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Can manager take legal action against trespassers?

Dear Dale: I manage an apartment complex that provides housing for median-income households. We are having a recurring problem with people who are not residents loitering in our hallways. They are not guests of our residents. Is there a procedure that will allow me to issue a trespassing notice to these individuals that will be enforced by the police?

You certainly have the right to keep loiterers off the property of your apartment complex. The respect the law has for property rights runs deep in America, and that is reflected both by criminal statutes and civil court decisions.

As far as issuing a notice goes, I don't think you have to do that, but it would probably help your cause. People who enter your property without permission or privilege are breaking the law. In Ohio, people can be prosecuted for trespassing by knowingly entering or remaining on the land or premises of another.

That's pretty broad, but the law includes additional sections, such as knowingly entering property that is restricted to certain persons, purposes, or hours, when the trespasser knows he is violating the restriction. The trespassing law also is broken when someone recklessly enters or remains on property after receiving notice to stay off or ignoring a no-trespassing posting.

For the purposes of this column, it's not really necessary to get into the definitions of "knowingly" or "recklessly," but suffice it to say people can't just hang out on someone else's property unless they have permission or some type of privilege — like a postal carrier or a firefighter responding to a call.

Violating the trespassing statute is a fourth-degree misdemeanor which carries a potential sentence of up to 30 days in jail.

So, you should be able to call the police, whether or not you have no-trespassing signs posted, when these people are loitering at your apartment complex. I don't think it's necessary, but the case would be strengthened in terms of a potential prosecution if you posted no-trespassing signs in a conspicuous place and if you told the loiterers to get off the property and never come back. In practical terms, the police are busy and have to prioritize calls, so it could be tough to get a quick response depending on the size of the community where your complex is located. Taking photographs or videos of their presence would help give the prosecutor evidence for a criminal case if the police can't get there in time to see them on the property.

These cases can result in criminal charges. I know of a case in Toledo in which a man was prosecuted for trespassing after he ignored repeated requests of an apartment complex manager to stay off the property. The prosecutor took it seriously because there were so many violations and it created a hassle for the manager.

You also have the option of bringing a civil action against a trespasser. In the civil context, the elements of trespass are an unauthorized intentional act that results in entry on the land of another. When you take it to the law school extreme, you can have a trespass by throwing a ball over another person's property even if you're not setting foot on

the person's land.

From a practical standpoint, bringing a civil case only makes sense if you can prove significant financial damages. For example, you'd need to show that the trespass cost you money because you were unable to use a portion of the property or you had to pay to remove the trespasser. Litigation is time consuming and expensive, so it makes sense to explore other options.

I think your best option is to put the trespassers on notice and call the police every time you see them loitering.

Dale Emch practices law at the Charles E. Boyk Law Offices, LLC, in Toledo. In his column, he will discuss general legal principles and answer readers' questions. Neither Mr. Emch nor The Blade present or intend his column to be taken as legal advice. Readers seeking legal advice should consult with an attorney. Readers should send their questions to Mr. Emch at demch@charlesboyk-law.com or Dale Emch, 405 Madison Ave., Suite 1200, Toledo, OH 43604. His blog is at www.toledocaraccidentlawyerblog.com.
