

Taking Civil Action Against Nuisance Behavior

(Revised 5/6/2011)

Most of the time, when residents behave poorly and disturb their neighbors, the neighbors can complain to their local government for assistance. The local municipal government usually has a police department and/or a code compliance department to investigate and force adherence to local, state, and federal codes. These departments will protect the anonymity of the neighbor and do most of the legwork to force compliance.

However, sometimes for various reasons, the local government will NOT be able to assist. Some of the reasons often cited are as follows:

- a) The alleged behavior is not technically prohibited.
- b) The alleged behavior cannot be observed nor verified by government personnel.
- c) Municipal budget and staff limitations force them to forgo some of their enforcement responsibilities.
- d) The alleged behavior is a low priority and thus resources will not be spent to pursue the complaint.
- e) The neighbor is unable to effectively convey the details of the nuisance because of language difficulties or lack of communication skills.
- f) The complaint can be lost in bureaucratic inefficiencies or unsympathetic employees.
- f) The complaint may be investigated, but progress is made so slowly that the neighbor becomes frustrated with the lack of progress.

When faced with these realities, the neighbor has the option to pursue civil action. Civil action is a process that may ultimately reach court action (ie: lawsuit). However, there are a number of recommended steps to try before attempting court action. Most times, when the full process is utilized and competently handled, a lawsuit can be avoided and a mutual resolution to the dispute can be reached.

This document describes the many recommended steps that might ultimately lead to a lawsuit. If any of the preliminary steps results in resolution, then the subsequent steps including the lawsuit can be avoided. If resolution can be achieved without a lawsuit, then most neighbors would consider the process a success.

This document contains samples of various items. The examples and discussions herein refer to a typical nuisance of unruly tenants living in a quiet single-family residential neighborhood. However, the nuisance behavior you are experiencing may differ. The steps you follow in your situation should remain unchanged, you will merely revise the words in your letters and logs as necessary.

Also, this document contains information specific for the San Diego region as of the effective date noted above. Your locale may have different municipal, county, or legal departments with slightly different operations or procedures. Even in San Diego, the relevant government entities may revise their procedures over time. You may have to make adjustments to the process to accommodate those differences.

The courts do NOT generally hold 3rd parties responsible for the actions of others. However, a property owner can be held liable for his tenants disturbing the neighbors if he does not take 'reasonable' and 'prompt' action to abate the nuisance when he becomes aware of its existence.

The basis of the potential lawsuit is California State Law, Civil Code Sections 3479-3484, which state in part:
(From <http://www.leginfo.ca.gov/calaw.html>)

Section 3479 - *"Anything which...interfere[s] with the comfortable enjoyment of life or property...is a nuisance"*

Section 3480 - *"A public nuisance is one that affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."*

Section 3484 - *"The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence."*

Basic Chronology

Most of these steps are optional. But remember, the goal is not "a rush to trial." The goal is to stop the nuisance activity via the property owner taking responsibility for the problem and taking prompt corrective action. If you can get the nuisance abated without a trial, then you have been successful. Rushing to trial without accumulating enough evidence to support your claim will fail to convince a judge and will jeopardize the outcome of the case. The burden of proof is on the plaintiffs (you & your neighbors) to substantiate the claim of nuisance.

The court case attaches a significant dollar amount to the nuisance. Hopefully, the possibility of an adverse judgment by the court sufficiently motivates the property owner to take the necessary steps. Otherwise, everyone takes the risk of letting a judge decide.

The process this document describes involves the following steps:

1. Begin Compiling Evidence
2. Initial Homework
3. Initial Notification Letter
4. Follow-up Letters/Calls
5. Mediation
6. Final Letter
7. File Lawsuit
 - a. Complete The Lawsuit Forms
 - b. Obtain Signatures of All Plaintiffs
 - c. Select Service Process (Sheriff or Private)
 - d. Collect Filing Fees & Service Fees From Everyone
 - e. Submit Forms To The Court
8. Issue Subpoenas, if necessary
9. Prepare For Trial
 - a. Three Copies Of Evidence (Yourself, Defendant, & Judge)
 - b. Organize Your Evidence
 - c. Select Spokesperson
 - d. Practice Testimony
 - e. Review Tapes From Similar Cases and/or Visit Court
 - f. Bring your Proof Of Service to court
10. Trial - Good Luck!

Begin Compiling Evidence

These steps are invaluable if the process ends up in court. But these steps take time, so **START NOW!**

1. Each neighbor needs to compile his or her own folder of evidence.
2. Each neighbor needs to create a log. Use 8½" X 11": paper with columns for Day, Date, Time, and Notes (see sample on following pages).
3. Be sure to enter all relevant activity into the logbook. Such as late night parties, loud music, illegal parking, visible trash on the property, conversations with owner or tenants, phone calls to or from the owner or tenants, phone calls to or from the Police, phone calls to or from Neighborhood Code Compliance, phone calls to or from County Animal Services, any pictures you take, etc. The log should read like a diary with specific dates and time of occurrences.
4. Call the police whenever appropriate.
Be sure to get the INCIDENT# from the operator and put it in your logbook.

Serious Crime In Progress, Call 911
Non-Emergency Police, Call (619) 531-2000

Neighbors should **ALWAYS** call the police for crimes in progress, for excessive noise past 10pm, and any situations where they feel threatened. The San Diego Police Dept utilizes a priority assignment method for dispatching officers. Officers are always dispatched to the **HIGHEST** priority calls first.

Sometimes people say, "I didn't call the police because I didn't want to bother them." Your call is not a bother. Citizens **CANNOT** bother the police. The Police will determine the appropriate response to each call. Even if they are on the way to your house, if a higher priority call comes in, the officers will be diverted from your house to that call. They will respond to your call when there are no other higher priority calls waiting.

Also, people sometimes say, "I'm not going to call because I know that John (from across the street) is going to call." If both you **AND** John call, then

you might get a higher priority than someone else with a similar problem with only one caller.

The police track all of the calls they receive. They use these statistics to decide how many officers to keep on duty in the different parts of the city. If there are more calls in another area, then the police believe that area has more crime than your area. They may decide to keep more officers on duty in another area, instead of your area. When neighbors do NOT report crime, then the police believe there is less crime, and thus they might keep fewer officers on duty in your neighborhood in the future.

5. Get the officer's name and ID# when you have contact and they provide useful information to you. Be sure to enter this in your logbook. You may later decide to issue a subpoena to the officer as a witness.

6. Call Neighborhood Code Compliance (NCC) for other municipal violations. Their phone number is (619) 236-5500. NCC will take your complaint by phone. This department investigates many violations, such as: construction without a permit, illegal bedrooms added to a house, conversion of a garage to bedroom or living room, illegal storage of "stuff" in the yard, illegal fences, illegal use of a house for business purposes, illegal grading, illegal auto repair, etc.

7. Pictures/Videos are GREAT evidence! Take pictures of illegal parking, of trash strewn yards after a party, of discarded beer cans and liquor bottles, of police cars in front of their house, of vandalism to your property, of broken down furniture in their yard, etc.

8. Log the vehicle license plates of problem vehicles, residents, and visitors, when appropriate. Let the police know that you have this information. If they are also investigating gang and/or drug activities, then the vehicle info, with dates and times, may help the police in their investigation.

The landlord may also be able to use your vehicle logs to confirm that more people (or different people) are living at the house than specified on the lease. A lease violation may give the property owner the tool he needs to evict them.

9. Keep copies of all letters you send and all letters you receive.

10. Keep copies of voicemail messages you receive, if appropriate. Be sure to note them in your logbook, too.

11. Accumulate evidence of any assets the property owner may own, such as other property, vehicles, boats, trailers, bank accounts (save copies of any checks you receive), etc.

12. Make a public records request to Neighborhood Code Compliance & Police Department for copies of information pertaining to investigations and enforcement action taken against the property and the property owner.

13. The log allows you to accurately and precisely tell your story to a judge. If this case ultimately results in a trial, then the judge will be listening to your story as well as the story of the property owner. Having all of your facts written down, organized, and prepared will help to convince the judge that your story is more credible than the story put forth by the property owner. Reciting stories from memory is less credible than having written notes and third party corroboration.

14. Keep copies of any receipts you get for related expenses (such as film, processing, copies, paper, phone calls, property improvements like burglar bars, security systems, double-paned windows, air conditioners, etc.

15. Be sure to call the police for every disturbance. Sometimes neighbors give up and call less frequently. This can be interpreted as a reduction in the frequency of the problems, or a reduction in the severity of the nuisance, or an indication that things are better now. So do not give up. Keep up the pressure.

16. Similarly, you must continually call/write to the property owner. Remember, an absentee property owner is only liable if he doesn't act reasonably to abate the nuisance. If you stop contacting him out of frustration, then he can reasonably say he thought the problem was fixed. This is the main argument used by owners in court. -- "I didn't know the neighbors were so upset" -- "If they had contacted me, then I would have immediately fixed things" -- "I hadn't heard from the neighbors in over a month, so I thought the issue was resolved"

17. DO NOT DISMISS THE IMPORTANCE OF COMPILING WELL-ORGANIZED EVIDENCE FROM A VARIETY OF SOURCES.

<u>DATE/TIME</u>	<u>NOTES</u> (SAMPLE LOG)
<u>Fri 8/21/05-10pm</u>	<u>Loud party with over 30 guests has been going since 3pm.</u>
<u>Sat 8/22/05-1230am</u>	<u>Went next door, they said they would turn it down</u>
<u>Sat 8/22/05-1am</u>	<u>Still loud. Called the police, incident#P05080031543</u>
<u>Sat 8/22/05-8am</u>	<u>On my way to work, their front yard is a huge mess. I took some photos. Beer bottles all over, even in my yard. Footsteps are evident in my rose bushes. I could smell that somebody urinated in them.</u>
<u>Sat 8/22/05-6pm</u>	<u>I went next door and spoke to Tim. He apologized and said it wouldn't happen again. They were celebrating the football game.</u>
<u>Wed 9/5/05-3am</u>	<u>I was awoken by loud arguing in the street by two adult males. They continued for about 5 minutes. Then one got in a car and drove away squealing his tires for 50 ft. The other male went back into the problem house</u>
<u>Sat 9/8/05-4pm</u>	<u>Officer John Glenn #3456 stopped by and told me that they have contacted the residents. They have been warned that they can be arrested if they continue to have loud late parties.</u>
<u>Sat 9/15/05-10pm</u>	<u>A loud party has been in progress since 5pm. They have a live band in the back yard. There's a drunken male wandering in middle of the street, he came from the party, 3 cars have honked at him to get out of the way. He tried to throw a rock at the last car.</u>
<u>Sat 9/15/05-1015pm</u>	<u>Called the police, incident#P05090044321</u>
<u>Sat 9/15/05 - 1030pm</u>	<u>Called John Smith (owner)</u>

DATE/TIME **NOTES** (SAMPLE LOG continued)

Thu 9/20/05-noon Saw John Smith (owner) at the property. I went over to talk to him about the problem. He said I was nuts and I should let the kids have their fun.

Sat 9/22/05-11pm Came home and found another party in progress. Cars parked all over the neighborhood. I had to park two blocks away and carry my groceries. Some cars were parked facing the wrong way. Two cars were parked in the front yard on the grass of the problem house. The music was so loud that I had to close all of my windows and I still could barely hear my tv.

Sat 9/22/05-1145pm Called the police, incident#P05090065432

Sat 9/22/05 - 1145pm Called the owner, left message

Sun 9/23/05-8am Broken beer bottles strewn in the street. pictures taken. somebody drove a car onto my lawn and left big ruts. pictures taken. My mailbox is missing.

Sun 9/23/05-10am Called John Smith at home to tell him about the party last night. I left a message on his answering machine to please call me back asap.

Mon 9/24/05-530pm John Smith called. He said he would evict the tenants.

Fri 9/28/05-5pm Came home and saw one of the tenants. He gave me "the finger" and yelled obscenities at me.

Sat 9/29/05-2pm My daughter came home crying. Said one of the people next door yelled at her for walking on the sidewalk.

Sat 9/29/05-210pm I went next door and knocked. I could hear them inside and saw movement behind the drapes. They didn't answer the door.

DATE/TIME **NOTES** (SAMPLE LOG continued)

Wed 10/8/05-8am Found 6 empty beer cans in my back yard, I think they were tossed over the fence by the neighbors.

Sun 10/16/05-10am Bought a new mailbox and sod to repair my lawn.
\$115.67

Initial Homework

1. Visit San Diego County Assessor Office and obtain:

- a) The legal ownership entity of the property (ie: one person, multiple people, family trust, partnership, etc)
- b) The mailing address of the legal owner
- c) Copy of property tax bill
- d) Name, address, and loan# of the mortgage holder of the property, if applicable
- e) Name & address of any other people that have filed liens against the property
- f) Lists of other property owned by the same persons

In San Diego County, the Assessor has two offices to get this information:

1600 Pacific Highway #103
San Diego, CA 92101
(619) 236-3771

9225 Clairemont Mesa Blvd
San Diego, CA 92123
(858) 505-6262

2. Speak with all of your neighbors (door to door), discuss the problems, and determine if they are impacted, and their level of frustration, and their willingness to participate in the process. You want as many neighbors as possible on your team. If retaliation is feared, there is strength in numbers. Having multiple people describe the problem to the judge lends credibility to all of you. The dollar value of the lawsuit (if a lawsuit becomes necessary) is based upon the number of plaintiffs. Although, your goal is NOT to receive money, your goal is to get the nuisance to stop. But having a larger dollar value looming in your lawsuit might provide additional motivation to the property owner to quickly resolve the problems.

3. Begin documenting EVERYTHING. See the EVIDENCE checklist

Initial Notification Letter

The initial letter should be sent relatively soon after the problems begin. It is important to put the property owner "on notice" as early as possible. The property owner is only liable if he doesn't take "reasonable" steps to correct the problem once he becomes aware that there is a problem. Some of his reasonable steps may include verbal warnings to the tenants, written warnings, 3-day notices, mediations, eviction, etc. These steps will take time to complete, especially if the owner doesn't really care about the problem. The earlier you "give notice", the earlier his reasonable period will expire.

1. The letter should be kept to a single page, or two at the most.
2. The letter should be addressed to the legal owner of the property at their designated mailing address. This info is available at the County Assessors Office.
3. Be sure to date the letter.
4. The letter should specifically reference the problem address, if it is different from the mailing address. This is important so the owner cannot claim he didn't know which property you were referring to.
5. The letter should have words to the effect of, "there is nuisance activity on your property, and under California Law, the property owner is responsible and liable for allowing the nuisance activity to continue."
6. The letter should briefly describe the nuisance activity. A single paragraph is adequate for this. No need to list all of the dates and times, etc.
7. Request phone numbers and addresses for contacting the owner if there are future problems.
8. The letter should ask for the owner's response no later than 20 days from the date of the letter. Be sure to give an address or PO Box for the response. Hopefully the owner will respond in writing, which will give you confirmation that they received your letter. Also, in their response they may

make promises, which you can later hold them to.

9. The letter should be signed by MANY neighbors, so that you alone are not the 'bad guy' or 'instigator'.

10. You can send the letter via Certified Mail, but be aware that some people do not ever accept certified mail. Usually, certified mail does NOT contain good news for them, so some people always ignore it. If you do send your letter certified, you should send it regular mail, too.

February 1, 2006

(Sample Initial Letter)

John & Mary Smith
123 Main Street
San Diego, CA 92101

This is to notify you that the residents of your property at 321 Elm Avenue, San Diego, CA 92123 are causing many problems for the neighbors.

Since August of 2005, there have been numerous parties lasting well past midnight that disturb us from sleeping and enjoying our property. We've asked the residents to be quieter late at night and they complied initially, but now they show no regard for our rights. They have become belligerent towards us and have been using obscenities to intimidate us. The police have been to the property multiple times to investigate noise, parties, alcohol, and drugs.

Under California Law, as the property owner, you are responsible and liable for nuisance activity on your property if you do not take action to stop it.

We desperately need you to take action now. Please contact us immediately to let us know the steps you intend to take to resolve this situation. Please respond to us at PO Box 222, San Diego, CA 92123 within 20 days.

Please give us a phone number that we may use to notify you of any future problems. And if this is not the proper address for future correspondence, then please provide your preferred address.

Sincerely,

Mary Jones

Bob Jones

Steve Wilcox

Tom Campbell

Kim Campbell

Esther Rains

Russell Crowe

Jim Beam

Claude Aikens

Follow Up Letters/Calls

If you are pursuing a landlord for the actions of his tenants, then you have a slightly more difficult case to compile. The courts are reluctant to hold one party accountable for the actions of another. However, a landlord is accountable to take reasonable actions to abate a nuisance that his tenants cause to the surrounding neighbors. The key point here is "reasonable".

If the landlord does not live at the property then he can reasonably claim that he didn't know about the nuisance. It is imperative that the neighbors remove this potential claim by informing the landlord. Your initial letter performs this function.

Next, if the complaints to the landlord subside, then he can reasonably claim that the problem must be cured. It is imperative that the neighbors continue to update the landlord about the lack of progress resolving the nuisance. If there are parties every week, then the landlord should be contacted every week.

Do NOT rely on the police or other city departments for your follow-ups. Usually they take action directly with the tenants. Regardless of their contacts, the landlord may be able to claim ignorance of continued problems. So, you must endeavor to keep him informed, if you want to later hold him accountable.

The easiest method for follow-ups to the landlord is by telephone. That is why you request their telephone number in your initial letter. Be sure to note in your log every time you call the landlord, even if you only leave a message. Be sure your message gives the appropriate details about the latest problem and why you're calling.

If the owner doesn't provide you with a phone number, then you should send follow-up letters by mail. You can create a generic form letter with blank lines for the details and print many copies. Then whenever appropriate, just fill in the details by hand, date the letter, and mail it (see sample on next page). Always save a copy of the letter for your evidence file.

Feb 16, 2006
(Date)

(Sample Follow-Up Letter)

John & Mary Smith
123 Main Street
San Diego, CA 92101

This is to update you about the continued nuisances occurring at your property at 321 Elm Avenue, San Diego, CA 92123.

Fri 2/15/06 6pm until 1am - loud music and yelling, sounds of breaking glass. 5 vehicles screeching tires as party guests left the party

Sat 2/16/06 7:30am - Trash all over the yard, including beer cans and condoms. Vandalism to neighbor's mailbox and front lawn.

Please contact us immediately to let us know what steps you are taking to resolve this situation. Thank You,

Elm Avenue Concerned Neighbors
PO Box 222
San Diego, CA 92123

Mediation

Mediation is a valuable tool when administered by a trained mediator. You are encouraged to seek mediation prior to taking further action. If you can reach an agreement that is mutually acceptable to all parties, then that would be a win-win situation. An agreement that was reached voluntarily by all parties has a greater chance of being followed and maintained than a court ordered settlement.

Most courts, including small claims court, are strong advocates for adversarial parties to attempt mediation before taking up valuable courtroom resources. Some courts actually require the parties to attempt mediation before filing.

Mediation is non-binding; this means that you cannot be forced to accept any partial reimbursement or negotiated settlement if you do not feel it is a fair agreement. You cannot be forced to concede any rights unless you decide that you want to.

In San Diego, the organization below has an excellent record of providing competent and professional mediation services:

National Conflict Resolution Center
(Formerly San Diego Mediation Center)
625 Broadway St #1221
San Diego, CA 92101
(619) 238-2400
<http://www.ncrconline.com/>

(There may be a small nominal fee for their services)

Contact the NCRC, describe your situation, and request that they setup a mediation session with the property owner.

If they are unable to schedule a mediation session because the property owner refuses to participate, or does not return their calls, then ask for a letter from NCRC confirming their attempts. Add this letter to your evidence folder.

Some possible items to request during mediation, if applicable:

- a) home address, business address, email address, phone numbers of the property owner(s), including cell phone numbers
- b) copy of the lease and other property rules
- c) full names of the tenants allowed to be living onsite
- d) names, addresses, & phone numbers of the parents of the tenants
- e) vehicle descriptions and license plates of the vehicles belonging to the allowed tenants
- f) what is the lease term (ie: expiration date)
- g) what is the monthly rent

File Lawsuit

The forms used for small claims court are available on-line as well as at the small claims courthouse. The address is:

8950 Clairemont Mesa Blvd
San Diego, CA 92123
(858) 694-2066

The website is:

<http://www.courtinfo.ca.gov/selfhelp/smallclaims/scforms.htm>

This website also has some very valuable instruction sheets and informational links about the small claims process and helpful hints.

You will most likely need some or all of these forms:

SC-100 Plaintiff Claim & Order
SC-100A Additional Plaintiffs & Additional Defendants
MC-30 Declaration
MC-31 Attached Declaration
SC-104 Proof Of Service
SC-104A Certificate Of Mailing

When you complete the forms, all of your plaintiffs will be combined onto the same order (i.e. same case). You may need to use form SC-100A to list all the plaintiffs. You do NOT want to complete multiple forms SC-100 for each plaintiff. If each plaintiff submits form SC-100 separately, then a filing fee is required for each submittal (approx \$75.00). The court wants to hear the entire case, including all plaintiffs, together and at one time. There is no need to file many separate claims. Furthermore, the small claims limit is currently \$7500 per plaintiff. So, if you have 10 plaintiffs, then your total claim would be \$75,000.

Final Note

An attorney did not write this document, nor should it be considered legal advice. However, the contents herein were learned & refined over many years of experience dealing with various nuisance situations. You may contact the author of this document, Fred Zuckerman, by email at FZuckerman@pd.sandiego.gov.