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## **SOUND AND SENSE: ACOUSTICS IN CONSTRUCTION DEFECT LAW**

Acoustical problems in apartment homes can infuriate residents and make a manager's life miserable. If a particular property is plagued with noise complaints there may be a serious underlying problem. Sometimes sound is transferred between units that shouldn't be. If sound at a normal decibel level is invading a neighboring unit, there may be a construction problem.

"Every time my neighbor's phone rings, I run over to try to answer it," a potential client explained to me when describing the acoustical problem in his unit. The acoustics in this project were so bad that one resident could hear his neighbor's phone ringing in his neighbor's home as clearly as his own. When normal sounds like this are transferred so clearly through the party walls; it is a good indication that there may be a construction defect.

With construction in Nevada in excess of one hundred homes per day it is hard for builders to find reliable workers. With this shortage of trained workers, mistakes can be made, and often are. One type of construction defect that is frequently overlooked is defective acoustical construction. Acoustical defects are becoming more and more common in Phoenix with the increase in multiple unit apartment, condominium, and town home construction.

To understand acoustical problems, we look to acoustical construction. There are a number of ways to construct interior walls to dampen the sound transmitted between units. These noise dampening techniques vary from the type of insulation used to special sound dampening products for party wall construction. The Resilient Channel is one such product for dampening sound in party walls and ceilings. Resilient Channeling attaches the Gypsum Board to the stud (the interior wall to the wood framing). The channeling is able to absorb sound by catching some of the sound vibration and diffusing it through the resilient channel rather than the framing. The channel screws into the stud and the gyp-board is then attached to the channeling.

Unfortunately, this channeling is not always installed correctly. The most common mistake contractors make is to drive the nail through the drywall - through the channeling - and into the stud. This wholly defeats the purpose of the channel. When the channel is nailed through the gyp-board into the stud, it is not able to serve its sound dampening purpose. Sometimes builders make other mistakes with channeling such as using the wrong screws or using less expensive channeling that has no sound dampening capabilities.

Resilient Channeling is only one of a number of ways to reduce noise transmission in multiunit housing. Likewise it is only one of a number of conditions that could have been defectively or deficiently constructed to lead to acoustical problems. Claims for acoustical defects tend to be among the most complicated construction defect issues to prove. An acoustical claim would typically require the use of an architectural expert as well as an acoustical engineer. These experts would perform a number of tests such as measuring the decibel transfer and destructive testing to examine the components used in the area between units.

Just because you have complaints of noise in your community does not necessarily mean that you have a construction defect. Your problem may just be noisy neighbors. Look carefully at the facts and circumstances of the complaints. Are people complaining about high noise level distractions such as stereos blasting or late night parties, or do the complaints describe being able to hear a low level conversation clearly or a phone ring as if it was the resident's own line. Remember to respond to your resident's complaints timely and with written warnings. Consult with an attorney if you have any questions regarding reoccurring complaints or evictions.

If you suspect you might have an acoustical problem on your property, please consult with an attorney.