

YOUR HOME; When Noise Is Too Much To Bear

By JAY ROMANO JUNE 16, 2002

FIONA BAYLY, a Manhattan tenant, recently sent a letter to the Real Estate Q. & A. column asking whether a "late-night, heavy-drinking, music-blaring party" between 10 p.m. and 1 a.m. in the courtyard below her apartment would be considered "unreasonable noise at unreasonable hours."

Edith Hess, a tenant in Hartsdale, N.Y., wondered whether a child running around in the apartment above hers -- behavior that Ms. Hess said made her "physically ill by the constant aggravation" -- could possibly be restrained by anything short of litigation.

Gerard Russell, the owner of a Midtown condominium, asked if there was any way to stop tenants below him from using their terrace as a basketball court. On Staten Island, David Mahony cannot sleep because the floorboards in the apartment above his creak; in Fort Lee, N.J., David Isaacson cannot get his co-op board to do anything about electrical transformers in the building that hum; and back in Manhattan, Alana Fishberg cannot understand why she hears voices and other sounds coming through the vents in her kitchen and bathroom.

"One man's music is another man's noise," said Bennett Brooks, president of Brooks Acoustics, an acoustical engineering company in Vernon, Conn. "We've worked all over the country, on everything from small apartments all the way up to million-dollar celebrity homes. And everybody basically has the same issue: they just want a little less noise."

First, let us define our terms.

"Noise," Mr. Brooks said, "is unwanted sound."

And while that may sound straightforward enough, he pointed out that noise has both subjective and objective elements. In other words, while all noise can be

measured, not all noise is loud enough to warrant official intervention.

"In some communities, but not all, there are legal standards for the objective measurement of noise levels which, if they are exceeded, constitute a violation," Mr. Brooks said. For example, in New York City, sound from a mechanical heating, cooling or ventilation device that exceeds an "A-weighted decibel level" of 45 that can be heard inside a residence three feet away from an open window violates the city's noise ordinance. A-weighting the decibel level is a way of adjusting that measurement to account for the way human beings, as opposed to mechanical devices, register sound.

But what does a 45-decibel noise sound like?

"Like a very quiet voice," Mr. Brooks said, adding that while that might not seem so loud, consider what it would be like to have somebody whispering at you from three feet away just as you're trying to fall asleep.

In fact, he pointed out, noise codes are generally designed to regulate sounds that are persistent rather than transient.

"I get complaints like: 'I can hear when the guy upstairs drops his fork,' " Mr. Brooks said. "But what can you do about that? Not a whole lot."

Even persistent sounds that are below the legal limit are often difficult to address.

"I've got a client in Greenwich who has a condominium apartment above the boiler room," he said. "Every time the boiler kicks on, she hears it. To her, it's a very real and noticeable problem. But we've measured the sound, and it's well within the criteria for mechanical systems."

Charles Sturcken, chief of staff for the New York City Department of Environmental Protection, said his department receives thousands of noise complaints each year.

"Noise is the most common quality of life complaint we get," he said, referring to calls placed to the department's hot line (718-337-4357).

While the department generally will not get involved in noise complaints made by one tenant against another ("That's a landlord-tenant matter," Mr. Sturcken said), officials will dispatch inspectors on complaints of persistent noise that comes from mechanical systems or devices inside a building or from sources outside it.

Rooftop ventilation systems, air-conditioner compressors and music systems in bars and restaurants, for example, are common precipitators of complaints. "We'll

make an appointment with the person and go in and listen to the noise they say is invading their space," Mr. Sturcken said. He added that in most cases, the inspector will use sound measuring devices to determine whether the sound making its way into an apartment -- as measured three feet away from an open window -- exceeds allowable levels.

"We first try to get the person who is responsible for the noise to understand what is going on and eliminate the problem," he said. "But if the violation persists, we'll issue summonses." Mr. Sturcken said the fines for violating the noise ordinance can range from \$250 for a first offense to \$15,000 or more for recurring problems.

And while most motorists are aware of the city's "No Honking" law -- which can result in a \$300 fine for each unnecessary honk -- many are not familiar with the regulations that apply to other vehicular offenders of the noise laws.

"We get a lot of complaints about ice-cream trucks," Mr. Sturcken said, explaining that if an ice-cream vendor's bell jingles more frequently than once every 10 minutes for more than 10 seconds in any one city block, the driver can be issued a violation. (And construction work -- the source of some of the city's signature sounds -- can be performed only between 7 a.m. and 6 p.m. on weekdays and, with special waivers, on weekends, except in the case of an emergency.)

The vast majority of residential noise problems, of course, are those that arise when tenants in a building live a bit too loudly for their neighbors.

Thomas Higgins, a Manhattan landlord-tenant lawyer, said the simplest way to address an aural assault is for the victim to directly engage the perpetrator. "If the guy upstairs plays his music too loudly and too late for you, the best thing to do is to ring his bell and ask him to turn it down," Mr. Higgins said. "Unfortunately, most people don't like to do that."

Instead, he said, most tenants, including co-op and condominium owners, tend to make complaints to their landlords, their boards or their managing agents. If that is the chosen strategy, Mr. Higgins said, the best thing to do is to try to get the owner or his representative to witness the problem firsthand. If the witness concurs that a problem indeed exists, action may be taken against the party causing the problem.

Some leases, Mr. Higgins said, contain specific prohibitions against creating unnecessary noise or disturbing other tenants in the building.

If the landlord or board declines or fails to take action, a victim of a noise problem basically has two options: to take action against the landlord by claiming

that the noise violates the tenant's "warranty of habitability," or, less commonly and more difficultly, to take action against the tenant who is the source of the problem by filing a nuisance complaint in Supreme Court.

Mr. Higgins said the warranty of habitability provides that rented premises are "fit for human habitation, for the uses reasonably intended by the parties, and that no conditions exist that are dangerous, hazardous or detrimental to the life, health or safety of occupants."

In most cases, he said, a tenant who employs the warranty of habitability strategy does so by withholding rent and then claiming violation of the warranty as a defense in an eviction action filed by the landlord.

When the second option is used -- that is, the victim files a nuisance complaint against the person creating the problem -- the complainant generally asks the court to order an end to the offensive behavior.

In either case, Mr. Higgins said, because of the subjective nature of noise complaints, the victim should carefully document the dates and times of the noise, obtain independent corroboration if possible and perhaps even make tape recordings of the offensive sounds.

Even then, however, a noise problem would have to be fairly severe to warrant a court's intervention.

"The law doesn't guarantee a perfect apartment," said Lucas Ferrara, a Manhattan landlord-tenant lawyer. "And some judges have characterized noise as one of the 'penalties of modern society.' "

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