NUISANCE ABATEMENT MANUAL

two thousand eleven • fifteenth edition

criminal
prosecutions
division

ATTORNEY GENERAL OF TEXAS
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7/11

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Introduction

Chapter 125 of the Texas Civil Practice & Remedies Code and Section 101.70 of the Texas Alcoholic Beverage Code are considered the "Texas Nuisance Abatement Statutes." These statutes permit law enforcement agencies to close any piece of property involved in illegal activities, including violations of the Texas Penal Code, the Texas Alcoholic Beverage Code and the Texas Controlled Substances Act.

The Office of the Attorney General (OAG) helps Texas municipalities, local prosecutors and law enforcement agencies (including police departments, sheriff offices, task forces, the Texas Alcoholic Beverage Commission and even federal agencies such as Border Patrol) in targeting, processing and filing suit against property owners who allow public and common nuisances to exist on their property. The purpose of a nuisance abatement lawsuit is not to show or prove that the property owner is guilty of illegal acts, but rather to prove that the property owner allowed the illegal activity to occur on the property or failed to make reasonable attempts to stop it.

Many police departments have become skilled at this procedure and have great success on their own. When local law enforcement lacks the resources or experience in such cases, the OAG will send staff when requested to any area of the state to provide technical assistance in initiating the nuisance abatement process. Evidence will be compiled and sent to the OAG for review. Arrest reports, calls for police service and search warrants contained in local departmental records, as well as police officers' and residents' affidavits, are all used in this process. When the OAG determines that sufficient evidence exists, a lawsuit will be filed on behalf of the state. The OAG will provide legal representation for the duration of the lawsuit.

Once a property is determined to be a common nuisance, and after a successful suit, it is closed for a period of one year.[1] During the pendency of the lawsuit, a temporary injunction can be requested requiring the posting of a bond by the owner to keep the property open pending final resolution of the lawsuit. If a public nuisance is found to exist due to gang activity, civil fines and jail terms for contempt of court may be imposed on those who violate the court orders.

In many instances, actual litigation is not required. When faced with the loss of income from closure, bonds adding up to thousands of dollars and the threat of forfeiture of those bonds, many owners enter into a voluntary abatement of the nuisance.

The nuisance laws can have a positive effect on locations that law enforcement agencies have spent many man-hours policing. In addition, law enforcement agencies may see large monetary savings by reducing the need to respond to these locations in the future. In several instances, businesses that have permitted illegal activity for years have been successfully closed, reducing the burden on law enforcement as well as on the immediate community.

By denying criminal offenders the use of real property as a base of operations, and by securing the property owner's cooperation in the removal of criminal offenders, neighborhood revitalization can become a reality. Our goal at the OAG is not to abandon other conventional

[1] Prior to 2007, a property owner could post a penal bond to keep the property open. This provision has been removed requiring automatic closure of the property found to be a nuisance.

methods of law enforcement at these nuisance sites, but to supplement these efforts by providing an additional tool to address illegal activity in Texas communities.

Summary

Which statutes are considered the "Texas Nuisance Abatement Statutes"?

- Chapter 125 of the Texas Civil Practice & Remedies Code (CPRC)
- Section 101.70 of the Texas Alcoholic Beverage Code (TABC)

Are there different kinds of nuisances addressed by the statutes?

Yes. Two kinds of nuisances are addressed:

- Common (Subchapters A & C of Chapter 125 CPRC and Section 101.70 TABC)
- Public (Subchapter D of Chapter 125 CPRC)

What kind of illegal activity can be addressed by the nuisance abatement statutes?

- Prostitution
- Obscenity
- Gambling
- Engaging in organized criminal activity
- Delivery, possession, manufacture or use of a controlled substance
- Discharge of a firearm in a public place
- Reckless discharge of a firearm
- Commercial manufacture, distribution or exhibition of obscene material
- Aggravated assault or sexual assault
- Robbery
- Unlawful carrying of weapons
- Murder
- Continuous sexual abuse of a child
- Massage therapy or services in violation of Occupations Code
- Alcohol violations
- Gang activity

Do apartments and motels qualify for nuisance abatement?

Yes. These are defined as multi unit residential properties under the code and are subject to nuisance abatement. These properties can also be subject to the imposition of a receiver to manage the property once a common nuisance is found to exist at the property.

What types of property can be closed?

Any place in the State of Texas that is causing a nuisance as defined by the nuisance abatement statutes can be closed:

- Businesses of all kinds
- Private residences

- Apartments
- Motels
- Convenience stores
- Any other type of location

Who can be sued?

- Owner(s) of real property
- Owner(s) of the business
- Lessee/renter of the property
- Manager of the property
- Management company
- The real property itself (in rem suit)
- Any combination of the above

How long will the property be closed if the lawsuit goes to trial and it is determined that the property is a nuisance?

- Under Chapter 125 of the Texas Civil Practice & Remedies Code, the property must be closed for a period of one year.
- Under Section 101.70 of the Texas Alcoholic Beverage Code, the property must be closed for a period of up to one year.

What can the owner do to prevent the property from being closed once a judgment is entered to close the property?

- Under Chapter 125 of the Texas Civil Practice & Remedies Code, the property must be closed for one year unless it is a multi unit residential property and the court has ordered a receivership in lieu of closure.
- Under Section 101.70 of the Texas Alcoholic Beverage Code, the defendant can post a penal surety or cash bond of at least $1,000 for a common nuisance.

What is the standard for proving that a common nuisance exists?

- Under Chapter 125 CPRC, must show that people habitually go to the subject property to commit any of the listed crimes (except the alcohol and gang crimes).
- Under Section 101.70 TABC, must show that it is a place where alcoholic beverages are sold, bartered, manufactured, stored, possessed, or consumed in violation of the Alcoholic Beverage Code or under circumstances contrary to the purposes of the code.

What happens if the defendant fails to post a bond and/or violates a temporary or permanent injunctive order and the illegal activities continue to take place on the property?

For a common nuisance under Section 101.70 TABC, the defendant is subject to the following:

- Loss of bond through forfeiture
- Property closure for up to one year

For a public nuisance (gang abatement), the defendant is subject to the following sentences for civil contempt:

- Fine of not less than $1,000 nor more than $10,000
- Confinement in jail for a term of not less than 10 nor more than 30 days
- Both fine and confinement

Does the case always go to trial?

No.

- A notification letter is sent to potentially cooperative property owners requesting a meeting to discuss the illegal activities that are occurring on their property. Operation guidelines to reduce illegal activities on the property will be discussed at the meeting. If the owner agrees to address the concerns of the referring agency and implement the suggestions discussed at the meeting and the referring agency observes improvement, a lawsuit is not filed. The property will be monitored for compliance.
- If a lawsuit is filed, the parties may enter into an Agreed Final Judgment. The conditions of operation, amount of the bond to be posted, fees and property improvements are negotiated and incorporated into the agreement. The property is then closely monitored.

Gang Abatement

Street gangs have become a problem in smaller towns as well as the larger cities in Texas. Regardless of the town size, the nuisance abatement statutes can help address gang problems. Under Subchapter D of Chapter 125 of the Texas Civil Practice & Remedies Code, both the gang itself and the places used by the gang to conduct criminal activities can be declared public nuisances.

The nuisance abatement statutes can be useful additions to the various methods law enforcement applies to stem the tide of gang activity. Removing the availability of places for gangs to gather can be very effective in disrupting the gang culture, thus making their activities less organized and more manageable for law enforcement.

A nuisance suit under this subchapter can be brought against the person who owns the property in question, the gang member(s) or both. In a successful suit, the court can enjoin the gang member(s) from engaging in criminal activity and can issue appropriate orders to prevent the continued use of the property for organized criminal activity. Any violations of these court orders can result in civil contempt charges for the offending defendant that can include fines and/or jail time. Additionally, violation of the court order can impose criminal liability under §71.021 of the Penal Code.

Examples of the types of remedies the court can impose on gang members and locations:

- The identification and delineation of “safety zones,” which typically reflect the geographic area in which the gang conducts its criminal activities.

- The imposition of curfews on identified gang members, making it illegal for them to be seen in public within the safety zone after a certain time of night.

- The enforcement of non-association orders which prevent identified gang members from associating in public with other gang members identified in the lawsuit.

Targeting a Nuisance Location

The first step is to determine whether the illegal activity at the targeted property constitutes a common or public nuisance as defined in the nuisance abatement statutes. A nuisance abatement action should be considered and an investigation should be initiated if the answers to the following questions are "yes:"

- Is the property used for committing the acts listed above?
- Is there a history of arrests for one or more of these illegal activities at the property?
- Will these illegal activities continue if legal action is not taken?
- Does the property have a reputation as a place to frequent for one or more of these illegal activities?
- Have the lives or businesses of people in the area surrounding the property suffered or been adversely affected by these illegal activities?

For the definitions of a common and public nuisance as defined by Chapter 125 of the Texas Civil Practice & Remedies Code, see Attachment A. For the definition of a common nuisance as defined by Section 101.70 of the Texas Alcoholic Beverage Code, see Attachment B.

Investigation

Most of the evidence needed to support the initiation of a nuisance abatement proceeding is contained in local law enforcement records. The evidence must be fully documented because it may be used in a court of law and discovered by the defendant. The most important evidence is that which shows that the property is a place to which persons habitually go for the purpose of those illegal activities addressed by the Texas Nuisance Abatement Statutes. This evidence can be obtained from arrest reports, citations, search warrants, incident reports, intelligence reports, complaints and calls for police service at the property. Any documentation that can be compiled indicating illegal activity on the property for a two- to three-year time period may be used as evidence. If the investigation shows that an inordinate number of calls for police service have been made and six or more arrests for the same type of illegal activity have occurred in the last six months to a year, this may be indicate a good nuisance abatement case. However, the case must be submitted to the OAG for a more definite determination to be made.

Offense reports must establish the habitual use of the property for illegal activities. It is important that the offense reports indicate that the illegal activity occurred, began or ended on the targeted property or immediately adjacent to it. In other words, the crime must be firmly associated with the target property. The reports must identify the property and be specific in the narrative as to the connection between the crime and the property. For example, to state that a prostitute or drug dealer was observed "coming out of or going into the establishment or parking lot of the property" or that the "criminal activity occurred in the establishment or on the parking

lot of the property," clearly connects the crime to the property. Stating that the prostitute or drug dealer was observed "on the street or roadway in front of the establishment" does not necessarily connect the crime to the property.

Site visits and/or surveillance of the property should be conducted to evaluate the physical appearance of the property and to observe the nature of the illegal activities occurring on the property. The site visits will also serve to corroborate (or refute) complaints concerning the property. If code violations of any kind are observed, representatives from any other applicable agency should be contacted to determine if a formal inspection of the property would be in order.

During the investigation, compile a case file that consists of the sections mentioned below with the described information included. Many departments have an automated database that will provide statistical information.

Summary of Illegal Activity. A general summary of the events occurring on the property and any pertinent information related to the investigation. Provide a list of all officers who have conducted investigations on the property and those officers who have made arrests on the property. Also, provide a list and give statistical data on calls for police service, general complaint citations and offense reports generated on the subject property. See Attachment A for an example of a summary of illegal activity.

Property and Property Owner Information. The legal owner of the real property must be identified by obtaining a certified copy of the recorded deed (Warranty Deed or Deed of Trust) from the county clerk's office or a title agency. The deed will not only provide the name of the owner(s) of the real property, but it will also provide the legal description of the property. The owner(s) of the real property must not be confused with the owner of a business that may be located on the property. The legal owner may be an individual, a group of individuals (joint venture or partnership), or a corporation. Any other information that can be obtained regarding the property owner(s) may be added to this section. For example, if the owner owns any other property or businesses, or if he has a record of any kind, this information can be included. This section may also include the names, addresses, telephone numbers, driver license numbers, photographs and criminal histories of owners, managers, employees, agents or persons who may be directly involved with the ownership or management of the property.

Correspondence, Documents and Notes. Copies are needed of any correspondence, documents, notes or memos regarding the subject property. Copies of all communications between the property owner, employees, managers or any other people who have personal knowledge of the property should be included in this section. All registered or certified mail return receipts of correspondence and all documents evidencing an informal meeting with the property owner should be in this section. This will show the court that your law enforcement agency and the OAG have attempted to obtain the property owner's cooperation to address the illegal activity before filing suit in the case.

Calls for Service Summary. Statistical information showing the total number of calls made to the property for any reason. This can help show how much more activity is reported and documented at the property in comparison to other similar properties. This

can help show the court how much of a burden a particular property is on the resources of the referring agency.

Offense Reports. Copies of all arrest reports generated on the property for the last three years. Please provide a subsection for each category of offense that has occurred on the property. For example, place copies of all the arrest reports for narcotic violations in one section, alcohol violations in one section, prostitution cases in one section, assault cases in one section, etc. While the property is under investigation, all arresting officers should provide written narratives for each arrest report. It is important that the prosecuting attorney be provided with all pertinent arrest reports up to the date of the court hearing, as the nuisance will have to be proven to be ongoing. If there are additional reports that can be obtained from other agencies with jurisdiction over the crime(s) involved (ex. DEA, FBI, etc.), those reports or information should be obtained and included, if possible.

Final Dispositions. Copies of all final dispositions or pending actions against any person arrested on the property for any of the illegal activities addressed by the statutes during a three-year period. Convictions of arrested persons and pending actions will support the allegation that the owner knew the illegal activity was occurring on the property.

Search Warrants. Copies of all search warrants served at the property, search warrant returns, and all arrest reports related to the search warrants should be included in this section. The probable cause articulated in the search warrants may contain additional information that will aid in the prosecution of the case.

Arrest Warrants. Generate a summary of all active arrest warrants for persons who listed the subject property as their residence. This will identify individuals who have no legal relationship to the property yet claim it as their residence, or it may identify individuals who may be contributing to the problems on the property.

Officer Declarations. Officer declarations should be obtained from every officer currently patrolling the neighborhood where the property is located and from those who have previously patrolled the neighborhood. Officer declarations should also be obtained from every officer who has made an arrest, assisted on calls for police service or conducted investigations on the property. The declaration should state any observations of illegal activity, the officer's involvement with the property, the property's reputation and the officer's professional opinion of the property and general knowledge of the history and reputation of the property. This can be done in affidavit or memorandum form.

Citizen Declarations. Citizens living in the vicinity of the property or persons associated with the property can provide helpful information regarding the illegal activities occurring on the property. Written statements in the form of letters, affidavits or declarations from citizens can be persuasive evidence. If a citizen is threatened by anyone, or if an act of violence has been committed against him or her, a request can be made for the court to order that any personal information obtained remain confidential.

Declarations or Affidavits from Interviews. Interviews conducted with citizens, informants and suspects will be very helpful to the case. They can aid in proving that the property has a reputation for illegal activities and can shed some light on other aspects of the property's history, such as who frequents the property, the types of concerns that they have with the property, what they have observed at the property, how the property is maintained, how the illegal activity adversely affects your law enforcement agency, etc. Each statement should be documented, signed and notarized; in other words, it should be a written statement in the form of a signed declaration or affidavit.

Regulatory Agency Inspections. All documents regarding investigations or inspections by regulatory agencies should be included in this section. Please provide a subsection for each applicable regulatory agency. The governing agency should coordinate its efforts with inspectors and investigators of regulatory agencies – this will not only benefit the case by providing additional evidence, but may also improve the property and help revitalize a deteriorating neighborhood. The property owners may make necessary improvements when they are issued citations for code violations. Since most illegal activities gravitate to neighborhoods that are poorly lit and maintained, such improvements may discourage illegal activity from occurring. Once you have contacted the regulatory agency and citations for code violations have been issued, you must keep communicating with the agency regarding the status and progress of the code violations. Regulatory agencies may differ in each city or county. Below is a list of the types of inspections that may be relevant to your jurisdiction. Telephone numbers can be found in the blue city or county government pages of your local telephone directory.

- Building (planning and development)
- Fire Marshal
- Noise Pollution
- Housing Code Enforcement
- Restaurant & Food Business
- County Health Department Services
- County Environmental Health Services
- Texas Alcoholic Beverage Commission
- County Sheriff's Office

Videotapes and Photographs. Videotapes and photographs of illegal and/or disruptive activity on the property make excellent evidence. This evidence will provide demonstrative proof of how the property is maintained and how it is a nuisance to the neighborhood.

General Complaint Citations. Copies of all general complaint citations that have been issued on the property for the last three years or for whatever period the property has been operating.

Miscellaneous. Items in this section should include information that may not be categorized in any other section of the notebook, but that will be helpful or relevant in prosecuting the case.

Once all the above-mentioned information has been compiled, submit the case file for review by the OAG. If you need assistance at any time during the investigation, feel free to contact the Criminal Prosecutions Division of the OAG.

Case File Checklist

_____ Summary of Illegal Activity (See Attachment A)

_____ Property and Property Owner Information

_____ Correspondence, Documents and Notes

_____ Calls for Service Summary

_____ Offense Reports

_____ Final Dispositions (Judgments and Sentences)

_____ Search Warrants

_____ Arrest Warrants

_____ Officer Declarations

_____ Citizen Declarations

_____ Declarations or Affidavits from Interviews

_____ Regulatory Agency Inspections

_____ Videotapes and Photographs

_____ General Complaint Citations

_____ Miscellaneous

_____

_____

_____

Meeting and/or Lawsuit

Insufficient Evidence

If the OAG review determines that the information compiled by the referring agency is not sufficient to file suit, there are two options. The first option is that the refrerring agency may continue investigating the property to obtain more evidence so that a suit may be filed at a later date. Once enough evidence is obtained, the OAG will proceed with a lawsuit.

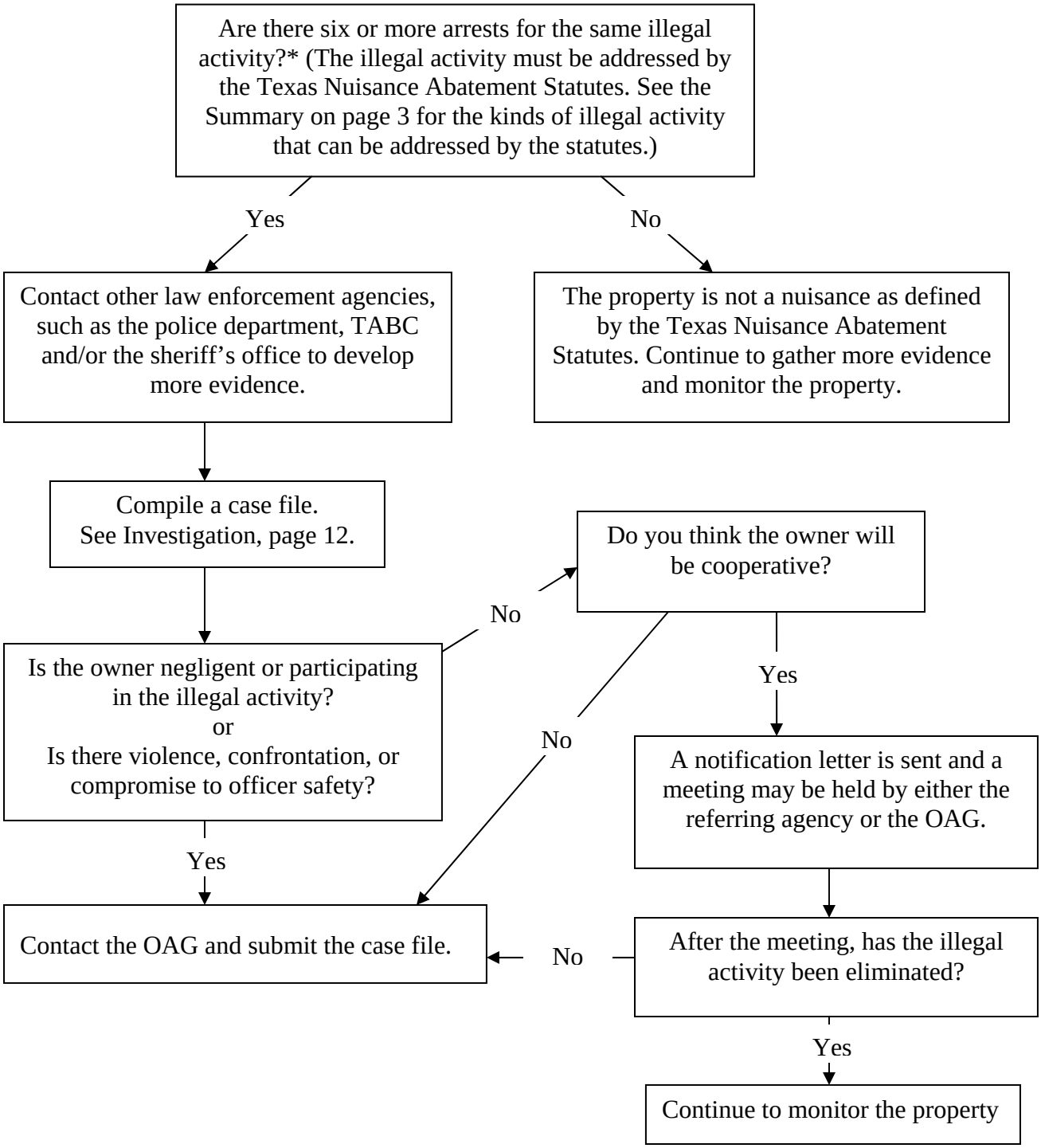
If the referring agency believes the property owner will cooperate in attempts to eliminate the illegal activity, the second option is to hold a meeting with the property owner. A notification letter will be sent to the property owner requesting a meeting. All concerned parties should be present at this meeting. Individuals present may include representatives of the referring agency, the OAG, regulatory agencies and the property owner or representatives. The purpose of the meeting is to notify the property owner of the persistent illegal activity taking place on the property and to obtain voluntary compliance in addressing the problem. The owner is given suggested guidelines of operation and made aware of the potential fines, bonds and civil actions that could be brought against him or her for maintaining a nuisance. The regulatory agencies and the referring agency will be given an opportunity to express their concerns and provide information regarding code violations. The property owner will also be advised as to the assistance he or she can expect from the referring agency and other regulatory agencies. After the meeting, if the illegal activity declines or is eliminated, the referring agency should continue to monitor the property. If the illegal activity has not declined or been eliminated, the OAG will proceed with a lawsuit once sufficient evidence has been obtained.

See Attachment B for an example of a notification letter and Attachment C for the guidelines of operation. The notification letter and the guidelines of operation can be modified according to the specific nature of the property involved.

Sufficient evidence

If sufficient evidence exists, either a meeting can be requested with the property owner to obtain voluntary compliance or a lawsuit can be filed to abate the nuisance. The OAG will file suit on behalf of the referring agency and will provide all of the legal representation for the duration of the lawsuit. **The OAG does not represent the referring agency but represents and will file suit on behalf of the state.**

Plan for Property Closure



- General Guideline (may be more or less depending on the size of the jurisdiction and circumstances of each property)

Texas Civil Practice and Remedies Code

Chapter 125. Common and Public Nuisances

Subchapter A. Suit to Abate Certain Common Nuisances Section

Section
125.001 Definitions
125.0015 Common Nuisance
125.002 Suit to Abate Common Nuisances; Bond
125.003 Suit on Bond
125.004 Evidence

Subchapter C. Additional Nuisance Remedies

Section
125.045 Remedies
125.046 Additional Remedies; Receiver

Subchapter D. Membership in Criminal Street Gang

Section
125.061 Definitions
125.062 Public Nuisance; Combination
125.063 Public Nuisance; Use of Place
125.064 Suit to Abate Nuisance
125.065 Court Order
125.066 Violation of Court Order
125.069 Use of Place; Evidence

SUBCHAPTER A. Suit to Abate Certain Common Nuisances Section

125.001. Definitions

In this chapter:

(1) "Common nuisance" is a nuisance described by Section 125.0015.
(2) "Public nuisance" is a nuisance described by Section 125.062 or 125.063.
(3) "Multiunit residential property" means improved real property with at least three dwelling units, including an apartment building, condominium, hotel, or motel. The term does not include a single-family home or duplex.

125.0015. Common Nuisance

(a) A person who knowingly maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance:

(1) discharge of a firearm in a public place as prohibited by the Penal Code;
(2) reckless discharge of a firearm as prohibited by the Penal Code;
(3) engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;
(4) delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481, Health and Safety Code;
(5) gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;
(6) prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;
(7) compelling prostitution as prohibited by the Penal Code;
(8) commercial manufacture, commercial distribution, or commercial exhibition of obscene material as prohibited by the Penal Code;
(9) aggravated assault as described by Section 22.02, Penal Code;
(10) sexual assault as described by Section 22.011, Penal Code;
(11) aggravated sexual assault as described by Section 22.021, Penal Code;
(12) robbery as described by Section 29.02, Penal Code;
(13) aggravated robbery as described by Section 29.03, Penal Code;
(14) unlawfully carrying a weapon as described by Section 46.02, Penal Code;
(15) murder as described by Section 19.02, Penal Code;
(16) capital murder as described by Section 19.03, Penal Code;
(17) continuous sexual abuse of young child or children as described by Section 21.02, Penal Code; or
(18) massage therapy or other massage services in violation of Chapter 455, Occupations Code.

(b) A person maintains a common nuisance if the person maintains a multiunit residential property to which persons habitually go to commit acts listed in Subsection (a) and knowingly tolerates the acts and furthermore fails to make reasonable attempts to abate the acts.

125.003. Suit to Abate Common Nuisance; Bond

(a) A suit to enjoin and abate a common nuisance may be brought by an individual, by the attorney general, or by a district, county, or city attorney. The suit must be brought in the county in which it is alleged to exist against the person who is maintaining or about to maintain the nuisance. The suit must be brought in the name of the state if brought by the attorney general or district or county attorney, in the name of the city if brought by a city attorney, or in the name of the individual if brought by a private citizen. Verification of the petition or proof of personal injury by the acts complained of need not be shown. For purposes of this subsection, personal injury may include economic or monetary loss.

(b) A person may bring suit under Subsection (a) against any person who maintains, owns, uses, or is a party to the use of a place for purposes constituting a nuisance under this subchapter and may bring an action in rem against the place itself. A council of owners, as defined by Section 81.002, Property Code, or a unit owners' association organized under Section 82.101, Property Code, may be sued under this subsection if the council or association maintains, owns, uses, or is a party to the use of the common areas of the council's or association's condominium for purposes constituting a nuisance.

(c) Service of any order, notice, process, motion, or ruling of the court on the attorney of record of a cause pending under this subchapter is sufficient service of the party represented by an attorney.

(d) A person who violates a temporary or permanent injunctive order under this subchapter is subject to the following sentences for civil contempt:

(1) a fine of not less than $1,000 or more than $10,000;
(2) confinement in jail for a term of not less than 10 or more than 30 days; or
(3) both fine and confinement.

(e) If judgment is in favor of the petitioner, the court shall grant an injunction ordering the defendant to abate the nuisance and enjoining the defendant from maintaining or participating in the nuisance and may include in its order reasonable requirements to prevent the use or mainenance of the place as a nuisance. If the petitioner brings the action in rem, the judgment is a judgment in rem against the property as well as a judgment against the defendant. The judgment must order that the place where the nuisance exists be closed for a period of one year after the date of judgment.

(f) Repealed

(f-1) If the defendant required to execute the bond is a hotel, motel, or similar establishment that rents overnight lodging to the public and the alleged common nuisance is under Section 125.0015(a)(6) or (7), the bond must also be conditioned that the defendant will, in each of the defendant's lodging units on the premises that are subject to the suit, post in a conspicuous place near the room rate information required to be posted under Section 2155.001, Occupations Code, an operating toll-free telephone number of a nationally recognized information and referral hotline for victims of human trafficking.

(g) In an action brought under this chapter, the petitioner may file a notice of lis pendens and a certifited copy of an order of the court in the office of the county clerk in each county in which the land is located. The notice of lis pendens must conform to the requirements of Section 12.007, Property Code, and constitutes notice as provided by Section 13.004, Property Code. A certified copy of an order of the court filed in the office of the county clerk constitutes notice of the terms of the order and is binding on subsequent purchasers and lienholders.

(h) A person who may bring suit under Section 125.0015 shall consider, among other factors, whether the property owner, the owner's authorized representative, or the operator or occupant of the business, dwelling, or other place where the criminal acts occurred:

(1) promptly notifies the appropriate governmental entity or the entity's law enforcement agency of the occurrence of criminal acts on the property; and
(2) cooperates with the governmental entity's law enforcement investigation of criminal acts occurring at the property.

125.003. Suit on Bond

(a) If a condition of a bond filed or an injunctive order entered under this subchapter is violated, the district, county, or city attorney of the county in which the property is located or the attorney general shall sue on the bond in the name of the State. In the event the attorney general originates the suit, the whole sum shall be forfeited as a penalty to the State. In the event the suit is originated by any office other than the attorney general, the whole sum shall be forfeited as a penalty to the originating entity. On violation of any condition of the bond or of the injunctive order and subsequent to forfeiture of the bond, the place where the nuisance exists shall be ordered closed for one year from the date of the order of bond forfeiture.

(b) The party bringing the suit may recover reasonable expenses incurred in prosecuting the suits authorized in Subsection (a) including but not limited to investigative costs, court costs, reasonable attorney's fees, witness fees, and deposition fees.

(c) A person may not continue the enjoined activity pending appeal or trial on the merits of an injunctive order entered in a suit brought under this subchapter. Not later than the 90th day after the date of the injunctive order, the appropriate court of appeals shall hear and decide an appeal taken by a party enjoined under this subchapter. If an appeal is not taken by a party temporarily enjoined under this article, the parties are entitled to a full trial on the merits not later than the 90th day after the date of the temporary injunctive order.

(d) In an action brought under this chapter, the court may award a prevailing party reasonable attorney's fees in addition to costs. In determining the amount of attorney's fees, the court shall consider:

(1) the time and labor involved;
(2) the novelty and difficulty of the questions;
(3) the expertise, reputation, and ability of the attorney; and
(4) any other factor considered relevant by the court.

(e) Nothing herein is intended to allow a suit to enjoin and abate a common nuisance to be brought against any enterprise whose sole business is that of a bookstore or movie theater.

125.004. Evidence

(a) Proof that an activity described by Section 125.0015 is frequently committed at the place involved or that the place is frequently used for an activity described by Section 125.0015 is prima facie evidence that the defendant knowingly tolerated the activity.

(b) Evidence that persons have been arrested for or convicted of offenses for an activity described by Section 125.0015 in the place involved is admissible to show knowledge on the part of the defendant that the act occurred. The originals or certified copies of the papers and

judgments of those arrests or convictions are admissible in the suit for injuntion, and oral evidence is admissible to show that the offense for which a person was arrested or convicted was committed at the place involved.

(c) Evidence of the general reputation of the place involved is admissible to show the existence of the nuisance.

(d) Notwithstanding Subsection (a), evidence that the defendant, the defendant's authorized representative, or another person acting at the direction of the defendant or the defendant's authorized representative requested law enforcement or emergency assistance with respect to an activity at the place where the common nuisance is allegedly maintained is not admissible for the purpose of showing that the defendant tolerated the activity or failed to make reasonable attempts to abate the activity alleged to constitute the nuisance but may be admitted for other purposes, such as showing that a crime listed in 125.0015 occurred. Evidence that the defendant refused to cooperate with law enforcement or emergency services with respect to the activity is admissible. The posting of a sign prohibiting the activity alleged is not conclusive evidence that the owner did not tolerate the activity.

SUBCHAPTER C. Additional Nuisance Remedies

125.042. Request for Meeting

(a) The voters of an election precinct in which a common nuisance is alleged to exist or is alleged to be likely to be created, or the voters in an adjacent election precinct, may request the district attorney, city attorney, or county attorney having geographical jurisdiction of the place that is the subject of the voters' complaints to authorize a meeting at which interested persons may state their complaints about the matter. To be valid to begin proceedings under this section, the written request must be signed by at least:

(1) 10 percent of the registered voters of the election precinct in which the common nuisance is alleged to exist or is alleged to be likely to be created; or
(2) 20 percent of the voters of the adjacent election precinct.

(b) On receiving a written request for a meeting from the required number of persons, the district attorney, city attorney, or county attorney may appoint a person to conduct the meeting at a location as near as practical to the place that is the subject of the complaints.

125.043. Notice

The district attorney, city attorney, or county attorney receiving the request may:

(1) post notice of the purpose, time, and place of the meeting at either the county courthouse of the county or the city hall of the city in which the place that is the subject of the complaints is located and publish the notice in a newspaper of general circulation published in that county or city; and

(2) serve the notice, by personal service, to the owner and the operator of the place.

125.044. Findings

(a) After the meeting, the person appointed to conduct the meeting shall report the findings to the district attorney, city attorney, or county attorney who appointed the person. The district attorney, city attorney, or county attorney, on finding by the attorney that a common nuisance exists or is likely to be created, may initiate appropriate available proceedings against the persons owning or operating the place at which the common nuisance exists or is likely to be created.

(b) In a proceeding begun under Subsection (a):

(1) proof that acts creating a common nuisance are frequently committed at the place is prima facie evidence that the owner and the operator knowingly permitted the acts; and
(2) evidence that persons have been arrested for or convicted of offenses involving acts at the place that create a common nuisance is admissible to show knowledge on the part of the owner and the operator that the acts occurred.
(3) Notwithstanding Subsection (1), evidence that the defendant, the defendant's authorized representative, or another person acting at the direction of the defendant or the defendant's authorized representative requested law enforcement or emergency assistance with respect to an activity at the place where the common nuisance is allegedly maintained is not admissible for the purpose of showing that the defendant tolerated the activity or failed to make reasonable attempts to abate the activity alleged to constitute the nuisance but may be admitted for other purposes, such as showing that a crime listed in 125.0015 occurred. Evidence that the defendant refused to cooperate with law enforcement or emergency services with respect to the activity is admissible.

(b-1)The posting of a sign prohibiting the activity alleged is not conclusive evidence that the owner did not tolerate the activity.

(c) The originals or certified copies of the papers and judgments of the arrests or convictions described by Subdivision (2) of Subsection (b) are admissible in a suit for an injunction, and oral evidence is admissible to show that the offense for which a person was arrested or convicted was committed at the place involved.

125.045. Remedies

(a) If, after notice and hearing on a request by a petitioner for a temporary injunction, a court determines that the petitioner is likely to succeed on the merits in a suit brought under Section 125.002, the court:

(1) may include in its order reasonable requirements to prevent the use or maintenance of the plase as a nuisance; and
(2) shall require that the defendant execute a bond.

(a-1)If the defendant required to execute the bond is a hotel, motel, or similar establishment that rents overnight lodging to the public and the alleged common nuisance is under Section

125.0015(a)(6) or (7), the bond must also be conditioned that the defendant will, in each of the defendant's lodging units on the premises that are subject to the suit, post in a conspicuous place near the room rate information required to be posted under Section 2155.001, Occupations Code, an operating toll-free telephone number of a nationally recognized information and referral hotline for victims of human trafficking.

(a-1)The bond must:

(1) be payable to the state at the county seat of the county in which the place is located;
(2) be in the amount set by the court, but not less than $5,000 or more than $10,000;
(3) have sufficient sureties approved by the court; and
(4) be conditioned that the defendant will not knowingly maintain a common nuisance to exist at the place.

(b) If after entry of a temporary or permanent injunction, a court determines that a condition of the injunctive order is violated, the court may:

(1) order a political subdivision to discontinue the furnishing of utility services to the place at which the nuisance exists;
(2) prohibit the furnishing of utility service to the place by any public utility holding a franchise to use the streets and alleys of the political subdivision;
(3) revoke the certificate of occupancy of the place;
(4) prohibit the use of city streets, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance;
(5) limit the hours of operation of the place, to the extent that the hours of operation are not otherwise specified by law;
(6) order a landlord to terminate a tenant's lease if:
    (A) the landlord and tenant are parties to the lawsuit; and
    (B) the tenant has violated a condition of the injunctive order; or
(7) order any other legal remedy available under the laws of the state.

(c) If a condition of a bond filed or an injunctive order entered under this subchapter is violated, the district, county, or city attorney of the county in which the property is located or the attorney general may sue on the bond in the name of the state. In the event the attorney general originates the suit, the whole sum shall be forfeited as a penalty to the state. In the event the suit is originated by any office other than the attorney general, the whole sum shall be forfeited as a penalty to the originating entity.

125.046. Additional Remedies; Receiver

(a) If, in any judicial proceeding under Subchapter A, a court determines that a person is maintaining a multiunit residential property that is a common nuisance, the court may, on its own motion or on the motion of any party, order the appointment of a receiver to manage the property or render any other order allowed by law as necessary to abate the nuisance.

(b) A receiver appointed under this section may not be appointed for a period longer than one year.

(c) The court shall determine the management duties of the receiver, the amount to be paid the receiver, the method of payment, and the payment periods.

(d) A receiver appointed under this section shall continue to manage the property during the pendency of any appeal relating to the nuisance or the appointment of the receiver.

(e) A receiver appointed by the court may:

(1) take control of the property;
(2) collect rents due on the property;
(3) make or have made any repairs necessary to bring the property into compliance with minimum standards in local ordinances;
(4) make payments necessary for the maintenance or restoration of utilities to the properties;
(5) purchase materials necessary to accomplish repairs;
(6) renew existing rental contracts and leases;
(7) enter into new rental contracts and leases;
(8) affirm, renew, or enter into a new contract providing for insurance coverage on the property; and
(9) exercise all other authority that an owner of the property would have except for the authority to sell the property.

(f) Expenditures of monies by the receiver in excess of $10,000 under Subdivisions (3) and (5) of Subsection (e) shall require prior approval of the court.

(g) On the completion of the receivership, the receiver shall file with the court a full accounting of all costs and expenses incurred in the repairs, including reasonable costs for labor and subdivision, and all income received from the property.

125.047. Nuisance Abatement Fund

(a) In this section:

(1) "Fund" means a nuisance abatement fund.
(2) "Nuisance abatement" means an activity taken by a municipality to reduce the occurrences of a common or public nuisance.

(b) This section applies only to a municipality with a population of 1.5 million or more.

(c) A municipality shall create a fund as a separate account in the treasury of the municipality.

(d) The fund consists of:

(1) money awarded the municipality in an action under this chapter;
(2) money awarded the municipality under a settlement to an action under this chapter;
(3) fines resulting from code enforcement citations issued by the municipality for conduct defined as a common or public nuisance under this chapter;
(4) bonds forfeited to the municipality under this chapter; and

(5) donations or grants made to the municipality for the purpose of nuisance abatement.

(e) The money in the fund may be used only for the purpose of ongoing nuisance abatement. That purpose includes:

(1) regular and overtime compensation for nuisance abatement or enforcement personnel; and
(2) hiring additional personnel for nuisance abatement as needed.

SUBCHAPTER D. Membership in Criminal Street Gang

125.061. Definitions

In this subchapter:

(1) "Combination" and "criminal street gang" have the meanings assigned by Section 71.01, Penal Code;
(2) "Continuously or regularly" means at least five times in a period of not more than 12 months.
(3) "Gang activity" means the following types of conduct:

(A) organized criminal activity as described by Section 71.02, Penal Code;
(B) terroristic threat as described by Section 22.07, Penal Code;
(C) coercing, soliciting, or inducing gang membership as described by Section 22.015, Penal Code;
(D) criminal trespass as described by Section 30.05, Penal Code;
(E) disorderly conduct as described by Section 42.01, Penal Code;
(F) criminal mischief as described by Section 28.03, Penal Code, that causes a pecuniary loss of $500 or more;
(G) a graffiti offense in violation of Section 28.08; Penal Code, that:

(i) causes a pecuniary loss of $500 or more; or
(ii) occurs at a school, an institution of higher education, a place of worship or human cemetery, a public monument, or a community center that provides medical, social, or educational programs;

(H) a weapons offense in violation of Chapter 46, Penal Code; or
(I) unlawful possession of a substance or other item in violation of Chapter 481, Health and Safety Code.

125.062. Public Nuisance; Combination

A combination or criminal street gang that continuously or regularly associates in gang activities is a public nuisance.

125.063. Public Nuisance; Use of Place

The habitual use of a place by a combination or criminal street gang for engaging in gang activity is a public nuisance.

125.064. Suit to Abate Nuisance

(a) A district, county, or city attorney, the attorney general, or a resident of the state may sue to enjoin a public nuisance under this subchapter.

(b) Any person who habitually associates with others to engage in gang activity as a member of a combination or criminal street gang may be made a defendant in the suit. Any person who owns or is responsible for maintaining a place that is habitually used for engaging in gang activity may be made a defendant in the suit.

(c) If the suit is brought by the state, the petition does not require verification.

(d) If the suit is brought by a resident, the resident is not required to show personal injury.

125.065. Court Order

(a) If the court finds that a combination or criminal street gang constitutes a public nuisance, the court may enter an order:

(1) enjoining a defendant in the suit from engaging in the gang activities of the combination or gang; and
(2) imposing other reasonable requirements to prevent the combination or gang from engaging in future gang activities.

(b) If the court finds that a place is habitually used in a manner that constitutes a public nuisance, the court may include in its order reasonable requirements to prevent the use of the place for gang activity.

125.066. Violation of Court Order

A person who violates a temporary or permanent injunctive order under this subchapter is subject to the following sentences for civil contempt:

(1) a fine of not less than $1,000 nor more than $10,000;
(2) confinement in jail for a term of not less than 10 nor more than 30 days; or
(3) both fine and confinement.

125.067. Continuation of Activities Pending Trial or Appeal; Appeal

(a) A person may not continue the enjoined activity pending trial or appeal on the merits of an injunctive order in a suit brought under this subchapter.

(b) Not later than the 90th day after the date of the injunctive order, an appropriate court of appeals shall hear and decide an appeal taken by a person enjoined under this subchapter.

(c) If an appeal is not taken by a person temporarily enjoined under this subchapter, the person is entitled to a trial on the merits not later than the 90th day after the date of the temporary injunctive order.

125.0675. Injunction for Specified Period

In addition to any other order that may be issued under this subchapter or other law, a court of appeals or a trial court acting under Section 125.067(b) or (c) may issue an injunctive order under this subchapter stating that the injunction remains in effect during the course of the trial or until lifted by the court.

125.068. Attorney's Fees

In an action brought under this subchapter, the court may award a prevailing party reasonable attorney's fees and costs.

125.069. Use of Place; Evidence

In an action brought under this subchapter, proof that gang activity by a member of a combination or a criminal street gang is frequently committed at a place or proof that a place is frequently used for engaging in gang activity by a member of a combination or a criminal street gang is prima facie evidence that the proprietor knowingly permitted the act, unless the act constitutes conspiring to commit gang activity.

125.070. Civil Action for Violation of Injunction

a) In this section, "governmental entity" means a political subdivision of this state, including any city, county, school district, junior college district, levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, and river authority.

(b) A criminal street gang or a member of a criminal street gang is liable to the state or a governmental entity injured by the violation of a temporary or permanent injunctive order under this subchapter.

(c) In an action brought against a member of a criminal street gang, the plaintiff must show that the member violated the temporary or permanent injunctive order.

(d) A district, county, or city attorney or the attorney general may sue for money damages on behalf of the state or a governmental entity. If the state or a governmental entity prevails in a suit under this section, the state or governmental entity may recover:

(1) actual damages;
(2) a civil penalty in an amount not to exceed $20,000 for each violation; and
(3) court costs and attorney's fees.

(e) The property of the criminal street gang or a member of the criminal street gang may be seized in execution on a judgment under this section. Property may not be seized under this subsection if the owner or interest holder of the property proves by a preponderance of the evidence that the owner or interest holder was not a member of the criminal street gang and did not violate the temporary or permanent injunctive order. The owner or interest holder of property that is in the possession of a criminal street gang or a member of the criminal street gang and that is subject to execution under this subsection must show that the property:

(1) was stolen from the owner or interest holder; or
(2) was used or intended to be used without the effective consent of the owner or interest holder by the criminal street gang or a member of the criminal street gang.

(f) The attorney general shall deposit money received under this section for damages or as a civil penalty in the neighborhood and community recovery fund held by the attorney general outside the state treasury. Money in the fund is held by the attorney general in trust for the benefit of the community or neighborhood harmed by the violation of a temporary or permanent injunctive order. Money in the fund may be used only for the benefit of the community or neighborhood harmed by the violation of the injunctive order. Interest earned on money in the fund shall be credited to the fund. The attorney general shall account for money in the fund so that money held for the benefit of a community or neighborhood, and interest earned on that money are not commingled with money in the fund held for the benefit of a different community or neighborhood.

(g) A district, county, or city attorney who brings suit on behalf of a governmental entity shall deposit money received for damages or as a civil penalty in an account to be held in trust for the benefit of the community or neighborhood harmed by the violation of a temporary or permanent injunctive order. Money in the account may be used only for the benefit of the community or neighborhood harmed by the violation of the injunctive order. Interest earned on money in the account shall be credited to the account. The district, county, or city attorney shall account for money in the account so that money held for the benefit of a community or neighborhood, and interest earned on that money are not commingled with money in the account held for the benefit of a different community or neighborhood.

(h) An action under this section brought by the state or a governmental entity does not waive sovereign or governmental immunity for any purpose.

Texas Alcoholic Beverage Code

Section 101.70

§ 101.70. Common Nuisance

(a) A room, building, boat, structure, or other place where alcoholic beverages are sold, bartered, manufactured, stored, possessed, or consumed in violation of this code or under circumstances contrary to the purposes of this code, the beverages themselves, and all property kept or used in the place, are a common nuisance. A person who maintains or assists in maintaining the nuisance commits an offense.

(b) The county or district attorney in the county where the nuisance exists or the attorney general may sue in the name of the state for an injunction to abate and temporarily and permanently enjoin it. Except as otherwise provided in this section, the proceeding is conducted as other similar proceedings.

(c) The plaintiff is not required to give a bond. The final judgment is a judgment in rem against the property and a judgment against the defendant. If the court finds against the defendant, on final judgment it shall order that the place where the nuisance exists be closed for one year or less and until the owner, lessee, tenant, or occupant gives bond with sufficient surety as approved by the court in the penal sum of at least $1,000. The bond must be payable to the state and conditioned:

(1) that this code will not be violated;
(2) that no person will be permitted to resort to the place to drink alcoholic beverages in violation of this code; and
(3) that the defendant will pay all fines, costs, and damages assessed against him for any violation of this code.

(d) On appeal, the judgment may not be superseded except on filing an appeal bond in the penal sum of not more than $500, in addition to the bond for costs of the appeal. That bond must be approved by the trial court and must be posted before the judgment of the court may be superseded on appeal. The bond must be conditioned that if the judgment of the trial court is finally affirmed it may be forfeited in the same manner and for any cause for which a bond required on final judgment may be forfeited for an act committed during the pendency of an appeal.

A. Summary of Illegal Activity

(This summary is only a suggested form and may be modified accordingly.)

Motel Inn (Food Mart Place, etc.)
12345 Cambridge Street
Austin, Travis County, Texas 78711

I. Owners:
   a. Name of Owner
      1000 Cambridge Street
      Austin, Texas 78711

   b. Name of Owner
      1234 Sunnyside
      Austin, Texas 78711

II. Management:
   a. Name of Manager
      1002 Drummond Drive
      Austin, Texas 78711

III. Lessee/renter/others with interest in property
   a. List names and addresses

IV. Summary of Criminal Activity
   a. Specify nuisance activity and send all offense reports that occurred on the property. The following is a list of criminal activities that can be addressed by the Texas Nuisance Abatement Statutes: obscenity, prostitution, promotion of prostitution, compelling prostitution, illegal gambling, discharge of a firearm, organized crime in violation of the Texas Penal Code, violations of the Texas Controlled Substances Act and/or liquor violations.

      Possession of a Controlled Substance arrests ___
      List Case Numbers, Dates and Persons Arrested
      List Arresting Officer(s)/Officer Witnesses
      List Date of Conviction/Conviction Number if applicable and available

      Delivery of a Controlled Substance arrests ___
      List Case Numbers, Dates and Persons Arrested
      List Arresting Officer(s)/Officer Witnesses
      List Date of Conviction/Conviction Number if applicable and available

      Prostitution arrests ___
      List Case Numbers, Dates and Persons Arrested
      List Arresting Officer(s)/Officer Witnesses
      List Date of Conviction/Conviction Number if applicable and available

Discharge of a firearm arrests ___
List Case Numbers, Dates, and Persons Arrested
List Arresting Officer(s)/Officer Witnesses
List Date of Conviction/Conviction Number if applicable and available

b. Give number of calls for police service at the property, list the calls by offenses and give number of calls for that particular offense.

There were ___ calls for service at this location from ____, 2011, to ___, 2011.

Offenses	**Number of Calls**
Assaults	#
Robbery	#
Shootings	#
Fights	#
Stolen Vehicle	#
Shots Fired	#
Etc.	#

c. List the reported offenses at the property and the number of arrests for each offense report.

Offense	**Offense Number**	**Number of Arrests**
Assault	#	#
Assault	#	#
Assault	#	#
Robbery	#	#
Shooting	#	#
Shooting	#	#
Shooting	#	#
Fight	#	#
Stolen Vehicle	#	#
Shots Fired	#	#
Shots Fired	#	#
Shots Fired	#	#
Shots Fired	#	#
Etc.	#	#

B. Notification Letter

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

(Date)

Mr. Property Owner Via Certified Mail, Return Receipt Requested
111 N. Main Street
Anytown, Texas 70001

RE: Notice of Criminal Activity at 111 N. Main Street, Anytown, Texas 70001

Dear Mr. Property Owner:

The Office of the Attorney General has formed a Civil Enforcement Section that investigates properties at which there are an excessive number of criminal violations occurring on a regular basis. With the goal of neighborhood revitalization, this section solicits the cooperation of property owners to rid these properties of criminal nuisances.

Public records reveal that you are the legal owner of property located at 111 N. Main Street, Anytown, Texas 70001. A review of the Anytown Police Department's investigation reveals that the number of calls for police service at your property is far greater than for other businesses in the area, and that numerous criminal violations have occurred on the property in the last few years.

Property at which persons are involved in the possession, use and delivery of controlled substances, prostitution, or illegal discharge of a firearm and others may be declared a common nuisance under Section 125.0015 of the Texas Civil Practice and Remedies Code. Under this civil remedy, a person found to be maintaining a nuisance may risk closure of the structure for a period of one year.

We have investigated the complaints against your property and have determined that if these problems are not eliminated, they could become worse and endanger the lives of the citizens in its immediate community. The Anytown Police Department has informed our office that you as the property owner can expect the full support of the police and other regulatory agencies in the elimination of the existing crimes that are occurring on your property. The Office of the Attorney General also wants to solicit your support and assistance as the property owner in an effort to

resolve these problems and avoid litigation. If these problems cannot be addressed by you as the property owner, the only option remaining is to seek the assistance of a court of law.

Please call me within the next ten (10) working days to schedule a meeting with you and all others participating in the operation of your business to discuss your property and steps that can be taken to address the criminal activity occurring there. It is imperative that we work together to establish a liaison and cooperation that will allow us to make this community a safer place to live. We look forward to meeting with you.

Sincerely,

Kent S. Richardson
Assistant Attorney General
Criminal Prosecutions Division
(512) 936-1348 Tel.
(512) 370-9741 Fax
kent.richardson@oag.state.tx.us

Guidelines of Operation

COUNTY OF ANY §
§
ANYTOWN, TEXAS §

This document will serve as notification to the owners and managers of the Super Motel of the persistent criminal activity taking place on the premises. Said owners and managers and/or their agents attended a meeting this day, January 1, 2011, at 100 Main Street, Anytown, Texas, in the presence of representatives of the Anytown Police Department and the Office of the Attorney General.

While in attendance at this meeting, the property representatives of the business known as the Super Motel, located at 2000 East Maple Avenue, Anytown, Texas, were made aware of the criminal activity which makes the property a common and public nuisance under the Texas Civil Practice & Remedies Code. The representatives of the property in question were also made aware of the potential fines, bonds and civil action that could occur for maintaining a common and public nuisance as defined under Texas Civil Practice & Remedies Code, Chapter 125.

ITEMS OF DISCUSSION:

1. Temporary injunction including bond upon filing of a lawsuit under Chapter 125 of the Texas Civil Practice & Remedies Code, violation of which could result in bond forfeiture and limitation of use of property during litigation.
2. Issuance of a permanent injunction enjoining defendants and defendants' agents, servants and employees from allowing violations of the Texas Civil Practice & Remedies Code, Texas Alcoholic Beverage Code, and Texas Penal Code.
3. Mandatory closure of the premises for one year if the court determines a nuisance exists.
4. Receivership imposed for multi-unit residential properties allowing the court to determine how business revenue should be used.
5. Costs of investigation, suit and attorneys fees as provided by Texas Civil Practice & Remedies Code Annotated Section 125.003(c).

While in attendance at said meeting, the representatives indicated a desire to make changes in the day-to-day operations of the property commonly known as the Super Motel, at 2000 East Maple Avenue, Anytown, Texas, in order to curb and eliminate such criminal activities that constitute a common and public nuisance. To that end, the following suggested Guidelines of Operation were discussed as measures to take to help address the noted criminal activity occurring at the Super Motel.

GUIDELINES OF OPERATION

THE FOLLOWING ARE RECOMMENDED GUIDELINES WHICH THE STATE OF TEXAS SUGGESTS TO MANAGERS AND OWNERS OF BUSINESSES AROUND THE STATE. THESE GUIDELINES ARE ONLY SUGGESTIONS THAT MAY HELP IN THE REDUCTION OF CRIMINAL ACTIVITY ON YOUR PREMISES; HOWEVER, THESE GUIDELINES ARE NOT EXCLUSIVE OF OTHER GUIDELINES OR REMEDIES THAT MAY HELP TO ELIMINATE ANY ILLEGAL ACTIVITY ON YOUR PREMISES. THESE GUIDELINES ARE IN NO WAY INTENDED TO BE USED TO ENCOURAGE UNLAWFUL DISCRIMINATION TOWARD ANY PERSON. THE STATE OF TEXAS ENCOURAGES PROPERTY OWNERS TO FOLLOW NONDISCRIMINATORY PRACTICES, ALL APPLICABLE LAWS, AND PROPER LEGAL AND JUDICIAL PROCEDURES WHEN DEALING WITH THE PUBLIC.

The following list of suggested reactive and proactive measures has been reviewed for applicability and reasonableness to the property in question. In the blank preceding the numbered action, the undersigned property owner or authorized representitive has initialed the suggested actions which are deemed reasonable to the property in question.

_____ 1. The property owners and managers should support all efforts to stop all illegal activities that occur on their premises by calling 911 when the managers or employees observe or suspect illegal activities occurring on their premises.

_____ 2. The property owners should post at least three (3) large signs in visible and conspicuous locations around the outside of the premises. The signs should read as follows:

"NO LOITERING, NO WEAPONS, NO CONSUMPTION OF ALCOHOL, AND NO CRIMINAL ACTIVITY WILL BE TOLERATED."

and

"THE ANYTOWN POLICE DEPARTMENT MAKES REGULAR AND FREQUENT PATROLS OF THESE PREMISES AND MANAGEMENT WILL EMPLOY ALL LAWFUL MEANS OF PREVENTING CRIMINAL ACTIVITY ON THESE PREMISES."

_____ 3. Always consult with proper legal authority with respect to implementing leasing procedures.

_____ 4. Require a valid state or government issued identification which includes a photograph and one other form of identification from all persons renting or occupying a motel room. Retain photocopies of all such documents for your room file. If a customer poses a risk of being a prostitute, or someone who might be involved with illegal narcotics, or otherwise posing a risk of using the motel property for criminal purposes, refuse to rent to that person.

_____ 5. Institute a set of "Rules of Conduct" for all patrons and guests at your motel which shall include all of the requirements set forth herein which apply to occupants. Include a provision that states that any violation of the rules is grounds for eviction and that the rules will be strictly enforced in an effort to create a safe environment for all concerned. Require each patron and guest to review and sign a copy of the rules to be placed in the appropriate room file to ensure each person's awareness of the rules. Place an additional copy of the rules on the inside door of the room or in some other conspicuous place in the room for further reference.

_____ 6. Require identification in the form of a Texas driver license or Texas I.D. from all visitors entering any motel room or the common area of the motel premises. Record this information (name and driver license/Texas I.D.#) on the registration card and sign, date and time-stamp the entry. Retain photocopies of all such documents for your room file associated with the guest. Include this requirement on your "Rules of Conduct" for which any violation is grounds for eviction. Institute a curfew which requires all visitors to depart by a certain time.

_____ 7. Do not rent rooms for "short time" or hourly rates. This encourages prostitutes and their customers to utilize your business for criminal activity. All rooms should be rented no more than one time for each 24-hour period.

_____ 8. Do not rent motel rooms to persons previously arrested on or adjacent to the motel premises for any reason.

_____ 9. Do not rent any room to a person who has been arrested or convicted of narcotics, prostitution, violent crimes or weapons violations within the last 2 years. To further ensure that occupants have not been involved in any such activities in the recent past, employ the use of a public records database. This action can be undertaken by subscription to a national public records database such as "PublicData.com" or a similar service which can be used on the motel premises via the internet. This method of screening guests to the property will additionally be applied retroactively to those currently renting at the property to the extent possible under the contractual obligations imposed by the rental agreement. However, to the extent that current rental agreements would not allow eviction for failing to meet these criteria, room rentals should not be renewed for any such individuals who do not meet the criteria. A printed copy of each search result should be included in the room file for the persons checked even if no criminal history is found so that upon inspection by the police department, it can be verified that a check has been completed.

_____ 10. Complete the registration card in full and make sure it is signed. All vehicle information should be included on the registration card. The registration card should include a notation such that the renter affirms that he/she has read the "Rules of Conduct" and is aware that any violation of the rules is grounds for eviction. The registration card should indicate the rental arrangement for each tenant with price and term included. The register should be made available to law enforecment for inspection at all reasonable times. The registration card should also include the following:

a. the name and address of each guest, and the name and address of each member of his/her party;
b. in the event that such guest or party travels by means of motor vehicle, the register shall specify the make, type and license number of each motor vehicle and the year of registration.

_____ 11. Motel guest room agreement shall specify that the following shall be grounds for immediate eviction from the premises if:

a. occupant commits any violation of the law other than a traffic violation on or adjacent to the premises (this shall include but not be limited to: narcotics, prostitution, violent crimes or weapons violations);
b. occupant's guest or visitor commits any violation of the law regarding the possession, use, storage or sale of narcotics/drugs or any prostitution offense on or adjacent to the premises;
c. occupant commits or permits to exist a nuisance (primarily defined as violations of controlled substance laws, prostitution laws or gambling laws) in the motel room or the common area of the complex;
d. occupant uses or permits the motel room to be used for any illegal purpose.

_____ 12. Evict all occupants engaging in narcotics, prostitution, or other illegal activities or having guests on the premises engaging in such activities.

_____ 13. Do not renew a lease to any occupant suspected of engaging in narcotics, prostitution, or other illegal activities or having guests on the premises engaging in such activities.

_____ 14. Assure effective management and control of the property. Property owners are expected to be involved in the property and require regular inspection and supervision of the premises by the manager. The property owner should employ only those people who have had a background check performed and who have no history either by arrest or conviction for any narcotics, prostitution, weapons or violent offense.

_____ 15. Do not allow alcoholic beverages to be consumed in public view or outside of any room.

_____ 16. Maintain locks and keys for each room. All rooms shall remain locked when not in use. Regular (at least once daily) inspection of unoccupied rooms shall be made and a log of such inspections should be kept to ensure that unoccupied rooms are not being trespassed. A key deposit system shall be set up to avoid keys being circulated among local prostitutes and drug dealers/users. The key shall be stamped "Do Not Duplicate."

_____ 17. The manager on site shall have duplicate room keys always available for emergency services personnel.

_____ 18. Check your lighting. Install high intensity lighting though the interior and exterior of building, particularly in the parking lot and the front and rear areas. Maintain lighting throughout the exterior of the building, particularly in the parking lot and the front and rear areas. Immediately replace any burned-out, worn, or damaged lighting.

_____ 19. Maintain a security camera system throughout the premises such that all common areas can be monitored remotely while walks of the premises are not being conducted. If recordings are made of the surveillance, make any such recordings available to the Anytown Police Department for review for reasons such as criminal investigation.

_____ 20. Check your shrubbery. Well-trimmed and carefully placed shrubbery can reduce both illegal drug use and graffiti.

_____ 21. Check security around buildings. Ensure that all locks are in working order. Ensure that utility rooms and laundry rooms are secured when not in use, according to Anytown City Code standards to prevent the hiding of drugs, weapons, and other contraband.

_____ 22. Make sure the address of your building is clearly visible from the street and from the rear.

_____ 23. If you know of a public telephone which you or law enforcement believe is being used for illegal gang or drug or prostitution activity, contact the property owner and/or the owner of the public telephone to discuss removal of the telephone or replacement with an "outgoing calls only" telephone.

_____ 24. Ensure proper maintenance of interior and exterior of building(s), and regularly check your property to ensure that your property is in compliance with all relevant Anytown City Code fire, health, safety, and building provisions. If you have any questions about code compliance, contact the Anytown fire and code inspectors.

_____ 25. Remove any and all graffiti from the premises.

_____ 26. Keep motel rooms and premises clean of trash and debris.

_____ 27. Install and maintain security fencing around the parking lot. If the fence is chain link fence, ensure that the fence is anchored properly so those trespassers may not crawl through openings.

_____ 28. Repair all fences and maintain all fences, so that property is maintained in compliance with Anytown City Codes.

_____ 29. Complete all painting and maintain painting to protect the exterior surfaces, so that property is maintained in compliance with Anytown City Codes.

_____ 30. Maintain security gates and perimeter fencing, particularly in the front and rear of the premises. Gates should allow exit in case of an emergency. Access should be for tenants and their guests only.

_____ 31. Institute a parking permit system to determine which vehicles belong on the property and which do not. This should be a system that prevents easy duplication or falsification and shall be required for both occupants and visitors to the property. Utilize a system that segregates renters from visitors to assist with any curfew program implemented for visitors.

_____ 32. Do not allow loitering in the common areas or outside of rooms as this is many times an indication of illegal activity. If there are common areas specifically designed for gatherings (pool areas), these will not be affected.

_____ 33. If the above actions do not eliminate the illegal activity on and adjacent to the motel premises or if persons are ignoring your rules, employ a state-licensed, uniformed and armed security guard or off-duty commissioned peace officers to patrol the premises as necessary to ensure that further criminal activity can be prevented.

_____ 34. The following are grounds for the immediate issuance of trespass warnings and the expulsion of any person. If an individual:

a. commits a violation of the Texas Controlled Substance Act;
b. commits a violation of the Texas Alcoholic Beverage Code; or
c. commits a violation of the Texas Penal Code.

_____ 35. The property owners and managers should contact the Anytown Police Department when an individual is trespassing to issue a trespass warning and, upon a second warning, an arrest for trespassing.

_____ 36. The property owners and managers should cooperate with the Anytown Police Department by reporting all incidents of criminal activity promptly, which includes notification through detailed written reports.

DATE:_____

I HAVE RECEIVED A COPY OF THESE GUIDELINES AND UNDERSTAND THAT I MUST IMPLEMENT THESE SUGGESTIONS AND SHOW A NOTICEABLE AND SIGNIFICANT DECLINE IN THE FOLLOWING ACTIVITIES WITNESSED ON MY PROPERTY IN THE LAST YEAR:

1. _____

2. _____

3. _____

I UNDERSTAND THAT THE ANYTOWN POLICE DEPARTMENT MAY CONDUCT UNDERCOVER OPERATIONS AT MY PROPERTY FOR STANDARD LAW ENFORCEMENT REASONS AS WELL AS TO DETERMINE WHETHER THE ABOVE ACTIVITIES HAVE BEEN CURTAILED. I UNDERSTAND THAT I MUST BE A PROACTIVE PROPERTY OWNER AND ATTEMPT TO MAKE SURE THAT THE POLICE DEPARTMENT DOES NOT FIND ANY OF THESE ACTIVITIES OCCURRING ON MY PROPERTY. I FURTHER UNDERSTAND THAT I HAVE UNTIL _____ TO ACHIEVE THESE GOALS OR RISK THE FILING OF A LAWSUIT BY THE STATE OF TEXAS.

_____
OWNER/OPERATOR
SUPER MOTEL

RECORDED ON THIS THE 1ST DAY OF JANUARY, 2011.

INDIVIDUALS IN ATTENDANCE AT THE MEETING:

NAME OF OWNER
NAME OF ESTABLISHMENT

OFFICER JOHN DOE
ANYTOWN POLICE DEPARTMENT

ASSISTANT ATTORNEY GENERAL JANE DOE
OFFICE OF THE ATTORNEY GENERAL