



A User's Guide to Bringing a Private Nuisance Action

Ryan Parisi
Law 826: Housing Court
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COMMONLY USED WORDS OR PHRASES

“Action”- A legal proceeding brought by one party against another for damages sustained as a result of the other party’s actions or omissions.

“Affidavit”- This is a written statement which is sworn to in front of a Notary Public and is given to the Court to provide them with facts relating to the action.

“Compensatory Damages”- This is an award of monetary damages which is meant to compensate the Petitioner for injuries they or their property has actual sustained.

“Damages”- Compensation for losses incurred through the actions of another.

“Element”- This refers to the different components that make up a cause of action for private nuisance. Each element must be proved in order to prevail in the action.

“Injunction” or “Injunctive relief”- This is an Order from the Court which prevents a party from doing or not doing a certain acts.

“Order to Show Cause”- This is one of the documents that must be turned in the Court when initiating the private nuisance action. It is an Order from the Court which directs the named parties to appear in order to argue why or why not the Court should perform a certain action. (An example is attached at the end of this document)

“Petition”- A document given to the Court asking that their authority be exercised to take a certain action. (An example is attached at the end of this document)

“Petitioner”- This is the party who will be bringing or initiating the private nuisance action.

“Punitive Damages”- This is an award which goes beyond compensation for the actual injury sustained. It is meant to act as a deterrent to engaging in the behavior that caused the Petitioner’s damages.

“Respondent”- This is the party who is being brought into court due to their maintenance of a private nuisance.

COMMON QUESTIONS AND ANSWERS

1. What is a Private Nuisance?

- The courts have stated that the essence of a private nuisance is the creation or maintenance of a condition on one property that causes a compensable injury to something or someone on another property.¹ In other words, a private nuisance is interference with the use or enjoyment of land that causes an injury in relation to an ownership right in the land.²

2. What elements need to be shown in court in order to prevail in an action for private nuisance?

The New York State Supreme Court, Appellate Division Fourth Department has enumerated the standard for finding a private nuisance:

In order to prevail upon a cause of action for private nuisance, the Petitioner must demonstrate (1) an interference substantial in nature, (2) intentional in origin, (3) unreasonable in character, (4) with a person's property right to use and enjoy land, (5) caused by another's conduct.³

However, a private nuisance need not be based on intentional conduct. Negligent conduct which creates a nuisance can also be actionable. In these situations the elements of the action change slightly. Instead of the conduct being intentional in origin and unreasonable in character, in these situations the conduct must either be negligent or reckless.⁴ It is important to note, however, that the language in the Complaint (the document submitted to the court which initiates the private nuisance action) will differ slightly to reflect whether the conduct was intentional or negligent.

¹ *Zamzok v. 650 Park Ave. Corp.*, 80 Misc.2d 573 (Sup.Ct. NY Co. 1974).

² *Copart Industries, Inc. v. Consolidated Edison Co.*, 41 NY2d 564, 568 (1977); *Turner v. Coppola*, 102 Misc.2d 1043 (1980).

³ *Vacca v. Valerino*, 16 A.D.3d 1159, 1160 (4th Dept. 2005) quoting *Hitchcock v. Boyack*, 277 A.D.2d 557,558 (3rd Dept. 2000) (Internal Citations Omitted).

⁴ *Copart Industries, Inc. v. Consolidated Edison Co.*, 41 NY2d 564, 568 (1977); See also, *Chenango Inc. v. County of Chenango*, 256 A.D.2d 793 (3rd Dept. 1998).

3. How does the court analyze each of the elements of a private nuisance action?

The first element of private nuisance is an “interference substantial in nature.” This leads to the question: what is substantial? Whether interference is substantial depends largely on the facts and circumstances of each individual case. The determination of substantiality is generally a question of fact for a jury as opposed to a question of law for the judge to decide. Substantiality, involves a review of the totality of the circumstances based on a balancing of the rights of the Respondent to use his or her property against the rights of the Petitioner to enjoy their property. The balancing basically amounts to a risk-utility analysis weighing the social value of the conduct involved against the harm to the private interest.⁵ Therefore, in order to be successful in your private nuisance action you must prove that the social value of the nuisance is outweighed the harm to you.

The second element and third element are related and will change depending on whether the private nuisance is based on intentional or negligent conduct. These elements will either be that the actions are intentional in origin and unreasonable in character or actions that are negligent or reckless. Conduct is “intentional” when the person (a) acts for the purpose of causing it; or (b) knows that it is resulting or is substantially certain to result from his conduct. Therefore, the intent element may be inferred where the owner of the property where the nuisance is emanating from knows that it is resulting or if the nuisance is likely to result from the conduct.⁶

Reasonableness, like substantiality, is generally a question of fact rather than a question of law.⁷ The Court of Appeals (the highest court in New York State) has stated in regards to the reasonableness inquiry that “[n]o hard and fast rule controls the subject, for a use that is reasonable under one set of

⁵ *Iny v. Collom*, 13 Misc.3d 75 (2nd Dept. 2006) (dissent).

⁶ *Copart Industries, Inc. v. Consolidated Edison Co.*, 41 NY2d 564, 568 (1977).

⁷ *McCarty v. Natural Carbonic Gas Co.*, 189 NY 40 (1907).

facts would be unreasonable under another.”⁸ As such, there is no definite way to determine reasonableness. It will necessarily depend on the facts and circumstances of each individual situation. Also, reasonableness of the nuisance is not judged by its effect on Petitioner, but upon the effect would generally have on a reasonable person in the community.

If the nuisance is based on the negligence of the property owner then the elements of negligence will have to be proved in addition to the elements of private nuisance. The elements for negligence are (1) a duty owed by the Respondent, (2) a breach of that duty, and (3) a showing that the breach of that duty constituted a proximate cause of the injury.⁹ The scope of the duty owed by the Respondent is defined by the risk of harm reasonably to be perceived. Therefore the duty owed is dependent upon the facts and circumstances of the individual situation. The duty is breached when it causes an injury to another party. Proximate cause basically means that the injury must have been produced by or directly resulted from the act or omissions of the Respondent.

The final two elements of a private nuisance action are that the injury must be to someone who has an ownership interest in use or enjoyment of the land and the injury must be caused by another’s conduct. These two elements are fairly straightforward. Without an interest in the use of the land a person cannot maintain a nuisance action. Generally, (as will be discussed below) the owner of a property and a lessee being injured by the nuisance will have an interest sufficient to maintain the action.

4. Who can bring an action for private nuisance?

There are limitations on who may bring an action for private nuisance. Generally however, someone who is who adversely affected by the nuisance is a proper Petitioner. The injury to the Petitioner can be to their use or enjoyment of the property, damage caused to their property, or to the

⁸ *McCarty v. Natural Carbonic Gas Co.*, 189 NY 40 (1907).

⁹ *Ingrassia v. Lividikos*, 54 A.D.3d 721, 724 (2nd Dept. 2008).

Petitioner personally. A person in possession of real property is a proper Petitioner. Additionally, the owner of real property, whether or not they are in possession, is a proper Petitioner. Therefore, both the owner and a tenant of a property being affected by a nuisance will have standing in court to maintain the action.¹⁰

5. Who is the Respondent in a private nuisance action?

First, anyone who is responsible for creating or maintaining a nuisance through their acts or omissions is a proper Respondent.¹¹ Therefore, there may be more than one Respondent in the case. The owner of the property causing the nuisance, if he or she is in possession of it, is the proper Respondent. If the owner is not in possession then they will have to have reasonable notice of the existence of the nuisance in order to be a properly named Respondent. A lessee who maintains a nuisance may also be named as a Respondent.¹²

6. What types of remedies can the court give if a private nuisance is found?

According to New York Real Property Actions and Proceedings § 841, in actions for nuisance the court may award damages or direct the removal of the nuisance or both. Depending on the circumstances courts will take different actions. In a case where a nuisance decreased the value of a property the court awarded the Petitioner the difference in the value of his property with and without the nuisance.¹³ If the nuisance is temporary in nature then the damages will be based on the temporary

¹⁰ *Garnham v. Haloid Co.*, 265 A.D. 904 (4th Dept. 1942); *Bly v. Edison Electric Illuminating Co.*, 172 N.Y. 1 (1902); *Darr v. Cohen*, 94 Misc. 471 (Sup 1916).

¹¹ *Morris v. Freudenheim*, 168 Misc.2d 417 (Sup. Ct. Erie Co. 1996).

¹² *Morris v. Freudenheim*, 168 Misc.2d 417 (Sup. Ct. Erie Co. 1996).

¹³ *Puritan Holding Co., Inc. v. Holloshitz*, 82 Misc.2d 905 (N.Y. Sup. Ct. NY Co. 1975).

diminution in the rental value of the property.¹⁴ In an action where the nuisance was based on injuries caused by a rotting tree the court ruled that it was proper for the Petitioner to have the tree removed.¹⁵ Abatement of the nuisance may also be ordered.¹⁶ Punitive damages may also be awarded against the Respondent where their conduct is knowingly and intentionally done in disregard of the property rights of the Petitioner.¹⁷ Therefore, a party who prevails in their action for private nuisance may be awarded compensatory and/or punitive damages, and injunctive relief. A Court can also order an injunction or injunctive relief which prevents a party from engaging or not in certain acts or actions.

7. How do I find out who the owner of the property is?

It is fairly simple to find out who the owner of the property is if you have the Internet. The information is available through Erie County's website. To go directly to page which allows you to look up information by property address go to: <http://www.erie.gov/depts/finance/webprop/index.asp>. If that does not work, go to www.erie.gov. In the upper right hand corner there is a place which allows you to search the website. Simply type "property information" into the box and click "Find it". Then click on the search result which says "Erie County Department of Finance: Real Property Information". You then be directed to the page that allows you search properties by address. Type in the street and house number and you will be given a wealth of information which includes the owner's name and address.

You can also find out information about the owner of the property by going straight to the Erie County Clerk's Office located at 92 Franklin Street, Buffalo, NY 14202. If you choose to go to the clerk's office you may use one of their computers to look up the owner of the property. You may also

¹⁴ *Guzzardi v. Perry's Boats, Inc.*, 92 A.D.2d 250 (2nd Dept. 1983).

¹⁵ *Childers v. New York Power & Light Corp.*, 275 A.D. 133 (3rd Dept. 1975).

¹⁶ *State v. Fermenta ASCCorp.*, 160 Misc. 2d 187 (Sup. Ct. Suffolk Co. 1994).

¹⁷ *Vacca v. Valerino*, 16 A.D.3d 1159 (4th Dept. 2005).

ask for help from one of the people at the counter and they will be able to tell you as well. In order to get the information you will simply need to know the address of the subject property.

8. In what types of situations have courts found there to be a private nuisance?

As previously mentioned, the existence of a private nuisance will depend largely upon the facts and circumstances of each individual case. With that said, the following are examples of situations courts have determined that a private nuisance existed or could exist:

Puritan Holding Co., Inc. v. Holloshitz, 82 Misc.2d 905 (N.Y. Sup. Ct. NY Co. 1975): The Petitioner in this case owned a small apartment complex across the street from an abandoned building owned by the Respondent. Uncontroverted evidence was provided that showed the building had deteriorated, become unsightly, and had been taken over by derelicts. Further, proof was introduced that the condition of the abandoned building was decreasing property values in the neighborhood and the Petitioner alleged that the Respondent created the nuisance by not maintaining her property.

After noting the upward trend in property values in the neighborhood, and the investment around the area in recent years, the court determined that the abandoned building was a nuisance. The court stated that in determining whether a nuisance existed it was important to be mindful of the location and surroundings as well as other circumstances. The court awarded the Petitioner the difference between the market value of his building before and after the nuisance. The most important aspect of the court's analysis in this case was that the abandoned building was located in a neighborhood that had been experiencing an increase in property values and the building was decreasing the value of neighboring properties.

Rashford v. Randazzo, 38 A.D. 3d 1261 (4th Dept. 2007): In this case the Petitioner owned a property contiguous with the Respondent's property. The Petitioner commenced the action alleging that

Respondent's property was used by drug users and dealers who engaged in offensive and illegal behavior. Petitioner further alleged that she notified the owner of this behavior and demanded that he discontinue it. The trial court refused to grant a motion for summary judgment (a motion for summary judgment is a way for the defense to have the case dismissed by the judge before it reached trial). The appellate court here ruled that the trial court properly denied the Respondent's motion for summary judgment and they found that the evidence presented was enough to uphold the Jury's determination that the Respondent was liable for private nuisance.

Childers v. New York Power & Light Corp., 275 A.D. 133 (3rd Dept. 1975): This case dealt with a situation where there was rotting tree on a neighbor's property. The court stated that the rotted and diseased condition of the tree presented an imminent hazard to persons and nearby buildings. Under these conditions the tree would be considered a private nuisance.

Zimmerman v. Carmack, 292 A.D. 2d 601 (2nd Dept. 2002): In this case the Petitioners alleged that a number acts done by their neighbors constituted a private nuisance. They alleged that the neighbors would leave for long periods of time and leave the stereo playing so loudly that the police would have to come and shut it off. Additionally, they alleged that the Respondent's would allow dog waste and garbage to accumulate immediately adjacent to the Petitioner's property. The lower court in this case dismissed the case on a motion for summary judgment. However, the Appellate Division found that under these circumstances the acts alleged were adequate to plead a cause of action for private nuisance and they reversed the dismissal of the case and allowed it to proceed to trial.

Galchus v. Vichinsky, No. 0019497/2005, 2007 WL 2814535 (Sup. Ct. Queens Co.): The Petitioner in this case sued for private nuisance based on two bird feeders which were maintained by the Respondent on the edge of his property near the Petitioner's property. The Petitioner alleged that the bird feeders interfered with the enjoyment of her property because they attracted large quantities of birds

which caused excessive amounts of feathers and droppings to fall on her property. She also alleged that as a result of the birds her property has been decreased in value, that she and her guests have experienced physical discomfort, and that she has been forced to spend time cleaning up the feathers and droppings. The court found that the allegations by the Petitioner in this case were enough to defeat the Respondent's motion for summary judgment because it created a question of whether there had been a "substantial interference" with the Petitioner's use of her property.

JP Morgan Chase Bank v. Whitmore, 41 A.D. 3d 433 (2nd Dept. 2007): In this case the Petitioner lived in a duplex condominium. She alleged that the noise generated by the condominium complex's large exhaust fans located near her residence constituted a private nuisance. The evidence at trial showed that the noise from the fans prevented the Petitioner from being able to use her front porch or sleep in her bedroom. The court here affirmed the lower court's decision finding that there was a private nuisance. The court upheld the award of damages which was based upon the diminished rental value of the Petitioner's unit during the years that the fan had been a nuisance.

Vacca v. Valerino, 16 A.D.3d 1159 (4th Dept. 2005): In this case the Respondent's built and maintained a retaining wall which encroached upon the Petitioner's property and threatened to collapse. The court here upheld the lower court's ruling that the wall was a nuisance. The court also upheld the award of punitive damages because the construction of the wall constituted to a knowing and intentional disregard of the Petitioner's property rights.

PROCEDURE FOR COMMENCING ACTION

1. Document the Nuisance:

The existence of the nuisance must be proven. Therefore, it is important that you collect as much evidence as possible to show the court that the nuisance exists and that it is substantially interfering with your use and enjoyment of your property. The method for documenting the nuisance will depend upon the character of the nuisance itself. In many circumstances photographs are an excellent way of documenting the nuisance. You may also tape or video record the nuisance as well. Basically, you want to document the existence of the nuisance using any possible method.

2. Determine the Owner of the Property:

Determining the owner of the property is a very important step in the process. First, in order to bring the nuisance action you must name the proper Respondent. Often times it will be the owner of the property who will end up being the Respondent. Also, it is important to give the owner of the property notice of the existence of the nuisance itself. The process for determining the owner is set forth in the answer to Question #7 above.

3. Contact Your Neighborhood Block Club

Your neighborhood block club is a helpful resource that you should take full advantage of. Depending on the extent of the nuisance, it is likely that other neighbors have the same complaint as you and have also contacted the block club for help. Members of the block club can assist you in compiling evidence, determining the owner of the property and also in exerting unified pressure on the property owner in order to get the nuisance remedied.

4. Contact the Owner of the Property:

This step serves two important purposes: First, it provides the owner with notice of the existence of the nuisance. In most situations the owner (or person causing the nuisance) must have notice of the nuisance. Second, it gives the owner the opportunity to abate the nuisance prior to the initiation of the legal proceeding. This can save you time and expenses.

In order to contact the owner it is best to write them letters. Make sure you date the letters, send them certified mail, and keep copies as evidence. Two example letters are provided at the end of this packet. The first letter you send to the owner should not be combative in tone. This letter should be viewed as an attempt to reconcile the dispute in order to avoid taking unnecessary legal action. This first letter should provide the owner of the other property information related to the existence of the nuisance and how it is injuring the neighboring properties. It should also convey to the owner that you would like to work with them in order come to amicable resolution that is satisfactory to them and you.

The second letter should be sterner in tone. This letter should reiterate the nature of the nuisance and the injury it is causing to neighboring properties. However, this letter should explicitly state that if no action is taken to remedy the nuisance that you will be forced to initiate an action for private nuisance in City Housing Court. This letter should also set forth a time limitation that the owner of the property must act within in order to avoid the legal action. This time limitation should give the owner sufficient time to act, but should not be excessive. A good amount of time would be between ten days and two weeks. If the owner does not contact you or attempt to abate the nuisance within this time period you should then initiate the action for private nuisance.

5. Bringing the Private Nuisance Action

If the property owner ignores your letters or refuses to remedy the situation, it is now time to proceed with your legal action. At this time you will need to draft several legal documents which are necessary to initiate and support the cause of action for private nuisance. The first document is known as an “Order to Show Cause”. This document is fairly straight forward and copying the example attached to this packet will be sufficient.

However, it will be necessary to fill in certain information. First, you will need to fill in the name of the person submitting an affidavit (which will be you) and the date that the affidavit was signed. You will next need to fill in the type of remedy that you would like the court to award you. This will generally be monetary damages and an injunction requiring the Respondent to remedy the nuisance. Finally, you will need to fill in the address of the property owner, the type of service (which will be “personal”). The court will fill in the blanks regarding the dates.

The next document that you will need to prepare is known as the “Complaint”. This document basically sets forth the pertinent facts of the case and what remedies you would like the court to impose on the Respondent. A form Complaint is attached to the end of this packet. It provides you with an example of the proper structure of the document and the necessary information. All the blank areas should be filled in with facts which are specific to your case.

The final document which you will need to prepare is an “Affidavit”. This document, like the Complaint, will set forth the pertinent facts which you are familiar with. (If you have neighbors who are aware of the nuisance, you can ask them to prepare an Affidavit as well.) It is important that you only include information in the Affidavit that is true and that you have

personal knowledge of. You may be subject to punishment by the court if you include information that you know to be false.

An example Affidavit is attached to this packet, and shows the basic structure and style of the document. The specific facts included in the Affidavit will depend upon your specific situation. When making this document you should make each general fact a different number paragraph. The final paragraph of the Affidavit should set forth the relief you are requesting from the court. Also, the Affidavit must be signed in front of a Notary Public. This can be done at any neighborhood bank for a small fee.

Next you will need to go and file the action with the Court. To do this it is necessary to go to the Buffalo City Court building located at 50 Delaware Avenue, Buffalo, NY 14202. The documents will be filed in the Judgments Room which is located on the first floor.

STATE OF NEW YORK
CITY HOUSING COURT: CITY OF BUFFALO
HOUSING PART 14

_____ ,

Petitioner,

vs.

_____ ,

Respondent.

PETITION

Index No. _____

Premises: _____

1. At all times herein mentioned, Petitioner, _____, (insert Petitioner's name here) was and continues to be a resident of the State of New York, County of Erie, and City of Buffalo.
 2. At all times herein mentioned, Petitioner owned or otherwise possessed a property in Buffalo, New York, known as _____. (Insert Petitioner's address)
 3. Petitioner's property consists of _____. (Insert type of property: ex. "a two-unit residential property which is occupied by the Petitioner and another family.")
 4. Upon information and belief, at all times mentioned herein, Respondent owned property in Buffalo, New York known as _____. (Insert the address of the property causing the nuisance.)
 5. Upon information and belief, Respondent's property is _____. (Insert Nature of Respondent's property: ex. "a single family residential home which is currently abandoned.")
 6. In relation to Petitioner's property, the Respondent's property is located _____. (Ex. Petitioner's property is located immediately adjacent to Respondent's property on the eastern side.)
 7. Respondent has created or maintained a nuisance by _____
-

_____. (Set forth the acts or omissions by the Respondent that created the nuisance.)

8. The aforementioned acts and/or omissions by the Respondent have caused _____
_____. (If applicable, set forth what the nuisance is here)
9. Petitioner and/or Petitioner's property has been injured by the Respondent's creation or maintenance of a nuisance by _____
_____. (Set forth the injuries that have been sustained to Petitioner and Petitioner's property.)
10. Respondent had knowledge and/or notice of the nuisance created or maintained on their property. Petitioner mailed (a) letter(s) informing Respondent of the nuisance and the damage the nuisance has caused on _____. A copy of said letter(s) is attached hereto.
11. The maintenance of the nuisance is intentional because Respondent has either acted for the purpose of causing the condition or should have know that it is resulting or is substantially certain to result from their conduct.
12. The aforesaid acts and/or omissions on the part of the Respondent constitute an unreasonable use of his/her property and are, and at all times mentioned were, a nuisance.

WHEREFORE, Petitioner respectfully demands judgment as follows:

- A. For the recovery of damages sustained by Petitioner, to wit _____ dollars (Insert dollar amount);
- B. That Respondent be enjoined and restrained perpetually from engaging in any activity complained of herein constituting a nuisance on his/her property located at _____
_____. (Insert address of Nuisance);
- C. That Petitioner have a preliminary injunction with the same force and effect pending the determination of this action; (If applicable) and
- D. Such other and further relief as the court may seem just and proper together with the costs and disbursements of this action.

Date: _____, 20____
Buffalo, New York

Signature of Petitioner

STATE OF NEW YORK
CITY HOUSING COURT: CITY OF BUFFALO
HOUSING PART 14

_____ ,

Petitioner,

vs.

_____ ,

Respondent.

ORDER TO SHOW CAUSE

Index No. _____

Premises: _____

On the annexed affidavit of _____, above named Petitioner(s), sworn to on the _____ day of _____, 20____, and upon all papers and proceedings herein:

Let the Respondent or his/her/their attorney(s) show cause at a term of the
HOUSING COURT OF THE CITY OF BUFFALO
HOUSING: PART 14, FLOOR 6
LOCATED AT: 50 DELAWARE AVENUE
BUFFALO, NY 14202

ON: the _____ day of _____, 20____, at _____.

Or as soon thereafter as the parties may be heard why an order should not be made
DIRECTING THE RESPONDENT TO:

AND/OR GRANTING SUCH OTHER AND FURTHER
RELIEF AS MAY BE JUST AND PROPER.

Sufficient reason being presented for the relief requested it is,

ORDERED, the Petitioner serve of a copy of this order to show cause and annexed affidavit upon the Respondent, or his attorney if one has been retained, at _____

_____ by _____
_____ by the _____ day of _____, 20____.

(Type of Service)

All papers Respondent desires to submit in opposition to the Petitioner's petition must be forwarded to the court prior to the hearing date.

SO ORDERED

STATE OF NEW YORK
CITY HOUSING COURT: CITY OF BUFFALO
HOUSING PART 14

_____ ,

Petitioner,

vs.

_____ ,

Respondent.

**AFFIDAVIT
(Example)**

Index No. _____

Premises: _____

I, (your name here), being duly sworn, deposes and states:

1. I, (Your name here), am the Petitioner in the above titled action and as such am fully familiar with the facts and circumstances of this action.
2. I submit this Affirmation in support of my application by Order to Show Cause respectfully seeking an injunction, compensatory and punitive damages related to the maintenance by Respondent of a private nuisance.
3. This application results from the acts and/or omissions of the Respondent, which began at least five years ago and have continued through the time of the writing of this Affirmation.

4. I purchased the two-unit property located at 1234 Unknown Avenue, Buffalo, New York on September 12, 1984, and have lived in the upstairs unit and rented the downstairs unit since that time.
5. The Respondent, upon information and belief, purchased the premises adjacent to mine at 1236 Unknown Avenue, Buffalo, New York (“the Premises”) on April 15, 1998.
6. Respondent has failed to maintain the Premises and has allowed its condition to deteriorate to the point that it substantially interferes with the use and enjoyment of my property.
7. The Premises has chipped and cracking paint on each side, the gutter has fallen off and remains in the backyard, the front porch is rotting and is in danger of collapsing, the roof is in disrepair and shingles are routinely blown off and end up in neighboring properties, several windows are broken and boarded over, and the bushes, grass, and weeds on the property are overgrown. (See photographs attached to the application hereto)
8. Due to the condition of the Premises owned by the Respondent, it has become harder for me to rent the apartment located on my property. People interested consistently tell me that the condition of the neighboring property led them to choose to live elsewhere. As a result, I have had to lower the asking rent from \$650 per month to \$450 per month. Further, the value of my property has decreased from \$95,000 to \$80,000 despite my efforts at maintaining my property in a reasonable condition.
9. I have attempted to contact the Respondent in order to come to a resolution of this problem, but he has refused to work with me or any of the other neighbors.
10. I sent the Respondent letters on February 17, 2009, and on April 1, 2009, informing him of the nuisance and requesting that he contact me to work towards a resolution. (See the Letters

attached to the application hereto) At the time this Affirmation was written the Respondent has failed to respond to my letters or contact me in any way.

11. Based on Respondent's maintenance of the nuisance, I have and continue to suffer substantial damages in the use and enjoyment of my property. As such, Petitioner requests that the court award compensatory and punitive damages.

DATED: Buffalo, New York
_____, 20__

(Your name printed here and signed)

Sworn to before me this _____
day of _____, 20__

Notary Public

SAMPLE FIRST LETTER

(Street Address)
(City, State Zip Code)
(Date)

(Name of Recipient)
(Recipient's Street Address)
(City, State Zip Code)

Dear Mr./Mrs./Ms. _____,

It has come to my attention you own and/or reside at the premises located at 1234 Unknown Avenue in Buffalo, NY. I own the property which abuts the rear of your property at 4321 Anonymous Lane. The condition of your property has deteriorated to the point that it has become a nuisance adjoining property owners and other residents of the neighborhood.

First, there is a rotting tree in the backyard of your property which has been losing branches and poses a serious danger from its eminent collapse. Branches continuously fall when anytime the wind blows. I am unable to my driveway on many days because of the threat posed of falling branches. Additionally, I do not let my children play near the tree due to the falling branch danger.

Furthermore, the physical condition of the structures on your property are significantly affecting the value of neighboring properties. Over the years and significant amount of development has occurred in the neighborhood. However, your property continues to be a "black eye". Your porch has rotting wood around both the bottom and upper areas and the support beams are rotting as well. The paint around the exterior of your entire house is chipping and peeling. The roof is rotted at the gutters around the northeastern portion of your house as well. Finally, your roof has been deteriorating to the point where shingles are rotting and falling off in strong winds.

Your neighbors and members of our block club would like to work with you in order to come to a resolution to these problems. Please contact me so that we may discuss the situation further. I look forward to hearing from you to come to an amicable resolution.

Sincerely,

(Signature Here)

John Doe

SAMPLE FINAL LETTER

(Street Address)
(City, State Zip Code)
(Date)

(Name of Recipient)
(Recipient's Street Address)
(City, State Zip Code)

Dear Mr./Mrs./Ms. _____,

This is the second letter I am writing to you in an attempt to discuss the condition of your property located at 1234 Unknown Avenue in Buffalo, NY. I previously you wrote to you on (Month Day, Year), however, to this point I have not heard back from you. Again, I would like to inform you that conditions existing on your property are causing a nuisance to your adjoining neighbors.

The tree located on the eastern edge of your property in the back of the house continues to rot and pose a financial and physical threat to my family and I. On windy days I cannot park my vehicles in the driveway due to falling branches. Furthermore, I do not let my children play near or under the tree in fear that they may be struck by falling branches. This restricts the use of a significant portion of my back yard because the size of the tree and the many branches that hang over my property.

Additionally, the physical condition of the house on your property is negatively affecting neighboring property values. The wood on your upper and lower front porches is rotting as are the porch support beams. Further, the exterior paint over your entire house and around the windows is chipping and peeling significantly. Your roof near the gutter on the northeastern corner of your house is also rotting.

I would again request that you remedy the aforementioned nuisances. Please contact me so that an amicable resolution to this problem can be agreed upon. If you fail to respond to this letter or remedy the nuisances with ten (10) days I will be forced to take legal action against you in the City of Buffalo Housing. This is not an action that I would like to take so please respond as soon as possible so that we may work together in improving our neighborhood.

Sincerely,

(Signature Here)

John Doe

Partnership for the Public Good
237 Main St., Suite 1200, Buffalo NY 14203
www.ppgbuffalo.org
