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PERSPECTIVE

Resolving criminal nuisance properties through civil litigation

By Ryan Griffith

Many properties have major building violations that are visible to the naked eye. Cities can abate these properties by red tagging them. Then, using Health and Safety Receiverships, codified at California Health and Safety Code sections 17980.6 & 17980.7, to rehabilitate and sell the property under court supervision. *City of Santa Monica v. Gonzalez* (2008) 43 Cal. 4th 905.

However, what can cities do with properties that look acceptable, yet terrorize a neighborhood? These can be motels where numerous drug deals occur and violence is rampant. These nuisances can also take the shape of residential homes operating as unlicensed casinos that cause significant traffic into the night, drunken fights in the streets, and other neighborhood disturbances that deteriorate confidence in community leadership. To address these scenarios, the California legislature created two statutory schemes. These statutory schemes are codified at California Health and Safety Code § 11570 et seq. and Penal Code § 11225 et seq., and are known as the Drug and Red-Light Abatement Acts respectively.

Drug and Red-Light Abatement actions can result in a court ordering a nuisance property being boarded-up and shut down. The court can also order a \$25,000 fine against the property owner. California Health and Safety Code § 11581. In certain scenarios a court may even appoint a receiver to take control of and sell the property to a responsible owner



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pursuant to California Code of Civil Procedure § 568.5.

In Drug and Red-Light Abatement Actions the Owner is ultimately responsible for what transpires at their property. This is true even if the owner is not directly involved in the criminal activity at the property. *Lew v. Superior Court* (1993) 20 Cal. App. 4th 869, 869-870. This was exemplified by a Berkeley apartment owner whose property had become a haven for drug sales and violence, including numerous shootings. *Id.* One Berkeley police officer reported responding to the property 250 times in a year. *Id.*, at 874. In this case, the apartment owner was not directly involved in the drug deals and violence. However, the

owner's inability to maintain control of his property resulted in his liability for the nuisance his property created. *Id.*, at 873. Of course, drug dealers and others operating at the property can also be named in the action, but the property owner is ultimately responsible.

These actions are civil actions, which means the standard of proof is preponderance of evidence. *Weiner v. Fleischman* (1991) 54 Cal.3d 476, 483. Nevertheless, the district attorney can use evidence from Drug Abatement Actions to prosecute notorious landowners. (ABC News, Sacramento Landlord Faces 13 years in Prison, Feb. 11, 2020.) This occurred in Elk Grove with a property that the media referred to as the House

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from Hell. (CBS Sacramento, Elk Grove Neighborhood Celebrates ‘Hell House’ Auction, Nov. 2019.) A judge determined the property was a drug house under H&S 11570. *City of Elk Grove v. Kiran Rawat* – Sacramento Superior Court Case #2017-00216691. The property was placed into receivership. *Id.* The Sacramento County District Attorney investigated the owner and discovered he owned over twenty properties in Northern California that were in great disrepair. These properties were also placed into receivership. *People of the State of California v. Kiran Rawat*, Sacramento County Superior Court Case #2020-00281126. Tragically, one woman burned to death in one of the owner’s buildings. Using the evidence from the Drug Abatement/Receivership action brought by the City of Elk Grove the District attorney was able to convict the landowner to thirteen years in prison. ABC News, Sacramento Landlord Faces 13 years in Prison, Feb. 11, 2020.

No specific evidentiary thresh-

old exists for these actions, but a single act can be enough. *People v. Smith* (1920) 48 Cal.App. 253, 256. For example, if a massive drug lab is found at a property that can be sufficient to bring a Drug Abatement Act. However, an enforcement agency usually reviews approximately 3-5 years of police reports for the property to determine if the situation is dire enough that a Drug Abatement Action is necessary. Adam Abel, Esq and Jordan Green, Esq. Sonoma County Bar Association, Drug Abatement Act. Thereafter, the enforcement agency writes a letter to the property owner documenting the transgressions at the property and threatening litigation under the act. *Id.* If an owner responds to the letter and resolves the nuisance, then the issue is resolved.

Owners are sometimes truly unaware of circumstances at their property or need to know legal action will be taken if the matter is not resolved. Of course, the letter is often ignored, or vague prom-

ises of compliance are given. If that occurs, then the enforcement agency should file suit.

A key piece of the lawsuit brought by the enforcement agency is the police officer declaration documenting what transpired at the property. *Id.* It can also be very helpful to have neighbors submit declarations regarding the reputation of the property in the community. *Id.* If a judge finds by a preponderance of evidence that the property constitutes a nuisance and has a notorious reputation in the community, it can be boarded up and the owner fined \$25,000. California Health and Safety Code 11581. Furthermore, the property owner can be responsible for attorney’s fees and enforcement costs. California Civil Code § 3496; see also *City of Oakland v. McCullough* (1996) 46 Cal. App. 4th 1, 6.

After facing all these fines, fees and costs, it is not uncommon for property owners to claim they will sell the property to another person once a suit is filed. However,

enforcement agencies should be wary of an owner’s conclusory promise of an “eventual sale,” as well as the fact that a new owner may be worse than the current one. Therefore, if concerns about the long term prospects of the property exist, then exploring a Post-Judgment Receivership within California Code of Civil Procedure § 564(b)(3) & 564(b)(9) is worthwhile. A receiver can monitor, rehab, and sell the property to a responsible owner under the judicial rules outlined at California Rules of Court 3.1175-3.1184.

When a drug house burdens a community, an enforcement agency should explore Drug Abatement/Red Light Abatement Actions. These actions are powerful and often result in voluntary compliance before litigation is necessary. However, if voluntary compliance cannot be achieved, the enforcement agency can fight to preserve public safety by bringing an action to protect neighborhoods from drug houses and dangerous activity.