

# Condo Insights

## **#72 – The Right to Quiet Enjoyment**

The right to quiet enjoyment is a legal concept that means you can possess and use your property without significant interference from others. In a condominium, your right to "quiet enjoyment" means you are entitled to live without unreasonable disturbances from your association or fellow residents.

The fact that you have a right to enjoy your property without interference from others does not necessarily mean that you have a right to live in a noise-free environment. In multi-family structures, achieving the same level of solitude and noise elimination as in single-family structures is not feasible. When people live in condominiums, it is reasonable to expect that there will be occasional interferences from a barking dog, a crying baby, children playing, or a neighbor's party. It is only when the intensity and duration of the interference is substantial and rises to an unreasonable level that would be offensive or inconvenient to the normal person, that the disturbance becomes a nuisance.

A breach of this principle occurs when a disturbance is on-going and excessive. A one-time event is not usually enough, but persistent problems can qualify, and the interference must be more than a minor annoyance and at a level that a reasonable resident would find intolerable.

Common examples of breaches in condominiums include: noise, regardless of whether it be loud music, constant barking dogs or excessive pounding or banging in a neighboring residence; odors from second-hand smoke from other units or strong cooking odors that permeate into common areas or into a neighboring residence; unsanitary conditions that attract pests, mice or other hazards; and even visual nuisances such as unsightly items on balconies, in common areas, or such behavior on display in a private condominium but clearly visible from common areas or other residences and such that the behavior offends a reasonable person.

Noise is subjective. One resident's music is noise to another. In the state of NJ, there are no laws addressing quiet enjoyment of property in relation to noise. The law does not guarantee or impose a lack of noise. The key issue is whether the noise level is reasonable.

Regarding noise from other units, if it results from a loud party or heated arguments between occupants, your best course of action would be to notify the police. They have the authority to address the noise issue. However, if the noise is typical of day-to-day living in a condominium association, there is no law that can be invoked to limit such typical noise.

The type of building and use may affect the levels of noise and activity. Within multi-family condominium buildings, equipment noise such as from elevators, water pumps, and pool equipment can create noise that may adversely affect a resident. At the shore, often older buildings are converted into condominiums that may not have adequate levels of insulation between units and/or between floors so noise transmission is more prevalent and neighbors may even hear the television in neighboring units. Activity levels are also affected by the number of year-round residents or if the building is primarily seasonal occupancy.

A building's location also influences the degree to which a resident has the right to reasonably expect quiet enjoyment. Residents in a building located next to a busy street or roadway can expect to hear road noise and even loud vehicles. Residents in a building located next to a fishing area can expect that boat engines will be heard in early morning hours, and that fishermen cleaning their catch can create foul odors. In these situations, the association did not create the circumstances that may cause such noise.

Association governing documents typically includes use restrictions, meaning residents agree to abide by certain behaviors toward assuring the covenant of quiet enjoyment. Typical examples of restrictions include prohibiting you from having a pet, operating a business from your residence, making excessive noise or having more than a certain number of people living with you.

Most associations have rules and regulations. The board can build the right to quiet enjoyment into its rules, regulations, policies and procedures. The board may also want to make sure that the association's rules and regulations align with municipal ordinances.

For example, at the shore most owners perform renovations in their condo during the off-season. Renovations generate demolition and construction noise, vibration and banging, and debris and dust. Renovation and contractor guidelines should be considered and incorporated into rules and regulations. The association's construction and renovation guidelines should also align with municipal ordinances, which are also intended to minimize inconvenience for neighbors.

The covenant of quiet enjoyment does not mean that you can keep the association from entering your condo. Many associations include easement language in their governing documents that permit an association representative or manager to enter a condo at reasonable times to inspect, investigate, diagnose and make repairs to common elements. The association is typically required to contact the unit owner before entering. If there is an emergency, the association or government authorities can enter a condominium residence without the unit owner's knowledge or permission, such as to respond to a fire alarm or a burst pipe that, if not fixed right away, could cause the building to be damaged.

If you are affected by excessive noise or nuisance, what can you do? Speak with your neighbor to address the issue directly and politely with the person causing the disturbance in the first attempt to find a solution.

If direct communication doesn't work, file a formal complaint with the condo association, and reference the association governing documents or rules & regulations. A formal written complaint should outline the issues and cite the relevant rules or sections of the governing documents. Document all issues including dates, time and what happened. Collect evidence including photos and videos and written records, including when you notified the condo board. It may also be viable to reference local ordinances and if the issue involves a violation of local noise ordinances, consider calling the police.

If these steps fail to achieve a resolution, consider mediation using a neutral third party. Finally, if there is no response from the neighbor or association, consult an attorney to understand your legal options, which could include taking legal action against the offending resident and/or the association. You can sue your neighbor for quiet enjoyment, but to win a private nuisance claim for excessive noise, you will need to show there is excessive or unreasonable noise, your neighbor is causing the noise, and the noise has disturbed your quiet enjoyment of your home.

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