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Counseling the Landlord

§4.44A A. Nuisance Law

Landlords may consider remedies under (1) CC §3479 (which defines “nuisance” to include the illegal sale of controlled substances and allows injunctive relief under CC §3501 and CCP §731), (2) CC §§3485–3486 (both of which allow city attorneys and encourage landlords to evict tenants to abate the nuisance caused by such tenants’ “illegal conduct” involving weapons, ammunition, or controlled substances), and (3) CCP §1161(4) (which allows an eviction action by the landlord based on the tenant’s “maintaining, committing, or permitting the maintenance or commission of a nuisance” or illegal activities defined in CC §§3482.8 and 3485–3486).

An action to evict under CC §3485 (currently applies only to Los Angeles, Long Beach, Oakland, and Sacramento) or §3486 (currently applies only to Los Angeles, Oakland, and Sacramento) must be based on a warrant or an arrest report by a law enforcement agency. CC §§3485(a), 3486(a). Before bringing the action, the city attorney must first give 30 calendar days’ written notice to the landlord and the tenant about the nuisance activity, and the landlord must either bring an unlawful detainer action and provide the city attorney with the details of the action or assign the right to bring the unlawful detainer action to the city attorney. The notice to the tenant must meet statutory requirements regarding content and translation into specific languages. It must also include prescribed information about the nature of the unlawful detainer action, potential defenses, and where to find legal assistance to defend the action. CC §§3485(a)(1), 3486(a)(1). The statutes require each participating jurisdiction to report specific information about evictions on an annual basis to the California Research Bureau. See CC §§3485(g), 3486.5. See also Stats 2014, chs 339, 341 (regarding effective dates of each section, which will sunset for some jurisdictions on January 1, 2019, but continue for Los Angeles on a limited basis). For further discussion, see §§1.58, 8.71.

On October 21, 2014, the City of Oakland passed an ordinance amending Oakland Mun C §8.23.100, which addresses eviction for nuisance and illegal activities. The ordinance seeks to address the city’s problems with prostitution-related crimes, including prostitution, solicitation, pandering, and pimping, by expanding the city’s existing requirement for landlords to evict individuals conducting illegal activities on rental properties. Previously, landlords were required to evict tenants who were engaged in or threatened violent crimes or illegally possessed, sold, or used weapons. The amended ordinance expanded this to include prostitution-related crimes, gambling, and illegal possession of ammunitions. Accordingly, landlords have the authority to evict any tenants suspected of engaging in any of the aforementioned illegal activities even if the tenant has not been convicted of any crime. The ordinance permits landlords

to request the city attorney to carry out evictions made under this ordinance, and also authorizes the city administrator or the city attorney (1) to issue a notice requiring the landlord to remove a tenant suspected of engaging in illegal activities, and (2) to cite the landlord for failing to do so.

Some local ordinances declare that all medical marijuana dispensaries (MMDs) are public nuisances per se. In *City of Riverside v Inland Empire Patients Health & Wellness Ctr.* (2013) 56 C4th 729, 738, the supreme court held that nothing in state law that promotes access to medical marijuana “expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders.” Consequently, any local ordinance declaring all MMDs to be public nuisances per se is not preempted by state law decriminalizing use of medical marijuana. See §4.44B.

A landlord may face liability, and potentially even a forced sale of the property, under the Narcotics Nuisance Abatement Act (Health & S C §§11570–11587). Health and Safety Code §11570 defines as a nuisance “[e]very building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance” specified in the Act. A district attorney, county counsel, city attorney, or private citizen may bring an action to abate and perpetually enjoin such a nuisance against both the landlord and the tenant under Health & S C §11571 (see, e.g., *People v Superior Court* (2015) 234 CA4th 1360) or an action for damages resulting from the nuisance under CCP §731. Thus, neighbors or other tenants who are bothered by drug use or dealing on the premises may likewise bring an action to abate the activity and obtain a judgment for damages. See, e.g., *Lew v Superior Court* (1993) 20 CA4th 866. Preliminary injunctive relief is available, and an abatement order after trial may result in severe penalties for the property owner, including

- Closure of the building for 1 year;
- Requiring the owner to reside in the property until the nuisance is abated;
- Relocation assistance to innocent tenants;
- Making the injunctive order applicable to subsequent owners and requiring disclosure of the order to prospective purchasers and commercial lessees;
- Monetary penalties not exceeding \$25,000; and
- Attorney fees.

See Health & S C §§11573, 11573.5, 11581. Under Health & S C §11571.1, the legislature declared that the state law is not preemptive of local ordinances relating to drug abatement and that state law remedies are not intended to prevent a tenant from asserting relief against forfeiture under CCP §1179.

In *People v Superior Court, supra*, the Los Angeles City Attorney brought enforcement actions against operators and owners of facilities alleged to be selling and distributing marijuana for medicinal purposes in violation of local ordinances, as well as Health & S C §11570 and the Unfair Competition Law (UCL) (Bus & P C §§17200–17210). As remedies, the plaintiff sought abatement of continuing public nuisances, permanent injunctions, and civil penalties. The trial court had denied summary judgment because it mistakenly determined that proof sufficient to establish all aspects of the requests for penalties was an element of each cause of action. But the court of appeal reversed and held that summary judgment should have been granted because the penalties were mere remedies. It reasoned that when statutory penalties are not essential elements of the causes of action that are the subject of the summary judgment motion, issues relating to penalties may be determined after the motion is resolved. The grant of a motion for summary

judgment in a case that seeks equitable remedies does not necessarily end with that ruling. Ascertaining the amount of penalties to be assessed is a remedy to be determined by the trial court sitting in equity and weighing the relevant evidence.

In *Lew v Superior Court, supra*, neighbors individually filed separate nuisance complaints against the landlord in small claims court, claiming that they were disturbed by drug dealers working from and around the landlord's property. The small claims court consolidated the actions and awarded the plaintiffs \$218,325. The court of appeal upheld the award, relying on Health & S C §11570 and its definition of drug-related activity as a nuisance. The court also allowed the plaintiffs to recover for mental suffering, because a finding that an activity constitutes a nuisance permits recovery of damages for discomfort and annoyance.

When a local ordinance requires a "just cause" for eviction, there will often be a provision allowing for eviction of tenants who cause "substantial interference" with the enjoyment of the premises by other tenants or the owner. Practitioners should carefully think through what further provisions in a lease might define what a "substantial interference" is and require tenants to cooperate with the landlord if the tenant is the party complaining of such interference to avoid landlord liability if the interference cannot be readily removed or is the subject of dispute. Noise issues between and among residents are often quite difficult to resolve, particularly in jurisdictions with eviction controls. While legal definitions of nuisance and case law might be of assistance, there may be conduct which interferes with quiet enjoyment but may not rise to nuisance levels. On breach of covenant of quiet enjoyment, see chap 3.

If a locality were to enact ordinances giving the police or other agency powers to compel landlords to deal with alleged drug abuse in rented property, landlords should still be very cautious and review the provisions of such an ordinance very carefully, particularly in jurisdictions with eviction controls. In *Cook v City of Buena Park* (2005) 126 CA4th 1, the court of appeal held unconstitutional on due process grounds a local ordinance in a non-rent control jurisdiction giving the local police chief discretion to force a landlord to evict tenants suspected of illegal drug activity. The Court found that the landlord was given insufficient information or time to prevail in an eviction action and was unconstitutionally required to prevail in the action to avoid criminal penalties.

PRACTICE TIP► Neighbors may fear retaliation and may not be willing to be called as witnesses for the landlord. A landlord who needs evidence to support the unlawful detainer action may either inquire from the local police department about whether the tenant has been arrested for the illegal activities causing the nuisance or invite the city attorney to investigate and then formally request that the landlord bring an eviction action.



For further discussion, see [California Landlord-Tenant Practice](#): Counseling the Landlord, chapter 4 (Cal CEB). Available in print and through [OnLAW](#).

The definitive book whether you are representing landlords or tenants, or involved in transactional or litigation practice. Amongst the topics discussed in this manual:

- Evictions after foreclosure; tenant strategies
- Medical marijuana in commercial & residential units
- Terminating tenancies, legal requirements, and notice forms
- Tenant bankruptcies; stay relief, rent claims
- Local rent & eviction controls; discrimination law