



**Mark Flanders**  
Director

# Ohio Legislative Service Commission

## HOUSE MEMBERS

**Clifford A. Rosenberger, Chair**

Ron Amstutz                      Mike Dovilla  
Jim Buchy                         Barbara R. Sears  
Nicholas J. Celebrezze         Fred Strahorn

## SENATE MEMBERS

**Keith Faber, Vice-Chair**

Edna Brown                      Thomas F. Patton  
Cliff Hite                         Joe Schiavoni  
Larry Obhof                       Chris Widener

---

---

## Memorandum

---

---

R-131-1969

**To:** The Honorable Kevin Bacon  
Ohio Senate

**From:** Carla Napolitano, Attorney *CN*

**Date:** October 7, 2015

**Subject:** Nuisance abatement process

You recently asked LSC what happens when a property is declared a nuisance. Your question is in connection with S.B. 201 of the 131st General Assembly, which in general, expands the definition of a nuisance property to include any real property on which an offense of violence has occurred or is occurring. Below is information describing the nuisance abatement process.

### General background

Ohio General Nuisance Law provides for a civil action, a lawsuit, in the court of common pleas to enjoin and abate anything defined as a "nuisance" anywhere in the Revised Code.<sup>1</sup> These lawsuits must be set for trial at the earliest possible time and take precedence over all other cases (other than crimes, election contests, or injunctions).<sup>2</sup>

### Remedy – suing for an injunction

The General Nuisance Law prohibits the maintenance of a nuisance. Any person guilty of maintaining a nuisance can be enjoined from continuing the nuisance.<sup>3</sup> Whenever a nuisance exists, specified government officials, or any person who is a citizen of the county in which the nuisance exists, may sue to abate the nuisance and to permanently enjoin the person maintaining the nuisance from further maintaining it. However, a private plaintiff must execute a bond of at least \$500 to cover any damages

---

<sup>1</sup> R.C. Chapter 3767. Ohio also has a Public Nuisance Law, R.C. 3767.41, the procedures for which are not discussed in this memorandum.

<sup>2</sup> R.C. 3767.05(A).

<sup>3</sup> R.C. 3767.02.

the defendant may sustain and the reasonable attorney's fees the defendant may incur in defending the lawsuit if any of the following apply:

- The suit is wrongfully brought;
- The suit is not prosecuted to final judgment, dismissed, or not maintained;
- It is finally decided that an injunction should not have been granted.<sup>4</sup>

### **Initiating the lawsuit**

The plaintiff commences the suit by filing a complaint in the court of common pleas of the county in which the nuisance is located. The complaint must allege the facts constituting the nuisance.

Once the complaint has been filed, the plaintiff may apply for a temporary injunction, and the court will hold a hearing within ten days. The court may issue an 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 court grants or refuses the requested temporary injunction and until the further order of the court.

The defendant must be served 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 at least five days before the hearing. If the defendant moves for a continuance, the court will issue the temporary injunction. Otherwise, if, at the hearing, the court finds that the complaint's allegations are sustained, the court will issue a temporary injunction restraining the defendant and any other person from continuing the nuisance. If at the time the court grants the temporary injunction the defendant does not prove that the nuisance is abated, the court will order the place closed 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. This order continues any temporary injunction already issued. If no temporary injunction had been issued, the order will contain an injunction of the type included in the temporary injunction.<sup>5</sup>

### **Owner's abatement of nuisance and release from temporary injunction**

The owner of real or personal property subject to an injunction can release the property from the temporary injunction by doing all of the following:

- Appearing in court between the time of the filing of the complaint for the permanent injunction and the hearing on the complaint;
- Paying all costs incurred;

---

<sup>4</sup> R.C. 3767.03.

<sup>5</sup> R.C. 3767.04(A) and (B).

- Filing a bond, in the full value of the real property.

If the court is satisfied of the good faith of the owner and of innocence regarding the owner's knowledge of the use of the personal property as a nuisance and that the owner could not reasonably have known of its use as a nuisance, the court will release the property subject to the temporary injunction. This release will be on the condition that the owner immediately will abate the nuisance until the decision of the court for the permanent injunction is made. However, this will not release the property from any judgment, lien, penalty, or liability to which it may be subjected.<sup>6</sup>

### **Court orders**

If the court finds that the nuisance exists, the court will permanently enjoin the defendant and any other person from further maintaining the nuisance. The court also may subject the person found to have maintained the nuisance to personal liability and penalties.<sup>7</sup> In addition, an order of abatement will be included in the judgment entry, which will direct the removal of the nuisance. This order will direct that the personal property or contents belonging to the defendant that are connected with the nuisance to be sold, without appraisal, at a public auction to the highest bidder, subject to the procedure described below under "**Personal property and contents sale.**" Further, the court can issue an order closing the place where the nuisance is found to exist and keeping it closed for a period of one year unless released sooner.<sup>8</sup>

### **Violation of court order**

If the injunction, closing order, or restraining order is violated, or if there is a commission of contempt of court, the court may summarily try and punish the offender.<sup>9</sup>

### **Personal property and contents sale**

Owners of unsold personal property or contents seized must appear and claim the personal property or contents within ten days after the order of abatement is issued and prove (1) their lack of any actual knowledge of the use of the personal property in the conduct of the nuisance and (2) that they could not have reasonably known of that use. Every defendant is presumed to have had knowledge of the general reputation of the place where the nuisance is found to exist. If an owner can establish their lack of actual or constructive knowledge of the use of their personal property or contents in the conduct of the nuisance, the unsold personal property and contents will be delivered to

---

<sup>6</sup> R.C. 3767.04(C).

<sup>7</sup> R.C. 3767.05(D), (E), and (F).

<sup>8</sup> R.C. 3767.06(A) and (B).

<sup>9</sup> R.C. 3767.07.

the owner. Otherwise, the property will be sold or disposed of. Proceeds from the sale are applied to the costs of bringing the lawsuit.<sup>10</sup>

### **Injunction tax**

When a permanent injunction has been placed, a tax of \$300 will be imposed against the person liable for maintaining the nuisance or the real property related to the nuisance. The tax will become a lien on the property until fully paid. This tax cannot be imposed on:

- Personal property or an owner of real property who has proven their innocence as described above;
- Real property or against the owner of that property who establishes that at the time of the granting of the permanent injunction, that the owner, in good faith, permanently abated the nuisance.

When a nuisance is found to exist, and the owner or agent of the place the nuisance was found was not a party to the lawsuit, the \$300 tax is still imposed against the persons served or appearing and against the property. However, before the tax is enforced against the property, the owner or agent must appear or be served with summons consistent with existing laws regarding the service of process, and those owners must be given an opportunity to defend against that tax.<sup>11</sup>

R1969-131.docx/lb

---

<sup>10</sup> R.C. 3767.06(B), (D), (E), and (F).

<sup>11</sup> R.C. 3767.08 and 3767.09.