

NUISANCE DEFINITION & POLICY

7/18/2008 Proposal

CC&R's (section 6, paragraph Q)

Nuisances. No Parcel Owner shall place or maintain any animate or inanimate object upon any Parcel so as to create a nuisance to the Owners of the neighboring Parcels. No vehicles or motors of any type without mufflers shall be allowed. No all terrain type vehicles or off road motorcycles shall be operated, except within the confine of the Owner's individual Parcel. No firearms may be discharged in any area of the Property.

LEGAL DEFINITION OF NUISANCE

Under the common law, persons in possession of real property (either land owners or tenants) are entitled to the **quiet enjoyment** of their lands. If a neighbor interferes with that quiet enjoyment, either by creating smells, sounds, pollution or any other hazard that extends past the boundaries of the property, the affected party may make a claim in nuisance.

To be a nuisance, the level of interference must rise above the merely aesthetic. For example, if you neighbor paints their house a color you don't like but has been approved by the ACC, it may offend you, but it does not rise to the level of nuisance. In most cases, normal uses of a property that can constitute quiet enjoyment cannot be restrained in nuisance either. For example, the sound of a crying baby may be annoying, but it is an expected part of quiet enjoyment of property and does not constitute a nuisance.

NUISANCE DETERMINATION POLICY

For a nuisance to be identified and determined a nuisance in which the Board can ultimately fine the property owner if not resolved, the following steps should take place.

1. The Property Owner that believes that their **right of quiet enjoyment** of their property has been violated and they have not been able to resolve the issue with the offending party in a manner that they are comfortable with, they must file a written complaint with the Board of Directors.
2. The offended Property Owner should note dates, times and durations that the offence is occurring and provide that information to the Board of Directors. Pictures and additional witnesses could also help.
3. The Board of Directors will contact the property owners of the property that the offending behavior is happening on and asked the activity be stopped.
4. If the property owner where the offending behavior is happening contests the violation believing that the activity is normal use, then the Board of Directors will make a ruling as to whether the activity is normal or nuisance.
5. If the Board of Directors defines the activity as nuisance and the activity is not curtailed to a normal acceptable activity, then the Board of Directors can incorporate fines to bring into compliance with the CC&R's.