



California Association of Code Enforcement Officers

Learning Domain #232

Disputes Between Neighbors and Between Landlords and Tenants

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Introductions

• Instructor Introduction

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DISCLAIMER

- CACEO is a statewide organization serving the needs of a diverse group. Some information may not apply to your agency at this time but will still serve you well during your career.
- The instructor is not an attorney and the information provided is not intended to serve as legal counsel. Review any actions with your organization's legal counsel before proceeding.
- Your agency policy is the authority under which you should act. Any information in conflict with your agency policy should be reviewed with your supervisor and management, and possibly your agency's legal counselor.

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Training Goals

- Students will be given an overview of disputes which commonly occur between neighbors and between landlords and tenants.
- Students will gain an understanding of various enforcement tools that may be utilized to resolve these disputes/issues.

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UNAUTHORIZED PRACTICE OF LAW

The State of California explicitly prohibits the “unlawful practice of law”.



B&P §6125 – “No person shall practice law in California unless the person is an active licensee of the State Bar.”

B&P §6126(a) – “Any person...practicing law who is not an active licensee of the State Bar...is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars (\$1,000), or by both that fine and imprisonment.”

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The Practice of Law in California

What constitutes “practicing law”?

The practice of law has been determined by the Courts to include:

1. Performing services in court cases/litigation;
2. Providing legal advice and counsel; and,
3. Preparing legal instruments and contracts that secure legal rights

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Providing Legal Advice

What constitutes "legal advice"?

Although there is not one clear definition of legal advice, the Courts have held that it includes researching difficult questions, that "reasonably demand the application of a trained legal mind" and giving advice based upon that research. *Agran v. Shapiro* (1954) 127 CA2d Supp. 807, 818.

However, Courts have also held that providing advice in connection with relatively simple proceedings (like unlawful detainers) constitutes practicing law. *People v. Landlords Professional Services* (1989) 215 CA3d 1599, 1608-09.

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Neighbor Disputes



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Determine If There Is a Violation of Law

People submit complaints to Cities/Code Enforcement regarding their neighbors for a variety of reasons – including:

- Spite
- Harassment
- Concern regarding an actual hazardous or nuisance condition

The first step for Code Enforcement is to determine whether an actual violation of law exists. *Irrespective of the motivation behind the reporting*, if a hazardous condition or public nuisance is verified, Code Enforcement should seek abatement.

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Private Nuisance vs. Public Nuisance

Some complaints involve "private nuisances" rather than "public nuisances" (or other violations under Code Enforcement's jurisdiction).

"A public nuisance is one which 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." Cal. Civ. Code §3480

"Every nuisance not included in the definition of [CCC §3480] is private" Cal. Civ. Code §3481

Most municipal codes also define those specific conditions which the City Council has already determined to constitute public nuisances.

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Public Nuisances

Code Officials need not be concerned with the motivation behind a complaint of a public nuisance *if* the public nuisance (or other hazardous condition) is verified by a governmental agency.

Some common public nuisances include:

- Loud parties/noise disturbances
- Attractive nuisances
- Violations of Municipal Code (including public nuisance, health and safety, building, and zoning regulations) [as designated in Municipal Code]

When a public nuisance/hazardous condition is verified, enforcement should be pursued in accordance with agency policies and procedures (which may include Notice of Violation or administrative citations, conducting office hearings, performing administrative abatements, and/or pursuing civil or criminal litigation).

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Private Nuisances

If the complaint involves a private nuisance, it typically does *not* fall within the jurisdiction of Code Enforcement (or other governmental agencies). Rather, these are issues that must be resolved by the involved parties on their own.

Some common private nuisances include:

- Trees which overhang property lines
- Security cameras which view neighboring property

Some conditions might constitute both a public nuisance and private nuisance (e.g., substandard housing conditions in rental units).

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Private Nuisances (Continued)

When a complaint is received regarding a private nuisance (that does not also constitute a public nuisance), ***Code Enforcement Officers must refrain from providing legal advice.***

Rather, Code Enforcement should either advise parties to seek legal counsel or refer them to appropriate public interest agencies.

In some locations, Cities provide mediation services – and this could also be an appropriate remedy to resolve a private nuisance.

If an individual continues to lodge complaints regarding private nuisances, consult with supervisor or legal counsel for additional direction or assistance.

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Landlord/Tenant Disputes



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Landlord / Tenant Disputes

Similar to neighbor disputes, there are a variety of reasons that landlords and tenants submit complaints about each other.

- Spite
- Harassment
- To gain an upper hand in eviction proceeding
- Concern regarding an actual hazardous or nuisance condition

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Typical Tenant Complaints

Tenants often lodge complaints with Code Enforcement regarding issues that diminish their tenancy in some fashion – although the offending condition/conduct may not result in a Code violation.

Typical complaints include:

- Faulty plumbing, electrical, mechanical (including fixtures and appliances)
- Lack of utilities
- Rodent / Pest infestation
- Mold and environmental concerns
- Noisy neighbors within complex
- Lease related issues

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Landlord / Tenant Disputes (Cont.)

There are significant differences in how Cities respond to tenant-initiated complaints – especially as compared to those Cities that have adopted rent stabilization (“rent control”) ordinances and regulations.

Some City Officials have a tendency to allow the motivation for the complaint to determine the City’s reaction. However, similar to disputes amongst neighbors, City Officials should remain focused on whether the complaint involves a violation of a Code (or State law) that falls within the Official’s enforcement authority.

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Common Landlord Assertions

Landlord – “The tenant is complaining because I am evicting the tenant.”

Generally, Code Enforcement Officer’s determinations should not be biased as a result of whether a tenant is being evicted from the rental unit. Rather, Code Enforcement Officers should focus on whether there are violations of law within the officer’s enforcement authority. [Code Enforcement Officers should investigate adequately in anticipation that they will receive a subpoena to testify in a subsequent hearing.]

Landlord – “The tenant caused the substandard condition”

Generally, Code Enforcement Officers need not be concerned with who caused a substandard condition. Officers are charged with ensuring that landlord’s properties meet minimum housing requirements – irrespective of who caused a substandard condition. [If a tenant repeatedly causes substandard conditions (e.g., removing batteries from smoke detectors, poor maintenance resulting in pest/rodent infestation, etc.), the landlord can exercise his rights under State law and/or the lease agreement.]

Code Enforcement Officers should refrain from providing legal advice to either the landlord or the tenant – and, if appropriate, Officers should advise to obtain legal counsel or provide referrals to appropriate agencies

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Rental Unit Lease Obligations

Although rental leases often assign responsibilities to both landlords and tenants (and penalties for violations of those obligations), Code Enforcement Officers are *not* bound by the terms of the lease. Federal, State, and local laws dictate ultimate responsibility for abating violations.

Examples

- Although the lease may require a tenant to advise a landlord of needed repairs, this is *not* generally a pre-requisite for Code Enforcement Action
- Although a tenant may remove smoke detectors, the landlord is required to ensure that required smoke detectors are present
 - Landlords are required to ensure that rental units meet minimum housing requirements (and should enforce their lease if the tenant causes a violation of those requirements)
- Although a tenant may store junk, trash, and debris on exterior portions of the property, *both* the landlord and the tenant likely bear responsibility under a municipal code

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Substandard Housing

"Any building or portion thereof including any dwelling unit, guestroom or suite of rooms, or the premises on which the same is located, in which exists any of the following listed conditions to an extent that endangers life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building..." Cal. H & S Code §17920.3

- Inadequate sanitation (including non-functioning water closet, lavatory, bathtub, shower, kitchen sink, hot and cold running water, heating, etc.)
- Substandard electrical, plumbing, and mechanical
- Structural hazards
- Visible mold growth
- Faulty weather protection
- Rodent/pest infestation

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Substandard Housing (Cont.)

Under the State Housing Laws (H&S §17900 et seq.), there are some limitations on when Code Enforcement Officers can make determinations regarding substandard conditions.

Health officers are required to make the following findings unless the jurisdiction does *not* have an agreement for a health officer (in which case, a Code Enforcement Officer may make the determination):

- Infestation of insects, vermin, or rodents. *H&S §17920.3(a)(12)*
- Lack of adequate garbage/rubbish storage and removal services. *H&S §17920.3(a)(16)*

Visible mold growth can be determined by either the health officer or Code Enforcement Officer (H&S § 17920.3(a)(13)), however, jurisdictions should ensure that Code Enforcement Officers are trained to do so sufficiently to testify in court (if necessary) where a health officer would otherwise be available to make the determination.

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Mobile Home Park Enforcement

The State of California has adopted uniform regulations applicable to Mobile Home Parks, and has explicitly authorized the Department of Housing & Community Development (“HCD”) to enforce those regulations throughout the State. There is, however, a procedure set forth in the California Health & Safety Code to allow a local jurisdiction to assume enforcement authority. As such, please check with your supervisor or legal counsel as to whether your jurisdiction has assumed that responsibility.

Irrespective of an assumption of enforcement authority, some *common areas/structures* at mobile home parks fall within the enforcement authority of local jurisdictions.

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Providing Referrals to Complainants

It is typically recommended that when providing referrals that City Officials provide a list of referrals rather than a referral to a single attorney, contractor, or public interest agency (in order to avoid any appearance that the City is requiring or recommending the services of a specific entity) – however, references to specific governmental agencies do not cause the same potential issues.

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Common Referrals

[Instructor could include common referrals to public interest and/or governmental agencies within the local area]

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Disputes Between Neighbors and Between Landlords/Tenants Conclusion

- Separate your investigation from the motivations of the complainants
- Determine whether the issue complained about constitutes a violation of law
- If a substandard or hazardous condition exists, follow your agency's policies and procedures
- If the issue does *not* rise to the level of a public nuisance within your enforcement authority, advise the parties that it is a "civil matter" – and advise them to consult with an attorney or provide them with referrals to appropriate governmental or public interest agency

Refrain from giving "legal advice"!!!

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Disputes Between Neighbors and Between Landlords/Tenants

QUESTIONS???

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