a substantial number of people at the same time, such as public health and safety.

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Nuisance is governed under an objective standard. In other words, how would a reasonable person respond under similar circumstances? For example, if your neighbor has weapons or threatens you with a weapon or if there is illegal drug or gang activity on the premises, these all constitute a private nuisance.

Excessive noise can also be a nuisance. There are laws on the books governing excessive noise.

For example, the San Francisco Noise Control Act of 1973 states that a tenant should not be able to hear more than 5 decibels of ambient noise when standing 3 feet away

from a shared partition. In Los Angeles, the laws on the books for excessive noise are more confined to noise coming from construction, garbage collection and vehicle deliveries (see LAMC sections 41.40.113.01 and 114.03, respectively).

Zac: We get calls all the time from tenants complaining that their neighbor is making too much noise. Is enforcement of this matter the responsibility of the property manager, the owner, or the police?

Baker: If the building has a management company or on-site manager, the complaint should first go to them. Otherwise, the complaint should be reported to the owner. The po-

lice are more concerned with criminal activity. And evicting a tenant due to excessive noise is a civil action. So calling the police may provide you with a “paper trail” that can be used in court. However, absent criminal activity, the police will be ineffective in removing a nuisance tenant.

Zac: Please identify other legal documents that can be used to establish a “paper trail” for evicting a nuisance tenant?

Baker: Depending upon the circumstances, a Landlord may select from a few legal documents for his paper trail. For a nuisance, the tenant

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should be served with a Three Day Notice to Perform Covenant or Quit. This document notifies the nuisance tenant that they have breached those covenants, either express or implied, contained in their lease, and that they have three days to cure the breach.

Other documents for a establishing a paper trail include the Proof of Service, records of prior complaints, records of conversations with the tenant, and any other records related to the tenant's bad behavior.

Zac: What is a Notice to Quit for Incurable Breach?

Baker: The standard Three Day Notice gives the offending tenant three days to cure

his breach. For example, if the breach is for non-payment of rent, or for creating a nuisance, the tenant has a three-day window of time in which to cure the breach.

In contrast, there is a Three Day Notice to Quit, for a non-curable breach. This Notice is served when the tenant has repeatedly (usually three times or more), breached his contract by creating a nuisance, and there's no amount of curing that can take place because the tenant has a history of repeating the breach.

For example, if a tenant has repeatedly denied the landlord access into his unit (to make repairs) or has re-

peatedly harassed the landlord or his agents, or has repeatedly failed to pay rent, the breach is deemed "incurable" and the landlord may now file an eviction.

Zac: We often get calls from tenants complaining about the smell of marijuana coming from the unit next door. As you know, in the state of California, marijuana is legal. How would you address this complaint?

Baker: The issue that needs to be addressed here is where does the landlord permit smoking, be it pot or cigarettes. Does the landlord allow smoking on the premises? If the landlord allows



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smoking, he may restrict it to the common area or any place other than inside the tenant's unit. As of January 1, 2012, California Civil Code section 1947.5 allows landlords of residential property to ban smoking. Landlords have the authority to put smoking restrictions in new leases. This law does not provide for automatically changing existing rental agreements. If a lease was entered into prior to January 1, 2012, and the landlord wants to ban smoking, it would be a change in the terms of the lease. For a month to month tenancy, in a non-rent control jurisdiction, 30 days written notice is required. In

a rent controlled jurisdiction, the landlord may request that tenants voluntarily adopt the smoke-free policy, but cannot force a tenant to agree to this change.

Odors such as cigarettes or marijuana normally don't rise to the level of a nuisance. The court will weigh the benefit to one party against the detriment to the other party. Meaning, is the harm significant enough that the ordinary person would say, I object. In my 20 years of experience, an action to evict based on nuisance will be successful only if the breach is egregious, such as an act of violence.

Zac: Some tenants have a

“service” dog. Even if they live in a building that prohibits pets, tenants will produce a note from a “doctor”, confirming the tenant's need for the dog. If this dog is constantly barking, would this rise to the level of a nuisance?

Baker: When you're dealing with barking dogs, “service” or otherwise, you want to call the police. Although the tenant may have the right under the ADA (Americans with Disabilities Act) to have the dog, the tenant does not have the right to create a nuisance. If the tenant is properly served a notice to cure the breach and fails to do so,

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it is legitimate grounds for an eviction. On the other hand, by filing an eviction based on a barking service dog, the owner may be setting himself up for a civil lawsuit because the ADA does permit service animals. It's a tough call.

Zac: What is an "attractive" nuisance?

Baker: It's the kind of nuisance that would entice a reasonable person to be drawn to it. The classic example of an attractive nuisance is if you have a swimming pool on your property that does not have any barriers or fences. This pool may reasonably attract curious children. The reason this example is called a nuisance, is because it may cause injury or death.

Zac: I often get calls from tenants claiming that they can hear footsteps, thumping and other noises from unit directly above them. They want the tenant above to install a carpet on their floor in order to muffle the noise. May a landlord compel this tenant to install a carpet?

Baker: A landlord cannot force a tenant to do anything that is not memorialized in their lease. However, the landlord may offer the "noisy" tenant to pay for and install carpeting on his floor.

The issue really isn't about carpeting. It's about whether or not that noise rises to the

level of a nuisance.


Years ago, I lived in a condo and my neighbor ran a dance studio from inside his unit. This was annoying to me. However, his dance studio only operated between 9am and

5 pm. As most people are working during this time, I didn't have a reasonable basis to complain about a nuisance.

Closing Comments

Dogs bark, kids scream and people dance. The issue of what rises to the level of a nuisance will always boil down to what is reasonable. So, if your neighbor's dog barks only when the doorbell

rings, and this annoys you, it's your problem.

However, if the same dog barks 24 hours a day, 7 days a week, then this would rise to the level of a nuisance and the Landlord should take appropriate steps to enforce the covenant of quiet enjoyment on the premises. 

Zachary Lawrence is the owner of Parkside Property Management and host of Landlord Tenant Radio. Website: www.parkside123.com. Andy Baker is a real estate attorney in Calabasas, California. He can be reached at Andy@.andybak-erlaw.com.

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