

617.80 DEFINITIONS

Subdivision 1. Generally. The definitions in this section apply to sections 617.80 to 617.87.

Subd. 2. Building. "Building" means a structure suitable for human shelter, a commercial structure that is maintained for business activities that involve human occupation, any portion of the structure, or the land surrounding the structure. If the building is a multiunit dwelling, a hotel or motel, or a commercial or office building, the term "building," for purposes of sections 617.80 to 617.87, means only the portion of the building within or outside the structure in which a nuisance is maintained or permitted, such as a dwelling unit, room, suite of rooms, office, common area, storage area, garage, or parking area.

Subd. 3. Movable property. "Movable property" means furniture and fixtures.

Subd. 4. Prostitution. "Prostitution" or "prostitution-related activity" means conduct that would violate sections 609.321 to 609.324.

<https://www.revisor.leg.state.mn.us/statutes/?id=609.321>

Subd. 5. Gambling. "Gambling" or "gambling-related activity" means conduct that would violate sections 609.75 to 609.762.

<https://www.revisor.leg.state.mn.us/statutes/?id=609.75>

Subd. 6. [Repealed, 1997 c 100 s 5]

Subd. 7. Owner. "Owner" for purposes of sections 617.80 to 617.87 means the person in whose name the building or affected portion is recorded with the county auditor for taxation purposes.

Subd. 8. Interested party. "Interested party," for purposes of sections 617.80 to 617.87, means any known lessee or tenant of a building or affected portion of a building; any known agent of an owner, lessee, or tenant; or any other person who maintains or permits a nuisance and is known to the city attorney, county attorney, or attorney general.

Subd. 9. Prosecuting attorney. "Prosecuting attorney" means the attorney general, county attorney, city attorney, or attorney serving the jurisdiction where the nuisance is located.

617.81 NUISANCE; ACTS CONSTITUTING; INJUNCTION; NOTICE

Subdivision 1. Injunction. In order to obtain a temporary injunction under section 617.82 or a permanent injunction or order of abatement under section 617.83, the provisions of sections 617.80 to 617.87 must be followed.

Subd. 2. Acts constituting a nuisance.

(a) For purposes of sections 617.80 to 617.87, a public nuisance exists (i) upon proof of one or more separate behavioral incidents described in clause (1), (5), or (8), or (ii) upon proof of two or more separate behavioral incidents described in clause (2), (3), (4), (6), (7), or (9), committed within the previous 12 months within the building:

(1) prostitution or prostitution-related activity committed within the building;

(2) gambling or gambling-related activity committed within the building;

(3) maintaining a public nuisance in violation of section 609.74, clause (1) or (3);

(4) permitting a public nuisance in violation of section 609.745;

[maintain or permit a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public; or any other act or omission declared by law to be a public nuisance and for which no sentence is specifically provided.]

(5) unlawful sale, possession, storage, delivery, giving, manufacture, cultivation, or use of controlled substances committed within the building;

(6) unlicensed sales of alcoholic beverages committed within the building in violation of section 340A.401;

[Except as provided in this chapter, no person may directly or indirectly, on any pretense or by any device, sell, barter, keep for sale, charge for possession, or otherwise dispose of alcoholic beverages as part of a commercial transaction without having obtained the required license or permit.]

(7) unlawful sales or gifts of alcoholic beverages by an unlicensed person committed within the building in violation of section 340A.503, subdivision 2, clause (1);

[It is unlawful for any person to sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age.]

(8) unlawful use or possession of a dangerous weapon as defined in section 609.02, subdivision 6, committed within the building; or

["Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.]

(9) violation by a commercial enterprise of local or state business licensing regulations, ordinances, or statutes prohibiting the maintenance of a public

nuisance as defined in section 609.74 or the control of a public nuisance as defined in section 609.745.

[maintain or permit a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public; or having control of real property permits it to be used to maintain a public nuisance or lets the same knowing it will be so used.]

(b) If the building contains more than one rental unit, two or more behavioral incidents must consist of conduct:

(1) anywhere in the building by the same tenant or lessee, or persons acting in conjunction with or under the control of the same tenant or lessee;

(2) by any persons within the same rental unit while occupied by the same tenant or lessee or within two or more rental units while occupied by the same tenant or lessee; or

(3) by the owner of the building or persons acting in conjunction with or under the control of the owner.

(c) Proof of a nuisance exists if each of the elements of the conduct constituting the nuisance is established by clear and convincing evidence.

Subd. 2a. [Repealed, 1995 c 244 s 42]

Subd. 3. [Repealed, 1995 c 244 s 42]

Subd. 4. Notice.

(a) If a prosecuting attorney has reason to believe that a nuisance is maintained or permitted in the jurisdiction the prosecuting attorney serves, and intends to seek abatement of the nuisance, the prosecuting attorney shall provide the written notice described in paragraph (b), by personal service or certified mail, return receipt requested, to the owner and all interested parties known to the prosecuting attorney.

(b) The written notice must:

(1) state that a nuisance as defined in subdivision 2 is maintained or permitted in the building and must specify the kind or kinds of nuisance being maintained or permitted;

(2) summarize the evidence that a nuisance is maintained or permitted in the building, including the date or dates on which nuisance-related activity or activities are alleged to have occurred;

(3) inform the recipient that failure to abate the conduct constituting the nuisance

or to otherwise resolve the matter with the prosecuting attorney within 30 days of service of the notice may result in the filing of a complaint for relief in district court that could, among other remedies, result in enjoining the use of the building for any purpose for one year or, in the case of a tenant, could result in cancellation of the lease; and

(4) inform the owner of the options available under section 617.85.

617.82 AGREED ABATEMENT PLANS; TEMPORARY ORDER

(a) If the recipient of a notice under section 617.81, subdivision 4, either abates the conduct constituting the nuisance or enters into an agreed abatement plan within 30 days of service of the notice and complies with the agreement within the stipulated time period, the prosecuting attorney may not file a nuisance action on the specified property regarding the nuisance activity described in the notice.

(b) If the recipient fails to comply with the agreed abatement plan, the prosecuting attorney may initiate a complaint for relief in the district court consistent with paragraph (c).

(c) Whenever a prosecuting attorney has cause to believe that a nuisance described in section 617.81, subdivision 2, exists within the jurisdiction the attorney serves, the prosecuting attorney may by verified petition seek a temporary injunction in district court in the county in which the alleged public nuisance exists, provided that at least 30 days have expired since service of the notice required under section 617.81, subdivision 4. No temporary injunction may be issued without a prior show cause notice of hearing to the respondents named in the petition and an opportunity for the respondents to be heard. Upon proof of a nuisance described in section 617.81, subdivision 2, the court shall issue a temporary injunction. Any temporary injunction issued must describe the conduct to be enjoined.

617.83 INJUNCTION; ORDER OF ABATEMENT

Upon proof of a nuisance described in section 617.81, subdivision 2, the court shall issue a permanent injunction and enter an order of abatement, except as otherwise provided by section 617.85. The permanent injunction must describe the conduct permanently enjoined. The order of abatement must direct the closing of the building or a portion of it for one year, except as otherwise provided in section 617.84 or 617.85, unless sooner released pursuant to section 617.87. Before an abatement order is enforced against a building or portion of it, the owner must be served with the abatement order and a notice of the right to file a motion under section 617.85 in the same manner that a summons is served under the Rules of Civil Procedure. A copy of the abatement order shall also be posted in a conspicuous place on the building or affected portion.

617.84 MOVABLE PROPERTY

The order of abatement may direct the removal of movable property used in conducting or maintaining the nuisance and direct the sale of property belonging to a respondent who was notified or appeared. The sale shall be conducted pursuant to the provisions of chapter 550 on the sale of property on execution. A person appointed by the court as receiver of the building may use a building or portion of it which is the subject of an abatement order in a manner approved by the court. Costs of the sale on execution, moving and storage fees, and any receivership must be paid out of the receipts from the sale of the movable property or any rents collected during the receivership. The balance from the sale of movable property must be paid to the owner of the property. The balance from any rents collected during any receivership shall be paid to the treasury of the unit of government which brought the abatement action.

617.85 NUISANCE; MOTION TO CANCEL LEASE

Where notice is provided under section 617.81, subdivision 4, that an abatement of a nuisance is sought and the circumstances that are the basis for the requested abatement involved the acts of a commercial or residential tenant or lessee of part or all of a building, the owner of the building that is subject to the abatement proceeding may file before the court that has jurisdiction over the abatement proceeding a motion to cancel the lease or otherwise secure restitution of the premises from the tenant or lessee who has maintained or conducted the nuisance. The owner may assign to the prosecuting attorney the right to file this motion. In addition to the grounds provided in chapter 566, the maintaining or conducting of a nuisance as defined in section 617.81, subdivision 2, by a tenant or lessee, is an additional ground authorized by law for seeking the cancellation of a lease or the restitution of the premises. Service of motion brought under this section must be served in a manner that is sufficient under the Rules of Civil Procedure and chapter 566.

It is no defense to a motion under this section by the owner or the prosecuting attorney that the lease or other agreement controlling the tenancy or leasehold does not provide for eviction or cancellation of the lease upon the ground provided in this section.

Upon a finding by the court that the tenant or lessee has maintained or conducted a nuisance in any portion of the building, the court shall order cancellation of the lease or tenancy and grant restitution of the premises to the owner. The court must not order abatement of the premises if the court:

- (a) cancels a lease or tenancy and grants restitution of that portion of the premises to the owner; and
- (b) further finds that the act or acts constituting the nuisance as defined in section 617.81, subdivision 2, were committed by the tenant or lessee whose lease or tenancy has been canceled pursuant to this section and the tenant or lessee was not committing the act or acts in conjunction with or under the control of the owner.

617.86 CONTEMPT

Whoever violates a temporary injunction, permanent injunction, or abatement order granted under sections 617.80 to 617.87 may be adjudged in contempt of court.

617.87 RELEASE OF PROPERTY

If, after an order of abatement has been entered, the owner appears and pays the costs of the action and files a bond in an amount determined by the court, but not to exceed \$50,000, conditioned that the owner will immediately abate the nuisance for a period of one year, the court may, if satisfied of the owner's good faith, order the release of the building or portion of it which is subject to the order of abatement. If the premises are released, for each day during the term of the bond that the owner knowingly permits any part of the premises to be used for any activity which was the basis of the abatement order, the owner shall forfeit \$1,000 under the bond. Forfeiture under the bond does not relieve the owner from prosecution for contempt. Release of the property pursuant to this section does not release it from an injunction issued under section 617.83 or any other judgment, penalty, lien, or liability to which it may be subject by law.