

Lash / Condo Law

—
OUR CONDO EXPERTISE

HOW TO DEAL WITH NOISE COMPLAINTS

—
PRACTICAL ADVICE, CREATIVE SOLUTIONS,
COST EFFECTIVE

—
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**IT'S IMPORTANT TO CONTINUE GATHERING
AND DOCUMENTING EVIDENCE AND
INFORMATION PERTAINING TO A COMPLAINT.
YOUR LAWYER WILL BE MORE EFFICIENT AND
YOUR LEGAL FEES WILL BE LOWER IF YOUR FILE
IS UP-TO-DATE, ORGANIZED AND COMPLETE.**

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LASH CONDO LAW'S PRACTICAL GUIDE TO HELP YOU DEAL WITH NOISE COMPLAINTS

Compliance issues, and in particular noise complaints, can be very difficult to resolve. As no two situations are the same, corporations and property managers should consult with their legal counsel to ensure that they are acting in compliance with the applicable legislation and the condominium documents.

When a corporation faces a situation where there is a breach of the Condominium Act, 1998 (the "Act"), the declaration or the rules, the corporation has an obligation to enforce compliance. Failure to act may expose the corporation to liability and possible litigation.

This pamphlet provides practical advice on how to best address noise complaints. It provides guidance through the three different phases of a noise complaint.

Enforcement Policy

Since prevention is often the best medicine, corporations should consider adopting an Enforcement Policy to assist them in addressing noise complaints in an efficient and systematic manner.

Contact one of us to assist you with the development and adoption of your corporation's Enforcement Policy.

INVESTIGATION PHASE

- Open a separate file for each complaint
- Get details of the complaint in writing (e.g. type, timing and frequency of noise)
- The corporation should collect as much evidence as possible from the complainant
- Consider advising the complainant to report noise disturbances to the police
- Gather information from neighbours. Identify the source of the noise:
 - Is the source outside or inside?
 - Is it a neighbour?
 - Is it a piece of equipment?
- Consider inspecting the unit as the source of the noise, but first consult legal counsel with respect to rights of entry
- Examine the corporation's declaration and rules on noise, nuisance and flooring restrictions
- Consider retaining a noise/sound expert
- Determine the validity of the complaint:
 - Is the complainant overly sensitive? Is he/she the source of many other complaints that had no merit?
 - Is the source of the noise a recurring problem or the source of many complaints?
 - Is the source of the noise the corporation's responsibility (i.e. emanating from common elements)?

INTERVENTION PHASE

- Where the noise is ongoing at the time of the complaint, consider immediately intervening to get the offending owner to stop
- Send a letter to the offending owner and advise him/her of the problem:
 - Provide particulars of the problem and refer to the declaration, the rule or the section of the Act being breached
 - Ask the owner to resolve the situation within a specific (but reasonable) period of time
- If required, send a second and final warning to the offending owner:
 - Provide particulars of the problem. Refer again to the condominium document being breached and to the previous letter
 - Provide the owner with a specific (and usually shorter) period of time to resolve the issue
 - The letter should specifically advise the owner that should the noise/disturbance continue, the matter will be referred to the corporation's lawyer, which will result in legal fees being claimed against the breaching owner
 - In the case of a rented unit, the warning letter should go to both the owner and the tenant
 - If appropriate, consider mediation to resolve the problem (note that tenants do not have a right to request mediation)

LEGAL PROCEEDINGS PHASE

- Should the disturbance or breach continue, the matter should be referred to the corporation's lawyer
- The lawyer will likely write to the owner to give him/her one last chance to resolve the noise issue and to comply with the condominium documents
- The corporation should consider taking legal action to obtain compliance
- Depending on the wording of the corporation's indemnification clause, the corporation can usually expect to recover from the offending owner the legal costs of obtaining compliance or such expense could be treated as a common expense
- In some cases, the next step may be formal mediation



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LASH CONDO LAW

Practical Advice, Creative Solutions, Cost Effective

We are committed to helping our clients make informed decisions and create strategies to successfully resolve condominium issues.

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