

## Q&A: Dealing with Noisy Children

By Joshua Krut

**Q** I live in a 3-floor, 4-room, 30-unit condo, mostly 50-plus, with the only family with children (ages two and three) living on the third floor above me. For the past year there has been an excessive amount of constant running; playing on tile floors with outside-type toys; screaming and crying from 7 a.m. until 8 p.m.; and playing in the bathroom. The sound of the children jumping off the sofa and onto the floor has become almost unbearable. In addition, the mother has very little control over the children and prefers to keep them in the house than taking them outdoors.

I approached the husband one night when the noise had gotten intolerable and he said he didn't realize that it was that bad. He apologized and said he would see that it didn't happen again. However, the wife simply ignores him and the kids continue on. Bottom line: I complained to the property management company (as well as other owners) about the noise from the family. The parents were sent a letter asking them to control their children. The noise stopped for three days but has since started again. They were notified again by property management but ignored the warning.

My question now is what is the next step to enjoin these owners to follow the "noise" rules? Can an attorney help me?

—Sounding Board

**A** "You have brought up one of the most common difficulties that unit owners face: noisy neighbors who are arguably creating a nuisance," says attorney Joshua Krut, a partner with the law firm of Weiss Serota Helfman Pastoriza Cole & Boniske in Fort Lauderdale. "Unfortunately, it is also one of the most difficult issues to address satisfactorily because what constitutes a nuisance is somewhat subjective and the available enforcement mechanisms are somewhat expensive to use.

"Interestingly, you mentioned that most of the owners within your community are 50 years of age and older. In Florida, the law actually allows you to live in an "adult only" community, which would likely allow you to avoid this sort of problem. Under Florida law and the rules created by the Secretary of the U.S. Department of Housing and Urban Development, a condominium association has the right to seek an exemption under the Fair Housing Act in order to establish itself as a "55 and older community." For a condominium association to qualify for this designation, the condominium must be intended and operated for occupancy by persons 55 years of age or older and meet other requirements. For example, at least 80% of the units must be occupied by at least one person who is 55 years old or older and this must be mandated in the governing documents. Further the association may prohibit residents who are 18 years of age or younger from permanently residing in the community. If you ever consider moving from your current residence, this type of community might well suit your needs.

"Unfortunately, it does not sound like you are living in an adult only community and the nuisance which you have described is obviously becoming extremely burdensome for you. You have taken the correct first step of informing the Board of Directors of the association of the issue and they, in turn, have taken the correct first step of notifying the unit owners who are creating the nuisance that they must keep down the racket emanating from their apartment.

Unfortunately, it does not appear that they are willing or able to keep it down. Still, there are a number of steps that can be taken. Assuming your documents prohibit noise violations and provide for fining, your association can put a process in place to fine the unit owners who are not abiding by the association's rules. If fining does not convince the owners to quiet down, the association has the right to bring an enforcement action against the owners. When such an action is brought, the arbitrator or judge will hear the evidence and then decide whether, to a reasonable person, the noise created by these owners and their children is sufficient to create a nuisance which the court should stop. It is important to realize that the law does not protect the particularly sensitive person; rather, the arbitrator or judge will decide whether the noise level is unreasonable and will issue an order enjoining the owners from making this noise going forward. You should also note that if your association does not take action to stop this nuisance on your behalf, the Florida courts have held that you have the right to file a lawsuit on your own to stop the owners from making this noise. If you or the association are successful in obtaining an order to enjoin your neighbors and their children from creating a nuisance, their failure to abide by the order will put them in violation of the order, subjecting them to further penalties.

"Obviously, the best course of action for all involved would be for you to speak with your neighbors about the problem, preferably with a board member or a property manager present, so that they can understand the seriousness of the issue. It sounds as though you have tried to do this, with little luck, unfortunately. I would recommend that you try one more time and if this fails, you will need to pursue the remedies described above if you want to get a good night's sleep anytime soon."