Florida Condominium Associations: What Is A Nuisance?

April 22, 2019 by Hans C. Wahl, Esq.

What's that smell? What's that sound? What am I looking at? Whatever it is offends me. Could it be a nuisance? Florida Condominium associations deal with nuisance complaints on a regular basis. The challenge in addressing nuisance issues is defining exactly what constitutes a nuisance. Generally, nuisance is defined in Black's Law Dictionary as "a condition or situation that interferes with the use or enjoyment of property." This definition is vague and leaves much room for interpretation.

Almost all Florida condominium associations have governing documents that prohibit nuisances but, at the same time, provide no express definition or guidance as to what constitutes a nuisance according to the association. Very generally, some governing documents include language to prohibit conduct that would endanger the health, annoy or disturb or cause embarrassment, or discomfort occupants. Conduct that could rise to a nuisance, as categorized by type, may include the following:

- Smells
    - Smoking on the lanai or in the hallways
    - Not cleaning up pet-waste
    - Not attending to the trash in the unit
    - Stacking trash outside the unit
- Sounds:
    - Playing music at an unreasonable decibel at 2:00 AM
    - Dogs constantly barking at all hours of the day and night
    - Excessively revving the engine of a vehicle
    - Dropping dumbbells on the second floor at 2:00 A.M.
- Sight
    - Parking a vehicle incorrectly and preventing others from parking and/or leaving the premises
    - Domestic violence incidents
    - Trash piled up on the balcony or front door
    - Excessive or obscene signage

Such conduct may seem like a no-brainer because it clearly sounds like it falls under the classification of a nuisance. Unfortunately, most questions of what constitutes a nuisance are not answered so easily, and the complained-of activity falls withn the "gray area." In an attempt to avoid this so-called gray area, associations should review their documents and determine how they can provide a more readily understandable definition of a nuisance. For some communities, this may include one of the following limitations: limiting noise from midnight until 6:00 AM; setting specific decibel ranges at which sounds are appropriate; restrictions on the length of time a sign can be on the resident's property; length of time that objects can remain on the limited common elements; prohibiting smoking in the hallways; requiring pet waste clean-up; etc.

A nuisance does not include conduct of every day activity such as walking around a unit, talking on the phone during reasonable business hours, or the occasional baby or child crying. There are times where residents of associations must be reminded that because they share walls, there is no guarantee of complete peace and quiet all of the time. To show a nuisance, an owner must demonstrate ongoing conduct by another that substantially and unreasonably disturbs his or her use of the unit. "Whether the activities constitute a private nuisance is a question to be decided based on the facts presented, and a court looks to whether there is an appreciable, substantial, tangible injury to the property rights of others, and not merely a trifling annoyance, inconvenience, or discomfort." *Admiral's Port Condominium Association, Inc. v. Roberto Barani*, 2014 WL 1513532, at *3 (Fla. DBPR Arb. March 5, 2014) (citing *Bechman v. Marshall*, 85 So. 2d 552 (Fla. 1956); *Baum v. Coronado Condominium Association, Inc.*, 376 So. 2d 914 (Fla. 3d DCA 1979)).

Aside from amending the documents for more clarity in these situations, there are other options that are available. One suggestion is simple communication. There are times that residents are unaware that their conduct is disrupting others. Maybe they have never lived in units that adjoin other residents or they are unfamiliar with the sound barriers. By having the affected neighbors communicate directly with the resident causing the issues, there could be an immediate resolution. While this will not always work, you would be surprised at how many times it prevents the association from getting involved. If the association must get involved, and if the governing documents permit, the association can send a violation letter to the resident creating the issues.

At the same time, associations should be mindful and cautious of calling actions a "nuisance" that do not rise to such a level. Associations do not want to be at the risk of homeowners pursuing legal actions for discrimination, defamation, or some other cause of action that may stem from untrue allegations. This is not to say that associations can never label actions as a nuisance, because there are certainly instances where particular actions are clearly a nuisance. Rather, associations should be mindful of actions that do not clearly endanger the health, annoy or disturb or cause embarrassment, or discomfort occupants.

If there are recurring questions about what constitutes a nuisance in your community or what you can do about the possible nuisance, it may be time to re-visit the governing documents, set some parameters around the offensive conduct and reach out to experienced community association counsel for guidance.