



Oh, Deer!

Private Nuisance and Community Living

A few nights ago, I was watching the movie “Bambi” with my toddler. I was reminded of a nuisance matter our office recently dealt with. You may ask: How could a deer be a nuisance? The answer may surprise you.

Sic utere tuo ut alienum non laedas. This maxim, when translated to English, means: Use what is yours in a way that you don't harm what is another's. Generally speaking, this is the law of private nuisance. A private nuisance is the use of one's property in a way that interferes with the legal right of another to use and enjoy their property.

Under Rhode Island law, it is well settled that a cause of action for a private nuisance arises from the unreasonable use of one's property that materially interferes with a neighbor's physical comfort or use of his property. Generally, nuisance is the doing of something intrinsically lawful in a manner that is damaging to others. It is the resulting damage that creates the wrong — not the action itself.

The question of reasonableness is a question of fact to be established by the party bearing the burden of proof. Under private nuisance law, equitable relief (an order to prohibit the offending activity) is an appropriate remedy.

As one can imagine, the law of private nuisance plays a large role in community living. For example, associations often deal with complaints regarding loud noises and noxious odors. If it can be shown that the particular noise or odor is unreasonably interfering with another's use and enjoyment of their unit, a nuisance action to stop the offending sound or smell may be successful.

Nuisance complaints are not, however, always regarding sounds and smells. Specific behavior of a unit owner may be offensive to another unit owner. This behavior, if unreasonably interfering with another's use and enjoyment of the property, may also constitute a nuisance.

The following example is based on a true story. Mr. Skinner, a unit owner at Forest Yard condominium in southern Rhode Island, loves to hunt. Every weekend, he travels out to the deer-rich Rhode Island wilderness in the hopes of returning with a nice looking buck. When successful, Mr. Skinner hangs his trophy outside of his unit and proceeds to skin and dismember it in full view of the other units. Numerous unit owners at Forest Yard call and write the property manager and the board to complain, insisting this behavior is upsetting and that it stop at once. What recourse, if any, do they have?

The first place to look is in the condominium documents. Most condominium associations have a rule which reads something like: “No noxious or offensive activity shall be carried on in any Unit, or in the Common Elements; nor shall anything be done therein either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners/Lesseees or occupants...”


The purpose of such a rule is to prevent the unreasonable interference by another unit owner, occupant or lessee, with a unit owner's use and enjoyment of the property, both in their individual units and on the common elements.

Unit owners often forget that there is a difference between being a single-

family homeowner and a condominium owner. As a member of a condominium association, a condominium owner and his or her tenants are bound by the rules and regulations of the association.

The board, in the exercise of its judgment on behalf of the entire association, and pursuant to the rules and regulations, determines if the behavior in question rises to the level of a nuisance and/or offensive activity. The conduct should then be dealt with just as any other covenant enforcement under the Rhode Island Condominium Act, in particular Section 34-36.1-3.20. It is important to remember that under the Act, there must be notice and opportunity for a hearing before assessing fines.

What some boards may consider a nuisance pursuant to the association's rules, however, may never rise to the legal level of nuisance under Rhode Island law. Boards should consult an attorney when faced with nuisance complaints to help prevent unnecessary litigation.

With respect to the above example, after a strong letter from the board's attorney, Mr. Skinner agreed to skin his deer in the woods and out of the sight of the other unit owners. As a result, whether skinning a deer on your porch is unreasonable interference with your neighbor's use and enjoyment of their property remains an open question in Rhode Island. The unit owners of Forest Yard, however, certainly bucked the behavior. 

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