Tenants’ Rights in Ohio Regarding Noise

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I. Introduction

One of the most annoying things that can happen to you in the landlord tenant relationship is to have noisy people around you. Loud music or parties at inappropriate hours can destroy the sense of privacy and solitude that we all want from time to time in our personal space. But you must take into account the fact that you aren't living out in the country by yourself. Whenever large numbers of people live close together, at times sharing walls and floors and ceilings, a court will take this into account in determining how much noise is too much noise.

A. Subjective and Objective Standards

The court is always going to look at noise issues via an objective, rather than a subjective, standard. The difference between the two is easy to understand. The Objective Standard implies an imaginary, average person. This is a person of ordinary sensibilities. This person is known in the law as the "reasonable man." The Subjective Standard is that of one specific individual who may have very particular sensibilities.

1. Subjective Standard

In the 1970s, there was a show starring Lindsay Wagner and it was called "The Bionic Woman." In that program, Ms. Wagner played the part of a character who had suffered terrible injuries in a parachuting accident. She was rebuilt in a secret government hospital with modifications providing for enhanced performance. Among these enhancements was a mechanical ear allowing her to hear conversations at great distances.

For our purposes, we will place Ms. Wagner's character in an Ohio apartment complex. She comes home from her job every day and can't relax because she can hear every conversation in every apartment in the complex. Were she to sue, the judge would undoubtedly sympathize with her condition, but since it is an abnormal individual condition, it would be subjective, and thus the judge would not grant her relief.

2. Objective Standard

Now let's take another example. If the famous deaf actress, Marlee Matlin, were to move into an Ohio Apartment complex and members of a 1980s throwback heavy metal rock group moved in upstairs and started to have jam sessions throughout from 10:00 p.m. until 5:30 in the morning, Ms. Matlin could complain and would likely prevail upon her noise complaint because it does not matter that she is deaf and can't hear the noise. That would be the application of the subjective standard. Rather, the court, even in Ms. Matlin's case, would apply the Objective Standard, and ask, how much should a reasonable, average person have to put up with from the rock group?

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II. Complaints Against the Landlord

A. Sources of Law

1. Common Law

Most leases will contain a clause stating that the tenant has the right to quietly enjoy the rented premises. In fact, in addition to the rights and obligations a rental agreement assigns to tenants and landlords, a Covenant of Quiet Enjoyment is implied into every lease contract. Dworkin v. Paley (1994), 93 Ohio App.3d 383 at 386. This means that even if this clause isn't in your rental agreement, the courts of Ohio will pretend that it is.

Originally, the Covenant of Quiet Enjoyment related only to issues of title to the property. It was a promise from the landlord to the tenant that the lease hold interest the landlord conferred to the tenant would not be disturbed by some other person with better title to the property than the landlord. The formal legal name phraseology for this was that the landlord was guaranteeing the tenant that he would not be disturbed by someone with paramount title. This meant that if you dealt with a sneaky landlord who rented you somebody else's property without the true owner's knowledge, then upon discovery of this fact, you would not have to pay rent to the sneaky landlord because he had breached the Covenant of Quiet Enjoyment. But recently, courts have extended the meaning of the clause to allow the tenants quiet and peaceful enjoyment of the premises where noise is concerned as well.

Thus nowadays, the Covenant of Quiet Enjoyment protects a tenant's right to the peaceful and undisturbed enjoyment and possession of her leasehold. Glyco v. Schultz (1972), 35 Ohio Misc. 25 at 33. The covenant is breached when the landlord obstructs, interferes with, or takes away from the tenant in a substantial degree the beneficial use of the leasehold. Howard v. Simon (1984), 18 Ohio App. 3d 14 at 16. Degree of impairment is a question of fact. Dworkin, at 386. In the Dworkin case, the tenant was complaining that the landlord's smoking was bothering her so much that she could not use her apartment into which the smoke was drifting. This has nothing to do with paramount title being vested in another. It can be argued that noise for which the landlord is responsible is an obstruction or interference, or a taking of a substantial degree of the beneficial use of the leasehold.

2. Ohio Landlord Tenant Act of 1974

a. Ohio Revised Code Section 5321.04

This section describes the landlord's duties to the tenant. It states that the landlord must fulfill all of the obligations in the lease agreement with the tenant, as well as doing what is necessary to put and keep the premises in a habitable condition. Your lease may not specifically say that you have a right to quiet enjoyment of the premises, but as stated above, the Common Law has long since implied this clause into every

residential rental agreement in the State of Ohio. Thus a violation of this clause is a violation of Ohio Revised Code Section 5321.04.

b. Ohio Revised Code Section 5321.07

A violation of the landlord's duties to the tenant under Ohio Revised Code Section 5321.04 only gets you half way to your goal as a tenant. You must then turn to Ohio Revised Code Section 5321.07. That statute says that if the tenant is current in his rent, and has delivered written notice to the landlord of the nature of the problem (in this case noise), then the landlord will have 30 days or a reasonable time (whichever is sooner) to fix the problem.

If the landlord has not fixed the problem within the time statutorily prescribed in R.C. 5321.07, then the tenant has one of three options. The tenant can start escrowing her rent with the clerk of courts until the problem is abated, the tenant can file a Motion to Compel with the courts requesting that the problem be fixed, or the tenant can declare that the lease agreement is terminated and move out.

One should be careful about declaring the lease agreement terminated because of the noise problem. Courts have tended to require some pretty bad conditions before allowing a tenant to terminate the lease agreement. It is far better to start off with the escrow solution and see if that will get the landlord to take the necessary steps to end the problem.

In fact, to constitute a breach of the covenant, "the interference with the tenant's quiet enjoyment must be so substantial as to be tantamount to an eviction, actual or constructive." Endress v. Equitable Life Assurance, 1987 Ohio App. LEXIS 9433 (Oct. 29, 1987), Cuyahoga App. No. 52958, unreported. A constructive eviction occurs when the acts of interference by the landlord compel the tenant to leave, and he is thus in effect dispossessed, though not forcibly deprived of possession. Sciascia v. Riverpark Apts. (1981), 3 Ohio App. 3d 164 at 166, citing Liberal Savings & Loan Co. v. Frankel Realty Co. (1940), 137 Ohio St. 489 at 499.

In this case, the problem is the noise. But then the issue becomes, is the noise the fault of the landlord?

B. When is the Landlord Responsible for Noise?

1. From Where Does the Noise Arise?

a. Unrelated Third Parties

It is generally the law in the State of Ohio that a landlord does not have any liability arising out of the acts of third parties over whom he has no control. A tenant cannot assert that her landlord has breached the covenant of quiet enjoyment because of wrongful acts taken by strangers. Ayers v. Simmons, 1993 Ohio App. LEXIS 5067

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(September 30, 1993) Highland Co. App. No. 93 CA 827 unreported citing 65 Ohio Jurisprudence 3d (1986) 263, Landlord & Tenant, Section 212; 49 American Jurisprudence 2d (1970) 356, Landlord & Tenant, Section 341; Annotation (1955), 41 A.L.R.2d 1414, 1441, Section 22. Thus if your neighbor who rents from another landlord is making a racket, you will not be able to hold this against your landlord and exercise your options listed above under Ohio Revised Code Sections 5321.04 and 5321.07.

b. Landlord or His Employees/Agents

If the landlord or his employees/agents cause the noise, then he will be responsible for the noise under the doctrine of Respondeat Superior. This is also called the Master/Servant rule. It goes like this: When the boss tells the employee or agent to do something that end up being legally actionable, the boss can't get out of responsibility for that act simply by saying "Hey, back off, it was my employee, not me." If the wronged party can show that the actions of the employee were taken in furtherance of the landlord's business, then the landlord will have responsibility for the wrong.

An example of this might be that of a landlord's employee who handles all of the maintenance around the apartment complex who has taken to cutting the lawn in the middle of the night with an old and very loud lawnmower. This disturbs the tenant to no end and the tenant complains. The landlord does nothing about it. In this case, the landlord will be held responsible for the acts of his employee/agent (since cutting the yard is in furtherance of his business) just as if the landlord had done the act himself.

c. Other Tenants of the Landlord

Things get a bit trickier if the person making the noise is another tenant in the building. In this case, the noisy tenant certainly doesn't fit under the employee/employer relationship, but neither is that loud tenant a perfect stranger either. The landlord will argue that he has no control over the amount of noise that the noisy neighbor makes. But the tenant will argue that the landlord put those noisy neighbors in a position to bother her with all of their racket, and that the landlord profits from this relationship by collecting rent from both.

For instance, if a landlord has a retirement community of older persons, and then allows a biker gang to move in to one of the units, few judges would be sympathetic to the argument that the landlord is not responsible for the noise the biker gang makes which disturbs the other tenants.

So what does the law say about it? In the case of Liggins v. Westminster Arms Inc., 1998 Ohio App. LEXIS 6247 (December 22, 1998) Franklin Co. App. Nos. 98AP-377 and 98AP-378, unreported, the tenant complained about marijuana smoke and loud noises coming from the apartment below her. The landlord conducted an investigation by sending employees over to smell the apartment, and by telling the tenant to fill out noise reports whenever the tenants below were being too loud.

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Regarding the noise problem, the court listened to the tapes of noise the tenant had prepared and found no out of the ordinary noise. The court found that no landlord can guarantee that neighboring tenants will never make noise and that the landlord had made all the attempts one could expect of a landlord to address the tenant's concerns. The court concluded that the landlord's attempts to address tenant's noise complaints had exceeded its legal obligations. Id. at 4-5.

What is important to note here is not whether the tenant won or lost or her individual noise complaint case. The court of appeals noted the trial court's finding that the landlord had offered many times to move the tenant to another apartment or to allow her to vacate the premises and receive her full security deposit back, but tenant had rejected all such offers. The trial court also characterized appellant as a very tense and nervous individual. Remember what we said early on about subjective and objective standards? Here, the Court of Appeals and the Trial Court concluded that the tenant was overly sensitive to noise and was being unreasonable.

What is important here is to note that the law apparently does create a duty on the part of a landlord to make a reasonable investigation into the noise complaints of his tenants and if they are well-founded, to remedy them. Whether the court considers you to be hypersensitive is another battle.

1). Provisions In Lease Against Noise

In another important case in Ohio, a tenant argued that he had been driven from his leased commercial by another tenant in the building, a dry cleaner. Both leases had clauses which prohibited the tenants from producing odors which were perceptible outside of the rented premises. In this case, the Tenth District Court of Appeals held that since the landlord did not enforce this provision in the lease agreement against the dry cleaner, and since the smells did invade the complaining tenants shop, it was not error for the trial court to find that there had been a constructive eviction. Eastgreen Center v. Long, 1982 Ohio App. LEXIS 13187 (May 13, 1982) Franklin Co. App. No. 81 AP 900, unreported. Thus if the noisy tenant has a provision in his lease with your landlord which forbids him from creating undue noise, then you can argue that the landlord had a duty to enforce this provision.

III. Complaints Against Others

If you can't go after the landlord for the noise problem, then perhaps it would be best to go after the noise makers directly. There are three methods you can employ.

1. Selection of the Apartment

With many things in life, your remedies are up front. I tell landlords all the time that if they don't want to get taken by tenants who fall behind in their rent and then run out leaving thousands of dollars of damage to the rented premises, they should ask for a bigger security deposit, perform better credit, background and rental reference checks,

and require a co-signer. Of course they know all of these things and usually don't consider this to be legal advice. But there is a wide gulf between knowing something and acting upon it.

It's not really legal advice, but it is good practical advice. I tell them that there is no debtor's prison anymore, and that the court is not going to throw the tenant in jail for failure to pay on a judgment entry. You can't get thousands of dollars out of someone with no money.

In the same vein, the tenant should look around at the apartment complex and attempt to discern what type of people live there. The younger the crowd, the louder these people are going to be. Younger people stay up later and have less concern for things like peaceful serenity than older people. If the complex is full of young people and silence is golden to you, then you might want to keep looking.

Cheaply made apartments don't dampen noise well. If you are looking at an apartment, ask the people next door to turn on their television and see if you can hear it through the walls. Ask them if they have any children, especially the apartment above yours. If so, and if that is going to drive you crazy, then move on. Don't go for the showing where the landlord shows you a "model" apartment rather than the one that you are renting. The model will always be very quiet since it is usually sharing a wall next to the rental office.

2. Common Courtesy and Politeness

Often in today's society, we forget that simply going up to someone and talking politely about things can have a big impact. We have gotten very insular to the point where we no longer have relationships with our neighbors. Many people don't even know the names of the people who live on either side of them. The apartment is just some place where you study, watch television, eat, or rest.

So try to maintain a cordial relationship with your neighbors. Don't start banging on the ceiling with a broomstick when the television upstairs is too loud. That is just going to make things worse. Maybe it would be better to invite the person upstairs down for a cup of coffee. Hopefully, that person will leave her television on and will realize how loud it is when she hears it through the floor.

The same goes for going over the person's head and right to the landlord. In the military, we had a saying that you had to use your chain of command to complain about a supervisor. If your lieutenant was giving you problems, then first you talked to your squad leader. If he didn't solve the problem, then you went to the flight leader. If that didn't solve the problem, then you went to the lieutenant himself that was causing the problem. Then you went to the captain over him, and so on until you got to a person who would solve the problem. But the theory was that you used the chain of command so that if possible, the matter could be resolved on the lowest level. You don't go right to the

general, just like you shouldn't go directly to the landlord. The cup of coffee approach might work better than you think.

3. Legal Remedies

When all else fails, then you have to resort to the law. Some folks you just can't reach. If the landlord does not owe you a duty to keep the noisemakers quiet, then you have three remedies. The first is from the common law of nuisance, the second is from the Ohio Revised Code Section 3767 and the third is to invoke local criminal ordinances regarding noise.

a. Common Law Nuisance Actions

Black's Law Dictionary defines "nuisance" as:

> That activity which arises from unreasonable, unwarranted or unlawful use by a person of his own property, working obstruction or injury to right of another, or to the public, and producing such material annoyance, inconvenience and discomfort that law will presume resulting damage. That which annoys and disturbs one in possession of his property, rendering its ordinary use or occupation physically uncomfortable to him. An offensive, annoying, unpleasant, or obnoxious thing or practice; a cause or source of annoyance, especially a continuing or repeated invasion or disturbance of another's right, or anything that works a hurt, inconvenience or damage. Black's Law Dictionary (5 Ed. Abr. 1983) 552-553.

1) Distinction Between Public and Private Nuisance

It used to be that if you were complaining of a nuisance, what you were complaining of had to be a crime. A very commonly used example would be when the thing you are complaining about is the existence of a whorehouse or a crack house (or both, sometimes). But most jurisdictions today follow the modern rule that the thing or action complained of does not have to be illegal. In Brown v. County Commissioners of Scioto County (1993), 87 Ohio App.3d 704 at 712, the Fourth District Court of Appeals held that the word "nuisance"

> describes two separate fields of tort liability that, through the accident of historical development, are called by the same name; "public nuisance" covers the invasion of public rights which one common to all members of the public and was historically criminal in nature, with recovery limited to those who could show particular harm of a kind different from that suffered by the general public; "private nuisance" covered the invasion of the private interest in the use and enjoyment of land and the action was required to be founded upon an interest in land. Id. at paragraph two of the syllabus.

Public nuisance deals with the rights that a person as a member of the public has lost. Private nuisance deals with any losses relating to use and occupancy of property. A leasehold is sufficient interest in land that one can bring an action for private nuisance.

A) Factors of Public Nuisance

There are several factors which go into whether an action is a public nuisance or a private nuisance. They are: 1) the type of neighborhood in which the nuisance takes place; 2) the nature of the thing or wrong complained of; 3) the proximity of those complaining to the thing or wrong complained of; 4) the frequency, continuity, or duration of the thing or wrong complained of; and 5) the resulting damage or annoyance. The harm complained of must be substantial, and the injury must be to the public at large, rather than to just one person.

B) Private Nuisance

A private nuisance is an interference with your use and enjoyment of land. It is something like a trespass, but technically different, as a trespass is a suit against another for disrupting your rights to exclusive possession of your land. So if a two kids throw a baseball back and forth in your backyard without your possession, this is a trespass because you have the right to exclusive possession of your premises. The kids haven't hurt anything on your property except your right to exclusive possession. But if the kids next door light off fireworks every night and the noise and smell is bothering you, then this would be a nuisance rather than a trespass.

One of the key factors in establishing a private nuisance is that the person complaining must have an interest in the land. A leasehold interest is sufficient to qualify as an interest in land. But if you were a fisherman complaining that an oil spill had poisoned the area of the sea that you usually fish in, then you cannot bring a private nuisance suit.

Thus there are two factors to establishing a private nuisance. Firstly, the plaintiff must show that his use or enjoyment of the land has been disrupted, and that the disruption was substantial and caused by the intentional, negligent, or abnormally dangerous acts of the Defendant.

Ohio courts have stated that the test as to the amount of annoyance necessary to constitute a nuisance is measured by the degree of discomfort that a person of ordinary sensibilities would experience. Adams v. Snouffer (1949), 88 Ohio App. 79; Kepler v. Indus. Disposal Co. (1948), 84 Ohio App. 80. This means that the standard is an objective rather than a subjective one. In essence, a trial court must look to the particular facts presented and determine what persons of ordinary tastes and sensibilities would regard as an inconvenience or interference materially affecting their physical comfort to a degree which would constitute a nuisance. O'Neil v. Atwell (1991), 73 Ohio App.3d 631 at 636.

Obviously, if you or your property has been physically injured in some way, then this will qualify as a substantial injury. But if you as a holder of an interest in land have merely been inconvenienced (by noise or unpleasant smells for instance) then you will have to show that a person of ordinary sensibilities would also have found the situation seriously bothersome. The nature of the neighborhood will be considered in this calculation by the courts. So if you live near the airport, don't complain about the noise of the airplanes.

In determining negligence, the factors are duty, breach, causation, and damage. In other words, you must show that the defendant had a duty not to do the thing that you are complaining of, that he breached that duty, that the breach of the duty was the proximate cause of your complaints, and that you were damaged by the breach.

In determining abnormally dangerous behavior, you must show that the defendant is acting in a way that is abnormally dangerous. For instance, if you find out that your neighbor is storing old dynamite in a storage shed near your property line, this is the kind of activity that would be defined as abnormally dangerous.

In determining intentional conduct, courts have held that it is not necessary that the defendant mean to interfere with your property. It is only necessary that the Defendant do the thing that he did knowing with substantial certainty that such disruption of your quiet enjoyment would occur. So the person in the upstairs apartment may not mean to wake you up by playing his stereo system on the number 10 volume setting at 1:00 a.m. on a Tuesday night, but a court would likely find that the disruption of your quiet enjoyment would be substantially certain in such matters.

The intentional interference must also be unreasonable. The courts will weigh the benefit to the person creating the alleged disruption with the injury to the persons complaining of it. Thus if you tried to sue the nearby hospital because ambulances ran by your house at all times of the night with their sirens going full blast, the court would weigh the need of the injured persons to get to the hospital quickly with your need to sleep throughout the evening.

A new trend in the law however, is to go away from the balancing test above, and require compensation from the person causing the disruption without regard to social utility unless the person causing the disruption can show that this would be unfair.

A person complaining of a common law private nuisance has three remedies. These are 1) a lawsuit for money damages; 2) an injunction against continuation of the disturbance (with contempt of court charges as a remedy for a breach of the judge's order of injunction; and 3) self help abatement, that is, going onto the land of the other, using only reasonable force, and stopping the disturbance. Tread very carefully on this last one, because if you are wrong, you are going to pay a pretty penny for it.

The defendant in a nuisance action can assert several affirmative defenses to it. If he can show that you were a part of the cause of the nuisance, then you can't complain of

it. Further, you cannot "come to the nuisance" and then complain of it. So if you move in by the airport, you can't complain about the noise of the aircraft.

2) Absolute or Qualified Nuisance

Once it has been determined whether the alleged harm constitutes a public or private nuisance, a further determination must be made as to whether the alleged harm constitutes an absolute nuisance or a qualified nuisance. Generally, an absolute nuisance or nuisance per se consists of an intentional act resulting in harm or an unintentional act resulting in accidental harm for which, due to the hazards involved, absolute liability attaches notwithstanding the absence of fault. Mezger v. Penn., (1946), 146 Ohio St. 426. A qualified nuisance consists of a lawful act that is so negligently or carelessly done as to create a potential and unreasonable risk of harm which eventually results in injury to another. Brown v. County Commissioners of Scioto County, *supra,* at 713.

b. Ohio Revised Code 3767

Ohio Revised Code 3767 is Ohio's way of codifying the common law into a statute, and it deals with nuisances affecting the health, safety and morals of the public. Much of it will likely be inapplicable to your situation (part of it deals with houses of prostitution), but some of it might apply.

1) Definitional Section

The first chapter of most statutory sections in Ohio law contains the definitions that will be commonly used under that section. Ohio Revised Code Section 3767.01 is no exception and it states as follows:

§ 3767.01 Definitions.

As used in all sections of the Revised Code relating to nuisances:

> (A) "Place" includes any building, erection, or place or any separate part or portion thereof or the ground itself;
>
> (B) "Person" includes any individual, corporation, association, partnership, trustee, lessee, agent, or assignee;
>
> (C) "Nuisance" means any of the following:
>
>> (1) That which is defined and declared by statutes to be a nuisance;
>>
>> (2) Any place in or upon which lewdness, assignation, or prostitution is conducted, permitted, continued, or exists, or any place, in or upon which lewd, indecent, lascivious, or obscene films or plate negatives, film or plate positives, films designed to be projected on a screen for exhibition

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films, or glass slides either in negative or positive form designed for exhibition by projection on a screen, are photographed, manufactured, developed, screened, exhibited, or otherwise prepared or shown, and the personal property and contents used in conducting and maintaining any such place for any such purpose. This chapter shall not affect any newspaper, magazine, or other publication entered as second class matter by the post-office department.

(3) Any room, house, building, boat, vehicle, structure, or place where beer or intoxicating liquor is manufactured, sold, bartered, possessed, or kept in violation of law and all property kept and used in maintaining the same, and all property designed for the unlawful manufacture of beer or intoxicating liquor and beer or intoxicating liquor contained in the room, house, building, boat, structure, or place, or the operation of such a room, house, building, boat, structure, or place as described in division (C)(3) of this section where the operation of that place substantially interferes with public decency, sobriety, peace, and good order. "Violation of law" includes, but is not limited to, sales to any person under the legal drinking age as prohibited in division (A) of section 4301.22 or division (A) of section 4301.69 of the Revised Code and any violation of section 2913.46 or 2925.03 of the Revised Code.

3767.01(C)(3) might apply if the nuisance is being caused by a bunch of underage drinkers who are regularly partying at a nearby residence as this would be a place where beer or intoxicating liquor is possessed or kept in violation of law. In fact, that statute specifically provides that a “Violation of law” includes, but is not limited to, sales to any person under the legal drinking age as prohibited in division (A) of section 4301.22 or division (A) of section 4301.69 of the Revised Code and any violation of section 2913.46 or 2925.03 of the Revised Code.

2) Persons Liable Under the Nuisance Statute

Ohio Revised Code Section 3767.02 describes the persons against whom the active part of the statute may be used against, and states as follows:

§ 3767.02 Nuisance.

(A) Any person, who uses, occupies, establishes, or conducts a nuisance, or aids or abets in the use, occupancy, establishment, or conduct of a nuisance; the owner, agent, or lessee of an interest in any such nuisance; any person who is employed in that nuisance by that owner, agent, or lessee; and any person who is in control of that nuisance is guilty of maintaining a nuisance and shall be enjoined as provided in sections 3767.03 to 3767.11 of the Revised Code.

(B) A criminal gang that uses or occupies any building, premises, or real estate, including vacant land, on more than two occasions within a one-year period to

> engage in a pattern of criminal gang activity is guilty of maintaining a nuisance and shall be enjoined as provided in sections 3767.03 to 3767.11 of the Revised Code. As used in this division, "criminal gang" and "pattern of criminal gang activity" have the same meanings as in section 2923.41 of the Revised Code.

The nice thing about this statute is that there is no need to show that the owner of the premises from which the nuisance arises has any idea about it. In fact, R.C. 3767.02 requires no proof of knowledge of, acquiescence to, or participation in the creation or perpetuation of a nuisance in order to find an owner of a nuisance guilty of the civil offense of "maintaining a nuisance." State ex rel. Pizza v. Rezcallah (1998), 84 Ohio St.3d 116.

3) Action Part of the Nuisance Statute

Ohio Revised Code Section 3767.03 is the part of the statute which contains the sting. It states in pertinent part as follows:

> Whenever a nuisance exists, the attorney general; the village solicitor, city director of law, or other similar chief legal officer of the municipal corporation in which the nuisance exists; the prosecuting attorney of the county in which the nuisance exists; the law director of a township that has adopted a limited home rule government under Chapter 504 of the Revised Code; or any person who is a citizen of the county in which the nuisance exists may bring an action in equity in the name of the state, upon the relation of the attorney general; the village solicitor, city director of law, or other similar chief legal officer of the municipal corporation; the prosecuting attorney; the township law director; or the person, to abate the nuisance and to perpetually enjoin the person maintaining the nuisance from further maintaining it. If an action is instituted under this section by a person other than the prosecuting attorney; the village solicitor, city director of law, or other similar chief legal officer of the municipal corporation; the attorney general; or the township law director, the complainant shall execute a bond in the sum of not less than five hundred dollars, to the defendant, with good and sufficient surety to be approved by the court or clerk of the court, to secure to the defendant any damages the defendant may sustain and the reasonable attorney's fees the defendant may incur in defending the action if the action is wrongfully brought, not prosecuted to final judgment, is dismissed, or is not maintained, or if it is finally decided that an injunction should not have been granted. If it is finally decided that an injunction should not have been granted or if the action was wrongfully brought, not prosecuted to final judgment, dismissed, or not maintained, the defendant shall have recourse against the bond for all damages suffered, including damages to the defendant's property, person, or character, and for the reasonable attorney's fees incurred by the defendant in defending the action.

This part of the statute provides that any person who is a citizen of the county in which the nuisance exists may bring an action in equity in the name of himself (or herself) to abate the nuisance and to perpetually enjoin the person maintaining the nuisance from further maintaining it.

But this is not an action to be lightly brought. You will have to provide a bond upon the filing of the action in an amount not less than $500.00 in case your action is found to be improper in order to compensate the other side for attorney fees. Further, if the noisemaker prevails and has attorneys fees higher than the $500.00, you will be stuck paying for those as well. So don't exercise this option unless you are pretty darned sure that you are going to win.

4) Procedure For Filing

Ohio Revised Code Section 3767.04 gives us the procedure in an action for an injunction (an order from the court forcing someone not to do something). It provides in pertinent part as follows:

> (A) The civil action provided for in section 3767.03 of the Revised Code shall be commenced in the court of common pleas of the county in which the nuisance is located. At the commencement of the action, a complaint alleging the facts constituting the nuisance shall be filed in the office of the clerk of the court of common pleas.
>
> (B)
>
> > (1) After the filing of the complaint, an application for a temporary injunction may be filed with the court or a judge of the court. A hearing shall be held on the application within ten days after the filing.
> >
> > (2) If an application for a temporary injunction is filed, the court or a judge of the court, on application of the complainant, may issue an ex parte restraining order restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where the nuisance is alleged to exist until the decision of the court or judge granting or refusing the requested temporary injunction and until the further order of the court. The restraining order may be served by handing it to and leaving a copy of it with any person who is in charge of the place where the nuisance is alleged to exist or who resides in that place, by posting a copy of it in a conspicuous place at or upon one or more of the principal doors or entrances to that place, or by both delivery and posting. The officer serving the restraining order forthwith shall make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining the nuisance. Any violation of the restraining order is a contempt of court, and, if the order is posted, its mutilation or removal while it remains in force is a contempt of court, provided the posted order contains a notice to that effect.

(3) A copy of the complaint, a copy of the application for the temporary injunction, and a notice of the time and place of the hearing on the application shall be served upon the defendant at least five days before the hearing. If the hearing then is continued on the motion of any defendant, the requested temporary injunction shall be granted as a matter of course. If, upon hearing, the allegations of the complaint are sustained to the satisfaction of the court or judge, the court or judge shall issue a temporary injunction without additional bond restraining the defendant and any other person from continuing the nuisance. Except as provided in division (C) of this section, if at the time of granting the temporary injunction it further appears that the person owning, in control, or in charge of the nuisance so enjoined had received five days' notice of the hearing and unless that person shows to the satisfaction of the court or judge that the nuisance complained of is abated or that he proceeded forthwith to enforce his rights under section 3767.10 of the Revised Code, the court or judge forthwith shall issue an order closing the place against its use for any purpose of lewdness, assignation, prostitution, or other prohibited conduct until a final decision is rendered on the complaint for the requested permanent injunction. Except as provided in division (C) of this section, the order closing the place also shall continue in effect for that further period any restraining order already issued under division (B)(2) of this section, or, if a restraining order was not so issued, the order closing the place shall include an order restraining for that further period the removal or interference with the personal property and contents located in the place. The order closing the place shall be served and an inventory of the personal property and contents situated in the place shall be made and filed as provided in division (B)(2) of this section for restraining orders.

(C) The owner of any real or personal property closed or restrained or to be closed or restrained may appear in the court of common pleas between the time of the filing of the complaint for the permanent injunction described in division (A) of this section and the hearing on the complaint, and, if all costs incurred are paid and if the owner of the real property files a bond with sureties approved by the clerk, in the full value of the real property as ascertained by the court or, in vacation, by the judge, and conditioned that the owner of the real property immediately will abate the nuisance and prevent it from being established or kept until the decision of the court or judge is rendered on the complaint for the permanent injunction, the court or judge in vacation, if satisfied of the good faith of the owner of the real property and of innocence on the part of any owner of the personal property of any knowledge of the use of the personal property as a nuisance and that, with reasonable care and diligence, the owner of the personal property could not have known of its use as a nuisance, shall deliver the real or personal property, or both, to the respective owners and discharge or refrain from issuing at the time of the hearing on the application for the temporary injunction any order closing the real property or restraining the removal or interference with

the personal property. The release of any real or personal property under this division shall not release it from any judgment, lien, penalty, or liability to which it may be subjected.

c. Filing Police Reports

There are many local ordinances which prohibit too much noise. The way that the police are going to respond to the complaints depends in part upon where you are. For instance, if you buy a house in the heart of the Ohio State University Main Campus area, the police aren't going to respond to your noise complaint until about 2:30 a.m. But if you are in an affluent area in the suburbs, then the police will likely be there straight away when the complaint is made.

The police will write a citation if they have to keep coming out after issuing a warning. But they will have discretion as to whether or not they are going to act upon what they see. Arguing with them that your neighbor is too loud when they don't think so isn't going to get you anywhere, and will likely make it all the harder to get a patrol to respond the next time things get too loud.

IV. Documenting Your Case

With any matter before a court of law, you will want to provide documentation of what you are saying to the court. Simply going in and testifying orally is usually not going to carry the day. You need to have a good combination of oral and documented testimony showing what you are describing.

A. Don't Talk, Write

Whenever you have communications upon a subject of landlord tenant law, you should always do it in writing. Write a letter rather than making a phone call. Keep copies of everything you write. Send every letter certified mail, return receipt requested. If you show up in court claiming to have written letters to the landlord, but sheepishly admitting that you didn't keep copies of anything, then the judge is going to roll her eyes at you. If you do have a conversation with the landlord or the person making all the noise via phone or in person, then send a letter confirming the contents of that conversation to that person. Keep all of this documentation in a file which won't get lost somewhere.

B. Tape Recordings

Taping what the noise sounds like when it is going on is very helpful to a judge, especially if you combine these tapes with a logbook as described below.

C. Keep a Logbook of All Disturbances.

Every time a disturbance occurs, you should write down the date and time it started, the date and time it ended, a description of the noise and who was doing it, and check off whether or not you have made a recording of it.

D. Bring in Trustworthy Witnesses

If you can find someone who has the time to show up at a court hearing and testify as to how bad the noise was on a certain date, then this will be very helpful. A friend or family member isn't bad, but the less reason the witness has to favor your side of the battle, the more convincing that person will be to the judge.

E. Make and Keep Copies of the Police Reports You File for Noise

Every time the police come out to your place to work out a noise complaint, you should ask them if they are going to write up a report of the incident. If they say that they aren't ask them if you can file a complaint with them about the noise. If they are going to do a report, ask where you can get a copy of it and then go to that place and get a copy of it.

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