

DO YOU HAVE A BARKING DOG PROBLEM?

What to do when a dog's bark is worse than his bite

1. If you are being disturbed by a barking dog, you may wish to consider the following:
 - **Don't rush into court.** Legal action can be costly and time-consuming and should be only a last resort. Keep in mind that even if you win a legal battle, your neighbor will still be living next door.
 - **Talk to your neighbor first.** If you contact the police first, they will likely ask whether you have communicated the problem to your neighbor and if not, ask you to do so.
2. In approaching your neighbor:
 - Give your neighbor the benefit of the doubt. Approach the subject in a manner that suggests you believe your neighbor is unaware of the problem, rather than assuming they know but just don't care. People often don't realize that their actions annoy others.
 - Tactfully present your side of the story.
 - Expect a defensive reaction, and be prepared to calmly answer any complaints about your own behavior.
 - Express your desire to work together to find a solution that satisfies the both of you. Ask for ideas your neighbor may volunteer to take help solve the situation. Offer to pay for some of the costs of required action, if it's within your means.
 - Discuss your differences on neutral ground, rather than on your property or theirs. Ask questions or make requests, rather than shouting demands.
3. **If the problem persists, make your requests to your neighbor in writing.** The letter should carefully state the situation. Without making threats, you should state if the situation doesn't improve you'll be forced to notify the authorities and take appropriate legal action. Keep a copy of your letter, you'll need it if, as a last resort, you later must take legal action against your neighbor.
4. **Keep a written record of the barking incidents.** You should write down each date the barking occurs, the duration of the barking and the time of day. You should also keep a record of the requests you have made to your neighbor to stop the barking.
5. **Call the police.** After documenting the occurrences and trying the above steps first, contact the police at 296-5807. An officer will write a report and

refer the incident to an Animal Control Officer. Try to get the police to come while the noise is occurring.

The Animal Control Officer will visit the dog owner's home to check for signs of cruelty or other possible causes of the dog's excessive barking. The Animal Control Officer's findings will be documented and kept on file.

(Of course, you can call the police much earlier but you are encouraged to try to solve the problem by using the above suggestions first.)

6. Try mediation. Mediation is an informal voluntary process in which parties try to solve their conflicts with the help of trained mediators. You may go to mediation before or after filing a lawsuit. One mediation resource is the Mediation Center at FOCUS, a community non-profit organization which provides mediation on a sliding fee basis ranging from no cost to \$100, depending on income, for a two hour session. Confidential sessions take place at 1025 Park Street. The process is designed to allow the parties to come up with their own solution without a judgment or decision imposed by the mediators. If an agreement is reached, it will be put in the form of an enforceable contract and signed by both parties. If no agreement is reached, parties can proceed to court. For information regarding mediation, you can call 977-2926.

7. File a lawsuit in general district court. If the barking has caused you to suffer damages, a lawsuit can be filed.

- If your claim is for \$2000 or less in money damages and you desire to represent yourself, you may use the small claims court (part of the General District Court).
- If your claim is for \$15,000 or less in money damages, you may file a civil warrant and debt in the General District Court. An attorney may represent you or the defendant in this court, but an attorney may not be necessary.
- Whether you file in the small claims court or General District Court, you will need to provide the General District Court clerk's office with the following information to complete the warrant:

Name of the defendant

Current address of the defendant

County or city in which the defendant is located

The amount to be recovered

The basis of the claim

A stamped envelope addressed to the defendant

\$36 plus \$12 for each added individual (i.e. \$48 for one defendant, \$60 for two defendants, etc.)

- The general district court's clerk's office will provide forms and instructions. It usually takes four or five weeks for the "return date" (initial trial date). If the defendant appears and contests, a later trial date will be scheduled. As an alternative to a trial, the court will offer immediate mediation
- The clerk of the general district court may be reached at 972-4004 if you need more information.

In the lawsuit, you must show the barking is a nuisance and that you have been damaged. Before proceeding, some issues you must address are:

How does the barking interfere with your reasonable use of enjoyment of your property?

Would the average person in your position be affected by the barking in a similar way?

Is the barking more or less tolerable if someone were to take into account the surrounding neighborhood where you live?

In what ways have you suffered damages because of the barking?

Do you have a measurable or tangible way of showing your damages?

Will you be able to show the damages were caused by the barking and not by other plausible factors?

Proving the barking is a nuisance which caused identifiable damages can be difficult. It is helpful if you can articulate a clear loss, for example through medical bills, or other proof of monetary loss.

Either party may appeal a General District Court decision to a Circuit Court. In an appeal, the case has to be tried again, as if brought for the first time. An appeal will require both sides to spend more time and money. Also hiring an attorney may be necessary, as the procedure in the Circuit Court is more formal and complex.

8. File a lawsuit in Circuit Court. If you seek more than \$15,000 in money damages, you will have to file a lawsuit in Circuit Court. This will probably require hiring a private attorney if you are unfamiliar with the legal process. The elements of proof are the same as in General District Court, but the procedure is more formal and complex.
9. Seek injunctive relief in Circuit Court. If you cannot prove damages, you may still be able to pursue injunctive relief by asking the Circuit Court to order an end to the barking. Again, a Circuit Court action is more formal and complex and will likely require you to hire a lawyer.

In considering whether to file for an injunction, some issues you must address are:

How does the barking interfere with your reasonable use or enjoyment of your property?

Would the average person in your position be affected by the barking in a similar way?

Is the barking more or less tolerable if someone were to take into account the surrounding neighborhood where you live?

Have you suffered damages that cannot really be relieved by winning a money damage award?

What else about your situation makes money damages an inadequate solution?

If the court orders a dog's barking to be abated and the dog owner fails to comply, the dog owner can be held in contempt of court and could be punished by fine or jail time for refusing to comply with the court's order.

This brochure is intended to simply provide information and is not legal advice applicable to individual situations. It should not be relied upon as a full explanation of the law. Before taking legal action, it is always advisable to consult a private attorney.

The County Attorney's office is not authorized to give private legal advice, to represent citizens in private legal actions or to refer citizens to private attorneys.

You may contact the Charlottesville-Albemarle Legal Aid Society (977-0553) for a referral to a private attorney. (Legal Aid does not provide representation for this type of dispute.)

For more information on animal-related issues, please contact an Animal Control Officer at 296-5807.