

SOLUTIONS FOR PARKING VIOLATIONS

Pursuant to recent requests from various associations, we have prepared the following guidelines on an Association's ability to tow vehicles which are in violation of the Association's parking restrictions. Of course, every Association is unique and thereby requires a special review of each Association's governing documents for additional restrictions on its ability to tow vehicles.

The guidelines are based on current law as of the date of this letter. However, it is possible that changes in the law, whether statutory, judicial or administrative, could affect any of our conclusions.

Under Vehicle Code §22658.2, associations may have improperly parked vehicles removed and towed to the nearest public garage if they meet specified requirements. To be able to tow vehicles, an association must meet the three sets of requirements of Vehicle Code §22658.2(a), which are further discussed below.

INSTALLATION OF SIGNS AT EACH ENTRANCE TO THE SUBDIVISION

Many associations' governing documents contain parking restrictions and provisions regarding the Association's authority to tow an illegally parked vehicle from the Association's common area parking lots and/or private streets. However, many associations would be unable to act on this authority because they do not comply with California Vehicle Code §22658.2, which requires that a sign, not less than 17 x 22 inches in size with lettering not less than one inch in height appear at each entrance to the subdivision and contain the following language:

A statement that public parking is prohibited and that all vehicles not authorized to park within the subdivision will be removed at the owner's expense;

The telephone number of the local law enforcement agency.

Therefore, if you do not have these signs you should immediately install them at each entrance to the subdivision to comply with this provision.

NOTICE REQUIREMENTS

Prior to the towing of any vehicle from the subdivision, the Association must follow both the notice requirements contained within the CC&Rs, if any, and the requirements contained in California Vehicle Code §22658.2.

• Notice Prior to Towing of Vehicle

California Vehicle Code §22658.2 permits associations to remove and tow improperly parked vehicles to the nearest public garage. Vehicle Code §22658.2, as well as §§(f) through (k) of §22658, do not specify any notice to the violating vehicle owner prior to towing. However, it is recommended that the Association place a written notice on any violating vehicle, enumerating that the vehicle will be towed to a public garage unless the vehicle is moved within the time frame contained in your governing documents. If your governing documents do not contain a notice requirement, then we believe a twenty-four (24) hour notice would be sufficient and reasonable. Additionally, although not required, it is suggested that if the telephone number of the vehicle owner is known, then the Association should attempt, at least once, to communicate with the owner before removal. Conversely, if the Association does not know to whom the vehicle belongs, you may wish to contact your local law enforcement agency and request information on the registered owner of the vehicle so that you may provide him/her with notice.

• Requirements of Notice after the Violating Vehicle Has Been Removed from the Subdivision

Vehicle Code §22568.2 also requires notice to the vehicle owner after the vehicle has been removed from the subdivision. More particularly, if the identity of the vehicle owner is known or readily ascertainable, the Association must notify the owner of the removal by first-class mail.

If the Association cannot ascertain the name of the owner and the vehicle is not returned to the owner within a period of one hundred twenty (120) hours, then the Association, pursuant to Vehicle Code §22853, shall immediately

send a written report of the removal by mail to the Department of Justice in Sacramento, and shall file a copy of the notice with the proprietor of the public garage where the vehicle was stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal, and the name of the garage or place where the vehicle was stored.

In addition to the notice requirement discussed above, the Association must also give notice to the local law enforcement agency immediately after the vehicle has been removed. The notice shall include, again, a complete description of the vehicle, the license plate number, the date, time and place where the vehicle was removed and the name of the garage or place where the vehicle was stored.¹

• **Liability for Damages**

If an association complies with vehicle code §22658.2, the association will not be liable for any damage which results from the removal of the vehicle from the subdivision.

Vehicle Code §22568.2(c) provides in pertinent part:

“The association shall not be liable for any damages incurred by the vehicle owner because of the removal of a vehicle in compliance with this section or for any damage to the vehicle caused by the removal. However, the owner of a vehicle removed pursuant to this section may recover for any damage to the vehicle which results from any intentional or negligent act of the association or any person causing the removal of, or removing, the vehicle.”

As such, the Association would not be held liable for any damage to the vehicle caused by the towing company or any storage thereafter. However, the Association could be held liable for any damage to the vehicle which resulted from the Association’s negligent act (for example, if the Association towed the vehicle itself or failed to comply with the Vehicle Code).

PRACTICAL TIPS AND SUGGESTIONS

Prior to towing a vehicle from the subdivision, an Association must meet the requirements of Vehicle Code §22568.2, as discussed above. In summary, the procedure for towing a vehicle shall be as follows (after proper towing signs have been installed at each entrance to the subdivision, if required):

Vehicle Owner Known to Association

1. Give notice pursuant to the CC&Rs, and place notice on vehicle. If your CC&Rs do not contain a notice requirement, then we recommend at least a twenty-four hour (24) notice.
2. Tow vehicle.
3. Mail notice to owner that vehicle has been removed.
4. Mail notice of towing to local law enforcement agency.

Vehicle Owner Not Known to Association

1. Give notice pursuant to the CC&Rs, and place notice on vehicle. If your CC&Rs do not contain a notice requirement, then we recommend at least a twenty-four hour (24) notice.
2. Tow vehicle.
3. Mail notice of towing to local law enforcement agency.
4. Mail written report of the removal to the Department of Justice in Sacramento and file a copy of the notice with the proprietor of the public garage where the vehicle was stored.



¹ Please note that pursuant to Vehicle Code §22658.2(b), an Association may tow a vehicle without notice if the vehicle is parked in a marked fire lane, within 15 feet of a fire hydrant, in a handicapped parking area or otherwise obstructs the ingress or egress of an owner or of the subdivision.