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Denver Office: <http://www.DenverHomeLiving.com> - (303) 816-9199 Office

Civil Remedies for Gang-Related Harm



Virtually every crime is also a tort--that is, a civil wrong against people, businesses, or the community for which the perpetrator is civilly liable in damages, subject to court injunction, or both. Gang activity is also likely to violate several civil ordinances, and gang members can be held responsible for the harm they create by these violations. Furthermore, civil remedies can reach other people who make it easier for gangs to operate by their failure to comply with local ordinances or commercial regulations.

Someone is responsible for every site where gangs inflict harm, because he or she owns it, manages it, lives there, or works there. The keys to clearing up the harm that a problem place presents are to identify:

- the people responsible for the problem
- the people responsible for the place
- the pressures that can be brought to bear on those responsible to remedy the problem

The pressures that can be brought to bear (other than criminal prosecution) fall into two general categories: civil suits for nuisance or trespass and civil code enforcement.

Civil Lawsuits

Civil lawsuits ordinarily seek to collect damages for injuries to the plaintiff or the plaintiff's property, or to prohibit the defendants from engaging in some kind of conduct. Private citizens, including private organizations, and public officials can both file civil lawsuits.

An injunctive suit seeks a court order to stop a present harm or prevent future harm. A damage suit seeks money for injuries that have already been inflicted. An injunction is the most powerful of the equity decrees. Violation of an injunction is contempt of court and can be punished by fine or jail or both.

If trespassing gang members cause serious damage to property, they are civilly liable. For example, if gang members set fire to a house, they can be sued for damages as well as prosecuted for arson. Gang members may have no assets at the time of their offense, but civil judgments against them can be renewed for long periods of time, as much as 40 years in many States. Whatever they acquire in the future is subject to attachment to pay the judgment.

Nuisance is a legal concept that applies to physically damaging neighboring property, reducing its value, or reducing its enjoyment. Nuisance also takes into account the neighborhood's general nature and refers to continuing abuses rather than isolated incidents.



Even if an owner and tenants have not themselves committed any specific crimes or offenses, they remain responsible for how their property is used and what happens there. Therefore, legal action can be directed at owners, tenants, or both to compel lawful use of the property, even though they have done nothing illegal.

There are both private nuisances and public nuisances. The difference is that the harm that a public nuisance creates does not affect just one or two neighbors; rather, it affects the general public. For example, public nuisances such as prostitution or crack houses have a negative impact on every property in the vicinity.

Nuisance statutes, ordinances, and cases usually refer to "nuisance abatement." Abatement essentially means getting rid of the nuisance--doing whatever is required to bring the problem to an end. Abatement orders can impose specific conditions for continuing to operate a property, including establishing a system for screening tenants and installing security systems to keep gang members off a property. Abatement can be an invaluable remedy to gang-related harms. Examples of nuisances subject to abatement include drug trafficking, prostitution, gambling,

trafficking in stolen goods, illegal liquor sales, public drunkenness, harassment of passers-by, loud noise, and excessive littering.

It is common in residential zones to regulate how many people can live in a residence, at least in terms of a family. When gangs take over a house, they often violate these occupancy limits.

Trespass refers to an owner's right to exclusive possession of his or her property and involves coming onto another's property. Ordinarily, trespass must be an intentional rather than a negligent or inadvertent invasion of someone else's property. But there are important exceptions involving street gangs. Conduct that is reckless or extremely dangerous can be a trespass even though the perpetrator did not specifically intend to invade the victim's property. Driveby shootings certainly fall into the category of reckless conduct.

There are several civil remedies for trespass: a suit for damages and an injunction or a suit to oust the trespasser. A trespass is not a criminal trespass unless it is a breach of the peace. The trespasser must intend to violate the rights of the landowner, and the trespass must carry with it at least some implicit intimidation or threat of a breach of the peace.

While precise wording may vary, criminal trespass statutes usually forbid going on, attempting to go on, or remaining on the property of another without authority or after being forbidden to do so. Notice against trespass can be either written or oral and can be given in several ways, including personal communication, posting signs on the property, or fencing the property.

The owner can designate agents, including police officers, to warn trespassers that they are trespassing and ask them to leave. Refusal to leave the premises after notice is a criminal trespass, meaning officers can make an immediate arrest or seek an arrest warrant allowing them to make an arrest later.

Civil Code Enforcement



Scarcely any aspect of living in a modern American city is untouched by the city's regulatory power. This power to regulate business stems from the city's responsibility to protect the health, safety, and welfare of its citizens.

Businesses cannot operate in zones where they are not permitted. Beyond the zoning code, there are building, fire, health and sanitation, and business-licensing codes. When gangs occupy or dominate buildings, they often damage them in ways that violate building codes. They may block exits, overload electrical circuits, clog plumbing, or destroy security devices. A fire escape that is down rather than in its retracted position may show that gang members are using it to get in and out of a building. Open windows and smoke coming from a building may show that people are cooking with open fires because there is no gas or electric service in the building. Such activity clearly violates fire codes.

Many places of amusement can also become centers of gang activity. In addition to complying with their basic business licenses, sites such as arcades, poolrooms, and dance halls must comply with fire, health and sanitation, and food service codes. Those that serve alcohol must also have liquor or wine and beer licenses and must comply, for example, with minimum drinking-age statutes.

Many gang-related problems arise on rental properties, which are usually subject to intensive local regulation. Rental properties that have fallen under the control of gangs are frequently in violation of several code provisions. City authorities can take action against both tenants and owners to remedy the problems.

Not even vacant buildings and lots escape regulation. Weeds on lots must be kept trimmed. Lots themselves must be free of litter. City codes also require that unoccupied buildings be secured against unauthorized users and vandals. Neighbors can call on code enforcement to make sure that owners meet these obligations.

Using Civil Remedies



Why have civil remedies not been put to better use? There are at least three major reasons for this failure:

- fear of retaliation
- difficulty of getting public officials to cooperate
- congestion in the courts

The fear of retaliation in gang-dominated neighborhoods is the greatest obstacle to getting neighborhood cooperation in confronting problems. The first step may be to get the neighbors to unite--to seek safety in numbers. If citizens are afraid to come forth, then public officials should provide means for them to communicate their concerns without exposing themselves to gang retaliation.

The best chance of getting swift legal action is to bring matters into the courts of limited jurisdiction (also called small claims courts). Involved parties should look for ways to keep within the jurisdiction of these faster moving courts, which allow the disputing parties to try their cases without lawyers and have simplified procedures and relaxed rules of evidence. Most code violations and less serious criminal offenses come before courts of limited jurisdiction and can be disposed of promptly. Landlord-tenant courts are often special divisions that can also handle cases promptly. Many gang-related problems are essentially landlord-tenant problems that can be taken to those special divisions.

Complicated nuisance suits may end up in courts of general jurisdiction, where it may take a long time for them to be resolved. But if plaintiffs are seeking injunctions rather than damages, they can often get their cases expedited because of the irreparable injuries they suffer by delay.

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