

# Neighbor Issues: You May Be Entitled to Damages for Your Neighbor's Noxious Odors

Andrew Lieb

Not only can the offensive smell be stopped, but damages may be available to you as the neighbor who has had to endure the offensive smell throughout its existence. In fact, the law in New York is not so extreme that it requires odors to adversely impact your health in order for you to have rights. Instead, you have a claim so long as the odors are unpleasant and offensive. Odors that typically give rise to these types of disputes are caused by chemicals, farms, factories, restaurants and the like. To stop the smell, the claim that you should bring is called a private nuisance cause of action and to win on such a claim you will have to demonstrate that your enjoyment of life and property has been rendered objectively uncomfortable based upon unreasonable activities causing the smell.

*Specifically, the courts explain that the following five (5) elements must be proven to prevail on this claim:*

- 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 in acting or failure to act*

You should take note that you don't even have to be forced from your home by the smell in order to win on your claim. Instead, and even if you stay in your home, as long as your property experienced a diminution in its rental value during the course of the existence of the smell, you can recover that diminution in addition to having the smell's cause be stopped.

Shockingly though, secondhand smoke infiltration emanating from a neighbor's own home is almost never considered a private nuisance and no action can likely be brought to stop the smoke. The only exception to this rule, where smoking can be stopped, is when there is an express prohibition against smoking in residences within the locality where the neighbors reside. Such a rule prohibiting smoking can come from either a local statute / code or from a private contractual right existing in the house rules of an apartment building, cooperative apartment or condominium building.

So, before trying to stop the smoking check all county, town, city and village codes for such a law. Additionally, if you live in a multiple dwelling unit (i.e., an apartment), check the rules of the building contained within its house rules, lease, by-laws and/or operating agreement before proceeding. Knowing the rules will be the difference between winning and losing your case.

*Adapted from this [Lieb Blog](#) post.*

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