



E-NEWSLETTER JULY 9, 2010

Enforceability of Parking Restrictions

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Association clients and managers often struggle to determine whether the association can regulate or restrict parking. While there are no published cases in Arizona about the enforceability of association parking restrictions on public or private streets, there is an appellate case on this subject from Missouri. In *Maryland Estate Homeowners' Association v. Puckett*¹, the Court held that the association could control parking on a publicly dedicated street because owners contractually gave up their right to park on the street. This is consistent with the general view that private covenants can be more restrictive than ordinances, and that such covenants are enforceable as contracts. Arizona law clearly holds that recorded CC&Rs are contracts. If the streets are private, the association has even more control over parking.

While an association may legally enforce valid restrictions regarding parking on its streets, the next question is whether an association should enforce the parking restrictions. Under Arizona law, an association has an obligation to enforce the governing documents. Therefore, if an association's CC&Rs contain parking restrictions, it is our opinion that the association has an obligation to enforce such restrictions.

Enforcement of parking restrictions is often difficult. In order for an association to conduct effective enforcement, it must have adequate staff or management participation to conduct enforcement/inspection activities during the day and night. An association must ensure that the entire association is being surveyed so that the association will not be susceptible to claims of selective enforcement.

Although an association's CC&Rs may authorize the association to tow a vehicle in violation of the parking restrictions, our firm generally advises against towing of vehicles in most situations because it is often difficult, if not impossible, to determine whether an improperly parked vehicle belongs to an owner or guest. An association will not know whose vehicle is improperly parked unless it has a vehicle registration policy in place, or unless it researches ownership of the vehicle.

As we do not recommend towing as a means of enforcing parking violations in every case, there are alternatives we recommend. An association can send violation letters in an attempt to obtain compliance. An association may consider imposing fines; however, it must strictly adhere to A.R.S. §33-1803(B) or §33-

¹ 936 S.W.2d 218 (Mo.Ct.App.) 1996.

1242(D) if it chooses this option. If an owner fails to comply after one or two letters, the association may then consider instructing its attorneys to send a violation letter. An association may file a lawsuit seeking injunctive relief against the offending owner. An injunction is a court order compelling an offending owner to comply with the parking restrictions.

An association may also want to consider adopting parking rules to address specific parking issues. Violations of these rules may be enforced as outlined above.

If an association has parking restrictions, the association has an obligation to enforce such restrictions. If such enforcement action is not acceptable to the Board or membership, the community should consider amending the CC&Rs to change the objectionable provisions.

For information about parking enforcement or review of restrictions or rules, contact Nikita Patel or another attorney in our office.