

Top Asked Question 4. There is excessive noise coming from my neighbour's unit late at night. What are my rights?

Answer 4: Issues of noise and odours are dealt with in the Act as well as the Regulations, by-laws and rules. Under the Regulations, Part II, Bylaws XIV **Restrictions in Use** may contain conditions or restrictions with respect to the occupation and use of the units or common elements. The Regulations also say that the corporation has a duty to ensure that the owners, amongst others, comply with the Act, the Regulations, the by-laws and the rules. Under section III of the Regulations, the board may make by-laws to govern the use and management of the assets of the corporation. Also the board may make rules with respect to the use of the common elements and units to prevent unreasonable interference with the use and enjoyment of the common elements, the units or the assets of the corporation. Section 99 of the Act allows an owner or a condominium corporation to ask the court for an order enforcing compliance with any provisions of the Act, the Regulations, the by-laws and the rules. A court can make any order the judge deems proper if the court determines that the conduct of the owner or corporation is, or threatens to be, oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant.

The Law of Nuisance

Noise is governed under the general law of nuisance. According to the legal texts on the subject, a person may be said to have committed the tort or wrongful act of nuisance when he is held to be responsible for an act indirectly causing physical injury to land or substantially interfering with the use or enjoyment of land or an interest in land, where in the light of all surrounding circumstances, this injury or interference is held to be unreasonable. However, not every nuisance is legally actionable. In the case of *Schenck v. The Queen*, the court held that "not every invasion of a person's interest in the use and enjoyment of land is actionable. The principle of give and take, live and let live is fundamental to the adjustment of claims in the law of nuisance". The issue of reasonableness was discussed in *Royal Anne Hotel Co. Ltd. v. Ashcroft* by the British Columbia Court of Appeal. The court stated that "it is certainly not every smell, whiff of smoke, sound of machinery or music that will entitle the indignant plaintiff to recover. It is impossible to lay down precise and detailed standards but the invasion must be substantial and serious and of such a nature that it is clear, according to the accepted concepts of the day, that it should be an actionable wrong."

As you know, condominium living, by its very nature, involves groups of people living together in close proximity to one another. By necessity, boards of directors would be well advised to become familiar with the law of nuisance. In the words of Florida Associate Justice Driver in *Sterling Village Condominium Inc. v. Breitenbach*, "Every man may justly consider his home his castle and himself as the king thereof; nonetheless his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others. The benefits of condominium living and ownership demand no less."

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