



“Immoral, Improper,
Unlawful, Offensive,
Unreasonably Noisy, Noxious,
Annoying, or a Nuisance”

Regulating Co-owner Behavior

Section 4. Activities. No immoral, improper, unlawful or offensive activity shall be carried on in any Unit or upon the Common Elements nor shall anything be done which may be or become an annoyance or a nuisance to the Co-owners of the Condominium. No unreasonably noisy activity shall occur in or on the Common Elements or in any Unit at any time and disputes among Co-owners, arising as a result of this provision which cannot be amicably resolved, shall be arbitrated by the Association. No Co-owner shall do or permit anything to be done or keep or permit to be kept in his or her Unit or on the Common Elements anything that will increase the rate of insurance on the Condominium without the written approval of the Association, and each Co-owner shall pay to the Association the increased cost of insurance premiums resulting from any such activity or the maintenance of any such condition even if approved. Activities which are deemed offensive and are expressly prohibited include, but are not limited to, the following: Any activity involving the use of firearms, air rifles, pellet guns, B-B guns, bows and arrows, or other similar dangerous weapons, projectiles or devices.



“Immoral” or “Improper”

- ▶ Immoral - violating moral principles; not conforming to the patterns of conduct usually accepted or established as consistent with principles of personal and social ethics. (Dictionary.com)
- ▶ Improper - not in accordance with propriety of behavior, manners; unsuitable or inappropriate, as for the purpose or occasion. (Dictionary.com)

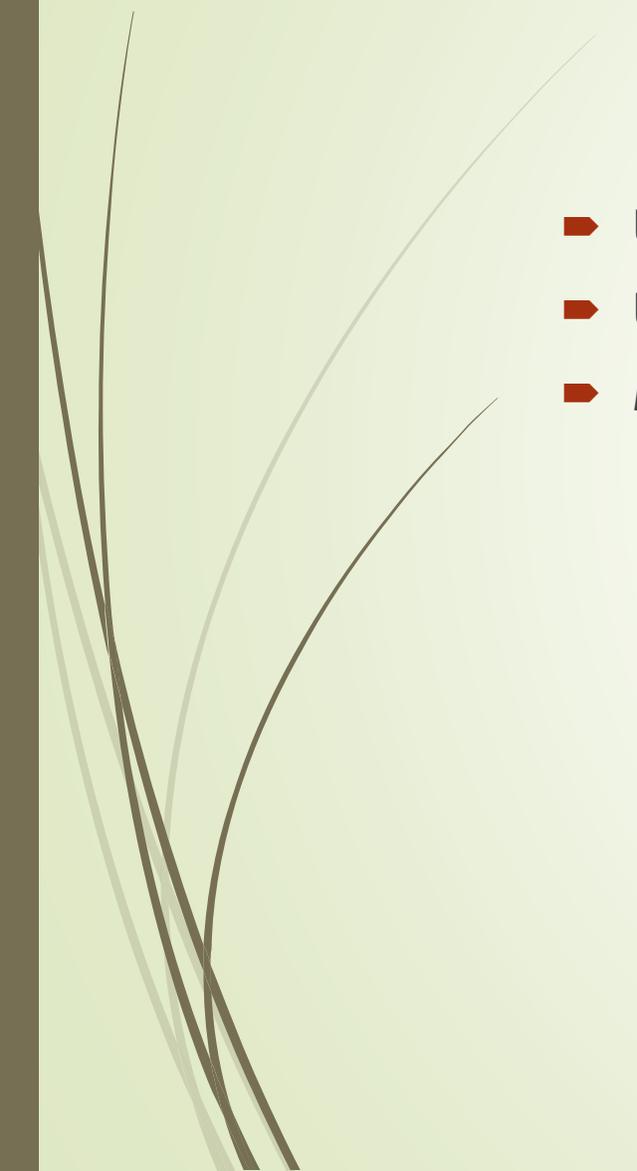


“Immoral” or “Improper”

- ▶ Just don't go there!
- ▶ “The opportunity to obtain employment, **housing and other real estate**, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, **sex**, height, weight, **familial status**, or **marital status** as prohibited by this act, is recognized and declared to be a civil right.” MCL §37.2102(1) (Elliott-Larsen Civil Rights Act)



“Unlawful”

- ▶ Unlawful - not lawful; contrary to law; illegal (Dictionary.com)
 - ▶ Unlawful is not limited to “criminal.”
 - ▶ May be a violation of either federal, state, or local law (ordinances).
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Examples of Unlawful conduct:

- ▶ Ingesting marijuana (marihuana) even with a registry identification card (“marihuana card”) is still illegal under federal law.
- ▶ Making an alteration to a unit or common element without obtaining a necessary building permit.
- ▶ Speeding*



“Offensive”

- ▶ Offensive - causing resentful displeasure; highly irritating, angering, or annoying; unpleasant or disagreeable to the sense; repugnant to the moral sense, good taste, or the like; insulting.
- ▶ What do you consider offensive?
- ▶ Does the Association really want to attempt to enforce civility between co-owners?*



“Unreasonably noisy” or “annoying”

- ▶ Unreasonable - not in accordance with practical realities, as attitude or behavior; inappropriate; excessive, immoderate, or exorbitant; unconscionable. (Dictionary.com)
- ▶ Annoying - irritatingly bothersome. (Dictionary.com)
- ▶ Whether something is unreasonably noisy or annoying is an inherently **subjective** decision.
- ▶ Proving something is unreasonably noisy or annoying is exceptionally fact-intensive.



Factors to consider:

- ▶ The level of the noise.
 - ▶ The level and intensity of background noise.
 - ▶ The soundproofing (if any) between units.
 - ▶ Whether the nature of the noise is usual (children playing upstairs) or unusual (practicing bagpipes at 3:00 a.m.).
 - ▶ The duration of the noise.
 - ▶ Whether the noise is constant, intermittent, or recurrent.
 - ▶ The time of day the noise occurs.
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“Noxious”

- Noxious - harmful or injurious to health or physical well-being. (Dictionary.com)
- Cooking meth
- Hoarding?



“Nuisance”

- ▶ Nuisance is the great grab bag, the dust bin, of the law. It comprehends interference with an owner's reasonable use and enjoyment of his property by means of smoke, noise, or vibration; the obstruction of private easements and rights of support; interference with public rights, such as free passage along streams and highways, the enjoyment of public parks and places of recreation, and, in addition, activities and structures prohibited as statutory nuisances. Negligence is not necessary to nuisance, though many wrongs thus denominated are made so through the defendants omitting to perform a duty.... It may be either public or private.... In short, nuisance, as was well put by Thayer, 'is a good word to beg a question with. It is so comprehensive a term, and its content is so heterogeneous, that it scarcely does more than state a legal conclusion that for one or another of widely varying reasons the thing stigmatized as a nuisance violates the rights of others.' (*Awad v McColgan*, 357 Mich 386, 98 NW2d 571 (1959)).



Two types of nuisances are recognized in the law:

- ▶ Nuisance *per se* - an activity or condition which constitutes a nuisance at all times and under all circumstances, without regard to the care with which it is conducted or maintained.
 - ▶ Burning tires.
- ▶ Nuisance *per accidens* - those which become nuisances by reason of circumstances and surroundings, and an act may be found to be a nuisance as a matter of fact where the natural tendency of the act is to create danger and inflict injury on person or property.
 - ▶ Digging a hole in the ground and leaving it uncovered/unmarked. Blocking the sidewalk.



Remedies:

- Fines.
 - Self-help, also known as “remove or abate.”
 - Injunctive relief.
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Fines

- ▶ “ A default by a co-owner shall entitle the association of co-owners to ... such other reasonable remedies the **condominium documents** may provide including but without limitation the levying of fines against co-owners **after notice and hearing** thereon....”
- ▶ “Condominium documents” means the master deed, recorded pursuant to this act, and **any other instrument referred to** in the master deed or bylaws which affects the rights and obligations of a co-owner in the condominium.
- ▶ Either the condominium bylaws contain a fines procedure, or the board may adopt a fines procedure **if** the bylaws allow the board to promulgate rules and regulations.



“...after notice and a hearing...”

- ▶ Requires a minimum of two letters:
- ▶ “It appears that you may be violating [cite a provision of the documents] by [describe the behavior or condition claimed to be in violation]. A hearing will be held on [date] at [time] at [location]”
- ▶ “As a result of the hearing, it has been determined that a violation has occurred. Accordingly, a fine in the amount of [amount] has been levied.
- ▶ **Each** fine requires a **separate** hearing.



Fines are the least effective method of remedying a violation

- ▶ Consumes Association time and resources in sending letters and holding hearings.
- ▶ Co-owners refuse to pay them.
- ▶ Fines do not address the underlying violation.
- ▶ Fines are bad public relations for the Board.



Self-help provision:

Section 3. Removal and Abatement. The violation of any of the provisions of the Condominium Documents shall also give the Association or its duly authorized agents the right, in addition to the rights set forth above, to enter upon the Common Elements or upon any Unit (but not inside any residence), where reasonably necessary and summarily remove and abate, at the expense of the Co-Owner in violation, any structure, thing or condition existing or maintained contrary to the provisions of the Condominium Documents. The Association shall have no liability to any Co-Owner arising out of the exercise of its removal and abatement power authorized herein.



Self-help examples:

- Towing the vehicle leaking oil.*
- Removing the stack of old tires behind the unit and disposing of them.
- Removing the “F--k Trump” sign from the entrance.



Injunctive Relief

- ▶ The Association files suit in the Circuit Court seeking an injunction (court order) compelling the co-owner to remove or remedy the condition, or prohibiting the conduct.
- ▶ Once an injunction is obtained, a violation of the injunction can result in the court jailing the offending co-owner and imposing other sanctions.
- ▶ If the Association is successful, it can recover its costs and attorney fees to the extent that the Condominium Documents so provide (most do).



Questions?



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