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## **The Nuts & Bolts of Abatement Actions in Litigation**

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# The Nuts & Bolts of Abatement Actions in Litigation

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# Abatement Defined

Abatement generally refers to a lessening or reduction of something. It may refer to the removal of a problem which is contrary to public or private policy, or endangers others.

For example, a municipality may serve a notice for abatement of nuisance on a landowner for weeds that might catch fire on an otherwise empty lot. Abatement may mean an equal reduction of recovery of debts by all creditors when there are insufficient funds or assets to satisfy the full amount. An abatement of a legacy is an equal reduction of benefits to beneficiaries (heirs) when an estate is not large enough to pay each beneficiary in full. An abatement of taxes is a rebate or reduction of taxes previously assessed and/or paid. In an eviction case where a landlord is seeking unpaid rent, a tenant may raise the defense that he/she is entitled to rent abatement due to uninhabitable living conditions.



# Private and Public Nuisance



# Nuisance

The interference with a plaintiff's use or enjoyment of his/her property. To make a claim for private nuisance, the plaintiff has the burden to show three elements:

- 1) Plaintiff has a possessory interest in the land;
- 2) Defendant performed an act that interfered with the plaintiff's use and enjoyment of his property; and
- 3) That the defendant's interference with the plaintiff's use or enjoyment of land was *substantial* and *unreasonable*.

Public Nuisance- while the tort of private nuisance provides a remedy for interferences with the use and enjoyment of property, the tort of public nuisance allows recovery for activities that hurt a neighborhood or society. Some examples are:

- 1) Anti-gang injunction
- 2) Lead paint
- 3) Handgun liability
- 4) Prostitution
- 5) Drug production

Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.



# Public Nuisance Abatement

- “The state has not only a **right** to ‘maintain a decent society,’ ... but an **obligation** to do so.”
- As has been pointed out by the California Supreme Court and that of the United States, “the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests.”



## Cal. Civ. Code §§ 3479, 3480

- A nuisance includes “[a]nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.”
- 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.”



## Nuisance per se

When certain conduct, activities, or conditions are declared by law to be a public nuisance, conduct fitting the legislative definition is a “nuisance per se.”

A “nuisance per se” may be enjoined ***without*** proof of its injurious nature.





# Legal Remedies

- Monetary damages- MONEY IS THE MOST EFFECTIVE DETERRENT. THE COST OF COMPLIANCE MUST BE LESS THAN THE COST OF NONCOMPLIANCE.
- Injunctive relief
- Self-help (like reasonable force to protect property)
- Receiverships (Health and Safety Code §11570-11587)



# Preparing for an Abatement Action



# Preparing for an abatement action

- a. **Investigation, coordination, and evidence gathering:** (1) get all necessary staff together as soon as practicable; (2) understand the history (prior notice to property owner- get correspondence Notices of Violations, Administrative fines, etc.); (3) coordinate and attend inspection; and (4) photograph!
- b. **Consider an inspection warrant:** seek consent and confirm in writing either way; seek a compliance agreement- if you have a seemingly compliant PO; if noncompliant, Nuisance abatement action- TRO, PI, and complaint;
- c. **Draft pleadings:** like preparing for trial—most of your evidence is presented upon filing; and prosecution leading up to trial: (1) file complaint at least 1 day before seeking *ex parte* relief; (2) *Ex parte* application for TRO and/or Preliminary Injunction (PI) before service of Complaint; hearing on PI (no live testimony); contempt actions for violation of Prelim or Perm Injunction; and receiverships.