

Noisy, nuisance neighbours? Know your rights

Martin Hatchuel • Mar 19, 2015

Neighbours making your life hell? Don't despair – the law is on your side. Find out what your rights are.

With properties getting smaller and smaller, and more and more people living together in gated communities, it'd probably be unsurprising if there wasn't a whole branch of law given to the relationships between people who live next door to one another.

According to Alec Veitch, an associate at Schindlers Attorneys, 'Neighbour Law' exists as a mechanism to balance the rights of neighbours "where competing interests exist."

Alec advised that our common law entitles everyone to the undisturbed use and enjoyment of his or her own land as long as he or she complies with the legislation, regulations, and by-laws concerning that land - and as long as that use poses no threat to anyone or their property.

"However," he said, "Section 36 of the Constitution provides that no right is absolute; all rights can be limited if it is just and equitable in our democratic society that this be the case."

Alec said that Neighbour Law in South Africa is extremely broad due to the scope of the disputes that can occur - but that the most common generally fall into one of five different areas: nuisance, encroachment, lateral and surface support, interference with the natural flow of water, and the elimination of danger.

NOISE

According to Schindlers Attorneys' Michali Zachariou (candidate attorney) and Chantelle Gladwin, (partner) South African law makes a distinction between 'Disturbing Noise' - which is "objective and is defined as a scientifically measurable noise level," and 'Noise Nuisance,' which is "a subjective measure and is defined as any noise that disturbs or impairs or may disturb or impair the convenience or peace of any person."

Both are illegal in terms of the Environment Conservation Act (73 of 1989) and the Noise Control Regulations. (In terms of Schedule 5 of the Constitution, the individual provinces have been responsible for administering these regulations since 1996.)

Disturbing Noise in the urban environment - a loud party, for example - is usually governed by municipal by-laws, so if your neighbour's kids are driving you nuts with their doef-doef-doef at a

ridiculous 85 decibels after 10:00 p.m. on a Friday or Saturday night, and if they refuse to respond to your polite requests to tone it down, a visit from the SAPS will usually do the trick.

Noise Nuisance, on the other hand, is more subjective and usually happens over a longer period. It's defined as noise that "disturbs or impairs or may disturb or impair the convenience or peace of any person," and could include dogs that bark incessantly, the roar from machinery, or any, similar, pervasive sound that makes your life a living hell.

Michali and Chantelle warned, though, that, "In order to show that a Noise Nuisance exists, a reasonable person must find a certain noise intolerable or seriously effecting his enjoyment of his property."

In other words - you can take your case to court if you feel that you've become a victim of excessive noise, but you need to remember before you do that the court will apply a test of objective reasonableness.

"A person who is too sensitive or easily irritable must accordingly think twice when considering taking action against his neighbour, as the action may not be successful if the reasonable person would not have been affected by the noise," they said.

LEGAL STEPS

If you do decide to take steps against your neighbour, you should begin by making a written complaint to your Local Authority. Many of them have Noise Control Units whose officials are empowered to take steps if they find that a problem exists. They could serve an instruction to reduce the noise, issue a fine, or even - in extreme cases - confiscate equipment.

If none of this works, said Michali and Chantelle, you could "apply to a court for an interdict to prevent your neighbour from causing the specific noise, or sue your neighbour for damages suffered as a result of excessive noise."

They said that the court would generally consider "the type of noise, the degree of persistence, where the noise occurs, the times when the noise is heard and the efforts made to resolve the matter" before it makes a ruling - but that every case is adjudicated on its own merits since no fixed standards exist when it comes to determining whether an action of this sort is unlawful or not.

If you do succeed in obtaining an interdict, but your neighbour persists with his or her unlawful actions, "the neighbour may be found guilty of contempt of court, in which case the court may impose a fine or imprisonment in serious cases."

Penalties for violating noise by-laws are laid out in Section 9 of the Noise Control Regulations: "any person who contravenes or fails to comply section 4 and 5 and liable on conviction to a fine not exceeding R 20,000.00 or imprisonment for a period not exceeding two years."